THE GOVERNMENT OF THE UNITED STATES OF AMERICA

CHAPTER I

The American Political Tradition

A Nation of Immigrants

Within the span of a hundred years in the seventeenth and early eighteenth centuries, a tide of emigration set from Europe to America. The most impelling single force which induced emigrants to leave their European Homelands was the desire for economic opportunity and England was the first to seize it. Between 1620 and 1635 economic difficulties of an unprecedented character had swept England and there was no work for a multitude of people. Even the best artisans could earn just a bare living. Bad crops added to the distress. In addition, England's expanding woollen industry demanded an increasing supply of wool to keep the looms working and the sheep, raised in their anxiety to make best of the opportunity, began to encroach upon soil hitherto given over to tillage.

Simultaneously, religious upheavals played their part. A radical sect of Puritans, known as the Separatists had migrated to Holland during the reign of James I in order to practise their religion as they wished. Some years later a part of this group decided to emigrate to the New World where in 1620 they founded the "Pilgrim" colony of New Plymouth. In Britain, too, immediately after the accession of Charles I to the throne, Puritans, who had been subjected to increasing persecutions, followed the Pilgrims to America and established Massachusetts Bay Colony. But Puritans were not the only colonists driven by religious motives. Dissatisfaction with the lot of Quakers led William Penn to undertake the founding of Pennsylvania. British Catholics, also, under Cecil Calvert's inspiration founded Maryland. The pace of emigration accelerated during the arbitrary and despotic rule of Charles I. After the triumph of Cromwell many Cavaliers—"King's men" left Britain in sheer horror and colonized in Virginia.

In Germany the oppressive policies of various petty princes helped to mount high the number of the emigrants. On the whole, the settlers who came to America in the first three-quarters of the seventeenth century, the overwhelming majority was the British. There was sprinkling of Dutch, Swedes, and Germans in the middle region, a few French Huguenots in South Carolina and elsewhere, and a scattering of Spaniards, Italians, and the Portuguese. But they were hardly ten per cent of the total population. After 1680, however, Britain did not provide any appreciable number of immigrants. A majority of them had come from Germany, Ireland, Scotland, Switzerland, and France for varied reasons. For a considerably long time immigration remained a steady stream and the population which numbered to about a quarter of a million in 1760 amounted to more than two and a half million in 1775.

Towards Independence

The immigrants from Britain not only brought with them English language, but also Anglo-Saxon traditions of civil liberty and self-government reinforced as they were by *Magna Carta*, the Bill of Rights and the *Habeas Corpus* Act. They transplanted all these traditions, in fact, the whole fabric of the Common Law in their new homelands. For the most part, the non-English Colonies adapted themselves to the traditions of the original settlers as they adopted the English language, law, customs and habits. The process of amalgamation had the obvious result of intermingling the different cultures and thereby producing a new culture—a blend of English and Continental characteristics conditioned by the environments of the New World.

Before Colonies could be established in

America, it was necessary to have legal authorisation to do so. This was granted by the King of Britain in Charters, granted in some instances to trading companies, in others to individuals and in still others to the colonists. The basis of government in each colony was the supremacy of the Crown, although there was the lack of controlling influence on the part of the Government in Britain. The colonies were , during the formative period, free to a large degree to develop as their inclinations or force of circumstances dictated. This large degree of self-government exercised by the colonists resulted "in their growing away with Britain" whenever in the years to come the Government attempted to regulate their conduct. The colonists had indeed, become with the lapse of time, increasingly "Americans" rather than "English" and this tendency was strongly reinforced by the blending of other national groups and cultures which was simultaneously taking place. How it operated and the manner in which it laid the birth of a new nation was vividly described in 1782 by St. John Crevecouer: "What then is the American, this new man? He is either an European, or the descendant of an European, hence that strange mixture of blood, which you find in no other country.....I could point out to you to a family whose grandfather was an Englishman, whose wife was Dutch, whose son married a French woman, and whose present four sons have now four wives of different nations. He is an American, who leaving behind him all his ancient prejudices and manners, receives new ones from the new mode of life he has embraced, the new government he obeys and the new ranks he holds....."

In 1763 at the end of the Seven Years' War the French were driven from the North American Continent. New territories came under British control, and money was needed to administer them. The British Government had incurred huge debt fighting the French and it was decided that the Colonies should bear a part of the expenses of administration and defence of the Colonies. At the same time, attempts were made to enforce the trade laws more rigorously, and to tighten the control over Colonial affairs. It spread a wave of deep resentment amongst the Colonies. "Businessmen wanting to develop their own industries; merchants and shippers wishing to trade with nations other than England; planters believing they could get better prices from the Dutch and French than from the English; speculators wishing to buy western land—all these and others found reason to chafe under the heavier taxes and harsher restrictions."[1]

But those who resented and protested had hardly thought of independence. What they exactly wanted was the repeal of the onerous laws and to leave the Colonists as much alone as possible. Their protests, however, stirred up popular feelings and radical men like Sam and John Adams in Massachusetts and Patrick Henry and Thomas Jefferson in Virginia seized the opportunity and appealed to the emotions of the colonists in the name of natural rights of men, and of government resting on the consent of the governed. They quoted Locke on individual liberty and human rights.

The result was a deliberate disobedience of the "obnoxious" laws and orders. The Colonial Legislatures frequently withheld appropriation of salaries for officials and soldiers until their demands were conceded to or their grievances redressed. After the accession of George III to the throne in 1760, the British Government decided to deal firmly with the recalcitrant subjects. This caused resentment fanned to revolutionary fervour. All attempts at conciliation failed and by 1776 the Colonists were faced with the alternatives of submission or rebellion and they chose the latter.

The Declaration of Independence

The Declaration of Independence adopted on July 4, 1776 announced the birth of a new nation. It declared the Colonies States, each independent of the Crown and politically independent of others. At the same time, it set forth a democratic philosophy of man's natural rights, popular consent as the only just basis for political obligations, a limited government, and the right of the people to revolt against tyrannical government.

The Revolutionary War dragged on for about six years with fighting in every Colony. With Cornwallis's surrender on October 19, 1781 the military effort to halt the Revolution was, however, over. When the news of Americann victory reached Britain, the House of Commons voted to end the war. Soon after Lord North's Government resigned and the new Government assumed office to conclude peace on the basis of the Declaration of Independence. The Treaty was finally signed in 1783. It acknowledged the inde-

1. Burns and Peltason, *Government by the People*, p. 92.

pendence, freedom and sovereignty to the thirteen Colonies which became the States.

The Continental Congress which managed the common affairs of the Colonies during the early stages of the Revolution met and functioned without any constitution or fundamental law. It was created to meet an emergency and was looked upon merely as a temporary expedient. But when war appeared imminent and the advantages of union became more manifest, it was resolved to place the common government on a firm and permanent basis with larger powers and definite authority. On June 12, 1776, the day after a committee was appointed to prepare a declaration of independence, Congress appointed another committee consisting of one member from each Colony " to prepare and digest the form of a Confederation to be entered into between these Colonies." In November 1777 an instrument called the *Articles of Confederation* was finally adopted by Congress, which was to go into effect when ratified by all the States. All States except Maryland ratified the Articles during the year 1778 and 1779. Maryland, too, ratified them on March 1, 1781 and on the same date the Articles went into effect. They constituted the first Constitution of the United States of America.

The Confederation, thus, formed was styled a "firm league of friendship," under the name of the United States, and its declared purpose was to provide for the common defence of the States, the securities for their liberties, and their natural and general welfare. For "the more convenient management of the general interests of the United States" an annual Congress of delegates, to be chosen by the States, was established. No State was to send less than two and more than seven delegates, and each State was entitled to only one vote regardless of its size or other considerations. Unlike the Continental Congress, the Congress of the Confederation had definite and express powers to deal with certain subjects of common concern to declare war and make peace, to send and receive diplomatic representatives; to enter into treaties to coin money; to regulate trade with the Indians; to borrow money; to build a navy; to establish a postal system; to appoint senior officers of the United States Army (composed of state militants); and a few other powers of a like character. Approvals of nine of the thirteen States was required to make important decisions.

The Articles of Confederation, however, did not give two most important functions to Congress, *i.e.*, those of taxation and regulation of commerce. All that the Congress could do was to ask the States for funds. The Central government, therefore, existed on the doles of the State Governments. Nor had the Articles made any provision for an executive department or for a national judiciary, with the single exception of a court of appeal in cases involving captures on the high seas in time of war.

During the revolutionary period it did not matter much. But the post-war complications created insoluble problems. The war had inflated the currency and it circulated at about one-thousandth of its face value. The sky- high prices had dislocated the economy of the country and everybody groaned under the crushing burden of the excessive prices. In the absence of a uniform rate of exchange the international trade had come to a standstill. The Central treasury was nearly empty and the States had become defaulters in their payments. Creditors were reluctant to lend and public securities were sold at a fraction of their face value. The Congress was helpless and it had no means to remedy the chaos. The conditions were yet more demoralising in the dealings of the States with each other and the Central Government. The latter had, according to the Articles of Confederation, sole control of the international relations, but a number of States had begun their own negotiations with foreign nations. Nine States had organised their independent armies and several had little navies of their own. There was a curious diversity of coins minted by a dozen foreign nations, and a bewildering variety of State and national paper bills. Each State regulated its commerce and some States even discriminated against their neighbours. The result was continuous jealousies, dissensions, and sometimes reprisals and retaliation between themselves. For purposes of foreign and inter-State commerce each State was, in sum, a nation by itself, and the Confederation was simply a non-entity.

Movement for Revision

The climax was reached when all attempts to improve the Articles of Confederation had failed and the States were on the verge of Civil War. Washington, Hamilton and many other political leaders, who had laboured to bring together the States in bonds of Union, were convinced that the Government of the Confederation must either be revised or superseded entirely by a new system. The Congress of the Confederation was

a government of the States and not of the people. It was weak because it lacked four things which every strong national government must possess: the power to tax, to borrow, to regulate commerce, and to maintain an army for the common defence. And to have a strong government possessing all these four powers, the Central Government must really be a government of the people belonging to one single nation. Washington wrote: "I do not conceive that we can exist long as a nation without our having lodged somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the State governments extends over the several States."

Disputes between Maryland and Virginia over navigation in the Potomac River led to a conference of representatives of five at Annapolis in September 1786. Alexander Hamilton, one of the delegates, convinced his colleagues at the conference that the subject of trade regulation was bound up with other essential questions and it was, accordingly, necessary to call upon all the States to appoint representatives in order to "devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to exigencies of the Union." The Annapolis convention adopted a resolution for a general convention of delegates from all the States to meet in Philadelphia in May 1787. The Continental Congress was at first indignant over this bold step, but finally it reluctantly endorsed the idea in February of that year. All the States except Rhode Island appointed delegates to participate in the convention.

The Philadelphia Convention

The Philadelphia Convention was in reality a constitutional convention as it was charged with the purpose of revising the Articles of Confederation. It assembled on the second Monday in May, 1778 and was composed of fifty-five members. It was, in the words of Jefferson, "an assembly of demi-gods." A French *Charge,* writing to his government said : "If all the delegates named for this Philadelphia Convention are present, one will never have seen, even in Europe, an assembly more respectable for talents, knowledge, disinterestedness and patriotism than those who will compose it." The men who actually guided the destinies of the emerging nation were George Washington, James Madison, Alexander Hamilton, Benjamin, Franklin, Edmund Randolph, Gouverneur Morris, James Wilson, and many other distinguished gentlemen.

The Convention actually met on May 15, 1787, in the Independence Hall and unanimously selected George Washington as the Chairman of the Convention. It was then decided that voting should be by States, each State having one vote; that the deliberations of the Convention should be behind closed doors and kept secret; that a quorum should be seven States and that a majority vote would be competent to ratify all decisions.

Within five days of its meeting the Convention made a momentous decision when it adopted Edmund Randolph's resolution : "that a national government ought to be established consisting of a supreme legislative, executive and judiciary." Thus, as Madison later wrote, the delegates "with a manly confidence in their country" simply threw the Articles aside and proceeded ahead with the consideration of a wholly new form of government. The delegates recognised that the predominant need was to reconcile two different powers—the power of the autonomous States and the power of the central government. They adopted the principle that the functions and powers of the national government, being new, general, and inclusive had to be carefully defined and stated, while all other functions and powers were to be understood as belonging to the States." They recognised, however, the necessity of giving the national government real power and, accordingly, accepted the fact that it be empowered among other things, to coin money, to regulate commerce, to declare war, and make peace.

At the end of sixteen weeks of deliberations and after ironing out many vexing problems, on September 17, 1787, a brief document incorporating the organisation of the new government of the United States was signed "by unanimous consent of the States present." But a crucial part of the struggle for a more perfect union was still ahead. The Convention had decided that the constitution would become operative when it had been approved by Conventions in nine out of the thirteen States. By the end of 1787 only three had ratified it. There was a widespread controversy. Many were alarmed at the powers which the constitution envisaged to give to the Centre. These questions brought into existence two parties, the *Federalists* and the *Anti-federalists;* those favouring a strong central government and those who preferred a loose association of separate States. The controversy raged in the press, legislatures, and the State conventions. Impas-

sioned arguments poured forth on both sides. Patriots like Patrick Henry, Richard Henry Lee, and others opposed the proposed constitution on the plea that it contained no Bill of Rights and, consequently, it would prove dangerous to the liberties of the people.

The *Federalists* conceded to the demand of the inclusion of a Bill of Rights as soon as the new government was organised. This promise, which was carried out soon after the new government came into being by the adoption of the first ten amendments, enabled the wavering States to support the constitution. The Constitution was finally adopted on June 21, 1788.[2] The Congress of the Confederation enacted that the new government should go into effect on March 4, 1789. In the meantime Senators and Representatives were elected as the first members of the new Congress, and George Washington was chosen first President of the Union. Thus the old Confederation passed away and the new Republic entered upon its career.

Today, the United States of America consists of fifty States including the States of Alaska and Hawaii. The country covers an area of more than nine million square kilometers. Hawaii lying in the Pacific 3,200 kilometers from the mainland, and Alaska 3,170 kilometers (by the Alaskan Highway through Canada) to the north-west. It is a varied land of mountains, plains and plateaus. About two-thirds of the people live in towns and cities, one-third in rural areas. A publication of the United States Information Service, thus, describes the land and the people: "The United States is a country of great diversity—vast cities and small villages; roaring factories and quiet fields, busy streets and small churches for meditation. Geographically, there is a variety too—lakes and deserts; prairies and mountain ranges; rocky sea coasts and sunbaked plains. And at the core of this varied land are the people—the most varied of all, for they stem from countries and social levels throughout the world. But in spite of many differences, certain traditions—freedom, equality, individual rights are common to all and are taught in the home, in the church, and in the schools."[3]

The Native Americans — A Tragic Story

A tragic chapter of the American political tradition is the genocidal violence directed against the native American people who numbered about a million when the white emigrants set foot on the territory which is today known as the U.S.A. As distinguished with other native American cultures and nations such as the Mayas and Azteks of Mexico and the Incas of Peru, who had developed advanced civilizations, the North American Indians had remained sociologically at a less developed level. These forest dwelling communities lived partly by the cultivation of corn and partly by hunting and fishing. As Parkes points out, "Most of them were relatively peaceful, though a few, like the Iroquois in what is now upstate New York, became highly militant. Their political organisation was simple and fairly democratic. The chieftain of an Indian tribe had limited powers, and important decisions were made by the tribal council"[4].

Fields and hunting areas were held by these Indian communities in common and were not divided into private properties. Agriculture was often managed by the women while the men engaged in hunting and fighting. The European settlers learned from them how to grow maize crops, a number of vegetables, medicinal and narcotic plants, particularly tobacco. The Europeans began to occupy their common lands, clearing forests and claiming all such land as their private properties. This brought them into conflict with the Indians. There was continuous fighting between the two races. The average European "usually came quickly to the conclusion that the only good Indian was a dead Indian." That is how the genocidal war against the Indian people commenced.

Henry Parkes concludes: "For nearly three hundred years the record of white-Indian relations in the United States was a tragic story of misunderstandings, broken agreement, treacheries and massacres, Eventually the white peoples took possession of almost the whole country, and the surviving Indians, reduced to one - fifth of their original number as a result not only of warfare but also of the liquor and diseases brought by the white men, were herded on to reservations."[5]

By 1875 the United States army had broken the back of Indian resistance and their struggle

2. North Carolina ratified the Constitution in November 1789, and Rhode Island in May 1790, after Congress had threatened to deprive her of the privilege of trading with the Union, and secession had been threatened by several countries in which Federalist sentiment was strong.
3. *Facts about the United States* (1956), p. 4.
4. Parkes, Henry Bamford : *The United States of America : A History*, p.23.
5. Ibid; p. 24.

for freedom and democratic rights. Most of the Indian communities were forced to settle on desert and semi-desert lands assigned to them. "But no sooner had the program been completed than gold was discovered in the Black Hills country in the South Dakota reservation, and a flood of white adventures invaded the lands of the Indians. This led to the most serious Indian conflict, the serious war of 1876. In addition to being driven out of their land, "the Plains Indians had also lost the economic base of their society. For countless centuries they had acquired food, clothing, and shelter from the meat and skins of the buffaloes who had roamed across the Plains in immense herds totalling perhaps 13,000,000 animals. But the white men almost exterminated them within a quarter of a century."[6]

There is an important lesson for us to learn from this ongoing genocide of the heroic Indian race, lasting for three centuries, that the American political tradition is rooted in violence and there is a link between this genocidal violence and dropping of atomic bombs on two Asian cities of Hiroshima and Nagasaki as well as America's desire to retain nuclear weapons, capable of destroying the whole human race, for eternity.

But there is a silver lining to this tragic saga. Citizenship was ultimately granted to all Indians by the American Government in 1924. Some of the Indians became educated and to a large degree assimilated into white civilization. Their population, which was reduced to 200,000, by now, has started increasing slowly. They are now researching their ethnic cultural roots and may ultimately enrich the multi-ethnic character of America's political democracy by their free and equal participation. After all, it is their country which was usurped by the European emigrants and aggressors and the indigenous inhabitants fully deserve a share in the fruits of modern American development and enjoyment of democratic rights.

The Institution of Slavery

Another negative feature of the American political tradition has been the institutionalised oppression and exploitation of the Afro-American people who were brought from Africa by the British and other European slave traders and sold into slavery to the planter aristocracy of the southern United States. First, they had employed poor whites as servants on contract basis to till their fields but soon found out that a permanent labour force in the form of Negro slaves imported from West Africa was much more profitable. The first cargo of Negro slaves reached Virginia from Africa in 1619 and in the early years of the 18th century the black slaves almost completely replaced the white servants. According to Henry Parkes, "English slave-traders and American planters were led by economic interest to fasten upon American society an institution which was to cause irreparable harm for many generations to come ... a plantation-owning aristocracy was slowly emerging .. In accordance with the English feudal tradition, it was generally assumed .. that wealthy landowners were entitled to exercise leadership and become a ruling class ... the average small farmer accepted upper-class rule as being in accord with the laws of God and nature."[7]

Thus it is not true to argue that America had no feudalist tradition. Slavery, as an institution, was even more oppressive and exploitative than medieval serfdom. The total slave population increased from nearly 800,000 to 4,000,000 in 1860. Most of them worked as farm labourers on the cotton plantations of rich landowners who sold their produce to British traders. Modern slavery, in its origin and usage was, therefore, an instrument of rising capitalism. In this respect, it can be distinguished both from Greco-Roman slavery and medieval European feudalism. Despite its profitability for the plantation landlord, the rising Northern bourgeoisie was opposed to it as these capitalists wanted the emancipated slaves of the South to come to the North and work in their factories as wage-workers.

Abraham Lincoln proclaimed the liberation of the slaves from January, 1863. But the social and political implications of this supposed emancipation were negligible. Direct disfranchisement of the Negroes was prohibited by the Fifteenth Amendment. But the same result could be obtained through indirect methods such as poll tax or literary tests which were fraudulently used even to disfranchise Negro graduates. Intimidation was another device to keep the blacks away from politics and voting. The black people gradually migrated to the Northern cities and practically almost to all other states in search of jobs and were concentrated in the urban ghettos and slums. They were continuous victims of discriminatory racial laws and economic exploitation.

6. *Ibid*; p. 424
7. *Ibid*; p. 32.

By long-established traditions, the Negro people were considered inferior to the whites, in sharp contradiction to proclaimed American ideals of liberty and equality. In the middle decades of the twentieth century these traditions were increasingly under attack. In the 1950's and 1960's there was a sharp increase in Negro militancy. The Supreme Court and Federal Administration had propounded new definitions of Negro rights but so far they had little concrete effect in improving social and economic conditions of the Negro masses. In the earlier phases of the movement, it was led by a moderate Negro priest, the Reverend Martin Luther King who believed in non-violent resistance to discrimination. The white racists resorted to violence killing many activists of the movement and thus wanted to intimidate all other agitators into submission. A civil rights march of 200,000 participants persuaded Congress to pass its most effective and comprehensive measure for Negro rights in July 1964.

This legislation, however, did not change the basic grievance of the Negro people which was simply economic misery. By mid-Sixties a new group of young militants had largely taken control of all Negro organisations. Their favourite slogan was "Black Power." Starting in the summer of 1965, the mass poverty of the slum population produced a frightening series of violent explosions in several American cities. Rioting became widespread killing and injuring thousands and destroying properties on a huge scale. The police retaliated with brutal violence and shootings, thereby demonstrating to the Negroes the government's hostility to the cause of Black liberation. In April, 1968, Martin Luther King, the apostle of non-violence, was martyred and his assassination sparked renewed ghetto riots. The Negro freedom-fighters were crushed by greater state violence but the outcome of the struggle was the recognition by the ruling elites that greater participation will have to be allowed to the Black people in running the American political system in future and their living conditions will have to show a marked improvement both in social and economic spheres.

Growth of Pluralist Democracy

American society, according to S.E. Finer, "is highly pluralistic, where a myriad freely-formed associations co-exist, of all types and traditions." U.S. society "contains a large number of sub-cultures" based on ethnic origin, religion or region while government is founded upon, dependent upon and accountable to the organised public opinion in society, the social structure is relatively much more fragmented, unstable and inherent. It would be wrong to say that American society is open-ended. Yet there may be some truth in arguing that, unlike Europe, it does not have a traditional aristocracy, a sort of ruling elite, that dominates high positions of the state. At the other end of the scale, the American working class does not have a party of its own, on the European pattern, which can fight its class battles against the dominant class in American society.

There was indeed a landlord class before the war of Independence in 1776, which sided with the British Crown, so it was as much a civil war in thirteen colonies as a war of liberation against British rule. After the defeat of the British, the estates of the Loyalist landowners were confiscated. This was the first great blow at the landed aristocracy. The second occurred when the planters' aristocracy was destroyed in 1865 as a result of the defeat of the Southern confederacy in the Civil War. In the absence of a hereditary ruling class based on landed property, America has lacked any kind of permanent ruling elite in the European sense. However, the growth of capitalist industry gradually created a new upper class in American society based on the possession of wealth.

However, it is difficult to agree with S.E. Finer when he says: "Whereas the one great cleavage that still persists in Britain is the horizontal one between capital and labour, this is not only greatly attenuated in the United States, but is simply one amongst a great number of other cleavages, which are very different in kind"[8] While the social structures of all advanced capitalist countries in Europe and North America may not be exactly identical, the cleavage between capital and labour is their most characteristic feature everywhere. So pluralist democracy there functions within the constraints of a system that recognises the ascendency, even supremacy, of a power elite, to use a phrase popularized by C. Wright Mills in the context of the American society after the second world war.

In the United states, citizens enjoy universal franchise, free and regular elections, repre-

8. S.E. Finer, *Comparative Government*, p. 196

sentative institutions and fundamental rights. Both individuals and groups take full advantage of these rights, under effective protection of laws, and independent judiciary and a free political culture. As a result, no U.S. government can fail to respond to the desires and demands of competing interests, whether related to labour or capital, which are both treated supposedly on an equal footing. A leading theorist of this democratic-pluralist view argues that in this political system'' all the active and legitimate groups in the population can make themselves heard at some crucial stage in the process of decision.''[9] Other pluralist writers "suggest that there are a number of loci for arriving at political decisions, that business men, trade unions, politicians, consumers, farmers, voters and many other aggregates all have an impact on policy outcomes, that none of these aggregates is homogeneous for all purposes; that each of them is highly influential over some scopes but weak over many others; and that the power to reject undesired alternatives is more common than the power to dominate over outcomes directly.''[10]

Another writer, who himself disagrees with the plurist interpretation of the American polity, summarises it as follows in relation to the United States : ''Congress is seen as the focal point for the pressures which are exerted by interest groups throughout the nation, either by way of the two great parties or directly through lobbies. The laws issuing from the government are shaped by the manifold forces brought to bear upon the legislature. Ideally, Congress merely reflects these forces, combining them... into a single social decision. As the strength and direction of private interests alters, there is a corresponding alteration in the composition and activity of the great interest groups — labour, big business, agriculture. Slowly, the great weatherman of government swings about to meet the shifting winds of opinion.''[11]

There are elites in different social, economic, political, administrative, professional and other spheres. But they lack cohesion to constitute what C. Wright Mills called a 'power elite'. Elite pluralism is a guarantee that power in society will be diffused and not concentrated in a dominant class.

Harold J. Laski contested the Pluralist 'democracy' thesis in his monumental work entitled *The American Democracy*. Ralph Miliband criticised its assumptions in *The State in Capitalist Society*. Both have argued that in the ultimate analysis, capital dominates labour in the American political system. Business groups, rather than trade unions, finance and control political parties as well as state institutions.

SUGGESTED READINGS

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9. R.A. Dahl, *A Preface to Democratic Theory*, pp. 137-138
10. R.A. Dahl, *et. al. Social Science Research of Business : Product and Potential*, p. 36.
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CHAPTER II

Essentials of the American Constitution

Constitution as a Document

The Constitution that emerged from the Philadelphia Convention was a model of draftsmanship, of linguistic elegance, of brevity, and of apparent clarity. It could not be otherwise, for it was designed to bring unity into the diversity of the new nation. Its provisions were built around several fundamental principles enshrined in the Declaration of Independence and upon these principles the American governmental system has since operated. So enduring and inspiring are these principles that the Constitution has, for more than two centuries now withstood the onslaughts of time and has served the country in war and peace, in calm and crisis, without fundamental change; 73 of the original 84 clauses of the Constitution stand exactly as they came from the fluent pen of Gouverneur Morris. The people of the United States have so much abiding faith in the sagacity, moderation, and "sense of the possible" shown by the makers of the Constitution that the original document is virtually worshipped. Until 1952, it was kept, along with the Declaration of Independence, in an illuminated shrine in the Library of Congress. Both these documents are now housed in the National Archives building in "a stronghold believed adequate to protect not only against the moth, the rust, the thieves but the atom bomb."[1] The words of Max Lerner are typical of the feelings of every American for their Constitution and its makers. He writes: "Here was the document into which the Founding Fathers had poured their wisdom as into a vessel; the Fathers themselves grew ever larger in stature as they receded from view; the era in which they lived and fought became a Golden Age. In that Age there had been a fresh dawn of the world, and its men were giants against the sky; what they had fought for was abstracted from its living context and became a set of 'principles' eternally true and universally applicable."[2]

The Constitution of the United States is the oldest written Constitution in existence and the shortest of the Constitution of any other nation, except the Chinese. It contains only 4,000 words, occupying ten or twelve pages in print which can be read in half an hour. Never was it in the minds of the Fathers of the Constitution to work out in all details a complete and final scheme of government for the generations to come. They sought merely a starting point and provided a skeleton to be clothed with flesh by customs, exigencies, national emergencies, economic development, and various other factors affecting the welfare of the nation. The Constitution is, thus, a living document; growing, developing and expanding, and it will continue to grow while the nation endures.

Gladstone called the Constitution of the United States, "the most wonderful work ever struck off at a given time by the brain and purpose of man." But actually its roots go deep, into the past. Some of its provisions are traceable to the *Magna Carta* and for other its authors drew ideas from the writings of John Locke, Montesquieu and Blackstone. Some basic concepts had an even more ancient origin, as the doctrine of consent. Following are the fundamental principles and distinctive features of the Constitution.

ESSENTIAL FEATURES

Popular Sovereignty

A prime feature of the Constitution is that it gives recognition to the principle of popular sovereignty. The right of the people to ordain, abolish and alter their own institutions of government was asserted in the Declaration of Independence. This inalienable right of the people received constitutional sanctity and the Preamble declares that "we the people of the United States.....do ordain and establish this Constitution for the United States of America." The Constitution also provides the methods by which it may be altered or abolished and to institute new form and organs of government which are most

1. Brogan, D. W., *An Introduction to American Politics*, p. 2 f. n.
2. *Ideas for the Ice Age*, pp. 241-42.

likely to guarantee the safety and welfare of the people. It means that the voice of the people is supreme in all matters of political determination in the United States and they reign, said de Tocqueville, "as Deity does in the Universe."

The doctrine of popular sovereignty attributes ultimate sovereignty to the people and consequently substitutes constitutional system of government for arbitrary and despotic authority of any kind. When it is recognised that the people are the safest depository of supreme power and that the will of the people is a better guarantee of wise, efficient, and moderate government, it really means respect for human rights, and in the language of Abraham Lincoln, a government of the people, by the people and for the people. "The American system," James Madison said, "is based on that honourable determination which animates every votary of freedom to rest our political experiments on the capacity of mankind for self-government." Since the incorporation of the doctrine of popular sovereignty in the American Constitution, "it has," as Bryce said, "become the basis and watchword of democracy."

On the concept of popular sovereignty is erected another pillar of democracy. The Preamble states the great objects which the Constitution and the Government established by it are expected to promote: national unity, justice, peace at home and abroad, liberty and the general welfare. The early State loyalties were strong and loyalties to the States are still strong, but there is the triumph of the nation and unmatching prosperity of the people built on the bastions of democratic ideals which disdain privileges of all kind. The Preamble, in fact, echoes the immortal saying of Thomas Jefferson :

> The God who gave us life gave us liberty at the same time.
> Error of opinion may be tolerated where reason is left to combat it.
> The earth belongs always to the living generation.
> Nothing is unchangeable but the inherent and alienable rights of man.

Limited Government

A natural corollary of the doctrine of popular sovereignty is the concept of a limited government, possessing only such powers as have been conferred upon it. The Constitution-makers had, indeed, a horror of unlimited power. While assuming that the people were sovereign, the organisation and powers of their governments were set forth in written documents. After carefully stating what powers they wished the Federal Government to exercise, they left all residual powers to the States composing the Union. Next, they separated the three branches of government, Executive, Legislative and Judiciary, and made them to operate with elaborate checks and balances. The Constitution also imposed certain positive restraints on all public authorities in the country, high and low, by setting limits and bounds to the actions they might take and the manner in which they exercise their powers. These limitations are designed to protect the person, property and civil liberties of the individual against arbitrary encroachment by government officials. In some matters the individual is protected against the Central Government, in others against State and Local governments, and in still others against all governments, Central, State and Local. The Fifth and Fourteenth Amendments together forbid Congress and State Legislatures to deprive any person of life, liberty, or property without due process of law. In a strict sense every line in the Constitution is a vindication of the sovereign rights of the people and a limitation on Government. "In framing a government which is to be administered by men over men," wrote Madison, "the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself." In this sense the Constitution serves a dual function. It is a positive instrument of government enabling the Governors to control the governed. It is also a restraint on the Government, a device by which the governed check the Governors.[3]

Federal System

The delegates at the Philadelphia Convention met to find means for establishing an effective national government. At the same time, there was no serious discussion in the Convention of proposals which might have lowered the dignity of the individual States. It is true that Hamilton pleaded for subjecting the State Governments to rather complete Central control but, "while many applauded his eloquence and admired his youthful brilliance, none followed his suggestion."[4] They knew that the overwhelming majority of the people were too much deeply

3. Burns and Peltason, *Government by the People*, p. 92.
4. Gosnell, C. B., and Others, *Fundamentals of American National Government*, pp. 67-68.

attached to their State Governments and they would not permit a scheme of government aiming at their complete subordination to a Central Government. The framers of the Constitution were, therefore, confronted with a difficult task : how to make the Central Government strong enough for its duties without impairing rights of States; how to preserve the integrity of the States without weakening the Central Government. By heroic efforts they devised a plan of government which now carries the nomenclature of a federation.

The Fathers of the Constitution, thus, established a dual system of government within the States of the United States of America. There is the National Government with a complete set of its own governmental agencies—Legislative, Executive, and Judicial—exercising powers delegated to it by the Constitution which are of common national interest. Paralleling this system in each State is another complete set of Legislative, Executive and Judicial organs acting upon the persons within that State and exercising the residuary powers, that is, the powers not delegated to the National Government or denied to the States by the Constitution. Under the Constitution, therefore, the National Government is one of enumerated powers only. Residuary powers rest with the State Governments. Each of these two sets of Government within its own sphere is autonomous and independent; neither encroaching on the other. If any change is desired to be made in the division of powers it can be done only by amending the Constitution and the method of amendment is provided in the Constitution.

Fears and doubts in the minds of the people existed at the time of the adoption of the Constitution about the practicability of the federal union. Before 1861, lively arguments were waged over whether a State composing the Union had a constitutional right to secede. But the Civil War settled once for all this controversial issue. As the Supreme Court declared in *Texas* v. *White* (1869): "The Constitution in all its provisions looks to an indestructible union, composed of indestructible states." No State, therefore, can break its constitutional bonds, for the Union is perpetual and indissoluble.

The United States of America is today the oldest federal union in existence. In fact, this type of polity originated therefrom. So successful it has been that many other countries have followed the American model. Quite a sizeable number of people spread all the world over even visualize a world organised on federal basis.

Federal Supremacy

Though the powers of the federal government are enumerated, yet federal law within its sphere is supreme over all state laws. This was the imperative necessity which the Fathers of the Constitution had fully realised. A federal union establishes two sets of government, each independent within its own sphere of jurisdiction. With demarcated powers and authority, conflicts between the National and State Governments are bound to arise and that, too, frequently. Such disputes might threaten the union if the Constitution does not provide for their settlement. The Constitution of the United States provides that disputes arising between the National Government and the State Governments must be settled in the Federal Courts. To guide judges in their decisions, the Constitution says: "The Constitution, and the laws of the United States.....and all treaties.....shall be the supreme law of the land....." It means that the Federal Constitution is paramount over all forms of law, State or National. Federal law, therefore, if validly enacted under the Constitution, ranks above the State Law. State Laws which conflict with the National laws or treaties may be declared unconstitutional ; and the Supreme Court at Washington is the tribunal of last resort for deciding all cases of conflict of jurisdiction between the Federal and State authorities. But treaties and Acts of Congress must be in accordance with and in conformity to the Constitution if they are to out-rank State Constitutions and laws. Compared with one another, Acts of Congress and treaties are on a plane of equality. If one conflicts with another, the measure passed most recently prevails.

A good example of the operation of the Federal supremacy occurred in 1956, when by a 6 to 3 vote the Supreme Court declared the Pennsylvania Sedition Act null and void on the ground that by passing numerous Federal sedition laws Congress "had occupied the field to the exclusion of parallel state legislation." The Court also held that "dominant interest" of the Federal Government in protecting the nation against subversion, and the possibility that the administration of State sedition laws would conflict with the operation of the federal plan were further reasons for declaring the Pennsylvania Sedition Act inoperative.

Separation of Powers

That the three functions of Government—Legislative, Executive and Judicial—must each be vested in a separate organ or department seemed to most Americans as undebatable as the laws of nature. James Madison wrote, in the *Federalist* : "No political truth is certainly of greater intrinsic value or is stamped with the authority of more enlightened patrons of liberty, than that.....the accumulation of all powers—legislative, executive and judiciary—in the same hands.....may justly be pronounced the very definition of tyranny." The theory of limited government, which formed the basis of political thought of that time, presupposed separating the three branches of government in order to prevent tyranny and absolutism. The Framers of the Constitution had, accordingly, no hesitancy about invoking the principle that political direction of authority should not concentrate in any one of the branches of government. They had rebelled against the tyranny of the British Government and wished to prevent such rulers from coming to power in the United States.

There is in the Constitution itself no direct statement of the doctrine of Separation of Powers. It is inferred from the opening sentence of each of the Constitution's three Articles. Article One begins by saying: "All legislative powers herein granted shall be vested in a Congress of the United States,....."Article Two begins with the statement that : "The Executive power shall be vested in a President of the United States of America....." Article Three states: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish....." The Constitution-makers, thus, provided that the operation of each of the three processes of government should be entrusted to a separate agency. The Legislative process be operated by an independent Congress, the Executive process by an independent President and the Judicial process by an independent Supreme Court and subordinate courts.

On the basis of this arrangement the doctrine of Separation of Powers has from the first been early established as a principle of governmental organisation in the United States and it has been enforced by the courts exactly as any other legal rule. One of the many statements of it is found in the judgment of the Supreme Court in *Kalbourn* v. *Thompson.* The Court declared: "It is believed to be one of the chief merits of the American system of written constitutional law that all powers entrusted to government, whether state or national, are divided into three grand departments—the Executive, the Legislative and the Judicial; that the functions appropriate to each of these branches of government shall be vested in a separate body of public servants; and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons entrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to others but that each shall by the law of its creation be limited to its own department and no other."

Checks and Balances

But even the most convinced believers in the doctrine of the Separation of Powers acknowledged that an absolute separation of the three departments of government would make government itself impossible. Madison, the ardent advocate of the doctrine of Separation of Powers, wrote in the *Federalist,* that the principle "does not require that the legislative, executive and judiciary departments should be wholly unconnected with each other. " He proceeded to prove that "unless these three departments be so far connected and blended as to give each constitutional control over the others, the degree of separation which the maxim requires as essential to a free government can never in practice be duly maintained." Unlimited power, it was argued, was always dangerous and the very definition of tyranny unless power was made a check to power. It could also be possible that different officials exercising different kinds of powers might pool their authority together and act in a tyrannical way.

The Framers of the Constitution, accordingly, introduced modification to the doctrine of Separation of powers when they came to details by setting up what are called 'checks and balances'. Having divided government into a threefold process and having assigned to each process a supposedly independent branch, the Philadelphia Convention authorised a very considerable amount of participation in, or 'checking' of the affairs of each branch by the other two. Expressed in simple words, instead of complete separation of the three branches of government, each was given enough authority in other func-

tional areas to give it a check on its companion branches. The object was to make exercise of power limited, controlled and diffused. The final constitutional arrangement, thus, gives to each Department of government exclusive powers appropriate to that Department, but at the same time, these powers are shared by other Departments lest it should corrupt those who wield power. The Legislative branch is checked by President through his veto power but Congress, if it can muster a two-thirds vote, may enforce its view by overriding his veto. The Constitution also armed the President with another kind of veto, described as "pocket veto." This veto kills a Bill presented to the President for his signature if he does not assent thereto within a period of ten days and in the meantime Congress adjourns. The President is, thus, able to check Congress. The Legislative Department, in its turn, checks the Executive through its powers to appropriate money and to impeach. The Senate confirms the appointments made by the President and approves treaties made by him. The President can declare war on the authority and approval of Congress. The Supreme Court depends upon Congress in several respects, for instance, appropriations and appellate jurisdiction as also for the number of justices who serve on that tribunal. Congress may impeach and remove federal judges from office. The President is empowered to appoint Judges of the Supreme Court, and grant pardons, reprieves, commutations and amnesties. And the Supreme Court, shortly after the Constitution became operative, developed the practice of ruling on the validity of Acts passed by Congress and approved by the President. Such a system of checks and balances has been described by Bryce : "The ultimate fountain of power, popular sovereignty, always flows full and strong welling up from its deep source, but it is thereafter diverted into many channels, each of which is so confined by skilfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any point where the stream threatens to break through."

No feature of American Government, national, state and often local, writes Frederic Ogg, "is more characteristic than the separation of powers, combined with precautionary checks and balances."[5] He further adds, "Nothing quite like it can be found in any other leading country of the world."[6] It was not the intention of Montesquieu, the author of the concept of Separation of Powers, to neatly divide the powers of government into three separate and distinct departments. What precisely he desired to establish was that power should be a check to power, *Le pouvior arrete le pouvior,* and in accordance with this dictum the Framers of the American Constitution divided government into three distinct departments and wove an intricate system of 'checks and balances' in order to avoid tyranny emanating from any source. They were thinking not alone of the tyranny of a monarch, as Montesquieu had thought, but the possible tyranny of the people or even of majority under a system of majority rule. "They knew, as we do, that no drug and no beverage is more intoxicating than power over men and that intoxicated men are not to be trusted as unrestrained rulers."[7] The Framers had, thus, a deep horror of the tyranny of the majority rule and they were not disposed to make any exception for a government conducted in the name of the people themselves. If the proper checks and balances are maintained no group is permitted to dominate and the programme of government is refined by the consideration from varied points of view.

The arrangement of government as established by the Constitution was designed to promote co-operation among the three branches of government as well as checking and balancing them. Without it the machinery of government, the Constitution Framers thought, would break down. But in actual practice, the system of checks and balances has prevented unity, frustrated leadership, divided responsibility and slowed up action. "Not all the objects which the Fathers had in view," says Herman Finer, "have been realized, but their main intention, effectively to separate the powers, has been achieved; for they destroyed the concept of leadership in government which is now so important in the present age of ministrant politics."[8] By establishing the Presidential system of government, the Fathers of the Constitution, adds Finer, "separated the executive sources of knowledge from the legislative centre of their application; severed the connection between those who ask for supplies

5. Ogg, F., *Essentials of American Government,* p. 38.
6. *Ibid.*
7. Swisher, Carl Brent, *The Theory and Practice of American National Government,* p. 62.
8. Finer, H., *The Theory and Practice of Modern Government,* p. 101.

and those who have the power to grant them; introduced the continuous possibility of contest between two legislative branches; created in each the necessity for separate leadership in their separate business; and made this leadership independent of the existence and functions of the executive." With powers divided between the Executive and Legislative Departments without any means of proper co-ordination, there is always inordinate delay to arrive at an agreement even on pressing matters which demand expeditious disposal. One branch of government may be operating on one policy whereas the other two may follow quite a different one, particularly when the Executive belongs to one party and the Congressional majority to another. Some Presidents have succeeded to bridge the gap separating them from the Legislature, but "while an emergency may bring temporary co-ordination, and the use of patronage can usually be counted upon to pave the way to some action, the national government is still torn into parts by the provision which the framers made for separation of powers."[9]

From the very beginning of the establishment of the Union, Congress has always emphasised its independent existence and its independent will. Whenever there had been unity of purpose and unity of will, as in an emergency like that of 1933, or during the two World Wars, Congress reasserted itself either by rejecting or by altering or modifying Presidential measures. And very often it does so "to draw attention to itself that he (the President) is not the unqualified master of the nation."[10] When in 1940 the United States became more and more involved in the Second World War, Congress conferred immense powers on the President. Protests soon followed both in Congress and outside that the President was gathering legislative power into his own hands violating the doctrine that the powers of government are sepa- rated by the Constitution. It was partly in response to this criticism that the new Congress, which commenced its life in January 1943 exhibited a revolt against the leadership of Roosevelt by rejecting many proposals which the President had recommended and accepting many Bills to which the President had objected including the two fundamental Acts which he had vetoed. The result is, as Finer remarks, "Legislative procedure had come to differ essentially from that in Britain and France, financial procedure is worlds apart; there is no co-ordination of political energy or responsibility; but each branch has its own derivation and its morsel of responsibility. All is designed to check the majority, and the end is achieved."[11] But, "At what cost?" Finer puts it. The cost, he replies, cannot be calculated unfortunately in dollars. And yet the principle of the Separation of Powers, as Professor Beard observes, " is indeed a primary feature of American government and is constantly made manifest in the practices of government and politics."[12] Somewhat ironically, even checks and balances "designed to promote over all equilibrium, often operate rather to aggravate than to ameliorate the ill efforts of separation, as for example, in the case of Presidential veto and senatorial assent to treaties."[13]

Corwin remarks that "lately the importance of this doctrine (the Separation of Powers) as a working principle of government under the Constitution has been much diminished by the growth of Presidential leadership in legislation, by the increasing resort by Congress to the practice of delegating what amounts to legislative powers to the President and other ad-ministrative agencies, and by the emergence in the latter of all the three powers of government, according to earlier definitions thereof."[14] The rise of political parties, a fact which was unforeseen by the Framers of the Constitution, and their functions have tended to redistribute the authority divided by the Constitution and have established the leadership of the Executive to a considerable extent indeed. Congress, too, has, not stood in the way of prompt and forceful action in times of emergencies. It has also on its own initiation delegated to the Executive the power of making rules and regulations in the pursuit of positive governmental programmes, and all such rules and regulations have the effect of statute law. Still there are limits beyond which the breaking down of the division cannot be permitted to go. Congress can delegate to the President a great

9. Zink, Harold, *Government and Politics in the United States*, p. 12.
10. Tourtellot, A. B., *An Anatomy of American Politics*, p. 83.
11. Finer, Herman, *The Theory and Practice of Modern Government*, p. 101.
12. Beard, C. A., *American Government and Politics*, p. 16.
13. Ogg, F. A., and F. O. Fay, *Essentials of American Government*, p. 39.
14. Corwin, S. E., *The Constitution and What It Means Today*, p. 2.

deal of power, but it cannot abdicate its functions and delegate its legislative authority to him. Even if it does, as Congress did in 1933, the Supreme Court intervenes declaring such delegation of authority void. The Supreme Court held in *Field* v. *Clark* (1892), that "the Congress cannot delegate legislative power to the President is a principle universally recognised as vital to the integrity and maintenance of the system of government ordained by the Const itution." The Court in 1935, unanimously invalidated the National Industrial Recovery Act partly on the ground that Congress had by that law delegated to the President its power to make what amounted to laws and, consequently, such a delegation of authority violated the principle of the Separation of Powers. However, the Court's subsequent policy has been to permit administrative rule-making provided the terms of the law are reasonably specific. And what is reasonably specific is, again, determined by the Court.

Both the principles of American government—Sepration of Powers and checks and balances—have frequently been a cause of confusion and conflict. They have resulted in great variations in the relationship bet- ween the President and Congress, variations in terms of personalities as well as external events. It is also impossible to deny, as Woodrow Wilson remarked, that "this division of authority and concealment of responsibility are calculated to subject the government to a very distressing paralysis in moments of emergency." Certainly, the Separation of Powers had been used, at various periods of American History to check and balance government so effectively that nothing could be accomplished even when the need for governmental action was most apparent. The more power is divided the more irresponsible it becomes. Power and accountability are the essential constituents of a good government. And today, when the area of governmental activity has broadened so enormously, can the system of Separation of Powers and checks and balances be reconciled with the need for strong, effective and responsible government ? This issue was brought into the forum of serious discussion by Woodrow Wilson's *Congressional Government,* and since then many proposals designed to bring about greater harmony in the Executive and Legislative Departments have been suggested. Woodrow Wilson had urged the superiority of a reasonable Cabinet system of government and his doctrine has been championed by effective writers. A few have, on the contrary, wielded the cudgels in defence of the American system. Some suggest a compromise by establishing a joint executive legislative Cabinet, that is, the Representatives and Senators should be included in the President's Cabinet. Still others suggest that Secretaries of the Government ('Cabinet' members) may be permitted to appear in the two Houses of Congress to explain Government's programme and policy, and answer questions. A few advocate changing the Constitution to prevent the Supreme Court from declaring law unconstitutional. Nothing tangible has come out so far although under the existing conditions the Separation of Powers on the whole is working better than the Framers could have foreseen. The system of checks and balances has been greatly modified by the political parties. Political parties join what the Founding Fathers had separated. The increasing important function of the President as legislative leader and other aspects of American political process owe their existence to adjustments necessitated by the Separation of Powers. Summing up the system of Separation of Powers and checks and balances, William Havard remarks, "The system as a whole is a going one despite a certain cumbersomeness in its general operation; to attempt to shift to some of parliamentary government, as a great many critics have urged, would seem to be as uncertain in practical effect as it is unlikely in terms of political feasibility."[15]

Presidential Type of Government

The system of government emerging from the principles of Separation of Powers and limited government is quite different from parliamentary democracy. Americans separated their institutions of government whereas there was fusion of governmental institutions in Britain. There was another important factor which influenced the deliberations of the Philadelphia Convention, Parliamentary democracy is unworkable without distinct political parties, each with its own programme and platform. The Framers of the Constitution forthwith rejected such a system of government which weakened national solidarity and created sharp cleavages and narrow loyalties. They strove to establish an energetic yet dignified Executive capable of enforcing laws firmly and one that should lend a note of stability.

15. Havard, William C., *The Government and Politics of the United States,* p. 33.

That is the Presidential Government.

It is a single Executive. The President is alone; one combining the functions of the Head of the State and Head of the Government. He is responsible to the people who elected him and to the Constitution to which he swore allegiance when he took office. He has no seat in the Legislature and is not accountable to that body. Nor does he depend upon it for the retention of his office; it goes by calendar.The Secretaries he appoints and make his 'Cabinet' and over which he presides, is not what Bagehot called a "Committee of the House of Commons." They are the President's nominees, appointed by him and responsible to him; it is his family. If any one is a member of the legislature at the time of his appointment, he must resign his seat therefrom before accepting such an appointment. The Executive department is, therefore, independent of and co-ordinate with the Legislative department and, as such, this system of government is the negation of Parliamentary system which joins the two, the Executive and the Legislative departments.

A Rigid Constitution

A Constitution that is written and establishes two sets of government with defined powers and both are equal in status, must be rigid. The procedure for amending it is prescribed in the Constitution and is distinct from the procedure adopted in making a statutory law. The amendment of the Constitution also necessitates participation of both sets of government. It is, consequently, unlike that of Britain. The Constitution provides two definite methods for amending it and we discuss these methods in the later part of this Chapter. The methods are extremely elaborate and rigid and account for only twenty-six amendments during the last 204 years.[16] Yet, in spite of its rigidity, it is the remarkable adaptability of the Constitution that has enabled it to survive the rigours of democratic and industrial revolutions, the turmoils of the Civil War, the tension of a major depression, and the dislocation of the two global Wars.

Judicial Review

As a corollary of the twin doctrines of a limited government and Separation of the Powers, there has developed the doctrine of judicial review by which courts exercise the power of annulling any Legislative measure or Executive action which in their opinion goes beyond the Constitution. The federal judiciary acts as a guardian of the Constitution. It interprets the constitution and decides the competency of Congress or State legislatures. If in the opinion of the courts a particular act is beyond the authority given to Congress or State legislatures or that it encroaches upon the domain of either of the two legislatures or seeks to deny or abridge the civil liberties of the people, then, such an act is declared unconstitutional or *ultra vires* and hence inoperative. Similarly, any act of the Executive, which is deemed in excess of or beyond its constitutional authority, may be held unconstitutional. When in 1933, Congress in a desperate effort armed the President with large discretionary powers to deal with the economic crisis, the Supreme Court intervened and in the *Panama Refining Company* v. *Ryan* held that this was an invalid delegation of legislative power to the Executive. Another part of the National Industrial Recovery Act authorised the representatives of each industry to make codes of fair practices applicable to all members of the industry under the supervision of the President and empowered him to promulgate the codes as law. This provision the Supreme Court also declared void.[17] "We think", the court rule "that the code making authority thus conferred is an unconstitutional delegation of legislative authority."

The doctrine of judicial review has been subjected to severe criticism during recent times. Its supporters defend it as necessary to preserve a free and limited government, and that it also helps to establish a stable government by guarding against legislative precipitancy and executive arbitrariness. The critics, on the other hand, assert that the courts infringe upon the Legislative and Executive functions and retard the working of representative government. It is further maintained that the process of judicial review delays pressing social and economic policies so necessary to meet changing conditions. We shall revert to the details of this controversy at its appropriate place.[18]

The Bill of Rights

The Constitution as it emerged out of the Philadelphia Convention did not contain the Bill

16. The Twenty-fifth Amendment setting out the way the office of President is filled in the event of his incapacity became law on February 10, 1967.
17. *Schechter* v. *United States*, 295 U.S., 495 (1935).
18. See Chap. VII infra.

of Rights embodying the rights and liberties of the people. Repeated efforts were made towards the end of the deliberations of the Philadelphia Convention to secure a Bill of Rights to the draft constitution, but all failed. Omission, however, became such a burning issue that it nearly defeated ratification of the constitution by the States. The Federalists ultimately conceded to the demand of the inclusion of Bill of Rights as soon as the new government was organised and the First Ten Amendments were added to the Constitution in 1791 to constitute the Bill of Rights. In these provisions are enshrined the rights and liberties of the people of the United States. A zone of freedom is, thus, established wherein no government may legally operate. Although the boundaries so set by Articles incorporating the Bill of Rights are by no means self-defining, yet they do whatever can formally be done to safeguard those individual rights which history has found to be the hallmark of a just and free society—freedom of speech, of worship, the right of *habeas corpus,* from arbitrary deprivations except by due process of law, and no unreasonable searches and seizures.

A few peculiarities may be noted. Some rights are mentioned in the body of the Constitution, but most of them are contained in the first Ten Amendments, popularly known as the Bill of Rights. Additional guarantees are made in other amendments, especially the Thirteenth, Fourteenth, Fifteenth, Nineteenth and Twenty-fourth. In addition to the basic rights, the Constitution refers to privileges or immunities, but does not define them. Section 1 of the Fourteenth Amendment says, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...." Without going into the legal complexities involved, civil rights are guaranteed to all persons whereas privileges and immunities extend only to citizens of the United States of America. "Although privileges or immunities," write Ferguson and McHenry, "have never been completely listed, experience suggests that they entitle citizens to have governmental protection while on the high seas or in foreign countries; expatriate, except when the nation is at war; have access of ports of United States, navigable waters, and agencies of the Federal Government, including courts of law; run for Federal office and vote for Federal officers; enjoy all rights and advantages secured by treaties; assemble peaceably and petition for redress of grievances; petition for writ of *habeas corpus;* enter the country and prove citizenship if questioned, and inform the Federal government of violation of its laws."[19] Privileges or immunities such as these, it is stated, are inherent in national citizenship and cannot be infringed either by the Federal or any State government. Aliens may be permitted to these privileges or immunities "as a matter of grace," but they cannot demand them as citizens can.

Rights in the United States are relative and not absolute. The Declaration of Independence refers to "natural" and "inalienable" rights and the Constitution too uses words that suggest the same ideas. For example, the first Amendment says, "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance". Amendment IX prescribes, "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Some Judges of the Supreme Court maintained that the rights conferred by the First Amendment are either absolute or "preferred," but the majority view is that rights are relative.

Both the Federal and State governments are forbidden to deprive anyone of life, liberty, or property, without the due process of law. The due process of law means that anyone suspected of violating the law must be dealt with according to established rules and not arbitrarily. It also means that the government must be the product of law and "powers must be applied not erratically to some people or to others as governors see fit, but uniformly to all people similarly situated." Finally, due process of law means that acts of Legislatures and Executives, both at the Centre and the States, must be reasonable. There has been a good deal of controversy over what is reasonable and what is not. Before 1880, the courts had held that what was reasonable was a political decision and, therefore, reserved to Legislatures and Executives to determine it. Since that time, however, courts have said that the "due process of law" clauses require the courts to make the final determination as to whether actions or laws are reasonable or not. This has led

19. Ferguson, John H., and McHenry, Dean, E., *The American System of Government,* p. 118.

judges to disagree sharply among themselves and has provoked widespread criticism. Nevertheless, the courts insist that "due process of law" guarantees both proper procedure and the reasonableness of the law themselves.

GROWTH OF THE CONSTITUTION

The Constitution as it emerged out of the Philadelphia Convention was a brief document consisting of a Preamble and seven Articles condensed into 89 sentences. Since then the Constitution has been steadily changing, developing, expanding and adapting itself to the new conditions. The Framers knew that if the Constitution was to endure, it must he a living Constitution capable of flexibility and adaptability to cater to the expanding needs of the people and the country. They did not try to reduce all details into writing but rather left room for the system to grow. Chief Justice Marshall observed in *McCulloch* v. *Maryland:* "A constitution is intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument,and give it the properties of a legal code.It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can best be provided for as they occur." The American Constitution, as Bryce says, "has necessarily changed as the nation has changed, has changed in the spirit with which men regard it, and therefore, in its own spirit." A written Constitution does not mean a set of clear-cut rules which inexorably control political authorities in the discharge of their public duties. "It is," according to Charles Beard, "a printed document explained by judicial decisions, precedents and practices and illuminated by understanding and aspiration. In short, the real Constitution is a living body of general prescriptions carried into effect by living persons."[20]

The American Constitution is, thus, not the written fundamental instrument of the Federal Government framed at Philadelphia together with its amendments. It also includes statutes enacted by Congress, particularly those dealing with the organisation of the government and the powers assigned to the agencies Congress has created; executive orders and actions which enable the government to function efficiently; the monumental decisions of the Supreme Court interpreting the Constitution and thereby affecting the powers and operations of the government; and the innumerable political habits and governmental usages which chisel the Constitution to achieve the dynamic political purposes of the flourishing nation of fifty States. Considered in that manner, the difference between the Constitution of the United States and of Britain remains only of a degree. Judge Cooley defined a Constitution as "the body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised." And Woodrow Wilson described the Constitution as a "vigorours taproot" from which have evolved "a vast constitutional system—a system branching and expanding in statutes and judicial decisions as well as in unwritten precedent."[21]

Development by Statutes

As said earlier, the Constitution is concise and brief and its makers left many matters to be determined by the Acts of Congress in order to complete the framework of government. The Judiciary Article (Article III), for example, states only that there shall be "one Supreme Court," and "such inferior Courts as Congress may from time to time ordain and establish." The Judiciary Act 1789 laid the foundation of the American judicial system, fixed the number of Judges of the Supreme Court and their salaries, provided for the Court's organisation, and set forth its jurisdiction. This Act has been amended from time to time. Several times Congress has passed laws changing the number of Judges of the Supreme Court. Similarly, Article II of the Constitution assumes administrative departments, but it says almost nothing about them. The elaborate organisation of the federal administration has been established by statutes, with federal departments or independent agencies created, reorganised, or given new functions by Congress. Still more, nowhere does the Constitution prescribe the precise way in which minor officers of the Government are to be selected. Congress enacted a civil service law providing for their appointment by competitive examinations.

Some of the manifold laws of Congress are so basic that they are more a part of the total Constitution than many of the written sentences.

20. Beard, C. A., *American Government and Politics* (1932), p. 15.
21. Wilson, Woodrow, *Congressional Government*, p. 9.

The Presidential Succession Act, 1947 determines succession to the Presidency, and in the event of the death of Vice-President the officers who will follow him. It is the Act of Congress that specifies that members of the House of Representatives shall be chosen from single-member districts. The Act of 1887 fixes in detail the method of counting electoral votes. The Rules of Procedure and internal organisation and practices of Congress itself are the result of statutory authority.

After enumerating the various powers of Congress, the Constitution concludes with a sort of general grant empowering Congress to make all laws which it may deem necessary and proper for carrying into execution the jurisdiction assigned to it. This is sometimes called "the elastic clause" and many matters that Congress might not otherwise feel authorised to deal with have been covered under this provision. In the same way, by broadly interpreting the Constitution, Congress has established a huge defence establishment, created scores of administrative boards and bureaus, entered into the business of education, banking, insurance, construction, transporting, generating electric power, and found authority to regulate the economic and social life of a highly industrialised nation. The policy of liberal interpretation was first adopted by Chief Justice Marshall and his associates, and with rare exceptions has been followed by the Court throughout its entire history. The Supreme Court has declared as a fixed principle that it will show great respect for the interpretations of Congress and will overrule them only when they are clearly and palpably wrong. In *Ogden* v. *Saunders* the Supreme Court ruled : "It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body in which any law is passed to presume in favour of its validity, unless its violation of the Constitution is proved beyond all reasonable doubt."Charles Beard is of the opinion that this axiom is often disobeyed "and there would seem to be reasonable doubt when four Supreme Court Justices dissent from the views of the majority, it is a canon of interpretation which, if generally followed would eliminate many disputes over the meaning of the Constitution."[22]

Development by Executive

Likewise, the nation's Chief Executives have greatly helped to develop the Constitution by their decrees, orders and actions. It is no exaggeration that Presidents Jackson, Lincoln, and both Roosevelts have had an impact on the Constitution at least equal to that of any of the original framers. By their vigorous use of the Presidential powers they made the Presidency an office of Legislative as well as Executive leadership. In fact, a considerable number of political techniques in the United States rest on precedents set by one or another President. The Constitution is silent about the existence of the 'Cabinet' and the President's obligation to consult it. But Washington created one and began consulting it. This practice has been followed since then making the 'Cabinet' an established organ of the government that meets ordinarily once a week. The Constitution states that only Congress can declare war, but the Presidents have used their authority to send troops into action in such a way as virtually to assure the creation of a state of war. Woodrow Wilson did it and so did Franklin D. Roosevelt. Constitutionally, all treaties must be approved by a two- third majority of the Senate, but recent Presidents have often substituted 'executive agreements' or 'gentlemen agreements' for treaties made and concluded by themselves not requiring Senate approval and yet considered by the Supreme Court as binding. Such power, the Court held, is inherent in the nature of the executive function. President Franklin D. Roosevelt assumed uprecedented powers manning the entire life of the nation during World War II, under his authority as Commander-in-Chief of the armed forces.

Various Presidents have asserted that they acted within their powers in sending armed forces anywhere in the world in order to protect the lives and property of the Americans without obtaining the approval of Congress. Franklin D. Roosevelt maintained that the Constitution was broad enough to justify a far reaching programme of recovery and reform.

Then, by statutes passed under the authority of the constitutional provisions, and regulations made thereunder it is determined how commerce is carried on, the process of the naturalization, the procedure and the methods of taking census, obtaining of patents and copyrights. Congress has also delegated to various executive official and administrative boards the power to supplement statutes by regulations and orders. These regulations are not laws but they have the force of law. "They are, as it were, the twigs on

22. Beard, C. A., *American Government and Politics* (Tenth edition), p. 28.

the branches which have sprung from the main trunk, which is the Constitution."[23]

Development by Interpretation

In the oft quoted observation made by Chief Justice Hughes lies the truth how the American constitutional system has developed through the process of judicial interpretation. He said, "We are under the Constitution but the Constitution is what the judges say it is." The judges have to interpret the Constitution and the Constitution, like that of United States, written in concise, general words and phrases often admits of varying interpretations. And to give a phrase a new interpretation is to give it a new meaning; and to give it a new meaning is to change it. Almost every clause of the Constitution has been before courts and interpretations of the judges have virtually remade parts of the Constitution. The doctrines of implied powers, of inherent powers, of the sanctity of contracts and many other decisions of the Supreme Court stand unique in determining the course of government. The Supreme Court vested the power of dismissal in the President excluding the Senate altogether, although in terms of the Constitution it shares with the President the power of appointment. The Constitution entrusts the Federal Government with power to control the means of communication and transport. The Supreme Court ruled that the means of communication embraced telegraphic, telephonic and air media communication. In the means of transport were included rail-road and airways. A similar liberal interpretation was given to the "armed" forces broadening thereby the jurisdiction of the federal authority. The Constitution declares that "Congress shall have power ...to regulate commerce." What is meant by the word commerce and what does it include, the Supreme Court has given it varied meanings to suit new situations and make it responsive to new problems. "It has been the work of the Supreme Court, through its power of judicial interpretation," says Munro, "to twist and torture the term'Commerce' so that it will keep step with the procession."[24]

Edwards S. Corwin stated in 1938 that, "the Supreme Court has handed down not far from 30,000 opinions...and of this total probably one-fourth at least comprises cases involving constitutional points."[25] It means that by 1938 some7,500 decisions rendered by the Supreme Court involved interpretation of some part of the Constitution or appealed some fundamental doctrine of the American constitutional system. The court has the last word; its declaration of meaning is final, unless and until some subsequent decision gives yet a different interpretation.

Thus, judicial interpretation has been the most important method of determining the meaning of the Constitution. "Whatever is enacted by Congress and approved by the Supreme Court," declared Howard Lee McBain, " is valid even though to the rest of us it is plain violation of an unmistakable fiat of the fundamental laws. There is no limitation imposed upon the national government which Congress, the President, and the Supreme Court, "acting in consecutive agreement, may not legally override. In this sense the government as a whole is clearly a government of unlimited powers; for by interpretation it stakes out its own boundaries."[26] It means that the Supreme Court is the final arbiter on questions of constitutional interpretation and it determines what the Constitution realy means in the context of the new developments which emerge in the country. Woodrow Wilson maintained that the Supreme Court is "a kind of constitutional convention in continuous session," constantly adjusting constitutional provisions to new circumstances. It adapts the document of 1789 to a changed nation of 1991 and 2000. The Supreme Court has, thus made the Constitution a living growing thing; has modernized it in each successive decade. And the Court's power to do so has not been brought about by any formal provision or amendment, but by interpretation of the Court itself in the case of *Marbury* v. *Madison* in 1803.

Development by Usage

The Constitution has, also, considerably developed, expanded and modified by usages and customs. What habit is to the individual, usage is to the State. Nations, like men, get into the habit of doing things in a given way. Habit then hardens into usage, which becomes difficult to change. These political customs and usages, which have their basis neither in laws nor in judicial decisions, are essential parts of the basic framework of the fundamental rules of the government. In

23. Munro, W. B., *The Government of the United States*, p. 69.
24. *Ibid.*, p. 70. The Supreme Court has rendered more than a hundred decisions in answer to what includes the term 'Commerce.'
25. Corwin, E. S., *The Living Constitution*, p. 78.
26. Corwin, E. S., *Supreme Court over Constitution*, pp. 93-4.

fact, the Constitution has been greatly modernized, amended and democratised through the development of the unwritten rules. They make flexible the otherwise rigid Constitution.

The most notable example is the extra-constitutional development of the political parties. It is scarcely possible to conceive of the Federal or State government in the absence of political organisations. Yet the Constitution makes no provision of the political parties. It is, again, the political parties which bring about co-ordination between the Legislative and Executive branches, and the Presidential office has been made more responsible to the people.

Another example is that of the 'Cabinet' which advises the President. There is no basis for this in the Constitution. The Congressional statutes have simply set up the departments from which the 'Cabinet' members are drawn up. President Washington found it useful to have a small group of advisers to whom he could look for counsel and other Presidents have continued with it and today, it is impossible to dispense with such a body. Senatorial courtesy, presidential nominating conventions, and other party activities, the residence requirements in the case of the Representatives all these rest, not upon the Constitution, but upon usage. Legislative Committees are not authorised in the Constitution, but custom and usage have made them as permanent as if they were.

A familiar example how a custom changes or supplements constitutional provisions is found in the procedure of electing the President. The Constitution makes a simple provision that he shall be elected by electors, chosen in their respective States. The Constitution-makers assumed that these electoral groups in the States would be actually deliberative bodies and that they would weigh the relative merits of each candidate before exercising their choice. But custom has rendered the Presidential election direct and nullified the intention of the Constitution-makers, if not the spirit of the document itself. To cite another equally important example, the Constitution provides that Money Bills must originate in the House of Representatives, but Senate's consideration of revenue measures by tradition is as much recognised as that of the House of Representatives.

President George Washington set precedent that the President should not seek election for more than two terms. This became a custom and was scrupulously followed till 1940 when Franklin D. Roosevelt sought election for the third time and was elected. He was elected for the fourth term as well. Under the stress of national emergencies and influenced by the dynamic personality of Roosevelt, the people succumbed to violation of the custom. But the popular opinion in the United States was so much in favour of the two-term election that eventually a constitutional amendment was made in 1951, limiting the tenure of office of the President to two terms. The custom became a constitutional law and that shows the sanctity of customs. The growth of the American Constitution has, therefore, heavily depended upon customs and usages. Professor Beard makes a bold statement when he says that customs and usages in the American system of government form as large an element as it does in the British Constitution.[27] This is, however, not exactly correct although customs have in some respect changed the basic characteristics of the American Constitution.

Growth by Amendment

The Constitution-makers prudently realised that future context of things and experience would need a change to foster the growth of the nation and, accordingly, they provided the process of the formal amendment of the Constitution. Article V provides—

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

The process by which the Constitution is amended may be divided into two parts: proposing an amendment (initiation or proposal of the amendment), and ratifying an amendment. There are two ways in which an amendment may be proposed:

(1) by a two-thirds vote of both Houses of Congress, or
(2) by a national constitutional convention called by Congress upon request of the

27. Beard, Charles A., *American Government and Politics*, p. 60.

Legislatures of two-thirds of the States. It may be ratified:

(i) by the Legislatures of three-fourths of the States, or

(ii) by special conventions in three-fourths of the States.

An amendment may be proposed by Congress, in which case it may be introduced in either House as a joint resolution, and must pass in both the Houses separately by a majority of two-thirds vote. Or an amendment may be proposed by a national convention convened by Congress upon request of the Legislatures of two-thirds of the States. Such a request might indicate a general nature of the amendment that is desired or it might simply ask that a convention be called for the purpose of revising the Constitution. Congress would then prescribe the number of delegates, mode of their election and the time and place of their meeting. But the difficulties inherent in this procedure have ruled it out as mode of initiating amendments to the Constitution.Therefore,all the amendments hitherto proposed have originated with Congress, that is, in accordance with the first method.

In whatever manner the proposal for amendments is initiated, Congress prescribes which of the two ratification procedures is to be followed : State Legislatures or state Conventions. State Legislatures have been used in all instances, except in the case of the Twenty-first amendment when Congress provided that State Conventions were to be used. When State Conventions are used, the Legislatures of each State decides on the size of the convention, how the delegates are to be elected, and the time and place of meeting. Two limitations were written into the amendment clause (Article V) and both these limitations were considered essential to safeguard the political compromises of the Constitution. These provided : (1) that no amendment prior to 1808 should affect the constitutional provisions barring federal interference with the slave trade or forbidding direct taxes not apportioned among the States according to population, and (2) that no amendment should deprive a State of its equal representation in the Senate without the consent of the State concerned.

A few important observations with regard to the process of amendment may be noted. The relevant Article in the Constitution does not say anything on the following points:—

(i) What does "two-thirds of both Houses" means; two-thirds of the total membership of each House or two-thirds of those present and voting? The Supreme Court has ruled that a two-thirds of those present and voting fulfils the constitutional provision. This interpretation has prevailed and it now means two-thirds of the members present.

(ii) It does not, also, say whether or not the action of Congress in voting to propose a constitutional amendment requires the assent of the President and Governors. The Supreme Court has held that amendment is solely a legislative function and the President need not sign proposed amendments before they are sent to the States.[28] Nor do the State Governors need to sign instruments of ratification.

(iii) Can a State Legislature, which has ratified the constitutional amendment, later before the necessary three-fourths has been obtained, rescind its previous decision? Congress by its resolution has declared that it cannot. But a State Legislature may, however, first refuse to ratify it and, then, at a later date may ratify it.

(iv) The Constitution does not fix any time limit within which the ratification must be completed. But Congress may do it on its own initiative as it was done in the case of the Eighteenth, Twentieth, and Twenty-first amendments and fixed seven years as the maximum time for ratification in each case. The Supreme Court has held that it is within the competency of Congress.

(v) Can a State Legislature, when a proposed amendment comes before it for ratification, refer it to the people for their approval? It has been held that it may be done provided the State Legislature itself takes formal action after the people have given their verdict. But a State Legislature, may not submit an amendment to the people for final decision, thereby abdicating its own powers. The Supreme Court has held that it was neither within the constitutional power of National or that of the State governments to alter the methods of ratification which the Constitution itself prescribes.

(vi) Are there any limitations, express or implied, on the subject-matters of amendment? The Constitution provides for only one limitation, that no State shall be deprived of its equal representation in the Senate without its consent. This limitation is designed to protect individual States or a small group of them from a discrimi-

28. *Hollingsworth et al* v.*Virginia.*

natory action by a dominant three-fourths of the States. Legally, therefore, any provision of the Constitution, except for a State's equality of representation, can be altered by amending the Constitution.

The process of amending the Constitution is difficult and circuitous and, consequently, there had been only twenty-six amendments during a span of two centuries since the Constitution became operative in 1789. The first ten amendments were "the price of ratification" and were embodied in 1791. The Constitution of 1789 was accepted by the States of Massachusetts, Virginia and New York on the definite assurance that a series of amendments guaranteeing individual rights would be speedily added to the original document. These amendments are called the Bill of Rights. The next sixteen amendments, the twenty-sixth ratified on July 5, 1971, brought about various alterations, deleting many provisions and adding new ones to fit in the needs of time and consistent with the political aspirations of the people.

Following are some of the important points of criticism of the amendment procedure:—

1. The inconsistency of majority rule requiring two-thirds votes of both Houses of Congress and ratification by three-fourths States is really inconceivable. Even two-thirds votes of Congress are difficult to secure. So far, out of thousands of resolutions introduced in Congress only twenty-nine had mustered the necessary two-thirds votes of both Houses. Out of these twenty-six have been ratified by the necessary number of States and have become effective. It has been suggested that only a majority vote in both Houses of Congress and ratification by two-thirds of States should be made necessary to effect constitutional amendments. But the proposal has not evoked sufficient enthusiasm.

2. For ratification, States rather population are required. It is asserted that this is too conservative a system, for thirteen small States may pool together and hold up the aspirations of an overwhelming majority of population. This is tantamount to a veto of an absolute nature. In other words, about one-tenth of the people of the nation, distributed in the thirteen geographical districts, can prevent nine-tenths of the people from effecting innovations in their system of government.

3. The submission of amendments to Legislatures instead of to ratifying conventions has been criticised as undemocratic. It means that the ratification is to be effected by a relatively small number of persons who happen to be in the Legislatures. And these legislatures had been elected for other purposes than the issue involved in the constitutional amendment. This objection can be removed by providing for ratification through State conventions. When the twenty-first amendment was submitted to the ratification of State conventions it was hoped that a new precedent had been set and that in future this democratic method would continue to be followed. But when Congress in 1947 proposed the Twenty-second amendment, to limit the Presidential tenure, it reverted to the previous practice and submitted the amendment to state Legislatures for ratification.

4. Finally, there is no prescribed time limit for ratification unless specifically determined by a resolution of Congress as in the case of Eighteenth, Twentieth and Twenty-first amendments.[29] Absence of such a prescription makes the issue a plaything of the States and indefinite delay takes away the purpose underlying the amendment. For example, the child labour amendment was proposed by Congress in 1924 without specifying the time limit for ratification. So far only twenty-eight States have ratified it, the last one being Kansas in1937.[30] On one occasion Ohio ratified an amendment submitted 80 years earlier.[31] Connecticut, Georgia and Mas sachusetts voted in 1939 to ratify the first Ten Amendments— 150 years after they had been submitted to them for their ratification, although these constituting the Bill of Rights, have been operative in those as in other States since 1791. On the whole the time required for ratification "has been rather short, varying from three years and eleven months for the Twenty-second Amendment to seven months for the Twelfth. The Twenty-third was ratified in nearly record-breaking time : slightly over nine months."[32]

Amendment is an integral part of the Constitution and the twenty-six amendments made to

29. The Supreme Court in *Dillon* v. *Miller* (1921) held that proposed amendments "died of old age" unless a time limit was stated. But in 1939 the Court ruled differently in *Coleman* v. *Miller* and held that the child labour amendment was still "alive" after fifteen years and that the question of a time limit was political.
30. Burns and Peltason, *Government by the People*, p. 108. But the prohibition of child labour under the Fair Labour Standards Act, 1938 has substantially eliminated interest in the pending amendment.
31. Ferguson, J. H. and McHenry, D. E., *The American System of Government*, p. 70.
32. *Ibid.*, p. 73.

date have an equal influence on the American political life as any other factor that has contributed to the development of the Constitution. All the amendments, except the Twenty-Second, seem to have had direct or indirect democratising tendency. The expansion of suffrage and lowering the voting age, the direct election of Senators, the protection of individual rights, the social and economic implications of the graduated income-tax and even the adjustments in Presidential elections and the dates of assuming office "have all made some contribution to the conception of a government resting on as broad a basis of popular sovereignty as possible."[33]

FEDERAL CENTRALIZATION

Growing Needs of the State

Centralization is the shifting of governing authority from lower or member units to higher units, with a tendency for power to grow at the top. Federal centralization is, accordingly, the tendency for the natio- nal government to assume influence or control over functions which formerly were considered under State jurisdiction. The Constitution limited the authority of the Central Government by prescribing that Congress might exercise only those powers expressly enumerated while the residuary powers were given to the States. This was specifically stated in the Tenth Amendment. But it was inevitable in the state of things in which United States began its career as a federation that the process of centralization should grow rapidly and the development in the expansion in the power and authority of Federal Government had been continuous. There were three principal factors which significantly contributed in increasing federal authority. The first is the part played by Federal Judiciary. Secondly, the express powers of Congress have considerably expanded and in effect added to by legislative, judicial and administrative interpretation. Finally, certain express powers of Congress, particularly the commerce clause, have been chiefly responsible for centralizing tendencies.

"A chief actor in the entrenchment of a strong federal government was John Marshall of Virginia, staunch Federalist and Chief Justice of the United States from 1801 to 1835."[34] His decision in the famous case of *Marbury* v. *Madison* gave the power to the courts to interpret the Constitution and declare Acts of Congress unconstitutional, although the Constitution itself contained no express provision to this effect. In 1819 Marshall, again, in the case of *McCulloch* v. *Maryland* established the doctrine of federal supremacy over the States, and enunciated the principle of implied powers[35] of Congress. Both these doctrines are landmarks which made federal centralization inevitable. But Marshall went even beyond the doctrine of implied powers by invoking the theory of resultant power. A resultant power is a power that is deducible from two or more express powers. "Thus where the doctrine of implied powers has a broadening effect, the concept of resultant powers has no limits at all except the judiciary itself exercises restraint."[36]

Marshall also declared in *McCulloch* v. *Maryland* that the United States was a union of the people and that the Central Government was both in theory and in fact a national government resting directly on the people. He aimed to emphasise that the federal government was held to have its powers direct from the people and not by way of the States. The Constitution only established a framework in which a national government could and should develop. This point was further stressed by Justice Holmes in *Missouri* v. *Holland*. The words of the Constitution, he observed, "called into life a being, the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism; it has taken a century and has cost their successors much sweat and blood to prove that they created a nation." The nation has grown and expanded and so have its needs. Since 1787 United States has grown from a poor, sparsely populated, agricultural country to a rich and densely populated and highly integrated industrial nation. Until recently the United States had no positive foreign policy. Her isolated geographic position, a favourable balance of power in Europe, and no embroilment in Asia, enabled her to keep aloof and repose in her security. Today, it has all changed and the United States takes on herself the burden of maintaining world peace and assumes the role of super-power. The obvious result is that all these

33. Havard, William C., *The Government and Politics of the United States*, p. 41.
34. Dimock, Marshall Edward and Dimock Gladys Ogden, *American Government in Action*, p. 70.
35. An implied power is a power that is deducible from an express power, *See ante.*
36. Dimock, M. E., and Others, *American Government in Action*, p. 134.

changes involve a powerful impact on government. The altered social, economic, political and international conditions require re-allocation of responsibilities and the overall general tendency has been strengthening the national government at the expense of the States. With all these changes there has been simultaneous change in people's attitude towards the national government, irrespective of the party in power. Determined to make America great and strong, the platforms of both the major parties reflect the wishes of the people and their programmes call for greater activity by the Central Government helping its domain to grow.

In fact, from the beginning the logic of events has helped the national government's sphere to expand. But the real swing in the Federal-State relations begins from 1860 when the Federal Government began to exercise what had hitherto been regarded as exclusively the reserved powers of the States. Many factors and various devices have contributed to that end and the National Government is today doing more things, spending more money and coming much closer to the people than was contemplated by the framers of the Constitution. It engages in such activities as public health, agriculture, poor relief, highway construction, labour relations and many others and yet the formal constitutional powers of the national government remain the same today as they were in 1789.

An important way to bring about the present Federal-State inter-relations is the system of grants-in-aid, that is, the amount of funds flowing from the national to State treasuries. The Committee of the Council of State Governments defines federal grants-in-aid as "payment made by the national government to state and local governments, subject to certain conditions for the support of activities administered by the states and their sub-division."This aid is given under the power granted in the taxation clause[37] which authorises the use of Federal funds to provide for the "general welfare." The practice is based on the assumption that some activities conducted by the States and local governments, like housing, agriculture, education and health, are matters of "general welfare" and, consequently, justify support by the Federal Government. Then, the revenue resources of the Federal Government are enormous as compared with those of the States. Grants-in-aid are the means by which the Federal government provides aid in financing State functions which otherwise would have been either insufficiently performed or tardily performed. Finally, the modern idea of the functions of the State does not compartmentalise its role within geographic jurisdictions of administration. All functions are national in scope and though there is virtue in their local administration, yet, they must be standardised at a high level. The Central Government, therefore, gives to the States financial aid up to a certain proportion of the total amount of expenditures on the beneficent departments, on the condition that the States and their local units administer the programme in accordance with rules laid down by Central Government.

The earliest grants made to States were in land or money without the imposition of conditions on their use. Today, the grants given are almost wholly conditional. This means that grants are made for specified purposes and subject to conditions stipulated by Congress or the administrative agency. It is a matter of common experience that one who gives money has a loud voice in calling the tune. Grants-in-aid are a prolific source of centralisation. They offer "a middle ground between direct Federal assumption of certain state and local functions and their continuation under exclusive state and local financing, with haphazard coverage and diverse standards. It makes possible the achievement of national minimum standards, yet retains most of the benefits of administration close to the people."[38] Thus, by the grants-in-aid the Federal Government is able to promote programmes in schemes of social services which it could not do otherwise without amending the Constitution.

Federal grants have increased stupendously, in 1911-12 their total was near about $ 5 million, but during the mid 1950's, the total was about $ 3 billion annually. In the late 1960's, all forms of Federal grants, including grants-in-aid, shared revenues, emergency grants, and payments to individuals within States exceeded $ 15 billion per year.[39] This figure enormously swelled in the decades to follow.

One of the vexatious problems of the Confederation period was the trade barriers which the States had been erecting against one another. The Annapolis Conference of 1786, which led di-

37. Article 1, Sec. 8, Clause 11.
38. Ferguson, J. H., and McHenry, D. E., *The American System of Government*, p. 174.
39. *Ibid.*

rectly to the Constitutional Convention of the following year, was really summoned to relieve the embarrassing commercial situation so created.[1] The Constitution, therefore, contains a clause conferring upon Congress the "power to regulate commerce with foreign nations and among the several States....."[40]. In defending this power of Congress, Hamilton wrote in the *Federalist*[41] that "a unity of commercial as well as political interests, can only result from a unity of government." What Hamilton meant was that the political power "must be commensurate in its range with the matter which it is permitted to regulate."[42] Today, the problem of inter-State and foreign commerce is not the same as it existed in 1787. It is now a gigantic problem and includes all commercial activities covering production, buying, selling, and transporting of goods. The power of Congress to regulate commerce should, accordingly, grow at equal pace with the growth of that commerce. The Supreme Court has consistently accepted this argument. Laws have, therefore, been enacted, upheld by the Supreme Court and subsequently administered in such fashion as to indicate that apparently no appreciable area of economic life lies outside the sphere of federal intervention.

The power to regulate is the power to prescribe rules by which commerce is governed, that is, the right to foster, promote, protect and defend all commerce that affects more states than one. Since today there are few aspects of the United States economy that do not affect commerce in States more than one, and as the term commerce now includes the whole complex mass of transactions covered by the word 'business,' most business transactions are subject to national regulation. As such, significant aspects of employment as collective bargaining, hours of work, wages, working conditions, and the conduct of strikes in large sectors of American industry have been largely withdrawn from the jurisdiction of the States. Summing up the astounding expansion of Federal Government's power under this heading, Ferguson and McHenry remark," in the decade of 1930 to 1940 alone, Congress has validly employed the commerce power to regulate labour relations, control radio broadcasting, provide retirement system for railroad employees, fix minimum wages and maximum hours, regulate inter-State bus and truck lines, control small streams even of doubtful navigability, regulate stock exchanges, forbid transportation of strike breakers, punish extorters, kidnappers and vehicle thieves."[43] All these are federal encroachments on the constitutional powers of the States.

The Central Government is constitutionally responsible for protecting the country from external aggression and, when necessary, for waging war. The problem of common defence today is entirely different from what it was in 1787. No country can afford to wait for defence until war is declared. It must always be prepared to ward off the probabilities of war and to win, if it actually comes. It means the ability to man the industrial resources of the country and to apply nation's scientific knowledge to the task of defence. Everything from the physics course taught in schools to the conservation of national resources and the maintenance of economy affects the war-making potential. When the country is in the midst of hostilities it must gear up the entire life of the nation in a bid to win war. It means to conscript men, control all the channels of production, transportation, distribution, and in fact every aspect of economic and social life in the country.

And when the war ceases the government must tackle problems of demobilization and post-war reconstruction. The change-over from war-time conditions to peace-time conditions must be smooth and it needs proper planning and co-ordination. It must also give aid to war veterans and to remove the maladjustments in the economy caused or aggravated by war. "In brief, the national government has the power to wage war and wage it successfully. In total war this means total power. As long as we live in a world where war is an ever-present possibility, the defence activities of the government will be many and varied, and they will impinge on all aspects of our lives."[44]

The people of the country at all stages of its development had always looked to the national government for solving their problems. Their desire to make the country big and prosperous necessitated "big business, big agriculture, big labour", and, "all add up to 'thirties big govern-

40. Article I, Section VIII, Clause 3.
41. No. 11.
42. Gensell, C.B. and Others, *Fundamentals of American System of Government*, p. 73.
43. Ferguson, J. H. and McHenry, D.E., *The American System of Government*, p. 122.
44. Burns and Peltason, *Government by the People*, p. 142.

ment." The World Economic Depression of 'thirties of the present century considerably enhanced the prestige of the Central Government. There were over twelve million unemployed out of a total labour force of fifty million, and many more million were destitute. The resources of the states were absolutely inadequate to give relief on such a mass scale and simultaneously devise means to steer the country out of economic and financial difficulties. The Federal Government came to the rescue of the people and the bold policy of Roosevelt led the country to the path of recovery.

Simultaneously to the increased confidence of the people in the national government, there has been decreasing tendency to holding on to the traditional ties of loyalty to States. This is due partly to the development in the means of communication and transport and, consequently, greater mobility of the population. Secondly, most of the States had no independent existence prior to their becoming members of the Union. There developed, accordingly, no strong feelings of local pride and the original settlers long looked to the Central Government for their betterment. The States themselves, too, are in a way responsible for it. Even within the limits of their jurisdictions and their resources most States have not kept abreast and, thus, failed to instil local loyalty. Washington D.C. is "almost a model of perfection when compared to some state capitals which are graft-ridden, inefficient, and unable to provide the services that the people expect."

Co-operative Federalism

All this process of centralization raises a question as to whether the United States is any longer properly classified as a federation. "Constitutionally speaking," observes Griffith, "it would appear as though the Supreme Court would no longer impose any substantial barriers to national legislation in the economic sphere as constituting an invasion of the states' rights. As for all other areas of constitutionlly permissive governmental action, it would appear to be open to the National Government to dictate or at least to dominate policy through the use of conditional subsidies."[45] He concludes that exclusive jurisdiction, even in the most traditional State and local functions, the smaller units may no longer have. But autonomy they still have in large measure. "Their vitality is still very great. The same social conscience that was among the factors causing the Supreme Court to let down the barriers to increased governmental activity nationally has had its counterpart in its wide extension of the sphere of permissible state activity."[46] Congress too, in practice has shown very considerable restraint in curtailing State discretion through conditional grants-in-aid. Internal-level co-operation has considerably increased and regional administrative units, often federal in nature, are created with problems (chiefly river basin conservation and development) on wider than State lines. Loyalties to the States are still strong among all the fifty States. "The traditional advantages of federalism—experiment, differentiation, political education, diffusion of power—still have great opportunities for expression in the United States to a degree very largely lost in Britain."[47] But in term of governmental functions, it cannot be denied that federal government has assumed inconceivable powers and federalism, as practised in the United States, is today no obstacle in assuming functions which in the interest of national strength it is important to handle at the national level.

But as Carl Friedrich says, "It would be a mistake....., to declare federalism in the United States dead; in some areas the states have recaptured some of their power through more vigorous insistence on their participation in the federal administration."[48] A new con ception of federal interrelations has developed lately. Co-operative federalism, as it is described, emphasises mutual administrative assistance among the different levels of government instead of administrative competition and conflict. "Co-operative federalism," observes Potter, "may be, as some charge, often less efficient, surreptitious centralization. It may be, as others charge, often less efficient than full centralization. But in view of the fiscal supremacy of the national government on the one hand, and the strength of local political sentiments on the other , it is almost certain to remain one of the most important aspects of the administrative element of American federalism."[49] According to Richard M. Leach, a United States expert on federalism, "In operation, feder-

45. Griffith, Ernest, S., *The American System of Government*, p. 24.
46. *Ibid.*
47. *Ibid.*, p. 25.
48. Friedrich, C. J., *Constitutional Government and Democracy*, p. 218.
49. Potter , A. M., *American Government and Politics*, p. 66.

alism requires a willingness, both to cooperate across governmental lines, and to exercise restraint and forbearance in the interests of the entire nation."

The traditional theory of federalism stands modified to fit into the needs and demands of the present conditions. No society can afford the luxury of a rigid division of powers which was possible in the social and economic conditions of the eighteenth century.

There is, accordingly, not much of substance in President Reagan's assertion that he made on January 20, 1981 in his inaugural address. The new President emphasised that it was his intention "to curb the size and influence of the Federal establishment and to demand recognition of the distinction between the powers granted to the Federal Government and those reserved to the states or the people." He reminded the nation that the Federal Government "did not create the states; the states created the Federal Government." This is true, but the course of United States' constitutional development now extending to more than two centuries cannot be so summarily changed. It is an unavoidable conclusion that older patterns of decentralization—whether in the form of local autonomy under a unitary system or of States' rights in a federal union "were doomed to dissolve in the corrosive acids of twentieth century politics, economics and technology: virtually all the great driving forces in modern society combine in centrist direction."[50] The traditional theory of federalism is a political anachronism now. Vile expresses the opinion that co-ordinate status of the federal and regional governments is as difficult to sustain as their independence in the spheres assigned to them. Their status of equality "may be defensible in legal terms, but it is very difficult to interpret in terms of power and influence."[51] The leadership of the federal government is unchangeable and all federal unions have moved alike in the same direction.

Of late, a new concept of "creative federalism" has emerged in the United States and is widely advocated. It puts emphasis on getting the job done without regard to who is in the pivotal role, the centre or the units of a federal polity. This is in sharp contrast to President Reagan's commitment to "revitalised federalism" which he made in his inaugural address. It is defined as a return of authority and revenues to State and local governments; the essence of the federal polity with which United States started her career.

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CHAPTER III

The Presidency

ORGANISATION, MODE OF ELECTION, AND POWERS

A Single Executive

One of the grave weaknesses in the organisation of government under the Articles of Confederation was the absence of executive authority to carry into effect the determinations of Congress and the treaties of the United States. The imminent need with the framers of the Constitution at the Philadelphia Convention was to provide an executive department co-ordinate with the legislative department. It was, accordingly, declared that the executive power should be vested in an officer called the President of the United States.

The basic considerations dominated the discussions relating to the Presidency. The first was the need to have an "energetic yet dignified" executive capable of enforcing national laws firmly, and one which should lend a note of stability to the new government. The other was, a fear that the people would be critical if the executive was made too strong. Many alternatives were suggested and discussed. Men, like James Wilson, wanted a strong executive independent of the legislature. It was argued, and Locke and Montesquieu were freely quoted in support of their advocacy, that if, the Separation of Powers was desirable, it was logical to have three co-ordinate branches of government with no one predominant over the others. There were others who wished to have the "executive magistracy" appointed by Congress and subject to its mandate. Some delegates favoured one-man executive; others advocated a plural executive composed of two or three men possessing equal power.

The final decision on the Presidency was a compromise. The President was to be single and independent of the legislature. Even after the single executive was agreed upon, many argued to associate with the President an executive council which would share with him the exercise of executive power in certain important fields. The proposition was rejected and in its place the Senate was charged with acting as an executive council to the President in negotiating treaties and the making of appointments. The Philadelphia Convention, in brief, finally decided to vest in the President considerable executive power, but he was hemmed in by the system of checks and balances. In this way, the framers of the Constitution accomplished both their objectives. By making him independent of the legislature and eligible for re-election, stability and continuity were assured. By sufficiently checking his powers the fears of the people at that time who had a horror of unlimited power were avoided. Sections 2 and 3 of Article II of the Constitution are devoted to enumeration of Presidential powers. But much of the President's authority has accrued to him by virtue of factors beyond the powers conferred upon him by the Constitution. "No important institution," as Harold Laski says, "is ever that the law makes it merely. It accumulates about itself traditions, conventions, ways of behaviour, which, without ever attaining the status of formal law, are not less formidable in their influence than law itself could require."[1] And the growth in power and prestige of the Presidency of the United States is a prominent example of the unforeseen possibilities of a written Constitution. If with the Founding Fathers the problem was, how strong should the executive be, the same problem confronts the Americans even today. The people also ask : Why has the President become so powerful? Is this a dangerous tendency ? We will deal with this aspect later in the Chapter. But one thing is clear. No longer could a James Bryce write on the subject, "Why Great Men are not chosen Presidents."

Qualifications and Compensation

The Constitution requires that the President shall be a natural born citizen, that he must have attained the age of thirty-five years, and must have been for fourteen years a resident of the United States. The question of residence was

1. Laski, H. J., *The American Presidency*, pp 13-14.

raised by the opponents of Herbert Hoover who had not been a resident for fourteen consecutive years immediately prior to his election in 1828, although he had resided in the United States considerably more than fourteen years altogether. According to Ferguson and McHenry the interpretation of Article II requiring residence for fourteen years "continuously and immediately preceding election appears unwarranted."[2] These constitutional requirements apart, Congress has in effect added to them by providing that persons convicted of various federal crimes will, in addition to other penalties, "be incapable of holding office under the United States."[3]

The salary and other emoluments of the President are fixed by Congress. They cannot, however, be increased or diminished during his term of office. From 1909 to 1940, the salary of the President was $ 75,000 a year. In 1949 it was raised to $100,000 plus $50,000 tax-free expense allowance. In 1953, the tax-free features of the latter sum were eliminated and the salary became $150,000 for all practical purposes. According to the Presidential Increase Act, 1969, the salary was increased to $200,000 and a general expense fund of $50,000. Both are subject to income-tax. The legislation was assented to by President Johnson on January 18, 1969, two days before he relinquished his office. President Richard Nixon was the first recipient of the new increase in salary. Separate budgetary provisions are made for his travel, official entertaining, and White House, the official residence of the President. After relinquishing office, Ex-Presidents, under a Presidential Retirement Law of 1958, get an annual pension of $60.000, free office space and up to $ 96,000 a year for office staff. The President is immune from arrest for any offence and is not subject to the control of courts. No process can be issued against him or compel him to perform any act. He can be removed from office only by Impeachment but after removal he is liable to arrest and punishment according to law.

Presidential Term

There was a vexing discussion in the Philadelphia Convention regarding the term of office of the President. It was first agreed that the term should be seven years with provision against re-election. On reconsideration, however, it was ultimately fixed at four years and nothing was said with regard to re-eligibility. When the Constitution simply stipulates that "he shall hold his Office during the term of four years,"[4] the framers, no doubt, allowed the indefinite re-eligibility of the President. The first President, Washington, set a two-term custom and it was followed for a century and a half, although two unsuccessful bids were made for a third term by Grant and Theodore Roosevelt. Grant failed to secure the party nomination whereas Theodore Roosevelt was defeated at the polls. When the question of possible third term for Calvin Coolidge first arose, the Senate passed a resolution declaring that any departure from the two-term tradition "would be unwise, unpatriotic, and fraught with peril to our free institutions."

Thus, the tradition seemed to have been fairly well established when in 1940 President Franklin D. Roosevelt decided to accept the Democratic nomination for the third successive term and his victory at the polls repealed the tradition. He was elected even for the fourth term in 1944, although he died soon after the inauguration.[5] But the breaking of the tradition by Franklin Roosevelt was not to become a precedent for indefinite re-election. The Twenty-Second Amendment, adopted in 1951 bars any person from being elected more than twice[6] Nor can a President be elected more than once if he has served more than half the term to which another President was elected. For example, Gerald Ford assumed office in the second year of Richard Nixon's four-year term, he could serve as President only for one more term.

Mode of Election

Perhaps no other question consumed so much time of the Philadelphia Convention as that relating to the method of choosing the President. Various schemes were proposed. Some proposed a direct election by the people, while others urged election by the Congress. The direct method of election by the people was ruled out for various reasons. The framers of the Constitution intended to establish a method which would, as Hamilton

2. Ferguson and McHenry, *The American System of Government*, p. 301.
3. Pritchett. C. Herman, *The American Constitution*, p. 285.
4. Article II, Section 1. President Jimmy Carter said, in an interview on April 30, 1979, that he had come to believe that the President should serve only one six-year term.
5. Franklin Roosevelt died in April, 1945.
6. This was not applicable in the case of Harry Truman who was President when the Amendment was proposed. Truman, however, did not seek election for the third term.

put it, "afford as little opportunity as possible to tumult and disorder," and would not "convulse the community with any extraordinary or violent movements." Against the method of election by Congress, it was argued that such a method was the negation of the unanimously accepted principle of the Separation of Powers and that it would make the President a mere creature or tool of that as- sembly.

The finally adopted plan was the expedient of indirect election. The Constitution provided that the President will be chosen by electors appointed in each State in such manner as the legislature of that State may direct, and each State to have as many electors as it has Senators and Representatives in Congress.[7] The method, thus, adopted, enabled the electors to meet in due course, each group in its own State, and give their votes in writing for two persons, of whom at least one must not be an inhabitant of the same State as elector. The ballots were then sealed and transmitted to the presiding officer of the Senate who counted them in the presence of both the Houses and announced the result. The person receiving the highest number of votes was to be the President and the one obtaining next to him was to be the Vice-President, provided, both had obtained a clear majority of the electoral votes. In case, no one obtained a majority of the electoral votes, the House of Representatives was to choose, voting by States and each State having one vote, from among the five highest. In the event of a tie in the electoral vote, it was provided that the issue would be settled in the same way.

The Founding Fathers had expected that the electors of the different States would be talented and leading citizens presumably well acquainted with the qualifications and merits of the candidates for Presidency. They had also hoped that the electors would meet at their respective State capitals, discuss among themselves the qualifications and merits of each candidate, and, then, exercising their best judgment, cast their votes for the fittest. In the first two elections the quiet and dignified procedure contemplated by the framers, functioned exactly as they had expected. At the third election (1796), however, a new shape of things began to emerge and long before the electors met, it was well known that most of the Presidential electors would vote for either John Adams or Thomas Jefferson, although in no case were any pledges exacted.

By this time two national parties, the Republicans and the Federalists, had come into existence and when the Presidential election took place in 1800, the electors were party functionaries pledged to vote for the candidates of their own parties. The Republicans, who elected a majority of their electors, had their candidates, Jefferson for President and Aaron Burr for Vice-President. It so happened that Jefferson and Burr had polled exactly seventy-three votes each. In accordance with the constitutional provision the election was thrown to the House of Representatives which was still controlled by the Federalists. It was with the greatest difficulty that Jefferson was elected, because some of the Federalists had toyed with the idea of making Burr the President. However, this incident revealed that the mode of election was defective and must be amended. Immediately there- after the Twelfth Amendment was adopted[8] to avoid the repetition of such an incident. Each voter now separately votes for the President and Vice-President and one who secures the majority of votes in each case stands elected. If no candidate for Presidency secures a majority of electoral votes, the House of Representatives chooses from among the three men with the highest electoral votes. The House votes by State delegation, with each delegation casting one vote. A majority of the members of each delegation determine how the State's single vote will be cast. If members of a delegation are evenly divided, then that State's vote is not counted. A majority of all the States is needed for election.

If no man receives a majority of the votes cast for Vice-President, the Senate chooses between the two men with the highest votes. Each Senator casts one vote, and election requires a majority of full members of the Senate. A law of 1887 declares that each State will determine the authority of its selection of electors.

Thus, the constitutional indirect method of Presidential election has been upset by the growth of political parties and political practices. Although the language of the Constitution relating to Presidential election remains unchanged, but the business of nominating candidates for Presidency, carrying on campaigns, and casting ballots has become a popular operation of national importance. The real choice of the President, graphically remarks Charles Beard, "has been transferred to the national convention of the

7. Article II, Section I.
8. it was adopted in 1804.

winning party, and the mass of voters supporting the party at the polls. In this way, the deliberative, dignified procedure contemplated by the framers of the Constitution has been replaced by a popular operation of the first magnitude. It fills the land with discussions and agitations for six months or more every four years. It puts at stake the ambitions of individuals in quest of power, the interests of classes, and the fortunes of the country. Nearly everybody takes part in it, from the President, busy re-electing himself or helping to select his successor,[9] down to ordinary citizens who discourse on the merits of candidates with as much assurance as on the outcome of the latest prize fight. The performance involves endless discussions, public and private, oratory, uproar, surveys, the election of thousands of delegates to elaborate national conventions, the concentration of opinion on a few ambitious leaders, a nation-wide propaganda as the sponsors for various aspirants exhibit the qualifications of their favourites to the multitude, and the expenditure of millions of dollars on publications, meetings, 'rounding up delegates' and 'seeing that goods are delivered.''[10]

Until recently candidates could raise funds from any source available and were totally free to spend as much money as they wanted. Successful fund raisers or independently wealthy candidates were often accused by their opponents of ''trying to buy the electors.'' Sustained efforts were made to reform the process of campaign financing and ultimately Congress, in 1971, 1974 and 1976, passed election laws that impose strict limits on both contributors and candidates. The new laws also provide for public funds to be made available to candidates who have successfully raised some funds within the prescribed limits and who agree to limitations on their campaign spending, both in primaries and general elections. The funds for candidates come directly from tax-payers, instead of from regular Treasury appropriations. Taxpayers ''voluntarily may check a box on their income-tax forms to express their support for the matching-fund system. Each taxpayer who checks the box, funnels $ 1 of taxes into a special fund, which is later distributed to qualified candidates.'' To qualify for federal aid in the primaries, candidates must raises at least $5,000 in individual contributions of $ 250 or less in each of the 20 States. The Federal Government matches these contributions dollar to dollar. Presidential candidates must also stay within an overall spending ceiling determined by an inflation-based formula and expected to be about 15.9 million for 1980. For the general election, the Democratic and Republican nominees may neither receive nor spend private funds if they want to qualify for public funds. In 1980 they were eligible for grants of approximately $2.5 million. In 1976, public funds were the only source of revenue for Jimmy Carter and Gerald R. Ford, either of whom received about $21.8 million.

What happens now is that within the constitutional framework described above, a standardized State procedure has developed under which electors are elected on a general ticket basis. The list of electors is made up by the official party organisation in each State and this honour goes to distinguished citizens or to partisans willing to make liberal contribution to campaign funds. On the election day the voter does not directly vote for President and Vice-President, but for all the Presidential electors put up by his party in his State. Normally, the party which secures a plurality of the popular votes in any State is entitled to all the electoral ballots of the State for President and Vice-President. Not too many hours after the polls close, it is usually known who will be the next President of the United States. However, the voters' verdict in the election of the electors is the last act in the Presidential drama. Technically, the voters have only elected the electors and it is the job of the latter to elect the President.

Each of the States possesses as many Presidential electors as it has Senators and Representatives in Congress. The total number of electors constituting the electoral collage is 538 including the District of Columbia, although it is

9. Dwight Eisenhower not only picked up Richard M. Nixon as his successor but helped in his campaign for the Presidency.
10. Beard, Charles A., *American Government and Politics*, pp. 179-80.
The costs of Presidential electioneering are impossible to estimate exactly. But they are growing at an alarming rate. For what the figures are worth, the President's 1962 Commission estimated joint expenditure on Presidential and Vice-Presidential candidates by the National Committees of the two major parties as follows:
1952 $ 11.6 million
1956 $ 12.6 million
1960 $ 20.0 million
The Commission estimated the total expenditure on all candidates in 1960 at $ 165–$ 175 million.

not entitled to have any member in the Senate or the House of Representatives. A simple majority of 538 electoral vote total (270) is needed to win the Presidency. The electors automatically vote for their party's nominee since no elector dare break faith with the party which nominated him, and the work of the electoral college is a final formality before the successful candidate becomes the constitutionally elected President. In this way, the deliberative, judicial, non-partisan system designed by the framers of the Constitution has been overthrown by political custom.[11]

If no candidate for the Presidency receives the necessary electoral majority on election day, the issue is thrown for decision into the House of Representatives. There, each State, irrespective of its population and size, casts vote for one of the three men who earlier had received the maximum electoral votes in the elections. There have been only three occasions in the American history in 1800, 1824, and 1876 elections, when the Statewise voting in the House of Representatives has decided the Presidential election.

The precise practice as it prevails today, may, thus, be summed up: the first stage to the Presidency is the selection of delegates to the national convention of the political parties. In most States, delegates are selected by the parties at their State conventions. But in 15 States they are chosen by the voters at primary elections—usually in March, April and May of the year preceding the Presidential election. The second stage comprises holding the convention when the party selects its candidates for President and Vice-President, and adopts a programme of objectives. In the first week of September starts the election campaign and the candidates for Presidency and Vice-Presidency selected by their parties crisscross the nation, explaining their positions on key issues, domestic and international. By train, plane, bus and car they travel to nearly every State. They make hundreds of public appearances, and scores of speeches from platforms, over radio stations, and before television cameras. As many as 20 speeches may be given in a day. Then, comes the polling day for the election of the electors early in November (on Tuesday following the first Monday in November). It is a legal holiday in most States. In other states, employees are given time off so that they may vote conveniently. The polling stations open as early as 6 in the morning for 12 hours or more. The ballot is direct and secret. Individual votes are counted State by State and by custom the presidential candidate receiving the most votes within a State is declared the winner of the State's electoral votes. The result is known in a few hours after the election is over. Once the outcome is clear, it is customary for the defeated candidate to make a concession speech thanking his supporters for their efforts and congratulating his opponent on the victory.

The formal balloting for President takes place long after polling day through the machinery of the Electoral College. The practice now is for the Electors to vote for the candidate who carried their State in the November Presidential election. The Electoral College does not actually meet. The various state groups of electors assemble at their respective State capitals, as required by the national law of 1934, on the Monday following the second Wednesday in December after their November election to vote for President and Vice-President. The votes of the State electoral groups are sent to the President of the Senate, opened and counted before a joint session of Congress on January 6, and formal announcement of the result of the election made. The new President is inaugurated at noon on January 20 to run a four-year term of office.

Since 1797, when Representative William L. Smith introduced the first proposed Constitutional Amendment for reform of the Electoral College, hardly a session of Congress has passed without the introduction of one or more resolutions on the subject. Presidents from Jefferson to Jimmy Carter have suggested changes. But only one—the 12th Amendment ratified in 1804—has been approved. The 23rd Amendment, ratified in 1961, gave three electoral votes to the District of Columbia, but that does not basically change the system.

Modern critics, for example, the American Bar Association, have described the Electoral College "as archaic, complex, indirect and dangerous." Public interest in change has been spurred by the close elections of 1960, 1968 and 1976. In the most recent of these, a shift of fewer than 10,000 votes in Ohio and Hawaii from Carter to Ford would have elected Ford despite his 107 million deficit in the popular vote. The direct vote plan, whose principal sponsor was Democratic Senator Birch Bayh, attracted the most attention, but was defeated in the Senate in July, 1979.

11. Beard, Charles A., *American Government and Politics*, p. 160.

Under his plan, the President was to be elected by a direct popular vote on a nationwide basis. If no candidate received at least 40 per cent of the votes, "there would have been a runoff between the top two candidates."

In the final analysis, no one is really certain of the impact of abolition of the Electoral College of the American political system. For this reason, passage of any future amendments and their ultimate ratification by the States are dubious. Both Congress and the States will be wary of change. A witness, Eddie N. Williams, in his testimony in 1977, stated the matter succinctly: "There is no conclusive evidence of the effect such proposals would, or would not have."

Removal from Office

Removal from office of a President is by impeachment and only for treason, bribery, or other high crimes and misdemeanours. No President has ever been so removed. President Andrew Johnson's impeachment failed by one vote. The House of Representatives has the power to initiate Impeachment proceedings by a majority vote. The case is tried by the Senate with the Chief Justice of the Supreme Court presiding. It requires two-thirds vote for conviction, which makes the President liable to removal from office and disqualification. He is also liable to trial under ordinary judicial procedure.

THE VICE-PRESIDENCY

The Vice-President must meet all the qualifications of President since he may succeed to the Presidency in the event of the President's death, resignation or removal. The framers of the Constitution might have omitted the Vice-Presidency but when the method of electing the President through the medium of Electoral College was decided upon, it became necessary to provide for an office the incumbent of which should succeed to the Presidency without delay. It would have been politically undesirable to leave the office of the President vacant until new electors could be chosen and they had chosen the President. But even when the office of the Vice-President had been created, the framers were not too enthusiastic about it. Benjamin Franklin took the position so slightly that he proposed to have its holder addressed as "His Superfluous Highness." This is, in fact, an apt description. John Adams, the first to hold the office of Vice-President, lamented to his wife : "My country has, in its wisdom, contrived for me the most insignificant office that ever the invention of man contrived or his imagination conceived." Thomas Jefferson, his successor, said something more apparent and meaningful than he realized when he described the "second office of government" as "honourable and easy," "the first" as "but a splendid misery." The rise of the political parties and the Jefferson-Burr episode and the consequent adoption of the Twelfth Amendment further contributed to the decline of the office of the Vice-President. It is an office of obscurity and not glory and it is rarely occupied by a man for whom the majority of the people would have voted as a candidate for the Presidency. Even the potential importance of the Vice-President as 'heir-apparent to the President', and ten had succeeded it in 185 years, had not been sufficient to attract leading political figures to seek it as a matter of course. "Most men of ability and ambition," observes Clinton Rossiter, "would still rather be a leading Senator or Secretary of State than Vice President, even after all the good and exciting times that Richard Nixon has had."[12] The Vice-Presidency is, therefore, "an office unique in its functions or rather lack in its functions."[13] Woodrow Wilson described the position of the Vice-President as "one of anomalous insignificance and curious uncertainty." Franklin Roosevelt said that he would rather be a Professor of History than Vice-President. John Nance Garner, who was Roosevelt's running-mate in 1932 and 1936, described the post as "not worth a pitcher of warm spit." Thomas R. Marshall, who was Vice-President under Woodrow Wilson, described himself as "a man in a cataleptic fit," who "is conscious of all that goes on but has no part in it." Such are the dimensions of importance of the Vice-Presidency "and impotence is the mark of a second-class office."[14]

Mode of Election

The Vice-President is elected in the same way as the President and according to the original provisions of the Constitution (Article 2, Section 1, Ch. 2) the man getting the highest number of votes next to the President-elect was declared the Vice-President of the United States. The Twelfth Amendment changed the method of election. The

12. Rossiter, Clinton, *The American Presidency*, p. 102.
13. Corwin, E. S., *The President: Office and Powers*, p. 73.
14. Rossiter, Clinton, *The American Presidency*, p. 102.

electors have now to vote separately for the President and the Vice-President. There are two considerations which govern the choice of a candidate for this office. First, he would not be from the same geographical district as the Presidential candidate.[15] If the President is from the Middle West, the Vice-President will be from the East, and *vice versa*. Wilson was from New Jersey; Marshall from Indiana. Harding came from Ohio; Coolidge from Massachusetts, Franklin D. Roosevelt came from New York; Garner from Texas. Second, by no means so strictly applied, that the candidates for the office of President and Vice-President shall represent different wings of the party. In 1940 Henry Wallace of Iowa was united with Franklin Rosevelt, and Charles McNary of Oregon with Wendel Wilkie of New York and Indiana. For the election of 1944 Roosevelt designated Harry Truman of Missourie as his "running- mate."

Functions and Duties

The Constitution-makers thought it desirable to give the Vice-President something to do besides the death, resignation, incapacity, or removal of his chief. The Constitution, accordingly, ordains that he should preside over the sessions of the Senate. Even as a presiding officer of the Senate his responsibilities of office are not great. The Senate is a body with customs and traditions that the presiding officer must respect and accept. He votes only in case of a tie and in all other matters plays an impartial role. The Senate refused to accept, in fact it refused to listen patiently, to the proposal of Vice-President Dawes who tried to modernize the House. The result is that a "vigorous man gets restive under such conditions; his frustration is noticed and the prestige of office degenerates accordingly."

During recent years, however, the potentialities of the office have been demonstrated. President Harding associated Vice-President Coolidge with Cabinet work. Franklin Roosevelt entrusted many responsibilities to Henry Wallace. Although less close to Roosevelt in outlook, Truman was able to help the President with Congressional problems. The Vice-President, as Rossiter says, "has experienced something of a renaissance" under Truman and Eisenhower. Alben Barkley was probably the most distinguished man nominated for the office since John C. Calboun and he proved extremely useful to Truman as a link to Congress. In 1949, the Vice President was made by law a member of the National Security Council. Richard Nixon was the busiest and most useful Vice-President in memory. Eisenhower believed that no President in the future could relegate the Vice-President to its former stand by status in the government. He showed the path that the Vice-President must be a working member of the administration, fully informed of every detail. He deputed Nixon on an itinerary of Latin America, the Middle East countries, India and Pakistan, and the extent of the economic and military aid given by the United States to Pakistan was largely based upon his report. Nixon sat by invitation in the Cabinet and even presided over some Cabinet meetings in the absence of President Eisenhower. Vice-President Johnson in the Kennedy administration continued in the Nixon pattern, with assignments overseas and chairmanship of several inter-departmental Committees. Johnson was also Kennedy's counseller as a member in the "Ex Com" of the National Security Council, an *ad hoc* group of a dozen top administration officials who aided the President in working out his responses to the 1962 Cuban crisis. Hubert H. Humphery was used for numerous political and diplomatic assignments. President-elect Jimmy Carter deeply involved Walter Mondale during the transition period in setting up the administration, joining in the interviewing and selection of Cabinet members and frequently advising on foreign policy. He received the same Central Intelligence briefings as Jimmy Carter. The President told his cabinet that Mondale was "his chief staff person" and added that all White House staff had been instructed that "he is their boss." The Vice-President had an office in the White House, close to the President, with special areas of responsibility, such as crime and to represent the President abroad as well as working with the Senate and House of Representatives. Mondale had become a partner in administration. But George Bush, under Reagan, did not enjoy that enviable position and authority.

The 'New look' which Eisenhower gave to the office was intended to give to the Vice-President training at least with the major national and international policies so that if he is compelled to take over the White House he may be able to steer through domestic problems and international complexities. Truman said, "It is a terrible

15. Amendment XIII provides : "The Electors will meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves...."

handicap for a new President to step into office and be confronted with a whole series of critical decisions without adequate briefing." But the powers of the Vice-President are only potential; authority comes to him only with the demise or other incapacity of the President. So far as the office of the Vice-President itself is concerned, it is up to the each future President to make whatever can be made "of this disappointing office." In all, the Vice-President has been chiefly useful to the President by relieving him of ceremonial duties and making goodwill journeys abroad.

Succession to Presidency

Ten Vice-Presidents have so far succeeded to the Presidency and nine in the event of death during their terms. The tenth Gerald Ford succeeded on Nixon's resignation. The Constitution provides: "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of his said office the same shall devolve on the Vice-President...."[16] This provision does not give the Vice-President any constitutional right to assume the title of the President. It simply provides that the duties and powers of the Presidential office shall devolve upon the Vice-President. But John Tyler, the Vice-President to fill a vacancy, took the title of the President for all practical purposes and did not differentiate himself in position and powers from the regularly elected holders of office. His example has since been followed. According to the Twenty-second Amendment a man succeeding to the Presidency and serving more than two years may be elected President in his own right only once."[17]

No case of Impeachment has made a vacancy for a Vice-President.[18] Nor had there been an occasion on which "the inability to discharge the powers and duties" on the part of the President may have resulted into the moving up of the Vice-President. President Garfield was physically unable for more than two months in 1881 to perform any important official work. President Woodrow Wilson was similarly incapacitated for a considerably long time during the latter part of his second term. Even absence from the United States for months together, as it happened during the terms of office of Woodrow Wilson, Franklin Roosevelt and Harry Truman, did not constitute "inability to discharge the duties" of Presidency. This is for two reasons. In the first place, neither the Constitution, till the Twenty-fifth Amendment became law on February 10, 1967, nor the laws provided who was competent to determine and under what circumstances a President might be considered unable to discharge his duties. Secondly, there had been extreme reluctance on the part of even ailing Presidents and their families to surrender authority. The result was that the question of succession to Presidency, except in case of death, remained obscure.

The Twenty-fifth Amendment provides that the Vice-President would take over the duties and responsibilities of the Presidency: (1) if the President states in writing to the President *pro tempore* of the Senate and the Speaker of the House that he is unable to carry out his duties, and (2) if the Vice-President and a majority of the Heads of Executive Departments believe that there is Presidential disability and send to Congress a declaration to that effect. But, in such an eventuality, it is only in his acting capacity that the Vice-President takes over the office of the President. When the President resumes office after the incapacity does not exist, he reverts to his original office of Vice-President. If, however, the Vice-President and a majority of the principal officers of the Executive Departments inform in writing to the President *pro tempore* of the Senate and the Speaker of the House of Representatives that the President was unable to discharge the duties of his office, Congress then decides whether the President was unable or not to discharge his duties. If it decided that incapacity still existed the Vice-President countinues to remain the Acting President otherwise the President shall resume the duties of his office. President Reagan after he was shot and operated upon for a major chest surgery with a cracked seventh rib and who needed two tubes to drain liquid from his lungs, still remained the effective President and conducted business from a hospital suite. How well did he fulfil his many Presidential functions, some of which could be very arduous, calling for long hours of continuing activity and that too at

16. Article II, Section 1, Clause 5.
17. "No person shall be elected to the office of the President more than twice and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once...."
18. Richard Nixon resigned in order to avoid the possibility of impeachment. But Exertt CarlLadd Jr. says that Richard Nixon ended his Presidency by "de facto impeachment and conviction." *Fortune*, December 3, 1979.

the age of 70 is a big question mark.

Succession to the Presidency in the event of both the offices of the President and the Vice-President having fallen vacant is covered by the Presidential Succession Act of 1947. In such an unhappy event, the law provides that the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative in Congress, act as President. If there is no Speaker, or if the Speaker fails to qualify as Acting President, then President *pro tempore* of the Senate shall, upon his resignation as President *pro tempore* and as Senator, act as President. If there is no Speaker or no President *pro tempore,* or if neither is qualified, as for example, neither is a natural born citizen, the line of succession then runs down through the cabinet to the first of its members not under disability to discharge the powers and duties of the office of the President. Such a man would be an acting President until a Speaker or President *pro tempore* had qualified to take over. There is no provision for a special election.

The Presidential Succession Act, 1947, has been a subject of criticism. It has been contended that the Speaker and the President *pro tempore* may not be of the Presidential stature and may even belong to the Party in opposition to the late President. But the most weighty criticism is that both the Speaker and President *pro tempore* are likely, since seniority has much to do with their selection to be too old to carry the burden of the White House. Following the assassination of John Kennedy, when Lyndon Johnson was sworn in as President on November 22, 1963, John W. McCormack, the Speaker of the House, was nearly seventy-two, and Senator Carl Hayden, the President *pro tempore,* was eighty-six. It has, therefore, been suggested that the Succession Act of 1947 needs a revision. Alternatives recently discussed include holding a special election, reassembling of the members of the Electoral College to choose a Vice-President, returning to the old form of having the cabinet officers—beginning with the Secretary of State—succeed, and having the former Vice-President designate a successor, with the consent of the Senate or of the whole Congress. One of these, or some variant, it has been pointed out, is likely before long to replace the present order of succession.

POWERS AND DUTIES OF THE PRESIDENT

Sources of Presidential Authority

The powers and duties of the President are partly determined by the Constitution, partly by Acts of Congress and treaties, partly as a result of usages and precedents, and partly by judicial interpretations. Article II of the Constitution, which deals with the office of the President, is primarily devoted to the methods of election, his term, qualifications, compensation, and oath of office. The clauses relative to his powers and duties are few and brief. Some of them are specific, but many of them are general in terms and hence open to interpretation. But a great deal of responsibility which now rests on the shoulders of the President may be traced to laws which Congress has, from time to time, enacted. Congressional statutes authorise the President to determine policies which may have far-reaching effects, make important appointments, and to issue orders which for all practical purposes have the force of law. Congress may also bestow upon him the exercise of wide discretionary powers within the framework of the laws passed by it. In 1933, for example, Congress vested the President with the discretionary power to reduce the gold contents of the dollar, to issue additional paper money, and to purchase silver as a partial currency. In 1941 the Lend-Lease Act gave to the President enormous discretionary powers in the matter of furnishing ships, munitions and supplies to the countries fighting against the Axis powers. Similarly, the programmes of economic and military aids in different parts of the world give to the President a wide range of discretion in the allocation of money and direction of aid.

The Supreme Court, too, has defined Presidential powers; for example, it has held that the President's power to remove from office can be exercised without consulting the Senate.[19] Where the Constitution is silent, the judiciary has been called upon to articulate. The Constitution gives the President the power to pardon offenders, but it does not say whether he may pardon a man before he is convicted. The Supreme Court held that the President possesses such a power and may pardon the offender even before he is convicted.[20] In some cases the Supreme Court has refused to take jurisdiction on the ground that the

19. *Myers* v. *United States* (1926).
20. *Ex-parte Garland* (1886).

matter involved political questions belonging to the sphere of the President or Congress as it was held in *Luther* v. *Borden* (1949). The Court affirmed that the constitutional guarantee to every State of a "republican form of government" presents a 'political question.' But more recently Justices "have appeared willing, even eager, to jump into what Mr. Justice Frankfurter aptly called 'the political thicket.'[21]

Finally, some Presidential powers and duties have been acquired through custom and usage. For example, the President is accepted as the leader of his party and is conceded the right to be consulted on all matters affecting the interest of his party both inside and outside Congress. The custom of Senatorial courtesy has now developed into a well-recognised policy for purposes of political patronage. Washington assumed he was master of his own family (the Cabinet) and Congress eventually concurred. He also established himself as the sole vehicle of communication with foreign governments and in the "Whisky Rebellion" he established the responsibility of his office for suppression of domestic disorder. President Jackson is responsible for the exercise of veto power over legislation on policy grounds; previously it had been more or less assumed that the use of the veto was to be confined to questions of unconstitutionality.

Extent of Presidential powers

But the real extent of the powers of the President depends upon his own personality, the influence he wields, and the state of affairs under which the office is administered. In times of national emergencies the powers of the President may be so expanded as to be limited in effect only by the necessities of the national existence. The powers wielded by President Lincoln during the Civil War were so enormous that he was frequently referred to as a dictator.[22] Both Wilson and Franklin Roosevelt assumed vast and unprecedented powers and so did George Bush during the Gulf War in January 1991.

Since many provisions of the Constitution relating to the powers of the President are general in terms, it all depends upon how the President takes a view of his responsibilities and duties as the Chief Executive. He may take a narrow view and may be satisfied with the bare duties of enforcing the Constitution and the law and conduct of routine administration. One may, like President Coolidge, not strive to be "a great President." Some may take a broad view of his powers and responsibilities, as did Theodore Roosevelt, who asserted that it was the President's right "to do anything that the needs of the nation demand unless such action is forbidden by the Constitution or the laws." The famous Monroe Doctrine laid down in 1823 the essentials of United States foreign policy and it still continues to hold good.[23] In the early stages of the First World War President Woodrow Wilson so defined the American rights of commerce and travel that it dragged the country eventually into war. Immediately after his inauguration in 1933 President Franklin Roosevelt assumed leadership to steer the country out of the economic crisis through his policy of New Deal. Later, he so formulated his foreign policy towards the Axis powers that it involved the United States in actual hostilities. It was Harry Truman who ordered atomic bombs dropped on Hiroshima and Nagasaki in 1945 and then refused to use them against any other foe. It was the Truman Doctrine (March 1947) that shattered the long United States tradition of peacetime isolation by supporting Greece and Turkey against Communist threats. It was Truman's Marshall Plan that committed United States resources to the rebuilding of Europe. Later Truman defied the Soviet blockade of Berlin and risked war by authorising the airlift. Still later, he met the Communist invasion of South Korea by ordering United States forces in the field. The role of the President is, therefore, affected by the personality and the time. Winston Churchill, at dinner on the Presidential yacht Williamsburg in 1952, spoke to Truman with blunt generosity: "The last time you and I sat across a conference table was at Potsdam. I must confess, Sir, I held you in very low regard. I loathed you taking the place of Franklin Roosevelt. I misjudged you badly. Since that time, you, more than any other man, have saved western civilisation."[24] The people and the times,

21. Irish, Marian D., and Prothro, James W., *The Politics of American Democracy*, p. 136.
22. Justifying the use of his executive prerogative in the absence of expressly granted authority, Lincoln declared, "No organic law can ever be framed with a provision specifically applicable to every question which may arise. The whole of the laws are being resisted and all will be destroyed if not protected....I am to sacrifice one law in order to save the rest.....The Constitution is silent on the emergency."
23. President James Monroe in a message to Congress in 1832 laid down his foreign policy commonly known as the Monroe Doctrine.
24. *Newsweek*, January 8, 1973, p. 28.

the complicated and fast-moving stream of events of the twentieth century, need strong and decisive leaders to occupy the White House. But there may be a unscrupulous President, like Richard Nixon, who impaired the traditional character of the Presidency by his crowding usurpation of powers and violation of the historic concept of Presidency or one like Jimmy Crater who was castigated for ineffectual weakness; a man of confused ideas and lack of direction.

The powers of the President may be divided broadly into: (1) those chiefly or exclusively executive in character; (2) those arising out of the legislative process; and (3) those which flow to him as a national leader. The executive powers of the President may further be divided under the following headings : (i) supervision over the administrative agencies of the federal government; (ii) enforcement of the laws; (iii) to make appointments and removals; (iv) granting of pardons; (v) to conduct diplomatic relations and negotiate treaties; (vi) to act as Commander-in-Chief of the armed forces of the United States and (vii) to act in emergencies.

EXECUTIVE POWERS

President as Chief Administrator

The President assumes high technical responsibilities as head of the national administration. It is the duty of the President, as Chief Executive, to see that the Constitution, laws and treaties of the United States, and decisions rendered by the federal courts are duly enforced throughout the country. He may, accordingly, direct the heads of the Departments and their subordinates in the discharge of the functions vested in them by the Acts of Congress. It is true that Congress has assumed the power of deciding the structure and extent of authority of administrative Departments, but it does not detract the right of the President to control administration. There are some Departments which are placed by law under his direct control. Moreover, the Constitution entrusts him with the duty of the faithful execution of the laws. The Constitution also permits him to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." This provision when supplemented by the decision of the Supreme Court that the President is bound to see that an officer faithfully carries out the duties assigned to him by law makes the legal position of the President supreme. Finally, the President has the power to remove the head of the Department who refuses to obey his orders. His authority to determine and direct, within the framework of law, the steps to be taken by that officer is clear and definite. "He is not likely, of course," observes Charles Beard, "to quarrel with a Cabinet officer over details but when there is a serious conflict over important public policies, the President, if firm in his views, will prevail, and the officer will yield, resign, or be dismissed."[25] Such a conflict occurred in the administration of President Coolidge in 1924, between the President and the Attorney-General Harry M. Daugherty; and the Attorney-General was forced to resign under protest. In 1946, President Truman ousted Henry A. Wallace from the Department of Commerce after a clash of opinions over foreign policy. Secretary of State Cyrus Vance resigned in April 1980 because he disagreed with President Carter's decision to attempt a military rescue of the American hostages in Iran. So did General Haig, Reagan's Secretary of State and a few more resigned on the issue of mandatory sanctions against South Africa and secret supply of arms to Iran.

Thus upon the President rests the overwhelming responsibility for the administration of the national government. The simple provision of the Constitution which vests in him the duty of seeing that all the laws of the United States are properly executed carries "the awesome significance of this responsibility." The Report of the Hoover Commission on Organisation of the Executive Branch of the Government stated: "The critical state of world affairs requires the government of the United States to speak and act with unity of purpose, firmness, and restraint in dealing with other nations. It must act decisively to preserve its human and material resources. It must develop strong machinery for the national defence, while seeking to construct an enduring world peace. It cannot perform these tasks if its organisation for development and execution of policy is confused and disorderly, or if the Chief Executive is handicapped in providing firm direction to the departments and agencies."[26]

When Jefferson became President, the federal government employed 2,120 persons. Today by latest count, the President heads a colossal

25. Beard, Charles A., *American Government and Politics*, p. 170.
26. *General Management of the Executive Branch*, p. 2 (1949).

establishment of over $2\frac{1}{2}$ million Federal civilian employees, These employees work in 2,117 component units of federal administration—in 2,117 departments, services, bureaus, commissions, boards, governmental corporations and other types of agencies. They are spread throughout the world and their wages alone amount to over 18 billion dollars a year. It is impossible for any President, whatever be the extent of his drive and however dynamic personality he may possess, to keep proper supervision over all the administrative agencies. And despite the immensity of the job, the President is only a part-time administrator. His other tasks demand most of his time, attention and energy. It, therefore, necessitates some integrated system of organization which should facilitate the President for leadership and control.

This is provided, in the first place, by the Presidential Secretariat consisting of the President's Secretaries and the staff that functions under them. They make a total of over 250 employees in the White House Office. The Secretaries are an able core of attaches to aid him in keeping abreast of administrative work. A recent development is the authorisation of administrative assistants to the President in addition to the executive Secretaries. The President's Committee on Administrative Management urged that the lack of staff assistants to the President be remedied by the appointment of six administrative assistants who "should be possessed of high competence, great physical labour, and passion for anonymity." The Administrative Reorganisation Act of 1939 provided for six Administrative Assistants for the President. Their duties are not precisely described by law but they include: collecting information for the President on all matters of interest to him as Chief administrator and head of his party, smoothing out troubles in politics and administration; scrutinizing and reporting on appointments to offices and work done by the civil servants, keeping the President in touch with Congress and a liaisoning between the President and Congress, and keeping the President informed about the fluctuations in the public opinion, grievances and needs of the citizens and of States and local government with respect to the work of the federal agencies.

In addition to the three Secretaries and six administrative assistants, the President has his personal staff consisting of an assistant to the President, a special counsel to the President, an executive clerk, and Army, Navy and Air Force aides. Outside this inner circle are the heads of a number of staff agencies who advise the President on policy and "help him run the administrative leviathan." The most important of these is the Director of the Bureau of the Budget. Several other Presidential agencies have also vital function especially in the making of economic and military policies. They are: the Council of Economic Advisers, Office of Emergency Planning and the National Security Council, the Office of the Defence Mobilization, Board of Impartial Analysis, and Office of the Personnel, etc.[27] The Executive Office of the President has since been expanded to a personnel of some 1,200 Executive Secretaries, officials, assistants, clerks and other employees. Within this large group is the White House Secretariat.

Power of Law Enforcement

The Constitution commands the President to "take care that the laws be faithfully executed."[28] It also prescribes that the President, before he enters on the execution of his office, shall take an oath or affirmation that "he will to the best of his ability, preserve, protect and defend the Constitution of the United States."[29] As law enforcement official for the nation, the President's responsibility is not limited to the execution of the specific provisions of Congressional statutes. It includes, as well the duty of protecting the whole constitutional system of government, guarding it against attack from any source, and ensuring to all citizens protection against rebellion or other danger to the rights, the Constitution guarantees to them. The President's power, to take care that the laws be faithfully executed embraces all phases of the Constitution as interpreted by courts. If the enforcement of laws encounters a resistance, the President "shall commission all the officers of the United States," including the armed forces, to see that the laws are faithfully executed. President Eisenhower dispatched federal troops to Little Rock, Arkansas on September 24, 1957 to enforce Federal Court's ruling on desegregation.

27. The new President, on assumption of office, may create a variety of new organisations reflecting his some pet projects and may even jettison an existing one as Kennedy did to the National Security Council machinery of Eisenhower administration.
28. Article II, Section 3.
29 *Ibid.*, Section I, Clause 7.

Addressing the American nation on the situation in the Little Rock and justifying the presence of federal troops there, the President said : "When large gathering of obstructionists made it impossible for the decrees of the court to be carried out, both the law and national interest demanded that President take action." Five years later (September, 1962) there occurred the greatest clash since the Civil War, between the Federal Government and the State of Mississippi, where Governor Barnett defied a Federal Court injunction to admit a negro, James Meredith, to the hitherto all white University of Mississippi. Seven hundred Federal Marshals were sent to enforce the law against the State National Guards who surrounded the University on the Governor's orders and even threatened to resist by force if the Federal Marshals brought Meredith to the University. President Kennedy ordered the mobilization of the Mississippi National Guards, thus, placing it under the command of the Federal Government. Troops and military police were also sent and James Meredith was finally enrolled. In 1894 President Cleveland, despite the protests of the Governor of Illinois, sent soldiers to Chicago where a great railway strike, affecting the movement of commerce and mail, had taken place. President Wilson, too, resorted to the same action on the occasion of the labour dispute among the steel workers at Gary, Indiana. Even if the President apprehends that laws are not likely to be obeyed, or there is the possibility of their being obstructed, he may order out the troops. President Harding ordered the troops to stand by in 1922 when a strike threatened to tie up the railways. Troops were sent to take over the plant of the North American Airplane Corporation in 1944 when strikers refused to heed the repeated appeals of the President.

The extent of the President's authority as chief law-enforcement officer of the nation is nowhere better illustrated than in the Supreme Court's decision in *re Neagle,* one of the most dramatic cases in American Constitutional History. In 1890 the Attorney-General of the United States, under direction of the President but without any specific statutory authority detailed United States Marshal Neagle to act as bodyguard of Justice Stephen J. Field of the Supreme Court whose life had been threatened by a citizen of California. The Justice was attacked in a railroad restaurant when Neagle shot to death the assassin. Neagle was arrested and indicted for murder by the Californian authorities. Neagle sought a writ of *habeas corpus* to secure his release from Californian authorities, an action eventually appealed to the Supreme Court. His defence hinged upon finding legal authority for his special assignment, that is, the authority of the President's appointment of an agent without statutory authorization. The Supreme Court held that inasmuch as it is the duty of the President "to take care that the laws be faithfully executed" there was vested in the President authority for Neagle's assignment, although there was no specific statute of Congress allowing the President and the Attorney-General to direct the Marshal to protect Supreme Court Judges. The Court further declared that the President's duty was not confined "to the enforcement of the Acts of Congress or of treaties of the United States according to their express terms," but included "the rights and obligations growing out of the Constitution itself, our international relations and all the protection implied by the nature of the government under the Constitution."

Presidents before and after Neagle's time have not hesitated to use the immense power which the Constitution vests in them as such. But it does not mean that the President's power is not without limit. It is true, that the Chief Executive may sometimes act, as President Washington did in sending troops (15,000 of them) in crushing the Whisky Rebellion of 1794; Lincoln took immediate action, with Congress not even in session, to move against, 'treasonable individuals' who defied the power of the Union in southern States, or as in Neagle's case, without specific authorization from Congress, but he has no *carte blanchè* to do so in all cases. The Supreme Court recently acted as a brake to slow down unlimited expansion in the powers of the President. In 1952 President Truman seized the nation's steel mills justifying his action on the grounds of the grave national emergency facing the nation if the strike should take place. The President was not supported in his action by authorization of Congress. The Supreme Court, in *Youngstown Sheet and Tube Co.* v. *Sewyer,* found the President's action invalid. The majority of the Court held that the President had transcended his authority, for no support of the seizure order could be found in the Acts of Congress in the President's power as Commander-in Chief of the Armed Forces, or in the general constitutional grants of executive power to the President. The President, in this instance, was making basic law rather than executing it and the exercise of

such a power he did not have under the doctrine of the Separation of Powers. The minority opinion, on the other hand, stressed the paramount responsibility of the President faithfully to execute the laws.

Power of Appointment

The power to appoint is one of the most important and effective in the list of Presidential powers. It gives the President the means to command the allegiance of a huge number of federal officers and enables him to secure the active support of the members of Congress for his programme. The Constitution gives the President the power to nominate, and by and with the advice and consent of the Senate to appoint "ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."[30] Thus, appointments to the federal services fall under two groups: officers whose appointment is entrusted by the Constitution or by an Act of Congress to the President and Senate, and "inferior officers" whose appointment is vested by Congress in the President alone, the courts of law, or the heads of departments.[31] There has never been made a logical line of division and distinction between the "superior" and "inferior" officers. In the first category, however, are included heads of departments, judges, diplomats, regulatory Commissioners, Marshals, and Collectors of Customs. Some bureau chiefs and virtually subordinate employees fall under the second category.

Taken together, the officers belonging to superior category may number several thousand. In filling these posts the President and the Senate are subject to no restrictions, except in some cases when Congress by law may fix some qualifications as citizenship, professional qualifications, technical training, etc. The Tenure of Office Act of 1820 fixed the tenure of great bulk of offices at four years, and even where the term is not prescribed by Statute, the custom is to replace most of them at the expiration of four years. So in practice the four years' tenure is universal, except for federal judges, and each President during his term has at his disposal an enormous extent of patronage, subject to the approval of the Senate. During 1954 Eisenhower sent in 45,916 appointments to the Senate for confirmation. Not one of these was rejected. Of the total, 42,057 were military appointments, which are customarily automatically confirmed. Of the 3,859 civilian appointments, just half were postmasters.

There are some appointments which are the personal choices of the President and the usual practice for the Senate is to ratify them promptly and without objections even if the Senate is in the hands of the party in opposition to the President. It rarely interferes with the President's selection of his own 'Cabinet,' that is, heads of Departments, ambassadors and Supreme Court Justices. The only two exceptions during the last forty years or so were Charles B. Warren nominated by President Coolidge as Attorney-General and rejected by the Senate, and its refusal to confirm Eisenhower's nominee for Secretary of Commerce, Lewis, L. Strauss, for political reasons.[32] The choice of the diplomatic representatives is also left largely to President's discretion, although Senate's rejection of Martin Van Buren as Minister to Britain will be remembered from the Jackson administration. On occasions, the President may be obliged to withdraw the diplomatic nomination on grounds of political expediency. In 1943, President Franklin Roosevelt nominated Edward J. Flynn to the post of ambassador to Austria. A storm in the Senate broke out and Flynn was attacked as a politician with a "clouded past and a man utterly unqualified for the position in question." President Roosevelt withdrew his name. Military and naval appointments, especially in times of crisis, are principally subject to Presidential determination. Finally Supreme Court Justiceships are filled by the President and nearly always approved. The Senate, however, refused to approve President Hoover's appointment of Circuit Judge John J. Parke in 1930 largely because of labour and negro opposition. It also refused to confirm President Johnson's nominations of Abe Fortas for Chief Justice and William H. Thornberry for associate Justice. Similarly, in November 1969 Clement Haynsworth's nomination was rejected. The Senate on April 8, 1970 rejected President Nixon's

30. Article II, Section 2.
31. The only appointments made by courts of law are : clerks, reporters, and other ministerial officers. There are, however, a large number of inferior officers in the various Departments who are appointed by the Heads of Departments.
32. Altogether there had been eight such rejections.

nomination of Harold Carswell to the Supreme Court.

In all other instances Senate freely uses its power to ratify or reject the appointments as it sees fit. As a rule, the Senate usually gives its consent unless there are substantial reasons to reject. Much, however, depends upon its political complexion. If the majority of the Senators belong to the President's party, then all Presidential appointments are usually confirmed, for it requires just a bare majority of the Senators present. Confirmation of appointments need not require a two-thirds vote as in the case of ratification of treaties. Paul C. Warnke's appointment the Senate ratified on personal appeal of President Carter, despite Democratic majority. But it forced withdrawal of Theodore C. Sorensen, Carter's first nominee for Director of the Central Intelligence Agency.

A good many of the federal offices, specially those of a local nature, are subject to a custom called *senatorial courtesy*. This is an unwritten rule which requires that the President would confer with and secure the consent of the Senator or Senators of his party from the State to which appointment is to be made. If the President does not do so and insists on his own personal choice, the other Senators, acting under the rule of senatorial courtesy, will probably reject the nomination. One of the best examples of the operation of senatorial courtesy was the Floyd H. Robert case of 1938-39. President Roosevelt appointed Robert as judge of the Federal District Court for Western Virginia. This appointment was objected to by both the Senators belonging to the State of Virginia, and the President's party. The President without heeding to their objection sent the name to the Senate for confirmation and the Senate rejected it. A similar conflict occurred in 1951 between President Truman and Senator Paul H. Douglas (Democrat) over two federal judgeships. When the President refused to accept the Senator's candidates, Douglas opposed the President's nominees[33] and the Senate unanimously refused to confirm the Presidential appointments. In case the federal vacancies to be filled are located in the State which has no Senators of the President's party, the President has some discretion, but even there he is bound to consult party leaders in the regions concerned.

The above statement of senatorial courtesy is not the actual practice. Ordinarily, the Senators do not wait to be consulted. They keep their eyes on the possible vacancies and send messages, through the President's liaison representative for Congressional affairs, requesting that certain of their followers be nominated to the positions. The President may attempt to inquire into the qualifications of the nominees of the Senators, but in many instances he simply endorses their desires. In fact, he has no time for all that.

Another class of officer subject to Presidential nomination are minor authorities like revenue officials, marshals and Federal Attorneys within Congressional districts. The custom is that the Representative, if he belongs to the President's party, names the person to be appointed for his district and the recommendation is always accepted unless for special reasons the President desires to make a "personal" appointment. If the Representative does not belong to the President's party, the patronage may go to the Senator if there is one of the President's political party. Extension of such a kind of patronage to the Representatives is of considerable utility for maintaining their political organisation.

Finally, are the great variety of federal appointments to minor offices which do not require confirmation of Senate at all. The power of all such appointments is vested by the Act of Congress in President alone or in the heads of various Departments and more than 95 per cent of federal appointments come under this category. By far the greater portion of them are now regarded as "classified services" and the appointment is made under civil service rules. Still, from 20 to 30 per cent are treated as patronage. When Congress carries the majority of the party to which the President belongs, and the relations between the two are harmonious, then, it is inclined to increase the proportion of officials whose appointment is vested in the President alone or in heads of Departments. But in times of conflict Congress exhibits its hostility. For example, in 1943, Congress was in "revolt" against President Roosevelt's domestic policy and it severely criticised some of the appointments made by him. The Senate went to such an extent as to actually pass a Bill providing that the selection of all officials, with certain exceptions, carrying

33. When Truman's nominations reached the floor of the Senate with adverse recommendation of the Senate Judiciary Committee, Senator Douglas stated, "'I do not want to label the nominees themselves as being personally obnoxious to me. I regard them as estimable men and fine citizens. But I should like to point out that they were nominated without consultation with me, without any indication of the reasons for their selection, and contrary to the recommendations of the much more highly qualified men whose names I had forwarded and who were supported by the heavy preponderance of informed opinion in Illinois."

a salary of $4,100 a year or more, should be subject to the approval of the Senate. Such a threat is always 'a gun behind the door' which Congress may employ in controlling the exercise of the President's appointing power.

While the Constitution expressly authorises the President to appoint officers with the consent of the Senate, it is completely silent on the question whether he may remove an officer, either with or without the consent of the Senate. The only provision in the Constitution in regard to removal is that by impeachment. But this process of removal is cumbersome and unwieldy. Moreover, the resort to impeachment to remove a person from a petty inferior office "would be," as Garner puts it, "very much like shooting birds with artillery intended for destroying battleships."[34]

The issue of dismissal assumed an important topic in the first session of Congress. There was difference of opinion as to whether that power lay with the President alone or he could do so with the consent of the Senate only, or whether the power lay with Congress to prescribe how removals might be made. It was finally decided that the President may remove alone and there was no necessity of securing the consent of the Senate. This interpretation was accepted by the Supreme Court. In 1866, Congress passed the Tenure of Office Act forbidding the President to make removals except with the consent of the Senate. The Act of 1866, thus, reversed the custom which had been in practice for seventy-eight years and recognised the right of the President to remove officers only on securing the assent of the Senate. President Andrew Johnson violated this Act regarding it as unconstitutional and it was one of the causes of his Impeachment in 1868. The Act was, however, repealed in 1887.

In 1876 an Act of Congress was passed providing that certain classes of postmasters could not be removed from office except with the advice and consent of the Senate. The constitutionality of this Act was contested in the Supreme Court and it was decided in *Myers* v. *United States* that the statute was unconstitutional and that the power to remove was implied not only from the power to appoint, but also from the general authority of the Executive to see that the laws are executed faithfully.[35] But this decision was modified in 1935. The Supreme Court held in Humphery's case that a regulatory commission's powers are quasi-legislative and quasi-judicial in nature and that the President's removal authority could be limited in respect to officers exercising such powers."[36]

To conclude, as to purely administrative offices, for which the President bears constitutional responsibility for the faithful performance of the duties thereof, complete and independent removal power rests in the President to be exercised on any ground. But three classes of officers cannot be removed by the President. First, the judges of the Federal Courts who can be removed by impeachment only. Second, members of the various Boards and Commissions with part legislative and part judicial powers who are protected by statutory limitations on the removal power. Third, all officers and employees who are appointed under Civil Service rules and may not be removed "except for such causes as will promote the efficiency of the service."

Power of Pardon

The President's power to grant pardons and reprieves is judicial in nature, and it is exclusive. The Constitution authorises the President "to grant reprieves and pardons for offences against the United States except in case of Impeachment." The President cannot, of course, pardon offences against State laws. Nor can he do it in regard to impeachment offences. Otherwise, his authority of granting pardons is very wide and if he chooses he may grant pardon before as well as after conviction. President Ford granted general pardon to his predecessor Richard Nixon against all offences during his tenure as President. A reprieve postpones the execution of the penalty. A general pardon, granted to a large number of offenders, is called an amnesty and is granted by proclamation. A good example of amnesty is Jefferson's freeing all persons convicted under the Sedition Act of 1798. In 1865 Andrew Johnson issued a proclamation offering amnesty to all those who had borne arms against the United States, with certain exceptions and subject to certain conditions. President Roosevelt issued a last minute pardon to Dr. Francis E. Townsend, who was held in contempt of a House of Repre-

34. Garner, J. W., *Government in the United States*, p. 303.
35. Justice McReynalds, Brandies and Holmes did not agree with the majority opinion. The majority opinion declaring the Act of 1876 unconstitutional and giving full power of removal to President was written by the former President, Chief Justice Taft.
36. *Humphery's Executor (Rahbun)* v.*United States (1935).*

sentatives investigating committee.

In actual practice, the President does not himself exercise his discretion in granting pardons. He has delegated his responsibility to a large extent to the Department of Justice and acts upon its recommendations, though he may take, as President Harding personally took, steps to arrange pardon for Deles.

Military Powers

The Constitution declares that the President shall be the Commander-in-Chief of the army and navy and the State militia when called into the service of the United States.[37] Provisions of law empower the President to appoint military and naval officers with the advice and consent of the Senate and in time of war to dismiss them at will. The power to declare war belongs to Congress, though the President may through the conduct of the foreign affairs of the country bring about the situation when declaration of war may become a virtual necessity. President McKinley despatched a battleship to Havana, where it was blown up, and it helped precipitate war with Spain. In 1918 President Wilson sent American forces to Siberia to help Allied troops, when no state of war existed between the United States and Russia, fighting the Bolsheviks. Under Harding and Coolidge armed forces were employed to suppress "disorders" in certain Caribbean countries. The United States declared war against Germany in 1941, but the navy had begun to fire on submarines threatening the convoys to Britain long before that. In fact, "a shooting war' had started in 1940. President Truman had no authorization from Congress in 1950 when he ordered American forces to resist aggression in Korea. President Nixon arrogated to himself "the power to initiate a war, to invade a foreign country without a declaration of war, to keep secret for three years a massive air attack upon a neutral country..."[38]

When war actually comes, there is tremendous enhancement in President's power both as Executive head and as Commander-in-Chief. As Commander-in- Chief, he decides where the troops are to be located and where the ships are to be stationed. It is upon his orders that troops are mobilised, the fleets assembled, and the militia of the State called out. He may direct the campaign and might, if he wished, take command of military operations, though in practice he never does so. But all major decisions of strategy, and many of tactics as well, are his alone to make or to approve. Congress may still more add to his powers by enacting blanket legislation, giving him discretionary authority in matters of vital importance, in domestic and foreign affairs. In World War I, President Wilson was given power to control production, purchase and sale of various kinds of material for war purposes and food supplies for troops. He had power to take over factories, mines, pipelines, etc. In fact, he had a vast reservoir of power in planning broad strategy, raising military and industrial manpower, and mobilizing the nation's economy for war. In World War II, Congress again delegated vast authority to the President and Roosevelt became a sort of constitutional dictator. Roosevelt used "Lincolnian as well as Wilsonian" precedents. In 1942, he demanded that Congress must repeal within a month a provision in the Price Control Act that protected the farmer and which it had refused to repeal earlier. This threat of Roosevelt was characterised as "a claim of power on the part of the President to suspend the Constitution in a situation deemed by him to make such a step necessary,"[39] Roosevelt's threat succeeded and Congress "meekly" repealed the provision. The Supreme Court has expressed its unwillingness to pass judgment on war policies. In the West Coast—Japanese curfew regulations case in 1943—the Court declared : "The Constitution commits to the Executive and to Congress the exercise of the war power....It has necessarily given them wide scope for the exercise of judgment and discretion....It is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs."[40] In the nuclear age of absolute weapons in which we live the next wartime President will have the right of which Lincoln spoke, to take "any measure which may best subdue the enemy." This is fully illustrated by the directions issued by George Bush to the Commander of the Allied Forces engaged in the conduct of the Gulf war.

Some forms of the Constitution, no doubt, are suspended during actual hostilities. But two basic constitutional rights do remain or have so far remained during all wars of the United States.

37. Article 2, Section 2, Clause 1.
38 Henry Steele Commager, "Nixon's Impact on U.S. Presidency." *The Tribune*, Chandigarh, August 19, 1974.
39. Corwin, E.S., *Total War and the Constitution*, p. 64.
40. *Hirabayashi* v. *United States (1943)*.

One is the ultimate control of the President by the people, that is, Presidential elections must be held during peace and war. In the midst of Civil War, Lincoln had to campaign for re-election and seek the verdict of the people, Roosevelt had twice to do the same in World War II. Similarly, despite certain restrictions, the basic liberties of free speech and free press "have survived the hard test of war."

The President may establish military government in conquered territory and in territory acquired through cession, subject to the Acts of Congress. After World War II, military governments were set up by the United States in Italy, Japan, and in certain sections of Korea, Germany and Austria. These military governments functioned until the signing of the peace treaty and were administered by a combination of American and local personnel.

At home the President may use troops in executing federal laws against resistance that cannot be overcome by ordinary civil process. It is also his constitutional duty to guarantee to each State of the Union a republican form of government, protect it against invasion, and to order out troops to suppress domestic violence upon the application of the State Legislature or Executive.

Conduct of Foreign Affairs

The Constitution does nowhere expressly declare that the President is the chief foreign policy maker and the accredited official spokesman of the country in international affairs. But constitutional interpretations and practices accept him so and ascribe such functions to him. In 1799, John Marshall spoke of the President as "the sole organ of the nation in its external relations, and its sole representative with foreign nations." In the Curtiss-Wright case,[41] the Supreme Court referred to the "exclusive power of the President as the sole organ of the Federal Government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but, which like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution." According to the Constitution, the President appoints ambassadors, and other public ministers, by and with the advice and consent of the Senate, he negotiates and concludes treaties with foreign governments, subject to the ratification of two-thirds majority of the Senate, and he receives ambassadors and other public ministers from foreign countries.

The power to appoint ambassadors and to receive them is important, because it involves the vital power of recognition. The President has complete discretion to recognise or not, new governments or States. In 1902, Theodore Roosevelt recognised the new State of Panama a few hours after a revolt had been staged with the help of United States forces. President Wilson withheld recognition from Mexican Governments which he disapproved. President Hoover tried to restrain Japan from an aggressive policy by refusing to recognise its puppet Manchukuo. Roosevelt recognised the government of Soviet Russia in 1939.[42] President Carter recognised China and terminated United States' link with Taiwan in January 1979. Withdrawal of diplomatic agents or alterations in their assignments or instructions amounts to disapproval with the policy of the country concerned. For example, after the conquest of Ethiopia by Italy in 1936, the American legation in Addis Ababa was reduced to a consulate. A more extreme form of indicating displeasure with a country involves closing its consulates as in the case of Germany in 1946.

The President shares his treaty-making power with the Senate. But there are many other methods by which the President may bypass the Senate. The first of this kind are the Executive agreements. Executive agreements are pledges of certain action by Executives of two countries. A famous example is the "gentleman's agreement" between President Theodore Roosevelt and the Emperor of Japan under which Roosevelt agreed to exert his influence and persuade Congress to kill exclusion legislation and the Emperor of Japan agreed to prohibit the emigration of coolies (labourers). Some Executive agreements have marked famous events : The Boxer Protocol of 1901, the Atlantic Charter, and the "destroyer bases" agreement. The Supreme Court has held that Executive agreements within range of the President's power are to be the law of the land. "Such precedents," says E. S. Corwin, "make it difficult to state any limit to the power of the President and Congress, acting jointly, implement effectively any foreign policy, upon which they agree, no matter how the recalcitrant third plus one man of the Senate may feel about the matter."[43]

41. *United States* v. *Curtiss-Wright Export Corp.* See also *University of Illinois* v. *United States.*
42. Wilson, Harding, Coolidge and Hoover had refused to recognise the Russian Soviet Government from 1917 to 1933.
43. Corwin, E. S., *The Constitution and What It Means Today*, p. 102.

In addition to the Executive agreements, Congress may confer authority on the President to make agreements with other nations. The most notable example of such Congressional authority is the Reciprocal Trade Act of 1934 which authorised the President, for a period of three years, to enter into trade agreements with foreign countries, and lower tariff rates by proclamation to the extent of fifty per cent without securing the ratification by the Senate. This Act was extended once in 1937 and again in 1940. In 1943 the term was extended for two years only. These reciprocal trade agreements, although not submitted to the Senate for confirmation, are fully enforceable in the courts.

The President may resort to secret diplomacy and consequently enter into secret agreements with foreign powers and commit himself to the pursuit of a specific policy. This he does by appointing personal emissaries of ambassadorial rank, without submitting their names to the Senate for confirmation as required in the case of more permanent appointees. President Theodore Roosevelt sent a high emissary to Tokyo in 1905 and came to terms with Japan on certain important matters in the Far East. On her part Japan undertook to respect American dominion in the Philippines. Roosevelt, on his part, committed his government to accept the establishment of Japanese sovereignty on Korea. He also impressed upon the Japanese Premier that the people of the United States were determined to see that peace is maintained in the Far East and that "whatever occasion arose, appropriate action of the government of the United States....for such a purpose could be counted upon by them quite as confidently as if the United States was under the treaty obligation." The whole negotiations were so quietly arranged that nothing was known about it in America until after the death of Theodore Roosevelt. Before and after United States entered into World War II, Franklin Roosevelt held top secret conferences with the British Prime Minister and heads of other governments. Some of the agreements reached at these conferences were made public, others were kept secret. From Washington's Proclamation of neutrality in 1793 to Eisenhower's decision to go to the Summit in 1955, Presidents have repeatedly committed the nation to decisive attitudes and actions abroad, more than once, to war itself. President Truman was not exaggerating much when he told an informal gathering of the Jewish war veterans in 1948, "I make American policy." Reagan in his inaugural address on January 20, 1981 enunciated his Government's foreign policy which he truly translated into action immediately after assuming office. He declared, "To those neighbours and allies who share our freedom, we will strengthen our historic ties and assure them of our support and firm commitment. We will match loyalty with loyalty." In an obvious reference to the USSR, the new President affirmed that as "for the enemies of freedom, those who are potential adversaries, they will be reminded that peace is the highest aspiration of the American people. We will negotiate for it, we will not surrender for now or ever. Above all we must realize that no weapon in the arsenal of the world is so formidable as the will and moral courage of free men and women. It is a weapon our adversaries in today's world do not have. Let that be understood by those who practise terrorism and prey upon their neighbours" (as in Afghanistan).

If properly evaluated the powers of the President as chief foreign policy maker and as Commander-in-Chief are, indeed, real, matter of fact, and colossal. And it is not surprising that the President's figure looms large in world politics. In an age of international complexities and mounting tensions in which we live, every word uttered by the President of the United States is searched for meaning in foreign offices throughout the world. Whenever people talk in the capitals of their respective countries "what is the United States going to do?" they actually mean therefrom "what is the President going to do." As Commander-in-Chief, he deploys America's armed forces abroad and occasionally supports policies with what is known as "Presidential war making." It must, however, be noted that in spite of the immensity of his powers in the field of foreign relations much depends upon the personality of the President, the state of conditions prevailing in the country and his ability to persuade Congress to approve or at least finance his programme. The President has, no doubt, the authority and capacity to act even independently of Congress, but he cannot act beyond Congress. Congress provides money and unless it provides what the President asks for no President can succeed in his efforts. Checks and balances operate in foreign policy-making and these cannot be ignored.

Emergencies

Emergencies arise in the life of every nation and it is the fundamental right of every State

to meet them and preserve its existence. Emergencies in the past concerned with the security of the State and martial law had long been justified as an emergency power to be exercised at the time of great stress to restore law and order and ensure the security of the State. But during the last six decades emergencies have been used as a reason for the exercise of other governmental powers as well, chiefly in order to combat economic emergencies that seemed to threaten the life of the nation. "In recent years," writes Gosnell, "crisis has followed crisis; emergencies have appeared to create new emergencies. One wonders if the United States will ever return to what was formally considered normal times."[44] An associated cause of the growth of Presidency, according to Griffiths, is the shattering series of emergencies, both foreign and domestic, that has been America's lot during the past century. Rossiter makes us to accept an axiom of Political Science that great emergencies in the life of a constitutional State "bring an increase in executive power and prestige, always at least temporarily, more often than not permanently."[45] He cites the examples of Lincoln, Wilson and Franklin Roosevelt. "Each of these men left the Presidency a stronger instrument, an office with more customary and statutory powers, than it had been before the crisis."

The Constitution of the United States does not specially provide for any kind of emergency. The Supreme Court, too, has held that "emergency does not create power" nor does it increase power already given in the Constitution.[46] The exercise of emergency power of the President is based either on his military power, his responsibility to see that the laws are faithfully executed or an emergency power delegated to him by Congress. In times of military emergency the President has always resorted to extraordinary means. But, it was not until 1933 that the President first made use of emergency powers to meet an economic crisis and since then Presidents have issued proclamations declaring both "limited" and "unlimited" national emergencies.

The laws passed by Congress are not uniform concerning actions which may be taken in case of emergencies. Under a few such laws the President may act only after Congress itself has declared that an emergency exists. But ordinarily Congress authorises the President himself to determine whether there is an emergency. The use of emergency powers is both salutary and dangerous. Properly used they are restorative; improperly used, they may become a prelude to dictatorship.

But such a contingency cannot happen in the United States. The system of checks and balances limits the emergency powers of the President. The Supreme Court, in *Youngstown Sheet and Tube Co.* v. *Sawyer* (1952), refused to uphold President Truman when he issued an order directing the Secretary of Commerce to take possession of and operate most of the nation's steel mills. The President's justification for his action was that in order to avert national catastrophe it was necessary. The Supreme Court declared that there was no source of authority for the President's action either in the Constitution or in any Act of Congress. It was not even a valid exercise of the military power of President, for, according to Justice Black, the Commander-in-Chief does not have the power "to take possession of private property in order to keep labour disputes from stopping production. This is a job for the nation's law-making, not for its military authorities....The Constitution does not subject this law- making power of Congress to Presidential or military supervision or control."

From the decision in the *Youngstown Sheet and Tube Co.* v. *Sawyer* following inferences may be drawn when the President may act without the authorization of law : (1) There must be a real emergency; (2) it must be of a type for which Congress has not already legislated; (3) and it must be one which has arisen suddenly not affording sufficient time for action by Congress. These are valid limitations to the exercise of emergency powers of the President, yet the President may still act in time of emergency. There may be times when these limits are obscure. Justice Clark agreeing with the majority decision in the case cited above, declared, "In may view....the Constitution does grant to the President exclusive authority in times of grave and imperative emergency. In fact, to my thinking, such a grant may well be necessary to the very existence of the Constitution itself." This is "but a substantiation of the doctrine," says Gosnell, "that when emergency power is used properly, it is restorative in nature."

So long as America held relatively aloof

44. *Fundamentals of American National Government*, p. 185.
45. Rossiter, Clinton, *American Presidency*, p. 65.
46 Refer to *Home Building and Loan Association* v. *Blaisdell* (1934).

from the world, cognisance of national emergencies could be taken alone. Now America has assumed for itself the status of the only super power and it has upset the old balance of the nineteenth century completely and finally. Woodrow Wilson wrote, in Theodore Roosevelt's last year in office: "The President can never again be the mere domestic figure he has been throughout so large a part in our history. The nation has risen to the first rank in power and resources. The other nations of the world look askance upon her, half in envy, half in fear, and wonder with a deep anxiety what she will do with her vast strength....our President must always henceforth, be one of the great powers of the world, whether he acts greatly or wisely or not....We can never hide our present President again as a mere domestic officer....He must stand always at the front of our affairs, and the office will be as big and influential as the man who occupies it." Rossiter maintains that it may be taken as an axiom of Political Science that the more deeply a nation becomes involved in the affairs of other nations, the more powerful becomes its executive branch. "The authority of the President", he says, "has been permanently inflated by our entrance into world politics and our decision to be armed against threats of aggression, and as the world grows smaller, he will grow bigger."[47]

LEGISLATIVE POWERS

The Presidential system of government, spearates the Executive and Legislative branches, as signing to each a major role in the government. No machinery is provided for integrating the two. But while the chief duty of the President is to execute the laws, he is at the same time given a share in their making. Rossiter characterises the President as the Chief Legislator, though it appears to be an extravagant title. He says, "Congress still has its strongmen, but the complexity of the problems it is asked to solve by a people who assume that all problems are solvable has made external leadership requisite of effective operation. The President alone is in a political, constitutional, and practical position to provide such leadership, and he is therefore expected, within the limits of constitutional and political propriety, to guide Congress in much of its lawmaking activity."[48] President's share in law-making is both positive and negative.

Presidential Messages

The Constitution ordains that the President "shall from time to time give to the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper...." The Constitution in the presence of this specific provision contemplates Presidential leadership in matters of legislation and, indeed, as Charles Beard says, "it is not too much to say that the fame of most Presidents rests upon their success in writing policies into law rather than upon their achievements as mere administrators."[49] Presidents who successfully directed Congress in policy-making are Jackson, Lincoln, Theodore Roosevelt, Wilson, and Franklin Roosevelt. The nation had rated them "great" Presidents.

The information required to be furnished is contained in an annual message (State of the Union message) conmmunicated at the beginning of each session, and in special messages communicated from time to time during the session. The Presidential message may be delivered orally in the presence of both Houses, or sent to them in a document. The annual message is major in significance and may roughly be compared to the Speech from the Throne in England. Washington and Adams came in person to Congress to deliver information and make recommendations. Jefferson adopted the practice of communicating what he had to say in the form of a written message. This was the rule for 113 years, when in 1913, President Wilson returned to Washington's custom and began delivering his messages to Congress personally. While reviving the earlier precedent Woodrow Wilson said, "the President of the United States is a person, not a mere department of the government hailing Congress from some isolated island of jealous power, sending messages, not speaking naturally and with his own voice; he is a human being trying to co-operate with other human beings in a common service."

For a time Wilson's successors followed in his footsteps. President Hoover read his first

47. Rossiter, Clinton, *The American Presidency*, p. 64.
48. *Ibid*, p. 19.
49. Beard, C. A., *American Government and Politics*, p. 203.

message to the general public over the radio as well to Congress, but subsequently he resumed the old practice of sending written messages. Franklin D. Roosevelt restored the practice of reading personally the messages as a means of drawing the attention of the whole nation to his programme with the invaluable help of radio and camera. This was followed at short intervals by a succession of special messages, each dealing with a particular problem and outlining in some detail the administration's proposed measures for dealing with it.

The annual message contains a review of the activities of government during the preceding year, a declaration of party policies, and recommendations for such legislation as the President deems the interests of the country require. Sometimes the message may contain an important announcement, warning some other country against pursuing a certain course of action. It may also contain a momentous statement of principles as the Monroe Doctrine incorporated in President Monroe message of December 1823 or Roosevelt's four freedoms which summarised objectives of American foreign policy in 1941. In March 1947, Truman appealed to Congress for aid to Greece and Turkey in their resistance to Russian aggression in the name of communism. In 1954 session of Congress, President Eisenhower presented some sixty-five proposals for new legislation in his opening address and even supplementary in later messages plus the budget message and the annual economic report.

Less obvious, but equally important, are the frequent written messages sent from the White House to Congress on a vast scale of public problems. These messages are read by a clerk, often indistinctly, and printed in the Congressional Record. They indicate the needs of the government and the necessity for an appropriate legislation and, thus, is a gesture to friendly legislators to the President to initiate the required measures, Often, these messages are accompanied by detailed drafts of legislation and the friendly legislators take them up as they are.

The consideration which the Presidential messages receive at the hands of Congress depends upon the influence which the President wields with the two Houses. If he belongs to a different political party from that which is in control of Congress, or if for other reasons Congress is out of sympathy with his policies, his recommendations receive very little consideration. Franklin Roosevelt assumed unprecedented leadership in legislation and every important measure enacted by Congress between 1933 and 1943 either emanated from the Executive Departments or was sponsored by the President. But the Congressional election of 1942 made a sharp change in the attitude of Congress with a reduced Democratic majority and a general disapproval of his domestic policy. The new Congress struck down one after another measures sponsored or favoured by President Roosevelt. A similar position happened in 1973, when a political crisis developed between Republican President Nixon and Congress controlled by the opposition Democratic Party. The most immediate issues were the ending of United States involvement in Vietnam and what many members of the Senate and the House of Representatives looked upon as the usurpation of Congressional power by the President. Democratic leaders of the 93rd Congress pledged to take strong counter-measures to reassert the authority of Congress as a co-equal branch of the Government with the Executive.

President Jimmy Carter could sense the tough and aggressive attitude of the Congressmen whose minds were moulded by the decade in which Presidents acted like monarch in determining foreign policy, making wars and subverting the executive structure of the Federal machine. He demonstrated that he needed more Congress expertise for his domestic measures and in the making of America's foreign policy. It was an established White House ritual that Jimmy Carter met from two to a couple of dozen members of Congress and informally discussed matters with them. The two-to-one Congressional majority of Democrats over Republicans, no doubt, worked to Carter's advantage on routine issues, but, with impressive insistence, the 95th Congress declared its intention to share in the making of foreign policy,"unlike any we have seen in history." The House of Representatives voted to trim foreign aid in general than to deny United States Funds in international lending agencies to certain countries. Some of these restrictions were endorsed by the Senate, despite the appeal of the White House that such action would deny administration needed flexibility to conduct foreign policy. So familiar did the White House become with the issue of Congressional intrusion into foreign policy that President Carter declared, "I have some good days on Capital Hill, but I have some bad days." The House of Representatives rejected Carter's recommendation to send nuclear fuel to India whereas the Senate

decided in favour of the Presidential recommendation. Reagan began courting Congress extraordinarily when he organised a political action committee, called Citizens for the Republic, to finance Republican candidates for national and State offices. During the 1980 campaign, Reagan supporters in Congress created a network of Congressional advisory committees to develop policy positions for him and advise him "on key concerns of constituents." The courtship of Congress intensified during the transition—the period in between his election and inauguration when the opinion of Doles and Senator John Tower, Storm Thurmond, and other Republicans heavily influenced Cabinet choices. Reagan aides promised regular bipartisan leadership meetings with the President. Reagan himself "met with a number of Senators....Democrats and Republicans.....touching all the right keys," Doles said. still Reagan had some very uneasy time with Congress and he had to give way or compromise on a number of crucial issues.

All the same, legislative leadership of the President cannot be discounted. The impact of the President's personality aside, the delivery of the oral messages, heard by tens of millions over the radio and heard and seen by additional millions, through television and newsreel, give greater emphasis to executive recommendations. The attendant publicity is frequently a factor in mobilizing public opinion in support of Presidential proposals. If, in addition, they receive popular approval, the Presidential prestige is enhanced considerably. In summing up the legislative powers of the President, Rossiter says, "The President who will not give his best thoughts to guiding Congress, more so the President who is temperamentally or politically unfitted 'to get along with Congress' is now rightly considered a national liability." John F. Kennedy in his "A Candidate's view of the Presidency" declared that the President "cannot afford 'for the sake of the office as well as the nation—to be another Warren G. Hardinge' described by one backer as a man who 'would, when elected, sign whatever bills the Senate sent him and not send bills for the Senate to pass'. Rather he must know when to lead the Congress, when to consult it and when he should act alone."[50]

Power to Call Extraordinary Sessions

The President is empowered to call extraordinary sessions of Congress for consideration of special matters of an urgent character. The President cannot of course, compel Congress to adopt his recommendations at a special session any more than at a regular session but "he can some time hasten action and if he is backed by a strong public opinion he may be able to accomplish even more." In earlier days when the second regular session of every Congress ended on March 4, with the next regular session not commencing until after the following December, special sessions were fairly numerous to deal with extraordinary situations specially in years like 1909, 1913, 1921, 1929 and 1933. Under the new calendar introduced by the Twentieth Amendment the need for special sessions is less, because the intervals between regular sessions are shorter, and the new President after his inauguration finds a new Congress already in session.[51] In 1939, a special session was necessitated by the outbreak of War. Since 1939, there had been only one occasion when President Truman called "a Congress back to Washington after it had gone home without expectation of returning."

The President is also given the power to adjourn Congress when there is disagreement between the House of Representatives and the Senate as to time of adjournment. But this power has never been exercised, for Congress has always been able to agree on this subject.

Budget

A sound, complete, effective and practical Budget system was inaugurated in 1921 under the Budget and Accounting Act. Before there was an Executive office to enable the President to discharge the responsibilities of a Manager with regard to the expenditure of the administrative agencies. Each Department of Government submitted and defended its budget directly to Congress and the President did not review the financial demands of Departments and independent agencies. The Budget and Accounting Act, 1921 vests in the President the sole responsibility for requesting the grant of funds by Congress and empowers him to assemble, correlate, revive, reduce or increase the estimates of the several Departments and Establishments. He is required

50. Cornwell Elmere, *The American Presidency : Vital Center*, p. 20.
51. The Amendment was adopted on February 6, 1933. Section 1 reads, "The terms of the President and Vice-President shall end at noon on the 20th day of January, and the term of Senators and Representatives at noon on the 3rd day of January....."Section 2 provides, "The Congress shall assemble, at least, once in every year and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day."

to submit to Congress a complete statement—Budget—of estimated revenues and expenditure and activities of the government as recommended programme. Budget is, thus, a detailed statement of policy objectives with means of achieving them for the guidance of Congress.

The Act of 1921 created the Budget Bureau as the organ for performing the work required of the President. It is empowered to supervise the spending activities of the various agencies and to advise the President on steps to be taken to introduce greater economy and efficiency in the administrative services. The Director of the Budget, who is head of the Bureau, is appointed by the President and acts directly and solely under the President. Since 1939, the Bureau has been located in the Executive Office of the President and has become the President's largest and most valuable staff agency. The Act also created the independent General Accounting Office, headed by the Comptroller General. "In taking the initiative for transferring the Bureau of Budget to the Executive office of the President, providing high level advisers within the White House Office and creating an executive planning organization, Roosevelt made it possible for a President to come closer to fulfilling the charges of the office than would have been conceivable before these steps were taken."[52]

Power to Issue Ordinances

Under the legislative functions of the President may be included what is known as the ordinance power, that is, the power to issue certain orders and regulations having the force of law. The issuing of ordinances or "executive orders" as it is sometimes called, has now become such an important phase of the President's legislative powers that in 1935 Congress passed a law,[53] requiring that all executive orders, decrees or proclamations having general applicability and legal effect must be published in the *Federal Register*, which is issued daily.

Some of these regulations are issued by the President and other administrators under express authority conferred upon them by Acts of Congress; others are issued as a result of the necessity of prescribing means for carrying into effect the laws of Congress and the treaties; while still others are issued in pursuance of the constitutional powers of the President, and this he does as Commander-in-Chief of the armed forces. It has now become a normal practice with Congress to pass laws in general terms leaving discretionary authority with the President or the executive Departments to fill in the gaps and this is tantamount to legislating in fact. The National Emergency Act, 1933, authorised "the President to organise and regulate the industries of the United States to create new agencies, to make regulations for them, to delegate functions for subordinates, and to do other things deemed necessary to bring about economic prosperity." The Trade Agreement of 1934 empowered the President to make the trade agreements with foreign nations and lower the existing tariff rates by 50 per cent. And even more radical kind of delegation was contained in the Reorganisation Act of 1939. Franklin Roosevelt, in fact, broke all records. Within a short time after his inauguration he prevailed upon Congress to delegate large powers to him and, thus, started an era of executive orders. Senator Herink Shipstead compiled the statistics and figured that President Roosevelt had issued 3,073 executive orders prior to 1944. During the same period 4,553 laws were passed by Congress.

The Congressional delegation of discretionary authority to the Executive has been a subject of deep controversy and described by many as a violation of the theory of Separation of Powers and an inroad on the legislative competence of Congress. The Supreme Court has established the general rule which requires that Congress should set standards and enunciate the policy under which the ordinance power is to be exercised by the President or his subordinates. In the National Industrial Recovery Act, 1933, for example, the Court found that the Congress had given the President power without required constitutional standard or policy to guide the Executive. The second case arose over the general National Recovery Act (NRA) code-making authority which the Court found delegated law-making to an even greater extent and was therefore unconstitutional.[54]

Veto Powers

Finally, the President is given an important share in legislation through his veto power. The

52. Harvard, William C., *The Government and Politics of the United States*, pp. 96-97.
53. The Federal Register Act.
54. *Schechter Poultry Corp.* v. *United States* (1935).

Constitution requires that all Bills and resolutions, except proposed constitutional amendments, must be submitted to the President before becoming law. If he approves, he appends his signatures thereto and it is promulgated as law. If he disapproves, he returns it to the House in which it originated with his objection, within ten days. Congress, by a two-third vote in each Chamber, may then pass it over his veto. If the President fails to sign or veto the Bill within ten days, excluding Sundays, it becomes law without his signatures. If Congress adjourns within ten days after the President receives the Bill and he takes no action, the Bill is automatically killed. This is known as the *pocket veto* and it is absolute. Towards the end of a session numerous Bills and resolutions are passed by Congress in order to clear up its accumulated business. A considerable number of the last-minute Bills, to which the President may be opposed or for which he does not want to take responsibility, thus, fail to become law and the Presidents have rather generously used this device. President Jimmy Carter killed in a single day (November 11, 1978) three Bills he considered inflationary.

The veto power has been used more vigorously during recent times than formerly. Eight Presidents, John Adams, Jefferson, J.Q. Adams, Van Buren, W. H. Harrison, Taylor, Filmore and Garfield, did not veto any Bills. The first six Presidents vetoed only three Bills. But in contrast to this Franklin D. Roosevelt alone vetoed 63 Bills (9 were overridden). Truman vetoed 251 Bills (12 overridden) and Eisenhower 86. The share of Jimmy Carter and Ronald Reagan is no less. Both Franklin D. Roosevelt (1944) and Harry Truman (1948) ventured into new territory when they vetoed Tax Bills, though both were overridden by Congress.

Washington and other early Presidents vetoed only those Bills which they regarded unconstitutional. Jackson was the first President to use this power to safeguard the Executive branches of government against the encroachments of the Legislature. Now Presidents veto Bills which they regard "as inexpedient, contrary to public policy, or for any other reason that is considered compelling." Eisenhower vetoed the first Farm Bill to come to him in 1956 on the ground that it was "bad legislation."

But Congress too has often reasserted its authority by overriding the Presidential veto. The Democratic majority in the Congress overrode President Ford's veto for 11 times during his tenure of office. Only President Andrew Johnson (15 times) and President Harry Truman (12 times) had their veto quashed by Congress more often than Gerald Ford, who had served only half as Andrew Johnson and less than one- third as long as Harry Truman.

THE PRESIDENT AS A LEADER

A Party Leader

The President combines in his person the two offices of King and Prime Minister, or as Theodore Roosevelt said, "A President has a great chance; his position is almost that of a King and Prime Minister rolled into one." On the one hand he is a party leader, the spokesman and representative of popular majority "more or less organised in the party that he heads." Originally, the Chief Executive was not a party man and Washington thought himself identified with no party. But when political parties had become definitely established, we have it from Jefferson's time that Presidents began to be elected as party men and party leadership became as truly a function of the President as of the British Prime Minister. And today his position as a political leader of the party is as much a source of his power as the authority which the Constitution confers upon him. Chosen as a party man to head a government operated under a party system, the President surrounds himself with advisers of his own faith, consults usually with men belonging to his party in Congress for appointments, confers with his own men in the party in framing policy, and he uses his power as chief legislator to push through the party's programme to a crowning victory. Sometimes it troubles good Americans to watch their dignified chief of the State deeply submerged in party politics, which torment Washington's spirit. "Yet if he is to persuade Congress, if he is to achieve a loyal and cohesive administration, if he is to be elected in the first place (and re-elected in the second) he must put his hand firmly to the ploy (plough) of politics." John F. Kennedy, commenting upon President Eisenhower's preference to "stay above politics," maintained that no President "can escape politics. He has not only been chosen by the nation—he has been chosen by his party. And if he insists that he is 'President of all the people' and should, therefore, offend none of them—if he blurs the issues and differences between the parties—if he neglects the party machinery and avoids his party's leadership—then he has not only weakened the political party as an instru-

ment of the democratic process he has dealt a blow to the democratic process itself. I prefer the example of Abe Lincoln, who loved politics with the passion of a born practitioner."[55]

Voice of the People

At the same time, the President is the voice of the people; the leading formulator and expounder of public opinion in the United States. While he acts as a political leader of some, he serves as a moral spokesman for all. Woodrow Wilson, well before he could become the President, explained the essence of this role: "He (President) is the only national voice in affairs. Let him once win the administration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. He is the representative of no constituency, but of the whole people. When he speaks in his true character, he speaks for no special interest. If he rightly interprets the national thought and boldly insists upon it, he is irresistible; and the country never feels the zest for action so much as when its President is of such insight and calibre. Its instinct is for unified action and it craves for a single leader." The President is the head of the State and the personal spokesman of the people, even of those who voted against him and who still oppose him. Former President Truman in a TV-radio interview with Edward R. Munrow in 1958, graphically described the President as "lobbyist for all the people." In his address to Democratic National Convention, which nominated him to be the Party's presidential candidate for the second term, Jimmy Carter described the President as "the steward of the nation's destiny. He must protect our children—and the children they will have—and the children of generations to follow. He must speak and act for them. This is his burden—and his glory."[56]

As an administrator the President must faithfully administer the laws, no matter whether these laws were passed by Democratic or Republican majorities in Congress. As Commander-in-Chief he represents the whole nation. He does not direct war for the benefit of any single party or any class of people. He, indeed, acts for all the people. The rank and file of the people identify the President with the federal government, and even with the American way of life. The White House is one of the few national sacred buildings. The President embodies the nation and as well leads it. The people naturally look to him for guidance in all sort of matters. It is he who labours to make the United States a better and prosperous place to live in. Even in democracy the people need a leader. "They need some one who will personalise government and authority, who will simplify politics, who will symbolise the protective role of the State, who will seem to be concerned with them." The eyes of the whole nation are, in fact, riveted towards its first citizen. There is a corps of astute journalists in Washington who shadow the President wherever he goes. They are always after to catch even the most trivial phrase that falls from his lips at press conferences, at fireside chats, or off-hand and spread it broadcast throughout the length and breadth of the country. His message to Congress (State of the Union) stirs the country and it is the one great public document which is most widely read and discussed. The President, wrote Woodrow Wilson just before his first inauguration, "is expected by the Nation to be leader of his party as well as the Chief Executive Officer of the Government, and the country will take no excuses from him. He must play the part and play it successfully or lose the country's confidence. He must be Prime Minister, as much concerned with the guidance of legislation as with the just and orderly execution of law, and he is the spokesman of the Nation in everything, even in the most momentous and most delicate dealings of the Government with foreign nations." John F. Kennedy said, that the White House is not the centre of political leadership. It must be the centre of moral leadership—a 'bully pulpit,' as Theodore Roosevelt described it. "For only the President represents the national interest. And upon him alone converge all the needs and aspirations of all parts of the country, all departments of the government, all nations of the world."[57] In his farewell address to the nation on January 14, 1981, President Jimmy Carter observed, "The President is the only elected official charged with representing all the people. In the moments of decision, after the different and conflicting views have been aired, it is the President who then must speak to the nation and

55. "A Candidate's View of the Presidency", reproduced in Elmer E., Cornwell's *The American Presidency, Vital Center*, p. 21.
56. Reproduced in *Span*, New Delhi (The International Communication Agency, American Center), October, 1980.
57. "A Candidate's View of Presidency", reproduced in E. Cornwell's *The American Presidency, A Vital Center*, p. 21.

for the nation."[58]

Head of the State

In an essay on British Government Ernest Barker described the monarch as a symbol of unity, a magnet of loyalty, and a centre of ceremony.[59] The President as head of the State serves the American people in the same capacity. Apart from the Chief Executive, the Constitution makers had expected him to perform, like the Monarch, what Bagehot called, the "dignified functions." Today, the "dignified" functions of the President surpass the expectations of the Founding Fathers. "Throwing out the ball at the first base ball game, lighting the White House Christmas tree, sponsoring Easter egg rolling on the White House lawns, receiving monarchs and delegations of almost reverential school children, the President is a dignified embodiment of the nation in a nation where official dignity is scarce and the supply normally exceeds the demand."[60] The American people need such a symbol and it has been useful "as a cement of national feeling." This symbolic character of the office of the President has strengthened its practical powers.

Speaking of the President's powers in general, Justice William O. Douglas of the Supreme Court said in a recent opinion, "the great office of President is not a weak and powerless one. The President represents the people and is their spokesman in domestic and foreign affairs. The office is respected more than any other in the land. It gives a position of leadership that is unique. The power to formulate policies and mould opinion inheres in the Presidency and conditions our national life." Harold Laski simply epitomises the whole truth when he said, "The President of the United States is both more or less than a King; he is also both more or less than a Prime Minister. The more carefully his office is studied, the more does its unique character appear." His military role, his ceremonial functions, and his national responsibilities combine to make him a powerful chief of the State representing the whole nation.

Presidential Power: Peril or Promise

The issue of the powers of the President has echoed and re-echoed throughout the history of American nation. Writing about President Andrew Jackson, Henry Clay said, "we are in the midst of a revolution, hitherto bloodless, but rapidly leading towards a change of the pure republican character of the government and to the concentration of all power in the hands of one man." The problem has become more critical in the present century. Amaury de Riencourt, writing under the caption *"The Coming Caesars,"* says, "In truth, no mental effort is required to understand that the President of the United States is the most powerful single human being in the world today. Further crisis will inevitably transform him into a full fledged Caesar, if we do not beware. Today, he wears ten hats—as Head of State, Chief Executive, Minister of Foreign Affairs, Chief Legislator, Head of Party, Tribune of the people, Ultimate arbitrator of Social Justice, Guardian of Economic Prosperity, and World Leader of Western Civilization. Slowly and unobtrusively, these hats are becoming crowns and this pyramid of hats is slowly metamorphosing itself into a tiara, the tiara of one man's imperium."[61] John F. Keneddy, in his address, *A Candidate's View of Presidency,* said, "whatever the political affiliation of our next President, whatever his views may be on all the issues and problems that rush in upon us, he must above all be the Chief Executive in every sense of the word. He must be prepared to exercise the fullest powers of the office—all that are specified and some that are not. He must master complex problems as well as receive one-page memorannda. He must originate action as well as study groups. He must re-open the channels of communication between the world of thought and the seal of power."[62] Kennedy's comments on the Presidential office were a kind of counter-attack against the reaction President Eisenhower had represented against the Roosevelt-Truman era. "Roosevelt fulfilled," he said, "the role of moral leadership. So did Wilson and Lincoln, Truman and Jackson and Teddy Roosevelt. They led the people as well as the Government—they fought for great ideals as well as bills. And the time has come to demand that kind of leadership again. And so, as this vital campaign begins, let us discuss the issues the next President will face—but let us also discuss the powers and tools with which he must face them. For he must endow the office with extraordinary strength and vision."[63]

58. Reproduced in *Span,* New Delhi (The International Communication Agency, American Center), March 1981.
59. Barker, E., *Essays on Government,* p. 6.
60. Brogan, D. W., *An Introduction to American Politics,* p. 273.
61. Cornwell, Elmer E., *The American Presidency : Vital Center,* p. 44.
62. *Ibid.,* p. 19.
63. *Ibid.,* p. 21.

Wars and emergencies, political and economic, are the main harbingers of Caesarism. In grave emergencies, leadership can never be collective and the people of United States are now living in an age of permanent emergency. The Government has to fight "hot wars" and wage "cold wars", solve critical and explosive issues involving abuse of diplomatic immunities as in the case of American hostages in Iran, prevent periodic trade and financial crises and create conditions of security in all avenues of the nation's life. The Government must also mitigate labour-management conflict, check monopolistic trends, vitalise the economy by removing roadblocks that slowed the economy and reduced productivity, provide decent housing, educational and health facilities and secure civil rights. President Carter maintained, "Today, we are asking our political system to do things of which the founding fathers never dreamed. The government they designed for a few hundred people now serves a nation of almost 230 million people. Their small coastal republic now spans beyond a continent, and we now have the responsibility to help lead much of the world through difficult times to a secure and prosperous future."[64] Such an immense increase in the efforts of the Government to achieve desirable results has literally forced a modern President to be what Woodrow Wilson called "a big man." Amaury Reincourt succinctly said, "Presidential power in America has grown as American power and expansion has grown, one developing within the other."

The "big man" as a symbol of power for good and evils has evoked varying responses. There are those who share the view that the Presidential power has increased, is increasing and ought to be diminished. They warmly supported the Twenty-Second Amendment to the Constitution which limited the President's tenure to two terms in office. By this limitation they hoped that the vast expansion of executive power will not lead to dictatorship and the destruction of representative democracy. Corwin, on the other end, suggests that such fears of Presidential dictatorship or domination are exaggerated. He notes the restraints on Presidential power that still exist. He reminds us that public opinion in the United States has strongly demanded vigorous Presidential leadership. Corwin, however, emphatically urges improved relationship between the President and Congress as a possible solution of the still inadequate status of the Presidency today.[65]

Laski finds many hindrances to the exercise of effective Presidential leadership. Instead of fearing power, he maintains, that power, "equal to the function the President has to perform, and suitably criticised and controlled, should be given to the Chief Executive."[66] Laski endorsed the views of the President's (1937) Committee on Administrative Management which were, in general, shared by the Hoover Commission, supporting administrative reorganisation in the interest of a strong, energetic, unified, efficient and responsible executive. Both the President's Committee and the Hoover Commission agreed that the President must be given administrative authority commensurate with his constitutional responsibility."[67]

The Presidency of the United States is, indeed, an office of great power. A number of factors, some historical and some institutional, have converged in modern times and have changed radically the character of the office as it was conceived by the framers of the Constitution. At the same time, the limits upon the Presidency are many and they have a way of exerting themselves even in the midst of grave crisis. No significant policy can be made effective without the approval of Congress, the law making and money appropriating body, and always jealous to assert its authority and independence. Congress also investigates, through its committees, the activities of the Executive Departments and their agencies. No unconstitutional action can escape the probity of the Supreme Court. "The opposing party, the free and active press, the permanent civil service, the governments of the fifty States and the giant corporations and labour unions, and

64. President Jimmy Carter's farewell address to the nation, January 14, 1981, *Span*, New Delhi, March, 1981.
65. Corwin, E.S., *The President : Office and Powers*, pp. 356-358.The peculiarities of the American electoral system make it possible for one Party to gain the White House while the other wins a majority of Seats in the House and the Senate. Such divided victories have occurred only five times since 1848—in 1956, 1968, 1986, 1988 and 1990. In 1980 and 1982 the Republicans gained majority in the Senate while they remained in minority in he House of Representatives. The majority of the Democrats increased by 25 more members in 1982. It is in the "Off-year" (mid-term non-Presidential) elections that the Party not in control of the White House is more likely to obtain control of Congress. Such a division has occurred in 13 of the 26 "off-year" elections since 1884.
66. Laski, H. J., *American Presidency*, p. 97.
67. *Report*, pp. 1-3, 53.

universities, all these independent centres of power can frustrate any President who attempts to overstep the boundaries of his rightful authority''[68] Jimmy Carter maintained in his farewell address to the nation (January 14, 1981): ''This is at once the most powerful office in the world—and among the most severely constrained by law and custom. The President is given a broad responsibility to lead—but cannot do so without the support and consent of the people, expressed formally through the Congress and informally through a whole range of public and private institutions.'' Every President's conscience, training and sense of history, remarks Clinton Rossiter ''have joined to halt him short of the kind of deed that would destroy his fame and his standing with the people.''[69] If he becomes so desperate to cross the boundary, he may meet the fate of Richard Nixon and make himself liable for impeachment, though Nixon was saved by President Ford by giving him general pardon against all offences during his tenure of office.

American Presidency, therefore, has a promise that it is an instrument of constitutional government. ''And it is one of the two prides of the American people that no one of their Presidents has been a scoundrel or a tyrant.'' The second is the tradition of American democracy, personal liberty and moral behaviour. This is the real strength of Presidency. Ronald Reagan had not met the fate of Richard Nixon, but the 'Iran-gate' scandal (arms for hostages deal) had a much more serious impact on America's status as a major economic and political power than Water-Gate did. And what shocked most the Americans was that their President (Reagan) lied to the American public, that he played foul with some of its premier institutions, (for example Congress,) that he failed to meet those uniquely American standards of decency, morality and democracy. In short, Regan betrayed that ''mythic self-image of American exceptionalism.''

Concluding his discussion on *The Coming Caesars,* Amaury de Riencourt says that the rise of Caesarism in America is considerably eased by a number of American features. The first is, '''democratic equality, with its concomitant conformism and psychological socialization, which is more fully developed in the United States than it has ever been anywhere, at any time.'' The second important feature is that Caesarism can come to America constitutionally, without having to alter or break down any existing institution. ''The White House is already the seat of the most powerful tribunician authoritty ever known to history. All it needs is amplification and extension.. Caesarism in America does not have to challenge the Constitution as in Rome or engage in civil warfare and cross any fateful Rubicon. It can slip in quite naturally, discreetly, through constitutional channels.''[70] Carl J. Friedrich says, ''indeed, two modern developments have brought with them a curb to presidential power as contrasted with Jackson's days : one is the professional expert and administrator, and the other is the techinques of mass communication and of polls which has brought the citizen's view into limelight.''[71] The Water-gate revelations blurred President Nixon's public image. There had also been revelations of wholesale falsehoods in regard to the bombing of Cambodia. By a vote of 71 to 18, the Senate approved a Bill on July 20, 1973 limiting the power of the President to commit the United States armed forces to future hostilities without firm Congressional approval. Speaking on the Bill, Senator Jacob Javits, a Republican, angrily asked, ''What gives him (the President) the pre-eminence and patriotism that is denied to us ? I do not understand it. He is human and mortal, as we are. If you had any doubt about it yesterday, you should not have it today. What is the basis for the assumption that he is infallible and cannot make a mistake and that only we are capable of mistakes ? Nixon was on record saying that the American people were like children and his opinion of their elected representative was not mere flattering. It had also been reported that Nixon based his actions on the theory that the President knew all the facts and he had the right to order burglary of the files of Dr. Daniel Ellsbergs, the psychiatrist. But what ultimately was Nixon's fate? A self-condemned person who brought Presidency to shame. No less was the contribution of his Vice-President, Spiro Agnew, to loss of faith by the people in the institution of the President.'' Agnew resigned in 1973, because of the ''kick charges.'' At that time he did not contest charges of evading $29,000 in income taxes. in April 1981 he was fined

68. Clinton Rossiter, ''The Presidency of the U.S.A.'' *The Indian Express,* New Delhi, November 6, 1964.
69. *Ibid.*
70. Cornwell, Elmer E., *The American Presidency : Vital Center,* p. 45.
71. Friedrich, C.J., *Constitutional Government and Democracy,* pp. 380-81.

$250,000 to pay Maryland for accepting "kick-backs" while Governor of the State from 1967 to 1969.

The country's reaction against Lyndon Johnson, Richard Nixon and Ronald Reagan demostrates that Americans do not want a President to become too powerful, to take too much authority to himself, to cut too many corners, to abuse the office, to ride roughshod over Congress. Yet the country certainly wants him to have ample power to cope with all emergencies, to be firmly in command of the sprawling bureaucracy, "really to run things." In fact, Congress and the public push at the President new authority to handle new problems. Election results and opinion polls indicate that the voters also respond to a just, humane, decent person—but one who can also be tough and ruthless when necessary. Time and again, an Alladi Stevension (1952 Democratic candidate) or a George McGovern (1972 Democratic candidate) or even Jimmy Carter for the second term in 1980, is dismissed as "too nice" or "too decent" for the White House. "The public seems to want a soft-hearted but hard-nosed President, and that is a hard role to cast." They want someone they can look up to and respect. Despite Ronald Reagan's landslide victory in the 1980 Presidential election and even the Democrats voting with his economic policies, especially to cut government spending, the public opinion poll (published by the *New York Times* in March 1982) showed the steady erosion of popular support for his domestic and foreign policy. It was found that only 45 per cent of those asked approved Reagan's "handling the job" as President. The Hollywood style of conducting the state affairs the nation did not accept from the occupant of the White House and that too, at the age of 70. The John-Tower Edmund, Muskie-Bent Scowrept-review Board exonerated Reagan of any personal wrong-doing in the so-called Iran-gate scandal, in which arms were sought to be sold to Tehran in exchange for American hostages held in Iran and the funds from the arms sale got diverted to Contra rebels in Nicaragua. In a broadcast speech to the nation, President Ronald Reagan acknowledged that his once-secret Iranian initiative "deteriorated," into an "arms for hostages" deal and said, "it was a mistake" and "as President, I cannot escape responsibility." The Iran-Contra affair has been the biggest crisis of the Reagan Presidency. But the political damage done to the Presidency cannot be repaired at any cost, though he had owned full responsibility for his own actions and for those of his administration and acknowledged : "I've paid a price for my silence in terms of your (nation's) trust and confidence."

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CHAPTER IV

The 'Cabinet' and the Executive Departments

Origin and Nature of 'Cabinet'

The Executive Departments of the Government of the United States are: State; Treasury; Defence; Interior; Justice; Agriculture; Commerce; Labour; Health, Education and Welfare; Housing and Urban Development; and Transportation. Each Executive Department is headed by a Secretary appointed by the President with the consent of the Senate. The ten Secretaries and the Attorney- General are recognised as the top political figures in the national administration and they were in the line of succession to the Presidency. They sit in the 'President's Cabinet.'[1] The Constitution has nothing to say about a 'Presidential Cabinet.' It simply mentions that the President "may require the opinion, in writing, of the principal officer in each of the executive Departments, upon any subject relating to the duties of their respective offices."[2] But the framers of the Constitution had in their minds the importance of counsel in determining policies, though they "apparently deemed it unnecessary to insert any formal provision, taking it for granted that the President would have sufficient sense to avail himself of advice upon important occasions."[3] They did, of course, give to the Senate a measure of such authority in connection with appointments and treaty making.

Washington had in the beginning expected that the Senate would serve the same purpose that the Upper Chambers in the Colonial Legislatures had fulfilled, that is, it would be an advisory council with as much executive as legislative responsibility. The Constitution more or less implied this function of the Senate when it provided that the President shall have the power "by and with the advice and consent of the Senate" to make treaties and appointments. Washington sought the advice of the Senate in connection with America's Indian affairs but was "snubbed." Relying on the precedent of English and Colonial courts, the President sought the assistance of the Supreme Court, to render opinions of an advisory nature, but here again he was "rebuffed." Washington, therefore, began talking over certain questions with the principal officers of government and by 1791, he called regular conferences of key officials for consultation not only on matters pertaining to their particular Departments but in regard to questions of general executive policy. Since 1793, the name "Cabinet" came to be applied to these joint meetings of the Chief Executive with his heads of the Departments. Unknown to the Constitution, Cabinet is an extra-legal institution and is a child of custom and tradition. But it is simply an advisory body, though its growth is an example of the manner in which usage has shaped the Constitution to meet the pressure of necessity.

Early in his administration, Andrew Jackson dispensed with Cabinet meetings altogether and acted on the advice of several of his intimate friends. This "Kitchen Cabinet," as it popularly came to be known, served the purpose of the President's advisers. His successors, however, followed the custom of calling the heads of the principal Departments into an informal conference for the discussion of complicated problems, and thus, began a series of Presidents who depended rather heavily on their Cabinets. With the coming in of Woodrow Wilson the reverse phase began.[4] He preferred his own sources of advice or depended upon the council of a very few personal agents such as Colonel Edward M. House. Wilson's successor, President Harding, however, was excessively reliant on his Cabinet, invited the Vice-President to attend its meetings and included in its membership "men who knew a great deal more about public affairs than did he himself." President Roosevelt did not lean heav-

1. Others may be invited to Cabinet meetings at the discretion of the President.
2. Article II, Section 2, Clause 1.
3. Zink, H., *A Survey of American Government*, p. 254.
4. Woodrow Wilson did not even bother to discuss the sinking of the *Lusitania* or the declaration of war with it. "For some weeks," wrote his Secretary of Interior, Franklin Lane, "we have spent our time at cabinet meetings largely telling stories."

ily on his Cabinet, although he did not dispense with its regular meetings.[5] In the beginning, particularly in fashioning his New Deal, he looked for advice to a little group of younger people known as the "brain trust." For a time, he tried a "super cabinet," the National Emergency Council, which included in its membership more than thirty persons drawn from the Cabinet and independent establishments. But eventually he returned to the old system, although Roosevelt and Truman leaned heavily on personal friends such as Harry Hopkins and George Allen. President Eisenhower did his best to restore the Cabinet to full duty. He invited such key officials as the Director of the Budget and the Chairman of the Civil Service Commission to attend regularly. He even established a formal Cabinet Secretariat to organise its work and to keep the necessary records. Eisenhower, accordingly, used an expanded and augmented Cabinet quite extensively as a sounding-board and policy-making group. President Kennedy, on the other hand, preferred to deal directly with those Cabinet members involved in a particular problem and he avoided large-scale formal meetings. Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter and Reagan included the Vice-Presidents in their Cabinets. Carter described his Cabinet officers—10 Secretaries and the Attorney-General—as "almost perfect" and directed them to "honor (honour) my commitments to the American people."

Though unknown to law yet it has become an integral part of the institutional framework of the United States of America.[6] But it is really not a cabinet in the sense in which we understand it under a system of parliamentary government. The members of the American Cabinet are not members of Congress and neither they take part in its debates nor do they go there to initiate and pilot legislation or to defend the policy of Government or stand in need of seeking its confidence. They are essentially the advisers of the President. The President can, and often he does, override the opinions of his 'ministers' or he may not seek it or even if he does seek, it is for him to decide whether to consult them individually or collectively. The use of the Cabinet depends on the President's desire. Harold Ickes, who was at times enraged at what transpired in the Cabinet, wrote in his Diary after a meeting in 1935: "Only the barest routine matters were discussed. All of which leads me to set down what has been running in my mind for a long time, and that is just what use the Cabinet is under this administration. The cold fact is that in important matters we are seldom called upon for advice. We never discuss exhaustively any policy of government or question of political strategy. The President makes all of his own decisions." Henry Morgenthan, another member of Roosevelt Cabinet wrote: "The important things were never discussed at Cabinet." Lincoln too ignored his Cabinet and at one time seemed on the verge of doing away with the meetings altogether. Gideon Welles, Lioncoln's Secretary of the Navy, complained, "There is really very little of a hearing at this time so far as most of the cabinet are concerned, certainly but little consultation in this important period." Again, he said, "But little was before the cabinet, which of late can hardly be called a council. Each Department conducts and manages its own affairs, informing the President to the extent it pleases."

The Cabinet meets ordinarily once a week and it is for the President to decide what matters come before it.[7] Proceedings are decidedly informal and there are no rules of transaction of business.[8] Only rarely is there a vote and that too, when the President asks for one. No minutes or official records were kept of its proceedings. President Eisenhower established a Cabinet Secretariat to organise its work, keep its records and follow through on decisions. In addition to setting up a sub-Cabinet to support the Cabinet itself, he continued the practice of authorising Cabinet level committees to deal with special problems. Eisenhower appointed, in November, 1954, Maxwell M. Rable as the Secretary of the Cabinet of the United States. But Cabinet members have no

5. "The President ordinarily began with a recital of pleasantries, telling stories which ticked with him or joshing cabinet members about their latest appearances in the newspapers. Then he might throw out a problem for a generally rambling and inconclusive decision. Or, turning to the Secretary of State, he might say without ceremony, "Well, Cardell, what's on your mind today? Then he would continue around the table in order of precedence." Cornwell, Elmer E., *The American Presidency: Vital Center, pp, 67-68.*
6. The term Cabinet is referred to by name in Chief Justice Marshall's decision *Marbury* v. *Madison* (1803).
7. President Taft observed : "As it is, the custom is for the President to submit to its members questions upon which he thinks he needs their advice, and for the membets to bring such matters in their respective departments as they deem appropriate for Cabinet conference and general discussion."
8. It is reported that Franklin Roosevelt sometimes related a story or an amusing incident. Lincoln, too, was fond of stories.

corporate rights which are uniformly recognised by custom. This is well illustrated by two anecdotes, one relating to America and other to Britain. "Ayes one, noes seven. The ayes have it," announced Lincoln following a Cabinet consultation in which he found every member against him. The only vote that counts is the President's own. This is so often contrasted with Lord Melborne putting a question on Corn Laws to the vote in his Cabinet and saying, "it does not matter what we will say, as long as we all say the same thing." Unanimity of decisions is the basic principle of Cabinet government and essence of collective responsibility. The Cabinet members in America may make speeches in support of the general policy of the administration. They may even initiate a line of policy which, having been approved by the President, may be described as their own special contribution, as the agricultural policy of Wallace and the reciprocal low tariff agreements of Hull, in Roosevelt's administration. "But, in general, the American Cabinet minister lives and moves and has his being in the context of Presidential thought. However able and distinguished, he is bound to be eclipsed by the major significance of his chief."[9]

The Cabinet in the United States is, in fact, the "President's family." President Monroe thought himself as merely a *primus inter pares.* But as Brogan puts it, "even Monroe was primus and he had chosen his peers."[10] A British Prime Minister may have a choice in selecting his colleagues upon whom he can rely, yet the party expects certain men to be in the Cabinet and the country, too, expects them to be there. In America, the President, unlike the Prime Minister in Britain, does not make a team. The considerations which influence his choice are different from those of a Prime Minister belonging to a country with a Parliamentary system. Some of his colleagues may hardly be known to him when he chooses them. President Wilson had never met Lindley Garrison, his Secretary of the Interior. He may, again, appoint persons not belonging to his own party, though since 1975 the principle of party solidarity has been adhered to rather closely.[11] Cleveland appointed Walter G. Gresham as Secretary of State and he had been thought of as a Republican candidate for the Presidency. Theodore Roosevelt and Taft each appointed a Democrat Secretary of War and Hoover made a Democrat Attorney- General. Roosevelt appointed Henry L. Stimon as Secretary of War, and Frank Knox as Secretary of Navy in 1940, although both were prominent Republicans and the latter had only four years previously been his party's candidate for Vice-President. Eisenhower thought it good politics to recognize the "Democrats for Eisenhower" by naming Texas Democrat, Mrs. Oveta Culp Hobby, as his first Secretary of Health, Education and Welfare. President Kennedy's Cabinet included two Republicans, the Secretary of Treasury, Douglas Dillon, and Secretary of Defence Robert McNamara. Lyndon Johnson continued with the members of Kennedy's Cabinet, after his assassination.

If the President makes his Cabinet, he can also unmake it at his will. It is true that the choice of the President is not so unrestricted as it is generally imagined. He is limited by party necessities, geographical considerations and it is politics also to recognise the major religious groups. President Kennedy appointed his brother Robert Kennedy as Attorney-General and it was obviously a personal matter. Wilson was compelled to make Bryan as Secretary of State and for the same reasons that compelled Gladstone to take in Chamberlain in 1880 and Lord Palmerstone to offer a place in his cabinet to Cobdon. But once Wilson had become settled, he was able to drop Bryan with no trouble at all. It happens only in the United States, because there cannot be a Cabinet crisis in the British sense. Leaving aside Lincolns and Wilsons even weaker Presidents can get rid of any member of the Cabinet as

9. Laski, H. J., *The American Presidency,* pp. 79-80. President Roosevelt did not refer to his Cabinet the proposal to reforming the Supreme Court as contained in his message to Congress in 1937. This is narrated by the late Harold Ickes and it illustrates how the President may commit the administration to a bold or even a rash course of action without consulting his Cabinet. Harold Ickes said, "I have always deprecated the fact that President Roosevelt did not consult his Cabinet in advance and that nobody knew about the particular plan, except the President himself and the Attorney-General. The Cabinet was called together hastily at eleven o'clock one morning. The message was already on the way to the Hill (*i.e.,* Congress). Even if our advice had been sought, it would have been ineffective. We were confronted with a choice of supporting the President—or of resigning from the Cabinet and opposing it." As quoted by D. W. Brogan in *An Introduction to American Politics,* pp. 176- 277 f.n.

10. Brogan, D. W., *An Introduction to American Politics* p. 275.

11. Washington made Jefferson Secretary of State and Hamilton Secretary of the Treasury. But friction soon arose and it proved desirable "'to bring the chief offices into the hands of men who saw eye to eye in political matters."

president Arthur got rid of Blaine, the most popular Republican and the greatest force in the party. The conclusion is obvious. In the United States the Cabinet is only what the President wants it to be. "It is his tool" and as for its members, "a breath unmakes them as a breath has made." Its compositon is unpredictable. Many of its members, after their terms of office, retire into the obscurity from which their elevation had brought them.[12] "Cabinet office," in the words of Professor Laski, "is an interlude in a career; it is not itself a career. There is no technique of direct preparation for it; there is no certainty that it will continue because it has begun; there is no assurance that the successful performance of his functions will lead to a renewal of office in a subsequent administration."[13] A President can get rid of all his Cabinet as Jackson did; he can get rid of his prodecessor's Cabinet as Taft and Truman did. He can dismiss a member of the Cabinet as Truman dismissed Wallace. In July, 1979, Carter dismissed Joseph Califano, Secretary of Health, Education and Welfare, and Secretary of the Treasury. He allowed Attorney-General Griffin Bell and the Secretary of Energy, James Schlesinger, to resign. The Secretary of Transport, Brock Adams resigned before he was dismissed. The Secretary of State, Cyrus Vance resigned in April, 1980, because he disagreed with Carter on the rescue of hostages in Iran.

Utility of the Cabinet

Nevertheless the Cabinet has a character and importance of its own. Membership in it continues to be the ambition of many politicians.[14] And although there is considerable variation in its prestige and influence from administration to administration, yet it must meet once a week and transact two types of business. In the first place, the broad policies of the government are examined and discussed. The President may frequently consult the Cabinet on matters of top policy. He may accept their opinion or not, but the discussions bring out useful information and opinion, clarify views and promote morale in administration. Cabinet discussions help to sustain the President and render him more responsible to the people.

The second type of work it does is rather more routine. The President co-ordinates the activities of different Departments and resolves interdepartmental conflicts which are bound to arise in a complicated and gigantic administration, as one finds in the United States. What the President does is that he frequently meets the individual departmental heads and agency chiefs, listens to their complaints and limitations and, then, asks the Cabinet to attempt co-ordination. Cabinet meetings and discussions help to iron out departmental differences and misunderstandings. The Cabinet meeting may also serve to produce a sense of administrative responsibility and coherence in an administrative structure that is fragmented, specialised, and diffused.

While evaluating the role of the American Cabinet, it may be noted that it is a body of advisers to the President and not a council of his colleagues with whom he has to work and upon whose approval he depends. Cabinet discussion, as Professor Laski says, "is the collection of opinions by the President with a view to clarifying his own mind, rather than a search for a collective decision." The Cabinet members cannot publicly oppose the direction of the President. Roosevelt made it significantly clear. He said, "when a Cabinet member speaks publicly, he usually speaks on the authorization of the President, in which case he speaks for the President. If he takes it upon himself to announce a policy that is contrary to the policy the President wants carried out, he can cause a great deal of trouble."[15]

A few significant suggestions have been made for making the Cabinet a more potent factor in administration. One suggestion is that the Cabinet could be transformed into a vigorous institution simply by making the proper appointments. "A good Cabinet," commented Professor Laski, "ought to be a place where the large outlines of policy can be hammered out in common, where the essential strategy is decided upon, where the President knows that he will hear, both in affirmation and in doubt, even in negation,

12. Laski, H. J., *American Presidency*, p. 80.
13. *Ibid.*, p. 95.
14. Prof. Brogan cites a case in which he was an eye witness. He writes, "I was present towards the end of 1948, at a discussion of the new Cabinet, Mr. Truman was expected to announce. It was suggested that Mr. Dean Acheson would be made Secretary of State and it was objected that he had resigned as Under-Secretary of State on the ground that he couldn't afford the job. A friend of Mr. Acheson's remarked, "He couldn't afford Under-Secretary, but anybody can afford to be Secretary of State." Brogan, D. W., *An Introduction to American Politics*, p. 277 f.n.
15. Truman, Harry S., *Memoirs*, Vol. I. p. 329.

most of what can be said about the direction he proposes to follow." A Cabinet functioning in this spirit could, indeed, stimulate administrative leadership, but thus far the Cabinet has fallen short of such an ideal. Alexander Haig, Secretary of State in Reagan Cabinet suggested: "if a government as large and complex as ours is to function," the President "must delegate a measure of authority. How well, consistently and effectively the executive branch functions will depend to a great extent on how wisely its President chooses, and uses, his Cabinet."[16] The basic criteria of selection, he says, should be excellence and competence, "preferably demonstrated by successful experience in fields at least related to those for which any particular Cabinet officer is to be made responsible."

Haig also proposed that a President "cannot squander time on minutiae; Cabinet members must be responsible for managing their respective departments for which they need a delegation of requisite authority or the right kind of presidential support and backing." On policy matters affecting the responsibilities or interests of more than one cabinet department the President "should compel every cabinet officer to make policy recommendations to the President in front of, and open to challenge by, other Cabinet officers—especially those whose responsibilities or interests are affected by the issue in question." Every Cabinet officer must have periodic private access to the President, "otherwise the officer's morale, prestige and hence effectiveness will be gravely undermined."[17]

Suggestions have also been made to establish closer relations between the members of the Cabinet and Congress by giving them seats in the Senate and the House of Representatives and the right to participate in debate without the right to vote. The Secretaries (Cabinet members) are now limited to appearing before the Congressional Committees. The proposed arrangement could conceivably be a mutual advantage. It has been contended that there is no constitutional obstacle if this arrangement is brought about. But there seems slight prospect in fact of the adoption of this plan. Congress itself is hesitant. Alexander Haig noted that Cabinet members can be invaluable in expounding, defending and lobbying for the President's own programme in Congress, without making any institutional changes, with the media, and through each Cabinet officer's personal range of contacts. "Cabinet officers will want to be as responsive as possible to congressional needs and desires—in fact they have to be, since Congress controls their department's budgets."

ADMINISTRATIVE ORGANISATION

The Constitution is silent regarding the administrative structure. The framers of the Constitution were not concerned with the organisation of the executive branch other than the office of the President. But having provided for the three Departments: Foreign Relations, the Military Forces, and Fiscal Affairs, it was evidently assumed that Congress would provide for additional Departments as the needs arose. This conclusion is supported by the constitutional provision that the President can require an opinion in writing from the principal officers in each of the Executive Departments. The Constitution further provides that Congress may vest by law the appointment of inferior officers in the President alone, in the Courts, or in the heads of the Departments. It is on this basis that Congress creates departments, commissions and other federal authorities.

Today, the Executive branch of government is made up of the following types of administrative organisations: (1) Executive Departments, ten in number, each headed, except the Department of Justice which is headed by the Attorney-General, by an officer with the title of Secretary; (2) executive agencies outside the ten regular Departments headed by single administrators; (3) boards and commissions, which may be further divided into regulatory, nonregulatory and advisory; and finally, (4) the government corporations. Agencies outside the ten Departments are usually termed "independent," in the sense that they are not responsible to the head of any Department. Some of these enjoy a large degree of independence of the President while others do not, but all are subject to legislative control by Congress.

The bureaux or the agencies directly associated with the President in an overall planning and control play a vital role in the administrative set-up of the country. There are between 200 and 400 bureaux in the Federal Government of which about 65 report directly to the President. Important out of these are the President's personal staff

16. Reproduced in *The American Review*, New Delhi, Autumn 1980, Winter 1981, p. 51.
17. *Ibid.*, pp. 51-52.

of Secretariat, personal advisers, and administrative assistants; and Bureau of the Budget; the Council of Economic Advisers; Science Adviser; the National Security Council; Civil and Defence Mobilization and the Central Intelligence Agency.

The Independent Commissions are another type of agency and these arose along with the growth of government regulation. Typically they are given regulatory powers over some sector of economy—rail and truck transport, trade practices, power, communications, aviation, tariffs. The Commission membership ranges from three to eleven. Commissions are appointed by the President with the approval of the Senate for a stated number of years. The power of the President to remove a commissioner during his tenure is usually limited.

Then, there are the 'government corporations.' Corporations, in America, as in other countries, enjoy a degree of freedom and flexibility in the performance of their functions which is not open to the more orthodox type of agency. Usually, but not always, the corporation is created to undertake some specific project or to conduct some business undertaking. The Tennessee Valley Authority is the best known of the examples of the Corporation.

Organisation of a Department

At the head of each Department, except the Justice and the Post Office, is the Secretary. Secretaries are the political appointees who express the policy of the party in office. They are also members of the President's Cabinet and are responsible to him for all intents and purposes. If any Secretary is selected by the President from the opposition party, he selects only those who are friendly to his cause. In most of the Departments the second ranking official is the Under-Secretary who is the deputy of the departmental head and like his superior is a political appointee. There are no permanent Under-Secretaries comparable to those serving in the British Ministries. Each Department has Assistant Secretaries, in some one, in others to the maximum four, who again are usually political appointees. Many of them may be career men.

Customarily, the Departments are divided and sub-divided into subordinate units, such as "bureaus," "divisions," "offices" and "services." The basis of division may differ from one Department to the other, but the most common basis is functions and actually speaking there is often much less difference among them than the titles would imply. A bureau in one Department is very similar in form and functions to a division in another Department. An office, however, may differ only in minor details from a service.

Powers and Duties of the Secretaries

While commenting upon the powers and duties of a head of the Department, John Sherman, a former head of the Treasury Department, declared: "the President is entrusted by the Constitution and laws with important powers, and so by law are the heads of Departments. The President has no more right to control or exercise the powers conferred by law upon them than they have to control him in the discharge of his duties....If he (a departmental head) violates or neglects his duty he is subject to the removal by the President or impeachment....but the President cannot exercise or control the discretion reposed by law in...any head or subordinate of a department of the government."[18] But this is not the real position. The President, as said earlier, is the Director of Administration. He is invested with the power of removal and by virtue of vast discretionary powers conferred upon him by laws has a wide choice of ways and means to get his will dominate. Whatever be the theory, the practice is otherwise. Being a political appointee, the Secretary is expected to inject the policies of the President in the conduct of the affairs of the Department he heads, especially when a strong-willed President is determined to carry out a fixed policy. When he does not belong to the Presidential party, he must be friendly to the President's policy.

The head of a Department is a legislator too, for he enjoys to a certain extent freedom in issuing orders pertaining to matters over which he presides. By a general Act of Congress, he may prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers, and property pertaining to it. This broad provision is very often supplemented by legislation giving him power to issue ordinances over particular matters.

The Secretary of a Department, also brings circuitous influence on actual legislation. He must submit to Congress annually certain specified reports bearing on the activities of his De-

18. As cited by Charles A. Beard, in *American Government and Politics*, p. 276.

partment. He must also appear before various Committees of Congress in order to explain, give information and answer to inquiries on legislation pending before Congress.[19] Secretaries write letters to Senators and Representatives, having political affinities with them, urging or opposing measures for discussion. "Indeed they sometimes submit to Congress, on their own motion, elaborate draft of Bills which they wish to have enacted into law."[20]

Finally, several heads of Departments exercise powers which are judicial in character. With the multiplication in the functions of government and growth of subordinate legislation and power of making Rules and Regulations, it has been thought expedient to give the heads of certain departments the authority to hear cases carried up from the lower administrative divisions under their control.

FEDERAL PERSONNEL AND THE MERIT SYSTEM

Those entrusted with the administrative duties are divided into two groups: political appointees and those who belong to the executive civil service. The Secretaries, Under-Secretaries and Assistant Secretaries, bureau chiefs, division heads, members of the boards and commissions form only a minor fraction of all over $2\frac{1}{2}$ million men and women who carry on the civilian activities of the national government. Such a staggering number of Federal government employees present a difficult problem, for the greatness of any government and the quality of its administration depend in large measure on the ability, loyalty and devotion of the men and women who constitute its staff and carry on its activities. Selection and retention of capable employees, therefore, is a prime requirement of public administration.

The Spoils System

For a generation or more the selection and appointment of administrative officers and other employees were based on competency, "fitness for office," a tradition set by President Washington. With the emergence of political parties more weight began to be given to political considerations when filling posts as they fell vacant or when new ones were created. John Adams, who succeeded Washington, was a party man, but he maintained to a considerable extent the principles established by Washington. The advent of Jefferson marked the first change in American public personnel practice. Though he agreed in principle with Washington's concept of "fitness for office" and there were only limited removals during the first two years of his first administration, he found the Departments of government and other administrative agencies peopled with those who were his political and personal enemies. Being a shrewd politician he was also aware of the political significance of the power of appointment. He was, accordingly, moved to remark: "How are vacancies obtained ? Those by the death are few, by resignation none." He found it necessary to remove some officials who had been appointed by his Federalist predecessors. Here is the start of the system known as "spoils," the requirement of party loyalty rather than fitness for office became the prime criterion for public employment.

The real fillip to the spoils system was given by a Congressional Act of 1810. It provided that terms of District Attorneys, Collectors, Surveyors of Customs, Navy Agents, Paymasters, and certain other office-holders should henceforth be limited to four years. It paved the way for rotation in office with the change in administration. For twenty-eight years Jefferson's party remained in power but Madison, Monroe, and John Quincy Adams did not follow the path of their great leader and made only a few removals. When Andrew Jackson occupied the White House, the concept of a public office as "spoils" had attained complete dominance in the governments of the States and vigorous pressure was being exerted for the extension of the principle to the operations of the Federal Government. Jackson welcomed the change as he believed that political parties need something besides "intellectual cement" to hold them together."

Andrew Jackson explained and defended his appointment programme which may be reduced to four propositions. First, since the administration of government is a simple process any person of normal intelligence and industry is capable of performing administrative duties; second, democratic principles support the idea of rotation in office; third, office-holders who remain over a great number of years are corrupted by a sense of power dangerous to the existence of democracy—more is lost by the long continuance of men than is generally to be gained by their

19. A recent Secretary made more than 400 appearances on Capitol Hill.
20. Beard, C. A., *American Government and Politics*, p. 277.

experience; and fourth, democracy is "prompted by party appointment by newly elected officials." The new President did not make a clean sweep of "anti-Jacksonian office-holders," nevertheless he removed in the first year of office nearabout 700 employees in the Executive Departments and filled all the new vacancies with his own party men.

The spoils system, therefore, is the practice, resorted to by political parties as well as factions, of filling appointed offices with their supporters when they come into power. "To the victor belong the spoils of the enemy," said Senator William L. Marcy in a debate in the Senate in 1832, and since then the phrase gained wide currency. While Andrew Jackson did not inaugurate the spoils system, he religiously initiated it and all appointments for party reasons became part of the established order of things in the national, State and municipal administrations. It flourished unchecked between 1820 to the close of the Civil War.

To job spoils were added other types of spoils—contracts, grafts, and the like. In the following years of the Civil War public opinion began to question some of the extreme practices associated with the spoils and the assassination of President Garfield at the hand of a disappointed office seeker served to arouse public opinion, as perhaps never before, on the evils inherent in the spoils system. While the spoils system has not been wholly eliminated even today,[21] important reforms were proposed and adopted in the two decades after the Civil War.

Movement for Civil Service Reform

The price of the spoils system had been too high indeed. The spoils system and political patronage had always produced incompetent and inexperienced public servants, and sometimes grafting and corrupt ones. By the sixties of the last century the standard of the Federal Service was at such a low ebb that civil service reform had become the aim of a popular political crusade. The goal of the civil service reformers was to establish a merit system under which appointments to the public service would be based on ability, experience, knowledge and training rather than on party loyalty. In 1868, Democratic Party urged in its platform that corrupt men be expelled from office and the useless offices be abolished. In 1872, both major political parties advocated civil service reform. The death of President Garfield in 1881 by a disappointed office-seeker aroused the nation's demand for a change in the system by which Federal offices were filled. In 1883, Congress passed the Federal Act, better known as the Pendleton Act.

The Pendleton Act set the basic pattern of national civil service and it is still the fundamental law governing recruitment. It created a Civil Service Commission consisting of three members, no more than two of the same party, appointed by the President and the Senate. The Act divided the administrative employees of the national government into two categories: (1) those in the unclassified; and (2) those in the classified service. Power to determine under which service most administrative agencies of government were to operate were granted to the President. Admission to the classified service was made dependent upon merit as manifested through the process of competitive examination conducted by the Civil Service Commission. Although appointments were still to be made by the President or the heads of the Departments, but the choice was limited to those who ranked at the top on the eligible list prepared by the Civil Service Commission on the results of the examination conducted by it. Also, all classified employees were required to abstain from active participation in politics, and they were to be protected in their jobs against political activity.

At the outset, the reform did not extend far and the number of positions affected did not exceed 14,000. After the turn of the century, the number was greatly increased and in 1937 over 60 per cent of the total positions were subject to the Civil Service Commission. By the Ramspeck Act, which came into force on January 1, 1942, many New Deal positions that had been outside the merit system were brought within its scope—a number estimated at well over 100,000."[22] At the time the Chairman of the Civil Service Commission declared that more than eighty per cent of the regular employees of the national government belonged to the competitive class.

The Civil Service Reform League bluntly declared in 1937 that Congress was always the chief obstacle to progress. It had repeatedly failed, when enacting legislation calling for ad-

21. Some positions are removed from the merit plan, but still they do not seem to receive adequately qualified incumbents. Others are exempted by [illegible] the [illegible] system.
22. Ogg, F. A., and Ray, P. O., *[illegible] American Government*, p. 325.

ditional appointments, to name them as classified services. Such instances were glaring when party long out of power suddenly found itself in control of Congress, *e.g.*, when the Democrats took over in 1886, 1913, and 1933, and Republicans in 1807 and 1921. Roosevelt's accession to Presidency in 1933, followed by his policy of New Deal, gave a rude shock to the merit system. The Democrats were back to power after 12 years, and the rank and file were hungry for offices. Creation of new agencies connected with the recovery plan multiplied the number of new jobs and in great majority of cases Congress exempted from competitive system the new entrants, thus, leaving the way open for spoils. The President by his first executive order on record withdrew from the classified service positions in the Bureau of Foreign and Domestic Commerce, which his predecessors had placed therein. "As a result of wholesale exemption by statute and of spoil raids in a good many of the older establishments as well, the service as a whole so far slipped back" and the proportion on a merit basis sank to hardly 60 per cent in the middle of 1936.

There was renewed agitation for reforms. In 1937, the President's Committee on Administrative Management recommended an extension of the merit system not only "upward and outward," but also "downward" so as to embrace skilled workers and labourers. President Roosevelt, too, urged, on Congress that all except policy making positions be placed on a merit basis. In 1938, the President ordered into classified service all New Deal non-policy determining positions. The Ramspeck Act did the rest. It authorised the President to include in the service, at Presidential discretion, all positions except those subject to Presidential appointments and subject to the confirmation of the Senate, and a few other limited groups of technical nature. In 1951, the proportion of the service operated under the merit plan was approximately 92 per cent. When President Eisenhower assumed office in 1953, he found only 17,382 jobs open for his patronage. The remaining, approximately 2,500,000 persons employed by the Federal Government at that date, were protected by the merit system. Of the 17,382 jobs not protected by civil service, practically all were either at very high or very low levels. Thus, the reform so modestly begun, today embraces a very large part of the federal civil personnel, over 85 per cent.

A significant feature of the American Political System in the ease with which ministers and civil servants in American Government interchange their positions with similar positions in corporate management. In fact, there is a contact flow of senior managers from business to government and of senior bereaucates to industry and private banks.

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