

CHAPTER VIII

LEGISLATIVE CONSIDERATION OF THE BUDGET

IF legislation by representatives is a failure — and a failure due to the inherent character of the system — then we ought to recognize the fact and attempt to devise other means to secure the desirable results that we hoped would flow from the present system. Some people do believe that the representative system has broken down completely and urge the substitution therefore of a small commission of legislative experts. With that proposal we have little patience, and the unlikelihood of its being accepted in any case in the near future does not warrant a digression. Other people would undermine the representative system insidiously by the so-called executive budget.

I. ARE LEGISLATURES A FAILURE?

The issue thus raised will be settled ultimately by the character of the legislative discussion of the budget proposals. That legislative discussion is occasionally a farce and may be frequently a waste of time, no one doubts. But that present American legislative organization or legislative procedure is directed to securing genuine discussion — pertinent discussion — adequate discussion — public discussion of budget proposals, may be safely denied.

Newspapers have frequently described the perfunctory character of legislative discussion of important projects. The orgy of the last night has been characterized in the best style of the newspaperman. How disgraceful the legislative consideration may be sometimes, overriding even existing means to prevent abuse, is shown in an article by ex-Governor Hodges of Kansas describing some "doings" of a Kansas legislature. The ex-Governor says:

"The bulk reading of omnibus appropriation bills totaling \$1,318,779 was the only vaudeville feature of the day!' So said the *Topeka State Journal*—the official state paper of Kansas—in its account of the doings of the Kansas Legislature.

"With a dozen members reading and singing a dozen different appropriation bills at one and the same time—and members on the floor and visitors in the gallery shouting, 'Louder! Louder!'—the House members considered, deliberated and appropriated over one and a quarter million dollars of the state's funds in an old-fashioned singing-school style.

"It was a regular 'Chorus of Money,' the *Journal* continues, as the House sang out the appropriations—a real, true, genuine omnibus passage of laws. No member objected to the procedure, which represented the expenditure of a vast sum of other people's money!

"The Speaker announced 'A bulk roll call and a bulk reading of bills'; and, calling a dozen owners of basso voices to the stand, each member was given a bill that carried an appropriation for some state institution or state department. 'Is every one ready?' asked the Speaker. A dozen members, with a dozen bills, answered: 'Aye, aye, sir!' 'One for the money, two for the show, three to make ready—and four, they go!' shouted the presiding officer.

"And the reading members went. They sang and mum-

bled and shouted the words on the pages of the typewritten bills—each reading from a different bill, with separate provisions. ‘Louder!’ shouted the members. ‘Louder! Louder!’ chorused the gallery visitors, who saw a moment of revelry in an otherwise uneventful day.

“While the bills were being read members pounded on their desks, and the reading ended in an uproar in which the members, clerks and visitors participated. The roll was called and a deliberative body of lawmakers placed its official approval on measures that called for the expenditure of one and a third million dollars, appropriated in bulk form, in a duration of possibly ten minutes of time.

“Making laws is a serious undertaking and making appropriations is a vital part of the state’s business. The one hundred and twenty-five members of the lower branch of the Kansas Legislature seemed to think that appropriating a vast sum of money—by a mass meeting, as it were—was only a vacational recreation; while at other times they discuss with owl-like wisdom for an hour or more the best method of shortening hatpins!” (“Common Sense for Commonwealths,” by George H. Hodges, *Saturday Evening Post*, June 12, 1915.)

Though such conditions as Mr. Hodges describes are exceptional, they indicate the potentialities of abuse of the present system. Occasional legislative discussions could no doubt be quoted—in Kansas, too—that are as dignified and as illuminating as this one was the reverse. But there are legislative devices and means for preventing just such abuses. And these will be described in this chapter.

The legislative consideration of the budget ought to focus public attention on the budget proposals in a significant way. *The audience of a national legislature is not the membership of the legislature and the few spectators in the gallery, but the nation.* This

makes the legislative discussion a means of educating the citizenship of very great value in budget-making, and goes to the very foundations of our government. Its further advantage is that it brings back into the legislature forces of public opinion otherwise without effect, or without even becoming articulate. It is this "action and reaction" of the people's representatives and public opinion which will assure the success of our great democratic experiment.

II. SECURING COORDINATED DISCUSSION:
A SINGLE BILL OR MANY

Our present system of making appropriations may very properly be described as "crazy-quilt" legislation. There is no more system about it than there is in a crazy-quilt. Appropriations for the same department are made in various bills. Appropriations for widely different purposes are made in the same bill. We have absolutely no plan. Appropriation bills are presented to the legislature in dribbles. Appropriations affecting any one department are not present in any one bill. In 1912 a special investigation in Wisconsin showed that there were from two to fourteen separate appropriations affecting single departments scattered throughout the statutes.¹ Wisconsin has since remedied this condition by placing all appropriation acts in one chapter and all appropriations affecting a department in one section or group of sections of the statutes. But most of the states continue the old condition. Bills are brought out by committees not for

¹Special Report of the Joint Committee on Finance of the Legislature of Wisconsin, 1912, p. 14.

the purpose of serious consideration but for the possibility of passing. Slowly these individual bills are presented. The legislature is very frequently without anything to do pending hearings on the financial bills, and then with a great rush, on the closing days and in the closing hours of the closing days of the session, appropriation bills are brought in involving millions of dollars which nobody has had the opportunity of examining carefully in their final form.

It is in the midst of such conditions as this that financial legislation is passed. The only result that can possibly come from this is confusion worse confounded. This surely is the result. In many cases it takes weeks after the legislature has adjourned to determine how much money has been appropriated to various departments.

The obvious remedy for such methods of appropriating is some method of coördination. It would seem utterly impossible to discuss pertinently or adequately these miscellaneous proposals brought in at odd times. The intrinsic worth of each of these things ought to be discussed, but so ought their *relation* to other similar activities of government and to the whole social program. Passing appropriation measures by dribblets does not secure such discussion nor can it. To remedy this situation the proposal is made that the whole financial program be brought in in a single bill. The reasoning back of this proposal is very simple and easily understandable. The individual items in our state or national financial plan must be related to the whole program in order to be intelligible. It is therefore necessary that the complete program should be

presented, and hence the necessity of a *single bill*.

There is need — and pressing need — for correlated discussion of the various elements entering into the national or state program. But it may be denied that the bringing together in a single bill of all the elements entering into our national program is the only way to secure this coördinated discussion or is the best way, or actually secures such discussion.

Sooner or later in all governmental divisions, the executive will prepare the budget proposals for submission to the legislature. Such a proceeding may seriously affect the value of the single bill plan. Under it a legislator has presented to him at the beginning of a legislative session a complete plan for financing the existing organization with such information for other years as will throw light on the new proposals. With this information and the machinery for securing information proposed in this book, separate bills could be fitted into their place in the complete program and acted upon accordingly. Action is then not blind, haphazard, uncoördinated. It may have as definite a relation to the whole as if the appropriation were embodied in a single bill. And thus the need for a single bill is not so evident as would on the impulse of the moment seem to be necessary. The ends to be attained are attained through these separate bills.

But in order to safeguard this presentation of separate bills there ought to be provided as a rule of the legislature that no appropriation bills shall be presented until hearings have been held on all the budget bills. It ought to be provided also that no bill shall be passed for an organization, department or bureau

until the legislative budget for the various special functions which it performs is formulated with respect to the entire service of the state or the nation. For example, if educational work is performed by five or six departments, no bill ought to be passed for any one of these departments until the complete budget is considered, and in this connection it might be advisable to have the budget presented in the form of things to be done rather than under the form of the departments that are to do them.

Other aspects of the single bill proposition should be noted briefly. A single bill to be passed at one time is a direct incentive to log-rolling. So many interests are represented that great pressure of the members is exerted to push the bill through for the sake of a single one or a few of these interests. On separate bills this log-rolling may also be arranged, but the possibility of individual roll calls is a preventive, and the very separateness of the bills does not invite, though it may permit, log-rolling.

Further, if the single bill is made up of detailed items as distinct from lump sum items, then nothing is gained for the estimates are already before the legislature in this form, and the legislature will have to take up the departments or services, or perhaps individual appropriations as a succession of separate propositions, and because of that they might just as well be in separate bills. If the appropriations are of a lump sum character, it is the details of the budget estimates about which the discussion will revolve. These have also been before the legislature from the beginning. And if these are discussed in the com-

mittee of the whole, the committee will take up propositions as under a detailed appropriation plan. It would seem, therefore, that everything that would be gained by a single bill in the way of coördinating the various elements in the budget program and the legislative discussion of them, is secured through the submission of comprehensive budget proposals by the executive and other officers at the beginning of the session. The consideration of appropriations in a series of separate bills which may be fitted into a comprehensive program as the discussion proceeds, accords with the fact and the necessities of the legislative discussion of the budget proposals of the executive.

III. MAKING PERTINENT DISCUSSION POSSIBLE :
CHARACTER OF ITEMS IN BUDGET BILL

The character of a discussion is determined largely by the way the question is framed. How shall the legislature frame its budget questions?¹ But before that question is answered another should be raised. How may the legislature frame its budget policies? Shall the legislature say :

Here is so much money for each of the bureaus making up your department?

Or shall it say :

Here is so much money to do these definite pieces of work?

In which form legislative decisions shall be put can be determined only with reference to the legislative function. The legislative function in our govern-

¹ An answer to this question will have an important bearing on the form of the budget estimates as submitted by the executive.

ment is the declaration of public policy? Can public policy be best declared — or declared at all — by making appropriations by organization units, i.e., departments, bureaus, boards, divisions? You may have five thousand dollars for the accounting division or for the child hygiene bureau, or for the welfare service of the health department. It will be understood, of course, that funds must, in the final analysis, be given to the larger organization units. The problem now is in giving this money to the larger organization units shall it be definitely assigned by the legislature to the smaller organization units? From the standpoint of public policy organization units may or may not be significant. Appropriating money to sub-organization units may be a way of declaring public policy, if the department is organized functionally, but then it is an indirect way. Appropriating money to a bureau or other organization unit of a department makes it independent, makes it practically impossible for reorganization within the department for better serving its purposes. If government organization is static and is functionalized, then it may be possible to declare public policy by means of appropriations to organization units. But in a progressive society like ours, with government anything but static, except where it is not serving its purpose, such appropriations are futile as a means of declaring public policy. Moreover, the question must inevitably come if appropriations are made to organization units: To do what? Perhaps the question may be: To buy what?

Can public policy be best declared — or declared at all — by making appropriations by objects of expendi-

ture? You may spend, Mr. Department Head, twenty-five thousand dollars for personal service or for supplies or for equipment. Does that express public policy? Hardly. But before giving a more definite answer to this question, a misconception that frequently enters into this discussion may be cleared up. From the accounting point of view, which has unfortunately been controlling in a large part of the budget discussion, objects of expenditure are of very great importance. They are the elementary facts of the whole accounting system. *They are the means of rendering an account of stewardship for funds granted. But they are of principal concern to the administrator rather than to the legislator.* To the auditing and accounting officers they are of fundamental importance as an instrument of control; to the legislator they are of subordinate importance. It is not, however, through objects of expenditures as such that legislators declare or can most effectively declare policies. After the legislature has declared public policy in its fiscal aspect, it is primarily the job of the administrator to marshal "the objects of expenditure" to achieve these policies. However, in the budget proposal objects of expenditure may very well be given, not only as a basis for an account of stewardship but as the elements entering into the financial cost of public policies. Hence it is not through "objects of expenditures" that legislators can best declare public policy.

Can public policy be best declared — or declared at all — by making appropriations by projects or functions? You may have, Mr. Department Head, five thousand dollars for food inspection, for workmen's

compensation administration and the like. That we shall or shall not have food inspection, or that we shall have this or that much food inspection are questions of public policy. And hence the budget bill should be in terms of functions or projects in order that the legislature may definitely answer these questions of public policy. It is by such formulation of the budget bill that the legislative consideration of the budget may be directed to fundamental questions of public policy rather than to subordinate questions of financial stewardship.

IV. PERMITTING ADEQUATE CONSIDERATION OF THE BUDGET: THE LIMITED SESSION

Let it be assumed that the legislative machinery is so organized that a coördinated budget is possible. But that is not all. That is purely formal, even though important. It is necessary that the coördination of parts shall come as a result of adequate consideration, and moreover that this consideration shall not be by representatives merely, but that the consideration shall be so managed as to provoke public discussion.

First as to the question of adequate consideration. And the first point to be mentioned has not, so far as is known, been raised in the budget discussion. It is the relation of the limited number of day sessions to the securing of adequate consideration of the budget.

If the legislature had a definite piece of work to do and was of one mind in doing it unmolested by outside influences, setting a time limit might be desirable, particularly if it were possible to determine a correlation between the work to be done and the probable time

needed to do it. But the work to be done is not very definite, and the legislators are not agreed as to what shall be done and how it shall be done, and interests of many kinds are exerting pressure in many ways to influence them to get many things done and undone, or not done.

But despite this fact, state constitutions have imposed a limit on the number of days the legislature may meet. For example, the constitution of the state of Wyoming provides that the legislature shall be in session "not to exceed forty days." (III, 6.) This means calendar days. When it is taken into account that usually in the "popular" branch of the legislature at least one-third of the members are new members, and it usually takes a month for the legislators to throw off the suspicion they bring with them, to get acquainted, to inform themselves in many ways, and to get to working, it would seem preposterous that such a time limit is set upon the length of the legislative session. But if we are really going to develop the representative opinion in the legislature and permit the organization of an effective public opinion outside, the proposition is absurd. And when we consider the range of subjects which a modern legislature must actually consider, and its function of questioning the old and proposing the new, we do not know what adjective to use unless it be ridiculous.

There is another consideration this definite setting of a day of *adjournment sine die* calls forth. It is the orgy of a last night of the legislature. The legislature is more or less tired from its work during the past one, two, three, four, five or six months' work. Pres-

sure has been put on by the leaders during the past few days. It is the last day. The legislature has been in almost continuous session from ten o'clock in the morning. It is now midnight. The clock has been set back. Bills are reported in pell mell. Reports of disagreements of the other house come in. Committees of conference must be appointed. A member discovers a joker in a bill, or the committee has tacked on a rider, or a department is given so much more or less. The amendments are voted down. Discussion, if any, is heated or irrelevant or both. Parliamentary maneuver is rampant. Roll calls more or less abbreviated are had. The legislature dies in an orgy. Exactly what happened both the legislature and the people will learn in a few days.

The greatest contributing factor to this orgy is the limited number of days session. Perhaps the business of the session might have been accomplished within the time limit, but interests were subtly at work delaying, dilly-dallying with minor matters in order to "put some things over" on the last night. The same result is secured also in legislatures with unlimited sessions where under the influence of the desire to go home the legislature imposes on itself a certain day for adjournment. This is particularly easy to bring about in a legislature of farmers who have been in session from January until the time for "sowing the crops" has come.

THE OBVIOUS REMEDY

The obvious remedy for the situation described is to remove any limitation on the length of the session.

The legislature ought to adjourn when its work is finished. It ought to be permitted to proceed with its work in its own leisurely way, if it chooses to be leisurely.

There is a popular misapprehension that a legislature does nothing anyway. The limited number of day session is a result in part of this misapprehension. There is need for the diffusion of general information on what the function of the legislature is, and as to the character of its work. People generally do not realize the value of time in the maturing of legislative projects, nor the number and extent of these projects. Newspapers can perform a real service to democracy by undertaking this work of enlightenment.

If the legislature is really made an agency for provoking public opinion as is proposed, this public opinion will be the best corrective for an abuse of length of session.

Some states recognize the need for unlimited sessions but are anxious to prevent prolonged sessions. These states provide for paying the per diem for a certain number of days of the session, and then reducing or omitting it. A few examples may be given:¹

“Three dollars a day from commencement of session but not to exceed in aggregate \$120 for any one session.” (Ore. IV, 29.)

“Four dollars a day for each day of session, for a period not exceeding 60 days; if longer in session to receive no compensation.” (N. C. II, 28.)

“As provided by law but not to exceed \$5 per diem for first 70 days of each session and after that not to exceed \$1 per diem for remainder of session, except during revising

¹ Cf. Tenn. where absence is penalized.

session, when they may receive \$5 per diem for 120 days and \$1 for a day for remainder of session." (Mo. IV, 16.)
(Taken from "Index Digest of State Constitutions."
Prepared by the Legislative Drafting Research Fund of
Columbia University, pp. 898-899.)

But there is a more serious result than lack of consideration which may follow the limited number of day session if persons care to practice the manipulation which it invites. It is the destruction of administrative departments, e.g., of the administration of the pure food law or what not.

And here is another example of the futility of considering single propositions apart from their context. Prolonged sessions of the legislature make the community, especially the business interests, uneasy. Short sessions will make breathing easier. Why not adopt limited sessions? Some of the reasons for not doing it are given above. Another is given below.

In most of the states appropriations are made annually or biennially. At the end of the fiscal period, by constitutional provision, all appropriations lapse, and the departments are without funds. The appropriation bills are usually brought in at the end of the session — and sometimes on the last night. Disagreement between the houses leaves the department "high and dry." Failure to agree leaves the department without funds during the next fiscal period. A determined majority in one house could thus stop the wheels of government, or of a department or departments.

Similar situations in Congress are patched up by means of resolutions continuing the department on the

basis of last year's appropriations. The real remedy for this situation is in continuing appropriations as has already been stated.

A REINFORCEMENT

The evil effects of the orgy of a last night of a session may be brought about in a session of a legislature which does not have to adjourn because of expiration of time limit where the members agree in advance to adjourn on a certain day *sine die*. This situation could be met in part by a provision in the state constitution or perhaps better in the rules of the legislature requiring that all appropriation bills in their final form shall be printed and lie on the desks of the members for at least three legislative days, which shall not be less than three calendar days. This would permit two full legislative days after the last bill was brought in. This would not necessarily prevent all the evils of a last night orgy, but it would at least give some opportunity to members to inform themselves as to the contents of bills, as they come from the committees. If a number of important bills are presented three days before the close of the session, the evils of a last night are not avoided by the rule. Of course the number of days required may be increased.

V. SECURING ADEQUATE DISCUSSION

(a) BY PUBLIC DISCUSSION

The first condition for securing adequate discussion of the budget proposals in the legislature is the *public* consideration of them. Dark-lantern methods, gumshoeing by lobbyists and private hearings in committees

are the usual substitutes for public discussion. These will be discarded, and in their place there must be a consideration of budget proposals that will bring to bear on the proposals the whitest searchlight of publicity and keep it there steadily.

As is elsewhere pointed out in this book, this is secured by an immediate reference of budget proposals to a committee of the whole of the legislature, and the elimination of the dark-lantern and subterranean ways of the usual standing committee procedure. In the committee of the whole there is the machinery for the manufacture of first page news. The stage is set for something to happen of great public importance about the public's most serious and significant business, its government. It is likely to happen and does happen.

While the legislature is making up its mind, the public is having the opportunity of making up its mind. And the public reaction will be frequently a decisive factor and always an influential one in the legislative decision.

The proposition that the public business is of public interest and the plans for conducting it and financing it should be publicly considered seems almost self-evident: It seems to be self-evident to every one — except the majorities in the legislature.

(b) BY THE PARTICIPATION OF THE PUBLIC IN THE
BUDGET-MAKING PROCESS

The public consideration of the budget proposals by the legislature is of very great importance, but of immensely more importance is the participation of the

public itself in the budget-making process. It is generally regarded as desirable that there should be this participation in budget-making and the more of it there is the better for the budget act. But there is serious difference of opinion as to the stage in the process of budget-making when the public should participate most actively.

One view maintains that public hearings be held in connection with the formulation of the budget proposals by the executive "whether the executive wants them or not." The other view maintains that there is no special need for these public hearings before the governor or, at any rate, they should not be made mandatory if the budget proposals as prepared are submitted to a committee of the whole of each house or to a joint committee of the whole.

PUBLIC HEARINGS BEFORE THE GOVERNOR

The view that there should be public hearings before the executive grew largely out of the rather successful experience of New York City in utilizing similar hearings for effective budget-making. But the all powerful Board of Estimate and Apportionment of New York City is the real budget-making power there, and the poor shadow of a legislature, called the Board of Aldermen, is practically without power. In New York City there is a coalescence of legislative and executive function in the Board of Estimate, and hence its experience is not by analogy pertinent in a discussion of state and national budget-making.

But perhaps there may be some worth to the proposition despite the worthlessness of the analogy. How

would the proposal operate? The executive, whether the President of the United States or a governor, would spend weeks listening to the expression of citizens on each department of the government, but to what end? To help the executive formulate the budget proposals? What would be before such hearings as a basis of hearing is the raw material of the budget proposals, namely, the departmental estimates. It is this preliminary character of the whole work done by the governor, and particularly of the departmental estimates, that indicates that this is not the place for the concentration of public opinion and public interest. The executive may call such hearings, if he wishes, on the whole budget or on only such part or parts as he wishes advice. An executive will probably seek out persons who are informed on the subject for guidance. No objection is here made to the executive holding public hearings, but normally this is not the place for the concentration of public interest. If it can be focused here and again in the legislature, so much the better. But the major thing is to bring it to bear most effectively on the legislature for there rests the real decision. It is the merely preliminary and recommendatory functions in budget-making that the executive performs that do not encourage the widest public interest at this point. Assuming always that the executive has time and has the necessary preliminary information to relate it to such information as the hearings develop, the duty placed upon the executive to make the proposals, and the character of the legislative consideration that these proposals will receive as outlined in this chapter, will make it necessary for the governor to secure the very best

information, both expert and lay, both official and unofficial. It is the freedom of the legislature to act upon the budget proposals that will make the executive peculiarly sensitive to public opinion and anxious to seek it out effectively.

However, in an executive budget where there is not this legislative freedom of action in dealing with executive budget proposals, it is of extreme importance that the public should "get into the game" before — long before — the budget proposals are formulated, for the form in which they are submitted by the executive is presumptively the budget. It is because of the adventitious status given to the executive budget proposals in the so-called executive budget scheme that the public ought to participate in their formulation. And presumably the only way this can be done is through public hearings before the executive, despite the fact that such hearings held at the state or national capital will be only indifferently attended, if attended at all by the citizenship generally.

PUBLIC HEARINGS IN COMMITTEE OF THE WHOLE

The budget estimates as made by the department heads are tentative and do not have standing until approved by the governor. The administrative departments are expressing their judgment of financial needs to meet the social situations as they find them. The governor in his criticism of them brings a lay point of view, but presumably not entirely inexpert. Until the fragmentary departmental estimates are coördinated and coalesced into a state or national program for the next fiscal year, any criticism is directed toward some-

thing that is merely tentative. It would be well to have the benefit of as wide a public criticism of these as is possible. But if these preliminary skirmishes are going to discourage in any way the fullest mobilization of public criticism at the most important juncture in the whole process of budget-making, that is, before the legislature, then they ought to be abandoned. If, however, the omission of budget hearings before the governor is an excuse for the usual provisions in the executive budget plan that the governor may at any time before final passage withdraw his proposals and substitute others, then we have submitted two evils for what was at least a partial good.

But with the executive budget proposals before the legislature, a situation is created which invites and stimulates public participation. Public hearings in a committee of the whole not only make possible but offer the best opportunity for participation by the public in budget-making.

The setting is peculiarly appropriate. The meeting is held in the legislative chamber itself. Visitors are present in the gallery. Presumably all or a majority of the members of the legislative house are present. Here is a matter for consideration of the whole legislature. And there are present the representatives of the executive departments whose budget proposals are up for discussion.

The occasion is peculiarly appropriate, too. The executive budget proposals are before the legislature. There is all the potential material of a dramatic clash of executive and legislature. The legislature is calling in the public for whatever guidance it can give. The

decision is to be made — and it must be made by the legislature — as to the very character of the government and the extent of its program for the fiscal period covered by the budget proposals.

Helping to reach such a decision under such conditions as have just been described is a fitting occasion for the public participation in budget-making. It has a reflex influence on all preceding stages of the budget-making process. It impresses the public itself with the importance of the budget discussion and raises it above the level of the informal talks of the small committee room. Persons appearing before the committee will probably come better informed, better prepared to present their case and ready to answer questions. There will be a tendency to exclude much of the drivel, half-baked plans and irrelevant criticism of the usual committee hearing. The very setting and importance of the occasion will do that.

The very occasion invites “first page” publicity and will produce an amount of public discussion that will have a very great reflex influence on the legislature itself.

And the great advantage of the mobilization of public criticism at this point, besides its effect on administrative officers and executive in budget-making, is that it is being presented where it will count most and count most in the final decision as to what the budget will be. It strengthens, too, the basis for the legislative criticism of the budget proposals and stimulates it by offering cues. These may be followed up later, as pointed out in the next subdivision of this section and in the succeeding sections of the chapter.

(c) THE PRIVILEGE OF THE FLOOR FOR ADMINISTRATIVE OFFICERS

The administration under the direction of the executive, let it be assumed, has carefully worked out the budget proposals. They are transmitted to the legislature. Let us use Congress by way of illustration. No one who has taken part in the formulation of the budget proposals is in Congress; no one who has the detailed administrative knowledge of the departments is in Congress. Shall they be just thrown into Congress to meet what fate comes to them? Or shall the executive use every secret means and agency to help force the proposals through? Or shall those responsible for formulating the budget proposals be given an opportunity on the floor of the house to defend them and to place at the disposal of the legislature such additional facts and information as the discussion shows need for? In other words the question is frankly raised if the privilege of the floor in the legislature should not be given to the chief administrative officers of the government.

EARLY EFFORTS

In the early years, as the Annals of Congress show, members of the Cabinet did attend legislative sessions, but the custom seemed to be dropped gradually. In 1864 House Resolution No. 214 was a "resolution to provide that the heads of the executive departments may occupy seats on the floor of the House of Representatives." In 1881 a bill (S. 227) provided for similar representation on the floor of the Senate and the House of Representatives. Admirable reports

were submitted by the committees to which this bill and this resolution were referred. (George H. Pendleton was chairman of both committees.)

These early proposals have reference to the right of cabinet members "to occupy seats on the floor of the Senate and the House of Representatives with the right to participate in debate on matters relating to the business of their respective departments under such rules as may be prescribed by the Senate and House respectively." Though the right of the administration to discuss general matters relating to their departments may be connected with the budget, our present interest is in this right as it relates to the budget proposals of the administration.

These early proposals wanted to give to the cabinet officers the privilege of the floor. In these later days an extension of this privilege will be required. The establishment of agencies such as the Federal Reserve Board, the Federal Trade Commission, and the Interstate Commerce Commission makes necessary an extension. These agencies are not represented adequately or even partially by any of the secretaries. For the same reason that they must submit separate estimates, they or the chairman or manager of these commissions ought to be extended the privilege of the floor. The same situation exists in the states where there are genuine administrative commissions, e. g., the Wisconsin Railroad Commission or Industrial Commission.¹

With the systematic organization of budget pro-

¹ By the same reasoning that the right of the floor ought to be extended to administrative officials, the same privilege should be extended to a representative of the judiciary.

cedure as proposed in this book, the proposals as they come to the legislature have a known father. Ordinarily executive proposals are smothered in illegitimacy, and only the gossip of the lobbies makes known the real facts. The public is hardly ever really "let in" on the facts. But in thus giving the executive definite opportunity to make proposals or rather requiring him to make proposals, he should not be left to present methods of having them carried out.

These methods are aptly described in the Congressional report of the bill introduced in 1881 and are exactly descriptive of the situation in Congress to-day and in our state legislatures. The report says:

"It has been notorious for years that by personal interviews with Members, by private conversation at the office, in social intercourse at casual meetings on the floor of the two Houses, by verbal statements to the chairmen of committees—liable always to be misunderstood or even misrepresented—by unofficial communications to the committees themselves, these officers originate, press forward, modify, or entirely defeat measures of legislation; and it has often happened that the rules of the House have been violated by stating what has occurred in committee, in order to convey to Members the opinions or wishes of a secretary.

"These officers have no authorized communication with the committees or the House. Their suggestions, even if in writing, are not recorded. No trace of their exertions is left behind. They work, they accomplish, and yet after a few weeks, or even after a few days, it would be difficult to show, although Members were fully conscious of it, that they had produced any effect as to particular measures or even what their opinions were in relation to these measures. Their secret, silent, omnipresent influence is felt, yet they are without responsibility. It is not necessarily corrupt because

it is secret and silent; but it may be; and wherever opportunity for corruption exists there will be, there ought to be, suspicion and distrust." (Privilege of the Floor to Cabinet Officers, Reports made to Congress, 1913, pp. 18-19.)

Another important result has been noted by Justice Story in his Commentaries on the Constitution (Sec. 869 et seq.). It is that under the present arrangement "the executive will never be compelled to avow or support any opinions. His ministers may conceal or evade any expression of their opinions. He will seem to follow, when, in fact, he directs the opinions of Congress. He will assume the air of a dependent, when, in fact, his spirit and his wishes pervade the whole system of legislation. If corruption ever eats its way silently into the vitals of this Republic it will be because the people are unable to bring responsibility home to the Executive through his chosen ministers. They will be betrayed when their suspicions are most lulled by the Executive under the disguise of an obedience to the will of Congress." Instead of the word "Congress" substitute the word "legislature" and we have an accurate description, for example, of what repeatedly happened in the 1915 Wisconsin legislature and of what is happening frequently in other state legislatures.

And in the light of these facts, easily verifiable by the careful student in any legislature now meeting, is it not natural that the Congressional Committee who studied the question should ask:

"Would it not be better that their opinions should be expressed, their facts stated, their policy enforced, their acts defended in open day on the floor of the House, in the face of the Nation, in public speech, in official, recorded state-

ment, where there can be no hidden purpose, no misconception, no misrepresentation?

"This would enlighten the House, inform the country, and be just to the officer. It would substitute a legitimate for an illegitimate power. It would establish an open, official, honorable mode of exercising that power instead of a secret unrecognized mode, liable to abuse, and therefore always subject to the suspicion that it has been abused. It would establish authorized and accurate instead of unauthorized, and therefore uncertain and inaccurate, communication with the House." (Privilege of the Floor to Cabinet Officers, Reports made to Congress, 1913, p. 19.)

CERTAIN OBJECTIONS

Two constitutional objections are made to the plan which, however, are easily disposed of. One is based on the provision that no person holding any office under the United States shall be a member of either House during his continuance in office.¹ The answer to this objection is that it is not proposed to make the administrative officer a member of Congress. It is merely a proposal to admit, under the constitutional provision that each house may determine the rules of its proceedings, certain persons to the privilege of the floor without the right to vote and without the immunities of Congressmen.

¹"The provision of the Constitution, that 'no person holding any office under the United States shall be a Member of either House during his continuance in office,' is in nowise violated. The head of a department, reporting in person and orally, or participating in debate, becomes no more a member of either House than does the chaplain, or the contestant, or his counsel, or the Delegate. He has no official term; he is neither elected nor appointed to either House; he has no participation in the power of impeachment, either in the institution or trial; he has no privilege from arrest; he has no power to vote." (Privilege of the Floor to Cabinet Officers, Reports of the U. S. Congress, p. 5.)

The other objection is in substance that the proposal is a violation of the principle of the separation of powers. The report of the Committee already referred to entirely disposes of this objection.¹ Rather than being an objection it does what President Taft very aptly says it does: "It would only facilitate their coöperation in the public interest." (Message of the President of the United States, 62d Cong., 3d sess., No. 989, 1912.)

A SOUND BASIS

This proposal for a "free open candid consultation" between administrative and legislative authorities rests

¹ "Your committee is not unmindful of the maxim that in a constitutional government the great powers are divided into legislative, executive, and judicial, and that they should be conferred upon distinct departments. These departments should be defined and maintained, and it is a sufficiently accurate expression to say that they should be independent of each other. But this independence in no just or practical sense means an entire separation, either in their organization or their functions— isolation, either in the scope or the exercise of their powers. Such independence or isolation would produce either conflict or paralysis, either inevitable collision or inaction, and either the one or the other would be in derogation of the efficiency of the government. Such independence of coequal and coördinate departments has never existed in any civilized government, and never can exist.

"The Constitution of the United States wisely distributed the powers of the Government, and with equal wisdom most carefully provided for the harmonious coöperation of the several departments to which such powers were confided."

And again:

"If there is anything perfectly plain in the Constitution and organization of the Government of the United States, it is that the great departments were not intended to be independent and isolated in the strict meaning of these terms; but that, although having a separate existence, they were to cooperate, each with the other, as the different members of the human body must cooperate with each other in order to form the figure and perform the duties of a perfect man." (Privilege of the Floor to Cabinet Officers, Reports made to Congress, 1913, pp. 6, 8.)

upon two simple propositions. In the words of the Committee they are:

"First. That it is the duty of Congress to avail itself of the best possible means of information in relation to the measures of legislation on which it may be called to act.

"Second. That the influence of the executive department upon the legislative, whatever it may be, should be open, declared, and authorized, rather than secret, concealed, and unauthorized."

THE RESULTS ON THE ADMINISTRATION

Besides facilitating the coöperation of the legislature and the executive in the public interest, the presence of representatives of the executive departments on the floor of the legislature has very important reflex influences on the administration. It may be summed up in the phrase that it puts the administration on its mettle. The possibility of having to explain in such a public manner as here provided would make any public officer alert and watchful. It would spur the principal administrators to give closer attention to what was actually happening in their departments. They would keep currently informed on needs instead of cramming in the information at the time of the preparation of estimates. They would be more interested in the public's attitude and would take greater care to avoid just criticism. Finally it would affect very much, indeed, the kind of men who were selected for the higher and highest administrative posts.

But let it be repeated that from the standpoint of budget-making the major advantages of the plan are:

(1) The legislature has at its immediate command

the best available governmental knowledge and experience — and has it available in a way that will make it valuable in formulating effective public opinion, and

(2) The backstairs and subterranean channels of influence of the executive are made unnecessary, and such influence as the executive wishes to exert may be exercised in an open, declared and authorized way, and

(3) Possible misunderstanding between legislature and administration may be averted because of the possibility of immediate correction of misstatement, misinformation or wrong conclusion.

VI. ORGANIZING CRITICISM

(a) GIVING MINORITY MACHINERY FOR COLLECTING INFORMATION

A great deal of the value of the so-called budget system depends upon what happens to the budget proposals after they leave the executive, i. e., in the legislature. This book accepts the point of view that the budget proposals ought not to have any strong presumption in their favor because of their source, but should stand or fall on their intrinsic worth. Hence the importance of the amount and quality of the budget discussion. One of the fundamental troubles with the national scheme of appropriating money is what happens to the estimates sent to Congress. From what happened to the recommendations of President Taft, the same thing would happen to revised estimates by any President himself. What does happen to these estimates? They are sent to the Appropriations Committee and are transformed by some occult process — occult to the public — into the various appropriation bills. There

may be hearings, but these do not receive adequate publicity. The stage is not set for it. The process being admittedly preparatory, the real work going on behind closed doors, the conditions for inciting public interest are not present.

But what happens to bills after they are reported to the legislature is more significant. The writer has seen bills appropriating millions of dollars presented to a legislature a few hours before final adjournment and passed without any knowledge by most of the legislators of any of the provisions of the bill. He has seen one appropriation bill after another introduced into a legislature in the orgy of a last night because "the boys" had to go home. It is this abdication of authority by the legislature that must be corrected. If the budget system is going to mean anything, and the fundamentally democratic character of our government is to be maintained, then the deliberative character of our legislature, particularly on budget matters, must be restored.

It is this condition which Frederick A. Cleveland, for example, accepts and makes the basis of the demand for the so-called "executive budget." It is presumably for this reason that he says that all the legislature can be anyway is a ratifying agency, ratifying the suggestions of the executive or of its own committees. But the conditions of Congressional legislation¹ are apparently designed to prevent genuine discussion by means of King Caucus, by means of the calendar as at present manipulated, by means of the rules. The manipulators

¹ This is less true of the Senate than of the House.

of Congress want to make it a ratifying agency. A new insurgent movement is needed badly.

In the present organization of our legislatures the majority may be ruthless. Very rarely does the minority or the minorities have any rights which the majority feels bound to respect.¹ Particularly since the caucus has been called so frequently into play, this tyrannical use of the power of the majority is augmented in great measure by what Bagehot calls the mechanical character of the majority. A mechanical majority is a majority that registers practically automatically the judgments of its manipulators, or if you prefer, of its leaders. Nothing can be worse for government than a mechanical legislative majority because in it virtually rests the sovereign power and through it we become not a democracy but an autocracy, not a representative government but an oligarchy.

“Mechanical” describes our governmental machinery rather accurately. We have four year terms for presidents and two year terms for Congressmen, come what will. The whole tendency of our organization is to sanctify routine — is machine-like. Disturbing factors — the possibility of new elements — are subordinated to the ordinary run of things. The governmental machine is to a considerable degree self-sufficient, or, at any rate, the possibilities of bringing into the legislative and administrative arena new forces, fresh points of view and additional information are not realized.

The legislative assembly of the nation or of a state

¹ Filibusters in the United States Senate being the exception that proves the rule.

offers the background for action, however great. Yet it really never reaches the people and is rarely the subject of first page publicity. A robbery of five thousand dollars' worth of jewelry from John Jones' house gets ample publicity, but a legislative robbery of millions via the pork barrel goes unmentioned. And this is characteristic. Examine the Congressional Record, — that morgue of eloquence and "hot air," of sound information and of unadulterated misinformation, of good sense and sheer nonsense — and you will find to what extent valuable public information — the wheat among much chaff — is neglected by existing publicity methods.

The real trouble is that the legislative discussion is not properly stage-managed. Ordinarily a legislative majority, as determined in the caucus, is going to record its predetermined decision. The process has little interest. And that brings us to the present point: the minority is practically disfranchised. Criticism of the majority is not encouraged, and surely the rules do not stimulate such criticism. And right here the American people may safely borrow a principle from Great Britain. Bagehot has pointed out that the English government was the first government which made "criticism of administration as much a part of the polity as administration itself." (p. 87.) This was done by utilizing the minority in the public interest.

There must be in Congress and in the state legislatures enfranchisement of the legislative minority. It must be utilized in budget-making as an effective agency for the criticism of the administration. But in order that this machinery may be effective the minor-

ity must have at its command at governmental expense the machinery of investigation so that its criticism may be intelligent and effective because it has access to all the information the majority has.

This could be done by organizing a Committee of the Minority, made up entirely of minority members selected by the minority, provided with adequate power of investigation and with an adequate staff protected by continuing appropriations. Such a committee would put the administration on its mettle. If the legislative majority was opposed to the administration, it would provide machinery for its legislative sympathizers to organize for the discussion *without putting too great a strain on the routine administrative machinery.*

(b) MINORITY QUESTIONING OF ADMINISTRATIVE OFFICERS

Perhaps of more importance even than giving the minority control of a committee on accounts with ample staff and authority is the right of a member of the legislature or a group of members to require the presence of an administrative officer before the legislature to be questioned on any phase of the work of his department. We are not now concerned with the effect of such a practice in making the administration alert and in preventing all those evils of bureaucracy which we very properly fear and deplore. We are interested in it as furnishing to the critics of the administration and of the budget proposals the opportunity of raising the issues created by the budget proposals and to get specific and authoritative statements from responsible officers as to the exact meaning of each part of the budget program. Moreover, it makes the ac-

count of stewardship for past fiscal periods in a sense personal and effective to a degree that is not possible under any other legislative device.

This right of question or interpellation, as it is sometimes called, is a very valuable and almost indispensable supplement to giving the minority the machinery, staff and power of investigation. It is the fruition of this power of investigation. It can be easily imagined how the keeping of records may be manipulated to conceal as well as to reveal information. That public records have been kept with that purpose in view has been frequently shown. In the examination of such records many a mystery would be solved by securing answers to simple questions by administrative officers. But in American legislative procedure it is not now possible for a minority to secure such an answer. In many cases it is not possible for the majority to secure such information if the public official is not obliging.

Apart, too, from the question of what is the fact, there is oftentimes the more important question as to what is the meaning of the facts. Then there is the human element which may be decisive in administrative acts and which hardly ever gets recorded unless in private letter or conference. The right of a minority to question is a means of getting into the public records and getting additional information such as would never be revealed by a mere examination of accounts or by voluntary testimony.

The audience of a legislature ought not to be merely its own membership, but the nation. The right of "question" makes this possible more frequently than any other means because it dramatizes the conflict.

And in the dramatization of the conflict is the news value. A nation the next morning reads on the first page of its newspaper the story of the legislative struggle in terms it can understand. Let us see the process. The English procedure has been succinctly described by Sir Courtenay Ilbert, Clerk of the House of Commons, as follows:

“Any member has the right to address a question to any minister of the crown, being also a member of the house, about public affairs with which he is officially connected, or a matter of administration for which he is responsible. The proper object of such a question is to obtain information on a matter of fact within the special cognizance of the minister, and the rules and practice of the house limit the right to ask questions so as to confine them to this object. The practice of putting questions to ministers developed rapidly during the latter half of the nineteenth century and tended to occupy so much time that restrictions became necessary. Under the existing rules notice of any such question must except in special cases, appear on the notice paper of the house at least one day before the answer is to be given, so that the minister may have time to prepare his answer. If a member wishes his question to be answered orally, he marks it with an asterisk, and a period of about three-quarters of an hour is set apart on four afternoons of the week for the answering of such questions. During that period supplementary questions may be asked within limits determined by the Speaker, but no debate is allowed to arise, and in this respect the English practice differs from the ‘interpellations’ of the French chamber. A minister cannot be compelled to answer a question, and sometimes declines to do so on the ground of public interest. It is for him to determine what kind of answer is likely to be considered proper and sufficient in the circumstances of the case. An unsatisfactory answer may give rise to a motion for adjournment of the house, which, under one of the standing orders, is

the technical mode of obtaining a discussion at a later hour of the day. But such a motion is not allowed unless the matter to be discussed is a 'definite matter of urgent public importance,' and the Speaker is strict in his interpretation of this rule. The answers to 'unstarred' questions, and to 'starred' questions for which time cannot be found within the allowed period, are circulated to members subsequently." (Sir Courtenay Ilbert, "Parliament, Its History, Constitution and Practice," pp. 112-113.)

This same process has been introduced in America for the first time in the state of Wisconsin in a very cautious way. A bill was introduced in the 1915 legislature giving a small group in the legislature the power the individual member has in England. This bill was defeated, but attached to a bill creating the Conservation Commission, its essential provisions were added so as to apply to this single commission. In a revision of the chapter on the legislature (Chap. 634, Laws of 1917) the 1917 legislature made the provisions of this law generally applicable to appointive officers. The provisions of the 1917 revision are:

"Section 23. (1) Upon the petition of six members of the senate, not more than four of whom shall belong to the same political party, or of seventeen members of the assembly, not more than nine of whom shall belong to the same political party, any appointive state officer shall appear before that branch of the legislature to which the petitioning members belong, to answer written and oral interrogatories relative to any matter, function, or work of such officer, or relative to any act or omission, or other matter pertaining to the powers or privileges exercised or duties performed by him or by any employee or subordinate of such officer, or in any way relating to the manner, conditions or terms of his appointment, or of any appointment made by him; or in

relation to any act, omission or conduct unbecoming the position of any such officer. Such petition shall be in writing, shall be accompanied by written interrogatories, shall be signed by the petitioning members, and shall be filed with the presiding officer of that branch of the legislature to which such petitioning members belong.

“(2) Upon the joint petition of six members of the senate, not more than four of whom shall belong to the same political party, and seventeen members of the assembly, not more than nine of whom shall belong to the same political party, filed with the presiding officer of the senate, requesting an examination of any appointive state officer made subject thereto by subsection (1) before a joint session of the two branches of the legislature, such officer shall appear before such joint session and answer written and oral interrogatories as to any matters included in subsection (1).

“Section 24. (1) Upon the filing of any petition, as prescribed by section 13.23, the presiding officer with whom the same is filed, shall forthwith fix a time not later than twenty days after the filing of the petition, for the meeting of that branch of the legislature, or the joint session of the legislature, as the case may be, before which such interrogation and examination shall be held. A notice of such meeting, together with a copy of the written interrogatories, shall be forthwith delivered to the officer named therein.

“(2) The legislature may adopt rules and regulations to govern such examinations. All proceedings, including all questions and answers, shall be fully recorded and a copy thereof shall be transmitted to the governor within thirty days after the close of the examination.”

Apart from the fact that the number of members required might very well be cut in two, the provision that not more than a certain number must be of the same political party is inadvisable. In many states only Republicans and only Democrats are elected, and

such a provision would prevent the effective use of this means of legislative control because of the difficulty of securing members of the majority. Members who did would probably be stigmatized as entering into an "unholy alliance"—unholy, let it be added, from the political and not from the public point of view. In Wisconsin such a provision is not likely to really restrict the use of such an agency because of the presence of Socialists in the legislature and because of the rift in the majority party into Progressives and Stalwarts. It would be comparatively easy to secure members of the majority joining with minority groups to secure such information. Of course in any state of factional political strife such a provision would operate. And it would operate just as well and more constructively in a state where party loyalty did not mean much in the face of a public interest.

It must not be thought that there is no need for permitting "interpellations" if there is executive representation on the floor of the legislature with the right to speak though not to vote. Entirely different objects are aimed at by these devices. The latter aims at giving the administrative agencies of government the opportunity to place fully before the legislature their case, presumably in its best aspects. The former aims at compelling the administrative agencies of government to supply the legislature, on the initiative of a single member or a small group, information which it has not voluntarily placed before it, or of which it did not see the need, or that has grown out of its own administrative action. In the interest of genuine discussion of

the budget proposals, both of these means of stimulating discussion ought to be utilized. Neither serves the purpose of the other.

SUMMARY

Perhaps the greatest legislative reform needed and one which includes all the lesser ones is to make our legislatures genuinely deliberative bodies. The recommendations made with reference to legislative organization are made largely with reference to making the machinery of legislation subordinate to the ends for which it is devised. The legislative organization proposed in the preceding chapter "clears the decks for action."

But how can an effective legislative consideration of budget proposals be secured? It can be secured by formulating the budget questions to the legislature in such form as will secure pertinent discussion. The vast array of information must be organized primarily with reference to the legislative declaration of policy. This is secured by organizing the information about services-to-be-performed, and similar or related services should be organized with reference to their coördination irrespective of the fact whether they are assigned to different organization units. The appropriations will actually be made to departments but will be made for services-to-be-performed, that is, in terms of functions. Objects of expenditures, such as personal services and supplies, have primarily administrative significance and are important in this connection only as supporting data.

In order that this coördination of services or func-

tions may be guaranteed, the budget proposals must be presented to the legislature as a whole. But this does not require that the budget act shall be passed in a single bill. So long as the complete budget proposals are before the legislature the separate departmental or service bills can be fitted into the program. Or what is the same thing, the legislature can come to tentative agreements on the separate services as the consideration of the budget proposals progresses, and it can then finally pass the budget at the conclusion of the consideration.

But time must be allowed to permit adequate discussion, and the rules must be formulated in the interest of discussion. Opportunities for rushing legislation through must be curtailed. And for these reasons it is urged: (1) that legislative sessions should be for unlimited periods; (2) that rules reform should proceed in the direction of permitting adequate discussion; and (3) that for the present and because of the difficulty of organizing and mobilizing a real national or state public opinion the bicameral character of the legislature should remain unchanged.

These three recommendations are further means for permitting adequate discussion. Adequate discussion will be secured if the legislative consideration of the budget proposals at all stages is a public discussion and if the public actively participates in budget-making both directly in the committee of the whole and indirectly in organized effective public opinion to help the legislature arrive at its decision. Public and adequate discussion of the budget proposals will be secured if the opposition is used as an agency of criticism and if the ad-

ministration is used as an agency of exposition and of defense. The latter will be accomplished by giving the principal administrative officers the privilege of the floor without any right to vote; the former will be accomplished by giving the minority machinery to collect information and the right to question administrative officers about their activities and their duties and to receive answers, or in other words, to give the minority the right of interpellation.