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THE STATE REORGANIZATION MOVEMENT*

WILLIAM H. EDWARDS**

Jacksonian Democracy, the popular revolt against the "boss and the machine,"¹ the settlement of the west, the development of a complex urban and industrial society, and the mounting cost of government were underlying forces which led to the movement for the reconstruction of state governments. These factors weakened the governor's administrative position, and the reorganization movement, distinctly crystallized by 1915 proposed to return the governor to his original status—"about the same relative position as the President."² Two distinct constitutional tendencies arose from these social forces. One was the popular election of state officials. The other was the enormous increase of independent administrative agencies. The two trends cannot be strictly confined to distinct periods, nor are they mutually exclusive. But the former was dominant during the first half of the Nineteenth Century and reached its peak by 1850. The latter became manifest especially in the second half of the century and continued approximately to 1915. The causes of the first tendency were the democratizing and equalizing influence of the Jacksonian Era, on one hand, and the rising tide of opposition to invisible government on the other. At present the futility of popular election of state executives (except the governor) as a means of eliminating the boss is generally recognized. But in the last century most people believed that such an electoral process would accomplish that end. That this misconception continued in the popular mind, even into the latter part of the past century, is evident from the direct election of such officials as Railroad and Warehouse Commissioners. In time, however, it was realized that such a practice merely played into the hands of the professional politician and entrenched the machine more firmly than ever.

*This article continued from 1 DAK. L. REV. 12. It will be concluded in the next issue of the REVIEW.

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¹Elihu Root in his speech before the New York Constitutional Convention August 30, 1915 explained the implications of the terms "boss and machine" and "invisible government" in an inimitable fashion: "The government of the state has presented two different lines of activity; one of the constitutional and statutory officers of the state, and the other of the party leaders; they call them party bosses. They call the system—I don't coin the phrase, I adopt it because it carries its own meaning—the system they call "invisible government." For I don't know how many years Mr. Conkling was the supreme ruler in this state. The governor did not count, the legislatures did not count, comptrollers and secretaries of state and what not did not count. It was what Mr. Conkling said . . . Then Mr. Platt ruled the state . . . The capitol was not here; it was at 49 Broadway; Mr. Platt and his lieutenants. It makes no difference what name you give . . . Fenton or Conkling or Cornell or Arthur or Platt or by the names of men now living. The ruler of the state during the forty years of my acquaintance . . . has not been any man authorized by the constitution or by law; and, sir, there is a deep and sullen and long-continued resentment at being governed by men not of the people's choosing. The party leader is elected by no one, accountable to no one, bound by no oath of office, removable by no one . . . What does the boss have to do? He has to urge the appointment of a man whose appointment will . . . preserve the organization. The invisible government proceeds to maintain its power by a reversal of the fundamental principle of good government. . . . Everyone of you knows what I say about the use of patronage under the system of invisible government is true . . . They were appointed, to promote the power of political organization. A great number, seldom here, rendering no service are put on the payrolls as a matter of party patronage. Both parties are alike". MUNICIPAL RESEARCH, No. 63, 827-9, July 1915. See *infra* Charles Evans Hughes statement on patronage, and Orth, S. P. *The Boss and the Machine*, CHRON. OF AM., Series XLIII.

²GOODNOW, F. J., COMPARATIVE ADMINISTRATIVE LAW, 81. See Field v. People, 3 Illinois 79, and Exparte Holmes, 12 Vermont 643, for difference between the legal status of the governor and the President; JOHNSON, A. AND ROBINSON, W. A.: READINGS IN RECENT AMERICAN CONSTITUTIONAL HISTORY, 1876-1926, chs. 35 and 36; HOLCOMBE, STATE GOVERNMENT IN THE UNITED STATES, revised ed., 289, CLEVELAND AND BUCK, THE BUDGET AND RESPONSIBLE GOVERNMENT, 62 for political, social and economic favors weakening the governor's powers.

The causes of the second tendency were the speedy building up of the west, the disappearance of the frontier, the astounding growth of cities and rise of manufactures and commerce. Colossal undertakings were made in the field of public works and state enterprises. The Erie Canal was one of the initial undertakings in an era of internal improvements. The new democracy demanded equality in education, and the consequence was the state board of education and the state university. Concentrated populations brought a cry for protection against the ravages of disease, the provision for good water supply, pure milk and food. Aided by recent advances in science, the states have undertaken to care for the mentally and physically disabled, the criminals, the poor, and the other unfortunate wards of the state. The rapid exploitation of the natural resources led to the creation of agencies to prevent their destruction. In an effort to aid in the solution of the problems of modern industry, services were established to deal with the relations of employer and employee, to control or supervise in a general way the wages, hours, and conditions of labor, and to protect the consumer against monopoly and fraud. Massachusetts was one of the first states to create new administrative services. In 1837 the state board of education was established; in 1838, the bank commissioner; in 1853, the board of agriculture; in 1855, the insurance commissioner; in 1863, the state board of charity; in 1865, the tax commissioner; in 1866, the commission on fish and game; in 1869, the state board of health, the railroad commission, and the bureau of labor statistics, and in 1870, the office of corporation commissioner. By the second decade of this century Massachusetts had over 100 different administrative services. Her experience was typical of all states.*

For our purposes, the most significant aspect of this trend is not the number of new administrative agencies. Rather it is the independence of these agencies from the governor's control. Through such independence, the specialized humanitarian, social, and public welfare groups favoring the establishment of these new services hoped such agencies would not be embroiled in partisan politics. Experience with practical politics had taught them that control of the governor and the executive branch by political parties meant the appointment of faithful partisans regardless of competence. Political machines, they found, were potent forces and unless they faced the problem squarely and set up every possible barrier against the encroachment of the spoilsman, their new agency would be inefficiently and incompletely managed, if, indeed, the whole object of creating the service was not nullified. In brief, their desire with regard to their particular agency was to replace partisan administration with competent administration, to replace professional politician with professional technician. Their task was not any easy one. They had little reason for optimism. All the other government services were controlled by the machine. How could their newly proposed agency be made an exception? In the attempt to solve this problem a "new species of political propaganda" arose.⁴ Unable to compete with the invisible government at the polls, they could through their human appeal secure the legislation they desired.

What was to be their technique of keeping their agency "out

* Illinois had 100, New York 187 and Michigan 116.

⁴ Cleveland and Buck, *Op. Cit.*, 65.

of politics?" One scheme had already been tried and had failed utterly—popular election of the head of the service. Their approach to the problem was sufficiently realistic to avoid placing their faith in the alleged "responsibility" of any popularly elected executive, not excluding the governor. They sought a system of appointment which would give the agency independence. Several varieties of boards and commissions were tried. After many disheartening experiences, these humanitarian groups found that the most fool proof method was to head the service with a board of seven or more members appointed by the governor for seven or more years with terms overlapping in order that a governor with a two year term might not be able to dominate the board. The board in turn was to appoint the executive head of the service. The governor realizing his inability to dominate the board usually made those appointments on the basis of merit alone. The fact that the board members were unpaid further eliminated the spoilsman's influence. As an additional precaution, the governor was frequently required to make his appointments upon the recommendation of interested social groups. Authorities are agreed that this process of appointment removed administration from politics as completely as possible.⁵ Not only did this type reduce political influence to a minimum but continuity was secured and experts were appointed for the highest offices as well as for the routine positions.

Thus, these two decentralizing tendencies, the popular election of executives and the establishment of independent administrative agencies, weakened the governor's administrative powers. Consequently, the proponents of the federal plan of reorganization opposed them. The advocates of this plan attacked the preceding movement to take certain services out of "politics" not only because the executive branch had become disorganized and lacked correlation but because it did not provide for responsible leadership. Instead of disposing of the irresponsible boss, they contended that the irresponsible humanitarian leader took his place along side the boss. They conceded, however, that, under the preceding movement, administrative agencies were for the first time manned by skilled technologists who held office on the basis of ability alone. But this apparently was not enough. The advocates of reorganization worked upon the assumption that *if* the governor was placed in control of the entire state administration and *if* the people in turn held him strictly accountable, then he would make the government as a whole efficient where before only certain segregated branches were efficient. This was the theory on which they justified the destruction or reconstruction of those agencies which had succeeded in installing a personnel of technologists instead of spoilsmen. Did their theory work? Was the reconstruction of those services justified?

All criticism of inefficient, and irresponsible, government remained academic until the public began to wince under the burden of taxes. Then practical politicians took up the cry and seized upon the scheme of the political scientists and research organizations as a practical remedy for the high cost of government. The opportunistic politician and the idealistic student united in their efforts to establish state reorganization and efficiency and economy commissions. The politician playing the role of the economist was not unique. Indeed, the originators of the "spoils system" in the United States preached

⁵ *Ibid.*, 65, 66. Holcombe, *Op. Cit.*, 395.

"efficiency and economy" in their campaigns.⁶ From that day to this politicians have promised economy. During this "era of efficiency and economy commissions",⁷ or since 1910, economy was masked in a new garb. Taxes were to be cut down not by "turning the rascals out" as before, but by a pseudo-scientific reorganization of the executive branch of the government. Since 1910 politician and student have agreed that "the chief cause of the high cost of government was waste and inefficiency"⁸ inherent in existing methods. This emphasis upon finances effected a movement for fiscal retrenchment. Consequently, this era of efficiency and economy commissions saw the inauguration of a movement for budget reform, a companion movement to that for administrative reconstruction.

The greatest impetus to the reorganization movement was given by President Taft when he appointed his Efficiency and Economy Commission of 1910 headed by Dr. F. A. Cleveland. True, prior to this time states had considered administrative consolidation, but the reforms had been only "piecemeal", that is, the unifying of agencies within a certain field such as labor, education, commerce, health. But, after the creation of Taft's Commission, plans were forwarded for comprehensive reconstruction of the entire state administration. The following year, 1911, Oregon and Wisconsin considered schemes for reorganization. In 1912, commissions were appointed in New Jersey and Massachusetts; in 1913, in New York, Iowa, Illinois, Pennsylvania, and Minnesota. Thus the movement continued apace, until now thirteen states have been completely reorganized along the most approved lines and a score of others have considered such projects.

The general demand on the part of all of the efficiency and economy commissions was that there should be a more scientific functional consolidation of agencies in related fields. All were agreed upon the necessity of eliminating overlapping jurisdiction, duplication of effort, inefficient budget and accounting methods, and the lessening of overhead. But the commissions were not agreed regarding the proper status of the governor. Some proposed that the governor should be in the main a political and titular officer, others that he should be the real administrative chief in addition to his political and formal duties. Thus two types of reorganization were advanced. The first carried the movement to take particular services "out of politics" to its logical conclusion. Sometimes it has been called "government by commission", and at other times it has been called the board of directors plan because the constitutional structure of the business corporation with a board of directors and a general manager was proposed for each major department. The second type has been called the federal plan and its idea of placing all administrative power in the governor who is directly responsible to the people has already been noted. The advocates of each of the two types said that it was the manifest destiny of American government that their particular type should be accepted; that to accept the other alternative would be to go contrary to the inevitable trend of our political institutions.

⁶ "Efficiency and Economy", was a phrase used by Thomas Benton in praise of Jackson "who had made a clean sweep of the office-holders, and filled their places with 'true Republicans.'" It is interesting to observe the originators of the first great national party machine using the term "efficiency and economy" in the same breath with "rotation" and "to the victor belongs the spoils of the enemy." STANWOOD, A HISTORY OF THE PRESIDENCY, I, 153. See also WRIGHT, BOSSISM IN CINCINNATI.

⁷ Holcombe, *Op. Cit.*, 805.

⁸ Cleveland and Buck, *Op. Cit.*, 70.

For instance an advocate of the second type said: "The constitutional history of the states is a history of the growth of limitations upon the authority of the legislature and of the expansion of that of the executive."⁹ But the proponents of the first type might reply that history also is one of the growth of the boss and invisible government a trend deplored by both, and that the governor's supremacy depends upon invisible government. If such is the case then the hue and cry about the governor's direct responsibility to the people is futile. Indeed, some leaders of the federal plan type of reorganization concede its failure because the governor in reality has not been responsible in spite of the fact that this plan has centered all power in his hands.¹⁰

The first type was proposed for Wisconsin in 1911, for New Jersey in 1912, for Michigan in 1919, and for Maryland in 1921. The New Jersey plan is the most clear cut case of the board of directors idea. It proposed the establishment of eight major departments each headed by a board and a commissioner appointed by and responsible to the board. To quote:

"All modern enterprises are conducted by corporations . . . guided by a board of directors; in fact, the law in this state—as in others—provides that the business of any corporation shall be managed by its directors, and that each shall have a chief executive called its president. . . . It has, therefore, been our aim to group together commissions and officials engaged in the same kind of work, and to consolidate such work in one department, with a board of directors, and a chief corresponding to the president of the corporation. The powers of consolidated departments we believe should be conferred upon the board of directors, so that it may define the policy to be pursued by the department, and to enact rules and regulations to be observed by the chief and all employees."¹¹

Their primary object in creating the boards was to eliminate political partisanship and to insure the appointment of technologists to all offices and positions. The chief precautions against partisanship were to appoint members to the boards with long overlapping terms in order that one governor might not dominate the boards, to prohibit the appointment of a majority of members from any one party, to make positions on the board non-salaried, and to prevent removal of the commissioner of the department by the governor except upon the demand of the majority of the board and after a cautious process of public hearings. In opposing the payment of salaries to board members the reorganization commission declared:

"We have seriously considered the advisability of paying some small salary, but experience has shown that for every salary offered there are numerous office seekers, the majority of whom scarcely measure up to the salaries to be paid. We believe that there are many public-spirited men in the state who cannot be induced to enter the employ of the state on a salary basis, but who would cheerfully give their services if they are afforded fair opportunity to have a voice in shaping the policies of the state and improving general conditions."¹²

Advocates of the second type of reorganization, based upon the

⁹ Holcombe, *Op. Cit.*, 403.

¹⁰ *Ibid.*, 305; Cleveland and Buck, *Op. Cit.*, 111.

¹¹ *Ibid.*, 96. Report of the Commission upon the Reorganization and Consolidation of the different Departments of the State government of New Jersey.

¹² *Ibid.*, 96-7. NEW JERSEY SESSION LAWS, 1915, ch. 241.

federal plan, denounced the New Jersey plan as an "aristocracy of intelligence," not under popular control.¹³ Their further complaint, that the first type of reorganization does not provide co-ordination and unity, is not entirely valid in the case of the New Jersey reorganization. The alternative to securing unity by centering all power in the governor was to provide monthly meetings of the heads of the major departments for the purpose of promoting efficiency and preventing duplication, to permit the temporary transfer of personnel and equipment from one department to another, and to allow departments to combine their efforts to prosecute similar undertakings. The highly desirable privilege given the New Jersey administrative departments of determining their own internal administration and of creating and abolishing offices within their department facilitated such interdepartmental co-operation.¹⁴

New Jersey and Wisconsin were the first states to propose and adopt comprehensive plans of state reorganization, and these states followed the first type. In later years, the federal plan became the prevalent type with one outstanding exception, the Maryland reconstruction of 1923. The reorganization commission of that state condemned the federal plan as installed in Illinois and followed in other states, opposed the movement "to centralize power in the hands of the governor," and advocated the board of directors plan in order to eradicate partisan politics. It said in part:

"The Governor has no need for further power. Indeed, the expression,—so frequently used as one of the strong features of the cut and dried reorganization plan which has started the round of the states,—'centralized power in the hands of the Governor,' really involves the use of loose language; for . . . the things done in other states thus to centralize power in the Governor, do not centralize any new power in him at all, but remove the checks . . . which certainly ought to be retained. . . . (The need) is facilities for keeping informed and advised as to exactly how departments are functioning. . . .

"Policy making boards. . . . will not only assure the benefits of combined judgment on the important questions of policy which these boards must constantly decide but it should remove such questions from political considerations and influences. Moreover, in the case of these boards, we believe that stronger members can be secured if they are not salaried, but as at present give their services as a duty and an honor."¹⁵

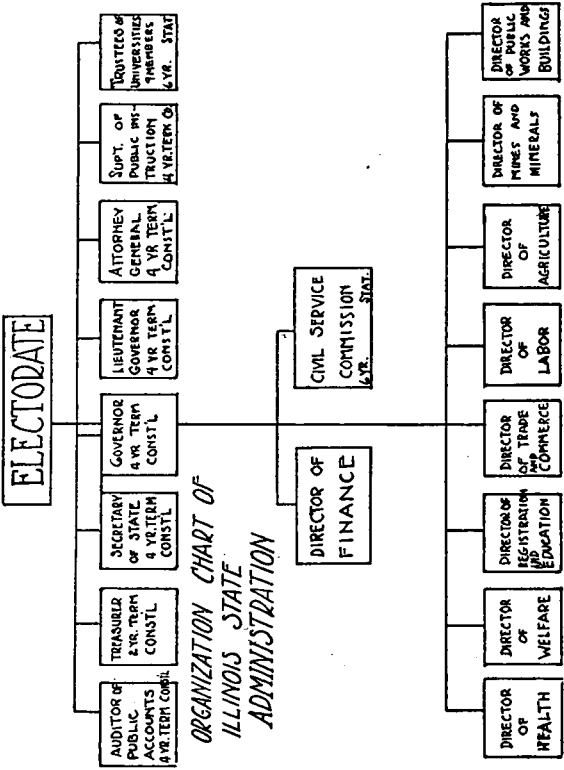
The Maryland commission defended the idea of overlapping terms and minority representation against the "loose language" used by the advocates of governor's responsibility.

Five ends were achieved in the movement to reorganize the states on the basis of the board of directors: 1. The consolidation of services along functional lines eliminated inefficiency. 2. The removal of administration from political influence led to the appointment of experts instead of spoilsmen. 3. Boards composed of many members with long overlapping tenures insured continuity of service in spite of the ins and outs of politics. 4. Boards of investigation,

¹³ The justice of this criticism will be considered fully in the next article.

¹⁴ Contrast this departmental freedom to the subjection of departments under the federal plan. *Infra*, 19.

¹⁵ Plan for the Reorganization of the Administrative Departments of the State Government of Maryland and for the Reduction of the Number of Elections in Maryland, by the Reorganization Commission of Maryland, adopted September 14, 1921, p. 20.



advice and publicity tended to make "responsibility" of the executive branch a reality. 5. Under the board of directors plan the idea of centralization and unity was not carried to such an extreme that the chief executive officers were given more power than they were able to administer capably. The complaint which the proponents of the federal plan make against the first type of reconstruction is that the administration is not sufficiently susceptible to popular will. But responsibility is a relative matter; and since there is some question as to whether the federal plan itself has secured the desired degree of responsibility, this matter will be handled at a later stage.

The second type of reorganization was first proposed on a comprehensive basis in 1913 for the states of Minnesota and Iowa. Prior to this time there had been some agitation in behalf of this plan by the Peoples' Power League of Oregon, in 1909 and 1911, and as far back as 1892 Governor Russell of Massachusetts spoke of the need of such a reorganization.¹⁶ But beginning in 1913, the federal plan of reorganization has spread rapidly from state to state. In view of the many admirable historical studies of the "state reorganization movement", it seems hardly necessary for the ends of this study to trace the details of how state efficiency and economy commissions were appointed after much agitation throughout the states, how these commissions spent months conducting investigations, holding hearings, drawing up their findings, presenting their recommendations, how the legislature was influenced by government research, and civic groups, and how the legislature following long continued debate finally decided to accept the plan usually with numerous amendments, or to reject it entirely.¹⁷

A critical analysis of the movement to reorganize the states on the basis of the federal plan necessitates an observation of its economic as well as its political and administrative features. Its promise of checking the mounting cost of government gave the movement its driving force. But the contention of proponents of the federal plan that "the chief cause of the high cost of government was waste and inefficiency" is not accurately true. If the total annual expenditure really varies in direct proportion to the amount of waste and inefficiency, then it might be contended that the unfortunate administrations of President Grant were many times more efficient than the economical and common sensical administrations of President Coolidge, because the expenditures of the former President were infinitely less than those under the latter. In other words, the constant and increasing demand for more and better government services, has been a more decisive factor in the growing cost of government than "waste and inefficiency." The introduction of more efficient methods results in more service for the same cost. The total expenditure, however, is seldom lowered thereby because of the increase of government services. Past efforts at governmental economy too often bear evidences of straining at gnats and swallowing camels. As long as unscrupulous politicians are allowed to feed at the public trough, little is to be accomplished by creating budget bureaus or bureaus of efficiency.

¹⁶ Message of Governor William E. Russell to the Legislature of Massachusetts, January 7, 1892. Johnson and Robison, *Op. Cit.*, 409.

¹⁷ WEBER, G. A. ORGANIZED EFFORTS FOR THE IMPROVEMENT OF METHODS OF ADMINISTRATION IN THE U. S.; MOLEY, R. THE STATE MOVEMENT FOR EFFICIENCY AND ECONOMY; BUCK, A. E. ADMINISTRATIVE CONSOLIDATION IN STATE GOVERNMENTS; CRENNAN, C. H., SURVEY OF STATE EXECUTIVE ORGANIZATION AND PLAN OF REORGANIZATION, (University of Pennsylvania Thesis, 1916).

If we find students of government promising the impossible, what may we expect from the politicians who have adopted their program? Is it surprising to find the latter assuring the voter that by accepting the efficiency and economy methods patented by their party, it will be possible to reduce the voters' taxes by many millions? The predominance of the economy issue in all political campaigns has been stressed. Indeed, one of the most important reasons that the members of legislatures and politicians in general support the reorganization and budget movements is because it is a basis for their promise of economy. In some instances it appears that there was no other motive for supporting the movement than to be able to tell the voter their taxes would be reduced. However, with the adoption of the Ohio Code, the high cost of government evil was not only not eradicated but expenditures increased and the administration was a most inauspicious one. It would seem therefore that those who press this claim of economy are either deceiving themselves or wilfully deceiving the people. For instance, one often hears the "spellbinder" pleading for "lower taxes and better roads", or lower taxes, the direct primary, and prohibition enforcement, or lower taxes and some other new governmental activity which would involve the expenditure of hundreds of thousands of dollars. If the propagandist really wanted the people's taxes reduced, he should have urged the abolition of certain services such as education or health.

Indeed, reorganization advocates have on occasion connected their movement with one to lessen government services. They contended that the movement for the federal plan was opposed to the preceding movement to take services "out of politics" because one group wanted more and better services while the other wanted fewer services and lower taxes. If such is their program, then the movement deserves no longer to be called a movement for efficiency and economy, for it might as well be called a movement for inefficiency and waste. It apparently is not realized that an increase of expenditures may aid in bringing about an increase of efficiency, the elimination of spoils, the lessening of the possibilities of corruption, the securing of experts, the realization of more service for the taxpayer's dollar, and the development of better government generally. The following condition in California indicates the consequences of false economy:

"California is tasting the bitter fruits of false economy in government. In 1922 the voters defeated Gov. William D. Stephensons of the old Hiram Johnson dynasty, and elected Friend W. Richardson on the single platform of "economy". To make good his election promise Richardson slashed ruthlessly into the vitals of every governing function.

"Richardson cut the forestry department budget in half. Today forest fires are raging unchecked, eating into some of California's most valuable pine and redwood forests and menacing the Tahoe and Sequoia national forest reserves. To date 84,000 acres have been destroyed and \$900,000 damages incurred, although the dry season is not half over.

"Richardson cut \$85,500 a year from the Bureau of Animal Industry. Early this spring the foot and mouth disease broke out among California cattle, spreading to 20 counties and causing inestimable damage to the cattle industry. While saving \$85,000 a year in taxes,

the people have subscribed out of their pockets \$2,000,000 which must be repaid at the next legislature, but the damage will be 10 times that in the state at large.

"Richardson cut \$300,000 from the industrial accident commission budget. The first year following there occurred 716 industrial deaths, more than ever in the state's history. One commissioner, resigning, stated that thousands of uninspected boilers and elevators are a constant menace to life in California, that there is no mine inspection at all and that there are flagrant violations of safety rules in buildings all over the state.

"All the state's institutions, from the two big penitentiaries to the homes for blind and feeble-minded children, from the two big penitentiaries to the homes for blind and feeble-minded children, are badly overcrowded. The schools are suffering and feeble-minded children, are badly overcrowded. The schools are suffering from lack of teaching force and facilities in the seven state normals. No attempt is being made to enforce the women's minimum wage law. Americanization of immigrants has stopped. The work of stamping out tuberculosis and "red plague" has about ceased. And, having made no provision for new revenue, Richardson will present the next legislature with a \$5,000,000 shortage below the present meagre budget.

"Too much economy is expensive."¹⁸

Although the economy features of the reorganization movement have been exaggerated, there is no question but what great savings can be made through the introduction of more efficient budget and accounting systems, through the functional grouping of organization units, through the elimination of duplication and overlapping jurisdiction, and through the standardization of administrative technique.

In evaluating the various aspects of the federal plan for states, the first query to be raised is the validity of the federal analogy. The influence of the adoption of the federal Constitution upon the structure of the local governmental units has been observed. Now the reorganization movement aims to make the state governments more like the federal structure than ever before. In supporting the applicability of the federal plan to the state and municipal units the protagonist reasons as follows: "Now in the federal government, we have the case of that unit undertaking the construction of the Panama Canal. In the state of Illinois, we observe that unit building a great drainage canal. While in the city of Chicago we find that unit digging a small passage to drain one of the lagoons in Lincoln Park. Thus, the various units perform functions of a similar nature differing only in size and jurisdiction. These facts combined with others show that a constitutional structure that is good for one is good for them all." Perhaps, but does the conclusion necessarily follow that the federal plan should be adopted in the states? Was not the federal plan for municipalities discarded by municipal reformers as futile, and was not the city manager plan accepted as the fundamental solution?

However, there seems to be considerable disagreement among the municipal reform and government research groups, as to just what stand they should take. Some take the consistent stand of advocating the extension of the city manager idea to the states on the basis of *true* representative government through legislative supremacy and non-poli-

¹⁸ ST. PAUL DAILY NEWS, July 19, 1924.

tical administration. Others take the consistent stand of advocating the federal plan for both state and municipality on the basis of direct democracy through executive supremacy and political administration. Still others take the apparently inconsistent stand of favoring the city manager plan for municipalities and the federal plan for states justifying their position on the basis of expediency. They explain their alleged inconsistency by saying that "while there may be much to be said in favor of such a plan (of responsibility of the governor and the administration to the legislature), it has seemed to the committee of the National Municipal League that for some time to come such a reversal of established American methods will not be approved."¹⁹ Notwithstanding these explanations, associations assuming such an inconsistent position lay themselves open to criticism. For instance, the following observation was made of the stand of the Short Ballot Association: "Although it supported the commission manager plan this was inconsistent with the short ballot propaganda in that the manager was not to be elected. The commission manager idea was in fact another device to keep the leadership of the public service out of politics and free from electoral control. . . . In fact, one of its claims to popular support was that the manager as chief executive would not be in politics."²⁰ But even those who consistently advocate the federal plan for all spheres of government recognize defects in the federal structure. For instance, F. A. Cleveland and A. E. Buck, leaders in the state reorganization and budget movements, contended that "the reason we have invisible and irresponsible government" is owing to the improper status of the offices of "President and governors." In spite of these compromising factors the federal plan has been accepted as model for state reorganization.

There are three fundamental principles which underlie this plan of reconstruction: *unity*, *leadership*, and *responsibility*. It advocates aim to establish "responsible leadership through the visible elected official in place of the irresponsible leadership by the boss of the invisible machine." They contend that all power must be centralized in the governor because the state services should be considered as a unit. With such power centralized in the hands of the governor, it is assumed that he would take over the leadership of all governmental operations, political and administrative, and would be accountable directly to the people for all activities of the state government. This system is often termed "one man control". It is defined as a plan "to institutionalize leadership by reorganizing the public service in a manner to make the chief executive the outstanding person in politics." Its proponents declare that the movement was designed to locate responsibility through providing a strong, sole executive leadership—a leadership within the government which could be effected for directing and improving the public service and at the same time could be reached and controlled by the electorate and their representatives. In contemplating the attainment of responsible leadership and the elimination of invisible government, Cleveland and Buck set forth two possible courses (1) centralizing all power in the governor, or (2) leaving him a titular head. Their statement reads:

"Failure to recognize the President and the governors as leaders might have been made consistent with principles of responsible gov-

¹⁹ NATIONAL MUNICIPAL LEAGUE, A MODEL STATE CONSTITUTION.

²⁰ Cleveland and Buck, *op. cit.*, 107.

ernment if they had placed on the chairman of their committees executive responsibility. But they did not. Instead of linking up executive responsibility with their committee leadership as in a parliamentary cabinet system, or of accepting the alternative of bringing the elected executive before the representative body to give an account of past acts and to explain future proposals before supplies were granted, the Congress and the assemblies turned over their powers of inquest and discussion, their function as one of the two essential organs of popular control, to the standing committees which had been organized by them to be exercised in a secret irresponsible manner. And this is the reason that we have 'invisible' and irresponsible government."²¹

Instead of allowing the governor to become the figure head of the executive department and vesting all power in the representative body, the advocates of reconstruction chose the other alternative. This they did in spite of the political teachings of the ages which show that the elected executive becomes responsible not to the legislature but to "the boss and the machine."

With regard to the principle of *unity* as applied to the federal plan, one proponent concluded: "State administration is a single task . . . (and) The Governor must have an organization that will treat (it) as a single task."²² But only in a limited and somewhat superficial sense is this true. It can hardly be said to be much more of a unit than human society itself. One of the greatest difficulties that the political reformers and the state reorganization protagonists have to face is that all but irresistible desire to oversimplify. In the words of Walter Lippman, "Nothing is easier than to simplify life and make a philosophy about it. The trouble is that the resulting philosophy is true only of that simplified life." If society is complex, our social organization must be moulded and manipulated accordingly. If governments have many intricate and diversified functions, a complex superstructure must be established to conform to it. There is little justification in the unification of such unrelated activities as building roads, inspection of insurance companies, propagation of fish, and mental hygiene.

The only conceivable basis for administrative unity is the fact that certain processes and things are necessary to all human activities governmental and otherwise. Human beings are necessary to operate the services. Money is necessary to finance them. Offices are necessary to work in. Tools are necessary to work with. Does the fact that all services have these characteristics in common justify considering state administration as a "single task" and centralizing all power in the hands of one man? Federal plan advocates answer in the affirmative. But this is hardly sufficient grounds for such an extreme concentration of power.

This conception of unity is expressed by the subjection of the services as far as possible to the arbitrary whims of the governor, and by the creation of a central department which possesses very substantial powers of control over the other departments. As far as the governor's personal control is concerned, it is all but impossible for him to express this unity in any real fashion. Critics say that the state reorganization protagonists have made "too much of a fetish of the principle of one-man control." Students of comparative govern-

²¹ *Ibid.*, 392.

²² DODD, STATE GOVERNMENT, 275-6.

ment hold that the idea of one man conducting the government of a great state in the present complex social system is untenable. In Europe as in America, the shortcomings of concentrating all power and authority in one man are recognized. For instance, Prince Max of Baden when he became Chancellor of Germany after the Kaiser's abdication observed "how difficult it was for one man to bear the tremendous responsibility of government in modern societies. The chance of error is too great. Bismarck himself constantly broke down in health."²³ European students commenting upon the situation in the United States suggest that "the one-man executive should give way to a responsible cabinet." In the United States, the early martyrdoms of Harrison and Taylor as well as the recent deaths of Wilson and Harding were the direct result of the physical strain upon the incumbent of the presidency. It may be recalled how newspapers at the time of Harding's death bemoaned the sacrifice of the lives of our presidents upon the altar of overwork. The plea was made that the extensive duties vested in that office be lessened. In addition to the enormous political and administrative duties, the president's strength is further sapped by his participation in many varieties of public demonstrations and formalities accompanied by the usual amount of handshaking. Even an easy going executive like Harding was unable to throw off the burden of office. Yet this is the condition in which the federal plan advocates wish to place our state governors. For the good of the nation as well as the incumbent in office, the duties of the chief executives in both the state and federal spheres should be diminished instead of extended.

In addition to the personification of unity in the governor, the new reorganization codes institutionalize unity by creating a central department of control endowed with formidable authority over all other departments in such matters as finance, audit, personnel, and purchasing. This central agency is supposed to act in the name of the governor and to be the hands of the governor in executing his policy. To the extent that efficient budget and accounting methods are promoted, this agency has been of real value. But many of these new agencies of control through other practices inhibit efficiency as much as they promote it because of its unlimited power to arbitrarily intervene in the internal affairs of other departments, and because of the undesirable character of its personnel.

The domineering authority of this agency over the various departments tends at times to become capricious and arbitrary. Its staff does not know and should not be expected to know all the detailed needs of the various services. And when it steps in, supposedly in the interests of efficiency and economy, to prevent the performance of certain specialized functions which constitute a portion of a well thought out departmental policy, the agency acts in an arbitrary manner in the worst sense of the term. The extent to which a central control agency should have charge of general fiscal and personnel activities of the state will be considered elsewhere. It is sufficient to say at this point that the most recent tendency seems to be toward greater departmental independence rather than a straight-jacket control by a political dictator.²⁴

The incompetence of the agency's personnel may be traced to the

²³ FINER, H., *FOREIGN GOVERNMENTS AT WORK*, 46.

²⁴ DAWSON, R. M., *PRINCIPLE OF OFFICIAL INDEPENDENCE*.

operation of the principle of governor's responsibility. When such a powerful department is composed of intimate friends and political supporters of the governor in order that the latter may have absolute control over it, there is a possibility of the agency functioning with purely partisan ends in view. That is, instead of controlling funds in order that the state services may be increased and utilized to the benefit of the people of the state, the agency tends to exercise its control as a means of perpetuating the party in power. In Ohio, where an administration was swept into power on a program of economy and reorganization, the central agency was manned by deserving party supporters who used the methods of the spoilsman. Consequently, owing to this bad start, the administrative reorganization in that state has been discredited.²⁵ Thus a central control agency proves to be a liability when an administration is characterized by spoils and political partisanship. Without this agency, unfortunate political manipulation might be localized to certain services; but with it, the whole state administration may suffer.

This sort of manifestation of "state administrative unity" constitutes a challenge to the fundamental concepts of representative government. It means the usurpation of vital legislative functions by the administration in the form of a central controlling agency independent of the legislative branch. The executive branch is that which performs the services while the legislative is that which watches and controls the executive. Woodrow Wilson deplored the fact that in the United States the legislative branch did not fully possess its most important function which he termed the "informing function".²⁶ Should not state unity be an attribute of the representative branch rather than the executive? Again to quote the words of Bluntschli: "All the other functions of the government belong to the particular organs but legislation to the whole body politic. As the whole is more than any of its parts . . . so legislative power is superior to all the other particular powers."²⁷ To the extent that a central control agency exists, it should be directly responsible to the legislative, not to the executive branch. Indeed, many of the reorganization advocates concede that such a central fiscal agency as the State Auditor should be directly responsible to the legislature and not the governor.

Although the central agencies of control established under the new reorganization codes improve budgeting and general administrative methods to a degree, the principle of unity as expressed in the federal plan may be challenged because the state government is not sufficiently a unit to justify the extent to which "one man control" is carried, because it is all but impossible for the executive in the modern state to fulfill all the extensive powers bestowed upon him, because the central agency's powers may be administered capriciously and dogmatically, because that agency is apt to be manipulated by political partisans, and because, according to the basic principles of representative government, unity resides in the legislative branch. In criticising the idea of unity in the reorganization movement, one authority concluded

²⁵ Coker, *Dogmas of Administrative Reform*, AMERICAN POLITICAL SCIENCE REVIEW, XVI, 399. Pollock, *Four Years Under the Ohio Reorganization Code*, NATIONAL MUNICIPAL REVIEW, XIV, 561. Miles, R. E., *Fiscal Control in Ohio*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, CXIII, 105. CRYING SHAME OF OHIO a biased Democratic pamphlet gives a scathing criticism of the Republican administration of 1921-23.

²⁶ WILSON, W., CONGRESSIONAL GOVERNMENT, 303.

²⁷ BLUNTSCHLI, ALGEMINE STAATSLEHER, I, vii, ch. 7.

"both reason and experience show that for the administration of many functions diffusion rather than concentration of authority secures not only more efficient but also more democratic administration."²⁸ In view of these facts would it not be well to heed Lippman's warning and avoid unfortunate consequences?

Leadership as applied to the governor's office under the federal plan of reorganization is titular, administrative, and political in character. His ceremonial leadership is analogous to that exercised by the British king or the nominal head of any great state. His executive leadership is analogous to that of the general manager of a super-corporation. His political leadership, since he is independent of the legislature, is somewhat analogous to that of the British parliament. Being endowed with all three of these distinct types of leadership he finds the burden too great to exercise any one of them satisfactorily.

In the first place he fills an exalted position as head of a state. Much time must be devoted to the formal ceremonies inseparably connected with that office. He is expected to attend all sorts of functions not only relating to many official ceremonies but to a multitude of events both within and outside the limits of the state—including attendance at livestock expositions, baseball and football games and other sports, innumerable conventions of a commercial, social or patriotic character, and he is usually expected to make an address at such functions. The fact that he stands out as the leader of a great political party makes the skillful execution of such perfunctory acts as kissing babies and laying cornerstones all the part of a day's work and by no means an insignificant part. These ceremonial duties occupy such a large portion of his time that it is difficult for him to assume the administrative leadership centered in his office by the reorganization codes.

In the second place, his leadership is considered that of an administrative chief or general manager. But is such a position consistent with his selection by popular vote? To support the argument for administrative leadership, its advocates contend that the federal plan is analogous to the constitution of a business corporation. The legislature is compared to the board of directors, the governor to the general manager, the people to the stockholders. The analogy is erroneous because the executive is selected not by a representative body as is the case in a business corporation, but by the electors who are in a position analogous to the stockholders of a corporation. In setting forth "The fundamental issue" in the campaign of 1912, the *Outlook* supported the federal plan of direct democracy, opposed the idea of representative government, and suggested the analogy of the structure of government to that of the business corporation.

"The fundamental issue is between the government by the people and government by representatives of the people. Do the ninety millions of people govern themselves? Or do they elect wise men to govern them? Do they decide what shall be done and elect representatives to do it? Or do they elect representatives to decide what is to be done and then do it?

"The stockholders of a great corporation elect directors and leave them to manage its affairs, while they go about their individual busi-

²⁸ Coker, *Op. cit.*, XVI, 411. He also spoke of the "uselessness of extending the scope of power of any officer beyond the limits of what that officer can actually devote his attention to."

ness. One conception of government regards the ninety million Americans as stockholders who elect directors to carry on the business of the Republic in their interest . . . The other conception of government regards the ninety million Americans as their own directors.

"The *Outlook* believes in the second conception."²⁰

The writer accepts the first conception. How much confidence could one place in a business corporation whose managers, engineers, mechanics and other technologists were selected by vote of the stockholders? Yet the electors are no more capable of selecting competent administrators and experts than are the stockholders. If we accept Chief Justice Ryan's dictum: "Where you want skill you appoint. Where you want representation you elect,"²¹ then the governor to possess the qualifications of a skilled administrative leader should be appointed. Upon a second thought, no one would contend that the voters are able to select technologists. A person going to the polls when he thinks at all seldom thinks of voting for a governor because of his competence as an administrator, but rather because he advocates certain policies, administrative or otherwise. It is as logical to select one who admires beautiful pictures as being a good artist or one who admires a magnificent cathedral as capable of building one like it. To the extent the proponents of reorganization expect the governor to exercise leadership from its administrative side they are doomed to disappointment. The elective process procures lay representation not skilled administration.²²

In the third place the governor's office is political. He is a politician and a party leader first and last. Indeed the enormity of his political duties, as the dominant representative institution, tends to preclude any activities as chief executive. But does the gubernatorial office serve as an effective representative institution? Political scientists are agreed that it is impossible for an executive official to represent the popular will as well as a representative body. The functions of a representative institution are such that they cannot be properly performed by one person. Yet the federal plan is typified as one man control which means that the governor is supposed to control and to keep check upon all the administrative activities. These functions are suitable only to a representative body or at least a board of directors, and to place them upon the shoulders of the so-called executive means that of necessity they will be fearfully neglected or at best poorly performed. Not even in the exceptional accession to office of an overpowering and intensively active and conscientious person has there been any approach to satisfactory performance. But usually the popularly elected executive is "available" and colorless.²³ The imperfect institution of the legislative investigating committee in its present form has come into being to supplant the glaring incompetence of the executive to fulfill this vital function. Of course, if the governor is to be the chief administrator, he should not be also the checking and controlling institution for this would amount to checking himself. Indeed, the theory of electing the administrative leader allows no place for a representative body to control the administration for this work is to be performed by the people at large—the electorate.

²⁰ *OUTLOOK*, editorial, June 8, 1912.

²¹ *LOWELL, A. L., PUBLIC OPINION AND POPULAR GOVERNMENT*, 260.

²² *MILL, J. S., REPRESENTATIVE GOVERNMENT*, 271.

²³ *Ibid.*, 270; *Stanwood, Op. Cit.*

To conclude, gubernatorial leadership is executive only in a superficial sense, that is, that the governor is the titular "executive" being thus called in the state constitutions. His leadership is, necessarily, political rather than executive or administrative. This form of leadership holds little promise because the office attracts a man who at best is a good party politician and almost never a technician. Too much confidence should not be placed in such leadership as a basis for efficiency and economy. However, political leadership in its place—the legislature—is an essential attribute of popular government. So far from increasing this political leadership and endeavoring to endow him with administrative leadership, he should be allowed to become only a titular leader of the state.

The third principle, responsibility, involves the most fundamental conceptions of constitutional organization. It is a term that has been subjected to more use and misuse than almost any other term used in the study of political science. The problem of the degree of independence on the one hand and responsibility on the other which is the most conducive to efficient government has never been properly treated although of late some very valuable contributions have been made by such students as Graham Wallas of England, and Robert Dawson of Canada.

In the state reorganization movement the problem of responsibility revolves about one person, the governor. He may be held responsible by one of two controlling groups, the legislature or the electorate. As to which of these the governor should be responsible, the proponents of the federal plan do not always make clear. As a rule they maintain that the governor should be directly responsible to the people, but occasionally, they declare he should be accountable to the legislature as in England. When the incompatibility of the federal plan and legislative supremacy is admitted, they suggest that possibly in the future, some sort of cabinet or ministerial responsibility will come into being as an outgrowth of the adoption of that plan. However, they make no provision in any of the codes for an evolution of the federal plan into ministerial responsibility. Instead, they make the governor more independent of the legislature. Their scheme is virtually an elective kingship. They suggest the possibility of the governor's "cabinet", but not the governor himself, appearing on the floor of legislature. From the experience of other countries, this arrangement would seem insufficient to guarantee the governor's responsibility to the legislature.²²

The direct responsibility of the governor to the "people" is the usual stand taken by the federal plan advocates. They tend to adhere to the idea of completely separating the executive and the legislature, and relegating the latter to an insignificant position in the constitutional scheme. To them the only function of the legislature is to make laws and the more important "informing function" is disregarded. Hence, the legislature is only vaguely concerned in the problem of state reorganization. In its practical operation this principle of governor's responsibility may be criticised first, because the short ballot idea which accompanied the idea of centralized responsi-

²² South American countries have endeavored to secure responsibility of the elected president to the legislature by requiring his cabinet to appear before the latter body, but they have always failed. In Chile the transition from executive supremacy to responsible government was made by an entirely different process. There the President, since the days of Balmaceda, was required to compose the ministry of the majority party of Congress.

bility did not appreciably lighten the burden upon the electorate, second, because the voters cannot know or judge all of the involved acts of the administration, third, because, the reorganization codes destroyed boards of inquiry, audit, and control which tended to give this principle a semblance of reality, fourth, because the governor is not apprehensive of his responsibility, and fifth, because he continues to be accountable to the invisible machine.

The protagonists for the federal plan desire to make the governor entirely responsible for the state administration by abolishing all other elective executive offices. They argue that by thus shortening the ballot, the electorate will use greater discrimination, and will hold that one executive responsible and through him the whole administration. They justly protest that so many executives are held accountable through direct election that the proponents of more democracy by way of the long ballot have overshot their mark. But it is possible to make a similar criticism of the reorganization movement which tends not to hold too many elected executives accountable but to hold a few elected executives responsible for an enormous number of acts. For this reason, some advocates of the short ballot, refuse to connect the desideratum of fewer elected officials with the federal plan to centralize responsibility in the governor.³⁴ The electorate is not able to pass upon a large number of intricate administrative acts any better than upon a great many executive officials. In fact, the latter alternative would seem to be the lesser of the two evils because the electorate could use better judgment in the selection of persons upon their general qualifications than they could in the analysis of technical administrative acts. In requiring the voters to check and control the conduct of the administration, it is possible that they will not see the woods for the trees. Will they be able to properly weigh the instances of corruption with the instances of honesty and efficiency? Will they be able to weigh instances of vicious, deplorable, mediocre, and first class administration in the proper proportions? And after that will they be able to decide whether it will be better to let well enough alone and not take a chance of upsetting the entire administrative machinery and putting in office worse "rascals" than those ousted? These are the problems that the electors must solve in order to vote intelligently for a governor under the federal plan. Consequently, this plan simplifies government in one way but makes it more complicated in another.

Even the electorate which possesses the virtue of eternal vigilance cannot be expected to devote all its time to scrutinizing the activities of the administrative officials, and therefore, it cannot make intelligent decisions at frequent intervals as to the merits of their work. What does it matter about governor's responsibility if the voters cannot know and judge all the facts of his administration? Furthermore, how would they organize if they did? In a city the problem is somewhat better because prominent civic organizations and newspapers can get together over night to stop a proposal or to arouse public opinion, but this cannot be accomplished with the same effectiveness for a whole state. To quote President Goodnow: "I can not inform myself. I don't know how to and there are not ten per cent of the citizens who

³⁴Coker, *Op. Cit.*, XVI, 410. Governor Charles Evans Hughes in his annual message of 1910, took the leadership in the short ballot movement. MUNICIPAL RESEARCH, No. 63, 618. LIPPMAN, THE PHANTOM PUBLIC.

do, and what we do, of course, is to rely so far as we can upon the party organization. We say on the whole we think the Democratic organization is better than the Republican or the Democratic party is worse than the Republican and we let it go at that, and in a great many instances we take what happens; where there is unfortunately an attempt made by a voter to discriminate apart from the party and to vote for persons then you get a lot of discordant people in the government . . . ”⁸⁸ This criticism may be applied to the federal plan as well as to the past constitutional arrangement in the states.

The new codes furthermore destroy important processes which give the idea of the governor's responsibility to the people a semblance of reality. Councils and boards, composed of public spirited citizens and performing functions of investigation, audit, control, and supervision, are often abolished because it is felt that they interfere with the smooth working of the administrative machinery. Thus organs of control which are in a key position to turn on a powerful searchlight of publicity upon the governor's administration are blotted out. What does governor's responsibility amount to under such a scheme? Is the term not an empty phrase? We say, "All power to the people." Then the "people" are virtually bound, gagged, and blindfolded. It would seem that the reorganization advocates would have us think that all that is necessary for the realization of popular government is that the voter should go to the polls every two or four years to cast his ballot for governor. The fact that he is not provided with any information on the subject of government would apparently seem of little consequence. To cross a ballot for a candidate for governor and then sit back as if the whole matter of government and responsibility were settled smacks of the superstition, supernaturalism and mysticism of the dark ages.

Not only is the electorate incapable of enforcing the governor's responsibility and of accurately judging his acts, but the concentration of authority in one man does not necessarily make him feel more responsible to popular demand. On the other hand, one who really wishes to be of greatest possible service to his fellowmen does not need to be continually prodded along to remind him that unless he stands in the good graces of the electorate he will lose his job. Is this the greatest possible incentive that can be given to a man who has been trained to devote his life to work in the field of public service? It seems that there must be some other incentive to rendering satisfactory service to the public than the concentration of political "responsibility." Other incentives which inspire one to increase the quality and efficiency of workmanship may be lost through the overemphasis of such accountability.

The success or failure of the federal plan depends upon whether the governor in reality is responsible to "the boss and the machine" or to "the people." Is invisible government destroyed as the proponents of the plan promise? Obviously it is not. As long as the governor is selected independently of the legislature, and dominates that body politically, it will continue. As observed in the preceding article such an extra-legal invisible machine is absolutely essential to the existence of a government where the executive and the legislative

⁸⁸ Dr. Goodnow's speech before the New York State Constitutional Convention, June 3, 1915.—MUNICIPAL RESEARCH, No. 63, 599.

branches are forced apart. A century's experience shows plainly that direct election of the executive and invisible government go hand in hand.²⁶ The existence of a powerful machine, which rules the legislative, executive and perhaps to a less extent the judicial branch, is a source of perversion of popular will and of corruption of administration. To perpetuate "Boss rule", public offices are made spoils for the victors, issues are submerged and political campaigns are contests between "ins" and the "outs". What is "governor's responsibility" and "popular control" when such conditions prevail? Little wonder there is an astounding lethargy on the part of the American voter. Certainly these constitutional defects are in no small part the cause of non-voting. That the federal plan has not replaced the irresponsible boss and machine with responsible officials is attested even by its advocates. For instance, in criticising the Illinois reorganization code of 1917, Cleveland and Buck declared: "The cabinet was responsible to the governor but there was no way of making either the governor or the cabinet responsible to the electorate or to their representatives."²⁷

When a principle fails in practice it is in truth no longer a principle. It is an hallucination. Here the fallacy lies in the idea of democratic control through the choice or rejection of administrative and executive officials. The failure of the federal plan of reorganization is the failure of every plan based upon this erroneous theory. Whether one or many executive officials are elected it matters little. It is the theory not the number that is wrong. Although the voter perhaps uses less discrimination when he chooses a large number of executives than when he chooses a small number, there is no fundamental violation of any constitutional principle in the selection of many executives as long as it is believed feasible to select any. Indeed, since the cabinet members or department heads have become actual executives and the "chief executive" only a titular official, it would, if anything, seem more reasonable to select the department heads by popular vote than the governor. But the basic error is in the election of any administrative or executive officer.²⁸

The election of such an officer is a violation of the principles of representative government because popular will is best expressed by and through a representative body whose chief function is to hold the administration responsible. Representative government is justified because the "people" are not able to hold the administration responsible direct. Otherwise direct democracy would be justified and the federal plan of reorganization would be feasible. Since the people acting en masse are amorphous and inarticulate, it is absurd to expect them to exercise this function. There must be created an organ composed of the representatives of the people. This body, which should as nearly as possible represent a cross section of the nation, gives articulate expression to the will of the people. The checking of the government is the prime duty of such a body. Unlike the federal plan advocates which desire to center both the controlling and administrative powers in governor, the supporters of true representative government find a radical distinction between these two functions. It is

²⁶ Mill, *Op. Cit.*, 271. See preceding article.

²⁷ Cleveland and Buck, *Op. Cit.*, 111.

²⁸ Wilson, *Op. Cit.*, 259-261: "The President cannot often be really supreme in matters of administration. . . . he is powerful rather as a branch of the legislature than as the titular head of the executive. Almost all executive functions are specifically bestowed upon the heads of the departments." Wilson's remedy however is not popular election but permanent tenure as non-political department heads.

for the representative assembly to perform only the former power. As John Stuart Mill said:

"The proper office of a representative assembly is to watch and control the government; to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfill it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors. This is surely ample power and security enough for the liberty of the nation."³⁹

Although this "informing function" has all but disappeared from American representative bodies, leading American authorities have held that the chief executive should not be accountable directly to the people but to their representatives—the legislature. As Dr. Goodnow maintains, "Popular government requires that the execution of the state will shall be subjected to the control of the organ expressing the state will. For an effective executive authority can never be so representative of the people of a state as a body which can effectively express their will."⁴⁰

Even some advocates of the federal plan of reorganization favor "the development of a procedure in the representative body, the established forum of the people, to make this popular organ of the government effective for inquiry, discussion and publicity," and the provision "within the government itself a means for the exercise of critical judgment and for informing the people so that public opinion might be deliberately formed on current issues after due consideration." Again they say it is the only practical means of inquest, criticism and discussion for "independent representative bodies are the most effective means of publicity."⁴¹ Although they recognize this function of the legislature, they turn to the development of a procedure which makes the executive even more irresponsible and independent of the representative branch, which makes it possible for the executive unjustly to assume that his office is more of a representative institution than the representative body itself,—more representative of the people as a whole, and which makes his only responsibility for all practical purposes to an inarticulate electorate and to an invisible machine.

Professor Coker in an able criticism of the reorganization movement cited the "dogma" of responsibility as the "fundamental error."

"Popular control of the administration of law is not exercised principally through the popular selection and dismissal of executive officers one or many. It is equally exercised in enacting directly or indirectly a law determining a method of administration. It is an exercise of popular control to determine that we the people want our health and charitable services expertly rather than politically administered. . . . We the voters don't want to be consulted on such question every two or four years. We believe that in the long run the schools will be administered more nearly in accordance with out needs and desires by not calling upon us to pass periodic judgment upon the matter."⁴²

³⁹ Mill, *Op. Cit.*, 115.

⁴⁰ GOODNOW, *PRINCIPLES OF ADMINISTRATIVE LAW IN U. S.*, 7.

⁴¹ Cleveland and Buck, *Op. Cit.*, 122.

⁴² Coker, *Op. Cit.*, XVI, 409.

With regard to the "semi-irresponsible position of the governor," Professor Allin of the University of Minnesota contends "Just so long as our chief executive is not subject to a continual criticism by the legislative body in respect both to his policy and the character of his administration, just so long as he is not forced to defend his conduct and to present the necessary public documents for critical analysis and investigation by the legislature, the office of the governor will be almost inevitably one of more or less arbitrary power in the hands of a strong and vigorous chief of state."

Thus the principle of governor's responsibility is a failure in practice and erroneous in theory. These defects in the three main principles of the reorganization movement—unity, leadership, and responsibility—are alone sufficient to condemn it, but it is open to further criticism for not recognizing that the factors of continuity and competency are equally essential to efficient and economical government.

As regards continuity, instances could perhaps be found under the new codes where changes of administration mean the sweeping out of the administrative services and a loss to the state of many millions. In fact, those in a position to speak declare that under the Ohio code, it costs the state highway department over a half million dollars every time there is a change in administration. Surely if economy is really what the advocates of the new codes are after then they should at least give some recognition to continuity of policy and personnel. With the breakdown of the reorganization plan, its advocates more and more turn to the need for continuity. For instance, W. F. Dodd, one of the proponents concedes that "perhaps the most important single problem in connection with the state executive department is that of continuity of policy," and maintains that "if each new state administration is to bring in a change of personnel and a change of general policy no scheme of executive responsibility can work satisfactorily."⁴⁸ It is hoped that this represents the beginning of a general swing on the part of the reorganization proponents from the adherence to the illusion of an all powerful governor's direct responsibility to the people over to the acceptance of the pragmatic realism of continuity.

In the past, except for giving moral support to the civil service reform movement reorganization advocates have made no effort to attain greater permanency in personnel. However, the civil service commissions, usually effect only the lower grades of the service. Even there they are all too frequently unable to withstand the pressure of the machine. Just what ranking officials should have a permanent tenure or serve as political officials going out of office with the governor, there is no crystallized opinion. But under the Ohio code, prepared under the guidance of W. F. Dodd and others, a formidable number of offices were taken off the classified lists, and placed on the "spoils" basis. This is justified on the theory of the governor's responsibility for all appointments. For instance, one student in praising the Ohio codes indicates that the theory of reorganization makes it necessary to use the administrative de-

⁴⁸ Dodd, W. F., *Reorganizing State Government*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, CXIII, 168. Wilson, *Op. Cit.*, 255: "Short terms which cut off the efficient as surely and inexorably as the inefficient are quite as repugnant to republican as to monarchical rules of wisdom. A President is dismissed almost as soon as he has learned the duties of his office."

partments for the purpose of "getting more and better jobs for the political henchmen," but, "at any rate, the governor will be responsible." "This seems to be the usual method of justifying the slackening of the merit system. Other supporters blandly assume that the governor will appoint the administrative officers below the rank of division chief only with the purpose of securing the most competent and highly skilled, while the bureau chiefs and department heads will be selected on a political basis. Thus, to expect that he will arbitrarily ignore political considerations in certain classes, or in any appointments for that matter is to manifest a total disregard for practical politics.

In criticising the dearth of continuity under the Ohio code, Mr. Miles, of the Ohio Institute, observes that "frequent turnover renders progressive achievement difficult if not practically impossible and that only through occasional re-election do state officials serve more than two years." "He sees the possibility of securing greater permanence and continuity not in the lengthening of the term of the governor but in relieving the governor of all administrative responsibility—the very contradiction of all reorganization schemes. Not only are students and observers of governmental activities apprehensive of the evils resulting from the lack of continuity, but even a surprising number of politically appointed department heads complain because they are ousted from office by a new administration after only two years of service and before they have had an opportunity to really learn their task. The failure to provide for continuity makes efficiency and economy under the reorganization codes a myth.

Insufficient safeguards against incompetency in administration constitute as grave a fault in the reorganization codes as the absence of continuity. The relationship of administrative incompetence to political partisanship is manifest from the following statement of Charles Evans Hughes:

"It probably is the opinion of the average citizen that the great obstacle to administrative efficiency is official corruption. . . . The purchase of public offices, the sale of indulgences to law-breakers to enhance the fortunes of those who control appointments to office, systematic levies for official favors,—these are crimes of the first magnitude. . . . But I believe that the grosser forms of corruption are happily more rare. . . . Corrupting influences have become more insidious and for this reason are perhaps more dangerous. They are rarely susceptible of proof; they leave few traces and largely defy investigation. These are the influences which are shown in the play of favoritism, in the payment of private obligations through official discretion, in permitting information to be given in advance of official solicitations which imply official promises. Larceny and embezzlement have largely given place to conspiracies and shrewd agreements for mutual protection and enrichment. Akin to these evils is the blighting influence of efforts to support partisan workers at the public expense. . . . This practice not only affords the means through which administrative action is perverted in order to hold and to pay for political support, but it also forms the avenue for the introduction of incompetents into the public service and leads to the multiplication

⁴⁴ See Masters thesis by Carl Finn on *State Reorganization in Ohio*, 39. (Ohio State University).

⁴⁵ Miles, *Op. Cit.*, CXIII, 110.

of unnecessary places. Partisan political incumbrances to a great extent account for administrative palsy."⁴⁶

This statement of Hughes' should be borne in mind when one hears reorganization advocates say that "politics" cannot and ought not be removed from administration. To clarify the issues the term "politics" should be more accurately defined. It might be used in one of three senses. First, it might mean general policies of government as distinguished from technical or routine matters of administration. The legislative body is finding it increasingly more necessary to delegate policy determining powers to administrative bodies owing to the increasing complexity of governmental activities. In this sense the more "politics" is injected into administration the better. But this does not involve the assumption that this determination of broad policies and quasi-legislative and quasi-judicial matters should be determined by party politicians and henchmen filling the administrative offices. Second, "politics" might mean the gift of handling men as individuals and as groups. Although this at times connotes the ability to handle voters and to lead in the activities of political parties, it does not necessarily involve any such implications. In fact, a man might possess all of these qualifications for handling men and acting as the chief administrator of a large administrative department or corporation while being absolutely free from any political or party attachments. Therefore, in this second sense also the term need not possess any undesirable implications. Third, "politics" might mean the exercise of power in a selfish, partisan and dishonest manner. This is the sense in which the term is most frequently used with reference to public administration. One often hears this statement: "Oh, if we could only keep the administration of this service out of politics." Indeed, the problem of eliminating political favoritism and influence from administration is no small matter as Hughes has pointed out. But under present circumstances, such a condition is easily accounted for. Owing to the obligations of the elected governor to the bosses who are instrumental in placing him in office, it is only natural for him to give ear to their demands in making appointments. In fact, the governor is so dependent upon their power that frequently he becomes little more than a puppet—a dummy on the knee of a master ventriloquist. Political administration in this third sense is not a matter to be trifled with.

The proponents of the federal plan for states deliberately encourage political manipulation of administration. Consequently, that movement has brought upon itself a tirade of criticism from not only those interested in competency in specialized fields of administration but from students of government as well. The latter demand expert rather than political administration and declare that it is in the interest of both democracy and competency that the department heads be selected by continuing councils or boards of directors rather than by a governor.⁴⁷

⁴⁶ HUGHES, CHARLES EVANS, *CONDITIONS OF PROGRESS IN A DEMOCRATIC REPUBLIC*, 45-6. Speech of Elihu Root, *MUNICIPAL RESEARCH* No. 63, 619.

⁴⁷ Coker, *Op. Cit.*, XVI, 409. Wilson, *Op. Cit.*, 264, 269: "Fur bearing animals can have no connection with political parties, . . . except, perhaps, as 'spoils.' Indeed it is a positive disadvantage that Mr. Secretary should be chosen upon such a principle. He cannot have the knowledge and must therefore lack the efficiency, of a permanent official separated from partisan conflicts of politics (italics mine) and advanced to the highest office of his department by a regular series of promotions won by long service . . . 'No one doubted that he (Secretary of Navy) would treat the Department as spoils and consequently nobody has been disappointed.'"

The reorganization movement furthers incompetence in five ways, by the failure to provide for continuity, by accepting the constitutional dogma of executive supremacy which makes the machine necessary, by actually advocating political appointments to enforce political responsibility, by destroying functional unity through the organic separation of quasi-legislative and quasi-judicial from administrative acts within a given field, and by lowering the morale of the personnel. The relation of continuity to competency has already been treated. That executive supremacy makes for inefficiency by enhancing the power of the boss and the machine is clear from a century of our political history. It has already been noted that invisible government is necessary in order to have any sort of harmony where the executive and legislative branches are virtually independent, and that political patronage is one of the best ways to build up a powerful party machine. In view of these factors, it is inevitable that the adoption of the federal plan does not destroy invisible government or replace the spoils politician with the competent technician.

The reorganization protagonists insure incompetence by deliberately advocating political appointments and partisan administration. By such measures, they believe they could bring the politician out in the open, could make the governor the visible boss, and could destroy invisible government. In advancing the federal plan for states, the supporters reveal how they connect political administration with their principles of unity, leadership, and responsibility. They maintain that it is impossible to keep politics out of administration, and that, therefore, we should provide for political administration throughout by electing only one man as executive head and should allow him to appoint all his subordinates in order to hold him personally responsible for all acts of the administration. Apparently one must conclude that the spoils system must be injected into the civil service from the highest official to the lowest employee and there must be a wild scramble for office every two years in order to maintain "governor's responsibility" and keep the administration political. Such a stand is inherently wrong. It is wrong in theory because the relegation of political representatives and their activities to the legislative body is the very cornerstone of representative government. It is wrong in practice because the administrative work is technical and routine. Consequently, there is no place for an expression of partisan political policy or the practice of favoritism. What is the policy of the Republican party as against the Democratic party relative to collecting statistics, keeping books, cleaning streets, or washing windows? Why is a Republican rather than a Democrat inherently fitted because of party affiliation to manage an insane asylum, to fight against the ravages of disease, or to solve intricate problems of mental hygiene? These queries seem almost nonsensical to the writer, but they are apparently reasonable to those who proclaim that partisan politics must be injected into administration.

To the extent the new codes destroy functional unity, efficiency of administration is lowered. This results from the attempt to reconcile the use of independent, non-political boards, councils, or commissions for quasi-legislative and quasi-judicial purposes with the principle of governor's political responsibility. To enforce this principle, these inconsistent departmental types are deprived of all

power but the mere promulgation of regulations or decisions. In Ohio, even the staff, which collects the data upon which the commission makes its decisions is accountable not to the commission but to the director of another department who is politically responsible to the governor.⁴⁸ But the commission, and not the political director of the other department, is responsible for the rules and decisions issued. All value accruing from the commission's independence is thus virtually destroyed. This seems to be carrying the dogma of responsibility to the ridiculous. At least it is carrying it to the extent of defeating the end of the commission's creation, violating the logical principle of functional unity, and hence abdicating efficiency and economy.

The morale of the personnel is distinctly lowered under the new codes. Few capable technologists are willing to enter the public service under political administrations. Indeed, experts, who head state departments by virtue of their appointment by non-political boards, have declared that they would resign at once if they were to be appointed by the governor. The lack of independence, honor, and respect connected with political service, the uncertainty of tenure, the acquiescence in an atmosphere of chicanery, partisanship, and favoritism are elements repulsive to the well trained and highly skilled administrators proud of their professions. Experts, who might possibly be employed in less important positions, would be subordinated to incompetent chiefs. This is of necessity the case because the department heads and bureau chiefs under the new codes are supposed to be appointed on a political basis. The issue between political administration and competent administration is clear. Do we want professional technicians or professional politicians operating our health, welfare, educational, and other services? That the federal plan for states gives the latter, there is little question.

In resume, the movement to reorganize the states on basis of the federal plan makes distinct advances in the elimination of overlapping jurisdiction and duplication of effort, in the reduction of overhead costs and routine clerical and field forces through the functional arrangement of organization units, and in the institution of the budget system and standardized methods of administration. But the defects of the movement should not be overlooked. It violates the foundation principles of representative government; oversimplifies the problem of administration, and overcentralizes the jurisdiction and powers of the governor beyond the means of human capacity; fails to make him appreciative of his administrative leadership; fails to make him apprehensive of his responsibilities to the "people"; overburdens the electorate with duties for which it is unfitted; destroys boards with powers of publicity and investigation which are essential to popular government and the proper functioning of public opinion; poisons the whole administrative system at its most vital points with the spirit of the political spoilsman; weakens and at times retards the civil service reform movement; disrupts functional unity by arbitrarily separating quasi-legislative and quasi-judicial from administrative acts; increases the turnover of employees and department heads; expels the technologist and replaces him with the politician; creates such an administrative system that a trained executive would seldom if ever accept an appointment even if offered by the governor,

⁴⁸ Coker, *Op. Cit.*, XVI, 407.

owing to the very temporary character of the office and the undesirable political atmosphere in which he would have to acquiesce.

In weighing the failures and successes of the reorganization movement, we are led to conclude that the movement has failed to accomplish its chief objectives. So far from achieving its goal of responsible government, it has actually destroyed the advances previously made by the movement to take certain state services out of "politics" and to secure competency and continuity of administration.

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