CHAPTER XI

THE EXECUTIVE VETO

In the executive budget plan there is no need for executive veto except for legislatively initiated appropriations, for the legislature is primarily a ratifying agency of executive proposals. In the plan here proposed the present relation of executive and legislature is accepted, though it is believed that the budget-making procedure is so ordered that each can better perform the functions definitely assigned to it in our scheme of government. The executive veto is therefore retained. The legislature has full power over budget estimates, and the veto power is given as a corrective for possible abuses as a means of requiring the legislature to think again and as a means of calling the legislature's attention to projects of doubtful value. Moreover, it gives public opinion that has been slow in forming an opportunity for expressing itself after the legislature has definitely formulated its ideas. The function and value of the executive veto in budget-making are the subject matter of this chapter.

EXECUTIVE VETO OF ITEMS

Despite the abuse of the veto power by the colonial governors, the constitution of 1787 gave the President the "qualified negative" with which we are familiar.

While radicals with reference to their relations to England, the colonists were essentially conservative in formulating their own constitution. There was just a slight fear of popular assemblies running amuck. It was necessary, therefore, to have a check on them through the executive who was to be the best man selected by the best men as organized in the Electoral College. The veto was very sparingly used at the beginning. Up to 1830 only seven Presidents of the United States used it, and no bill was passed over a veto until 1845. Since 1845 the veto power has been more frequently used than before, but its use even now is infrequent compared to our vast mass of legislation. There are, of course, exceptional cases like Johnson's twenty-one vetoes, Grant's forty-three vetoes, and Cleveland's three hundred and one vetoes. But the main point is that the veto was conceived primarily as a negative influence on legislation. Only recently (1915) the Supreme Court of Illinois held that in exercising the veto power the governor "is exercising only a qualified and destructive legislative function and not a creative legislative power." [1] It was to prevent too hasty, ill-considered, ill-advised legislation.

THE SITUATION WITH REFERENCE TO ITEMS IN APPROPRIATION BILLS

Appropriation bills are rarely vetoed, but it is urged that the opportunity to veto is practically denied the President through the placing of many unrelated items in one bill. So many of these items are undoubtedly

[1] Opinion of the Supreme Court in the Fergus Case, Filed Nov. 6, 1915.

in the public interest, and others are just "pork." But to veto the bill injures the public service less than passing it, and so the President is "hamstrung." The situation is thus worded in a memorandum submitted to the Chamber of Commerce of the United States:

"Thus, by conjoining in a single bill diverse subjects of varying degrees of merit and requiring action by the President upon the bill as a whole, he is deprived of the power of independent judgment, and coerced either into accepting that of which his judgment disapproves or defeating that which he believes wise and necessary.

"This condition arises through the absence from the Constitution of any regulation as to the number of subjects which may be included in a single bill, and from its failure to empower the President to deal separately with unrelated subjects when conjoined in a single bill.

"Two grave accompanying evils have resulted:

"One — The practical powerlessness of the President to exert any effective restraining influence upon general appropriation bills, and the resulting outlays;

"Two — The frequent enactment of undesirable measures opposed by the President by attaching them as 'riders' to general appropriation bills whose passage is usually indispensable to the operation of government, and whose acceptance by the President is therefore practically compulsory.[1]

"The President is practically powerless to prevent these abuses, which lie at the root of the governmental extravagance of the United States, by reason of the fact that he has no discretion as to individual items, but must accept measures as a whole or reject them as a whole."

The remedy for the evil is, in short, executive veto of items in appropriation bills.

[1] This is not strictly a budget problem and hence is not discussed here.

THE CASE FOR THE EXECUTIVE VETO OF ITEMS

It is urged in support of this contention for the veto of items that:

(1) defects are generally conceded by publicists;
(2) defects are denounced by well informed public opinion;
(3) several Presidents have protested earnestly in various veto messages against the Congressional coercion;
(4) public sentiment is progressively in favor of it.

These four points make in reality two points, namely, the "rebellion" of Presidents against Congressional coercion, or, in other words, that several Presidents have been in favor of veto of items because they were compelled, on account of the form of the appropriation bill, to sign bills containing objectionable items; and an increasingly favorable public sentiment. Both of these points will be taken up in detail.

WHAT IS AN ITEM?

Assume for the moment that there is an unquestioned public sentiment in favor of the executive veto of items of appropriation bills. The basis of this assumed public sentiment is very simple. Appropriation bills contain many items, some objectionable, many not. The executive ought to have the power to reject the objectionable and accept the rest. The remedy is therefore very simple; the executive veto of the items of appropriation bills.

Let us look for a moment at the actual situation as

it confronts an executive. An appropriation bill comes to the executive in this form:

State of Nevada
Public Works No. 1 — Bridge, A, River...$10,000,000
Public Works No. 2 — Dredging 100,000
Public Works No. 3 — Preparation of plans 10,000

or

State of Nevada
P. O. City of A.....$50,000
P. O. City of B..... 50,000
P. O. City of C..... 50,000

We suppose that item 3 in both cases is objectionable. The advocates of the veto of items show how very simple their remedy is. Is it?

But suppose the legislature wanted to present the appropriations to the executive in this form:

Public works.....$1000000000

In such a procedure on the part of the legislature the executive veto of items is useless, and exactly a similar situation could occur with reference to the case of post offices.

Let us study this a little more closely and take, by way of illustration, an appropriation for a state university. The principle of the case will apply equally well to any state or federal department.

If the appropriation were presented in this form:

University of Weissnichtwo.....$3,000,000

it would make no difference whether the executive had the power to veto items or not. He would have to

reject or accept the total appropriation. But, on the other hand, the appropriation bill might be in this form:

APPROPRIATIONS FOR THE UNIVERSITY OF WEISSNICHTWO:

Graduate School	$10000
College of Arts	10000
Extension Division	10000
School of Medicine	10000

In such a case, the executive could decide merely whether a school is to be supported or not, and the use of the veto power here is comparatively slight. Still another form in which the appropriation bill may come to the governor is:

APPROPRIATIONS FOR THE UNIVERSITY OF WEISSNICHTWO:

College of Arts	
Department of Latin	$10000
Department of Mathematics	10000
Department of Political Science	10000
Department of Sociology	10000
Department of Hebrew	10000

The usefulness of the power of the executive to veto items is, with this form of appropriation bill, more serviceable. He could express somewhat his preference for the "cultural studies" or for the new studies. But he would be limited to merely negativing a whole department. He could not nicely express his preference for one or the other. The number of forms in which the appropriation bills might come to him are numerous, but we will carry our illustration one step further. The appropriation for the University of

Weissnichtwo may come to the executive in this form:

College of Arts
  Department of Political Science
    Professor Teufeldrock.....$100000
    Professor Richard L. Ross..... 100000
    Professor Edward A. Wyman..... 100000
    Professor Bruce McLaughlin..... 100000
  Supplies

Now in a detailed itemized appropriation bill, the power to veto items has its maximum effect, and in fact depends for its usefulness on such a detailed segregated appropriation bill. But notice also not merely the power for good, but also for evil. Let us suppose that Professors McLaughlin and Wyman are safe and sane, experts before public service commissions for public utility corporations, "accelerators of public opinion." Suppose on the other hand that Professors Ross and Teufeldrock were advocating government ownership of telephone and telegraph, limited franchises for water power corporations, child labor and woman labor laws. What a power the veto of items would be for good or for evil in such a case.

What is the upshot of the matter? The problem of the veto of items of appropriation bills is secondary to the problem of the form of the appropriation bill. In other words, the usefulness of the veto of items depends upon our meaning of items and depends for its value on the detail in which the appropriation bills are itemized. The question of the detailed appropriation bill is discussed at some length in the chapter on "The Budget and the Administration." It is there shown

why detailed appropriation bills are undesirable. And if the experience there told and the reasoning on it are conclusive, then the veto of items is built upon a foundation of sand.

THE CHARACTER OF THE APPROPRIATION PLAN OF FUNDAMENTAL IMPORTANCE

Budget bills may present different questions to the executive in connection with the possible use of the veto power. The character of the question to be answered will seriously affect the use of the veto power. Suppose the appropriation for a department were presented to the executive in this form:

Department of the Interior
Bureau of Education.....$10000000

The character of the question the executive will have to answer in considering this appropriation is not evident from the form of the appropriation but is determined by the general character of the appropriation plan.

If past legislatures have been wise enough to establish the presumption of continued existence for the permanent services of the state or nation on the basis of continuing appropriations, the question before the executive is: *Shall the Bureau of Education have the proposed appropriation or shall it continue on the same basis as last year's appropriation?*

If on the other hand there is no presumption of continuance of public services and these services are financed for just a year or a biennium, then under this system of annual appropriations the question before

the executive is: *Shall the Bureau of Education have the proposed appropriation or nothing?* In the former case the question is whether a change shall be made in the running of the department whose continuance is presumed. And in the latter case the question is whether the department shall be abolished or whether it shall be continued on the proposed basis? The question of the executive veto is affected, therefore, not only by the form of the appropriation bill, but by the fundamental character of the appropriation plan.

IS PUBLIC SENTIMENT FAVORABLE TO EXECUTIVE VETO OF ITEMS?

Two arguments are urged in favor of the executive veto of items: a progressively increasing favorable public opinion, and the experience of the Presidents. Bryce states the case for the former in these words: "Such an amendment is generally desired by enlightened men because it would enable the Executive to do his duty by the country in defeating many petty jobs which are now smuggled into these bills without losing the supplies necessary for the public service which the bills provide. The change seems a small one, but its adoption would cure one of the defects due to the absence of ministers from Congress, and might save the nation millions of dollars a year by diminishing wasteful expenditure on local purposes." [1]

If Bryce's statement is accepted at its face value, then giving cabinet members a seat in Congress would obviate the errors indicated and others, so far as there

[1] Quoted by Merchants' Association in their statement to the Chamber of Commerce of the United States, 1916, p. 5.

is the possibility of comparison between the English practice and our own. If Bryce here means that the American Cabinet members shall have in Congress relatively the same position as British ministers do in Parliament, then the comparison avails nothing for that is impossible without a radical change in the underlying theory of and in the structure of our government.[1] But apart from this remedy, Bryce's statement is based merely on opinion, however enlightened.

Statistics about constitutional provisions are used in support of the contention that public opinion is favorable to the executive veto of items. As indicative of the extent to which the public sentiment of the United States has progressed in this matter, it is pointed out that "the Constitutions of no less than 39 of the States have been so amended as to require, in effect, that each bill shall contain but one subject, to be clearly expressed in its title, with exceptions as to appropriation bills in 12 of such states; while in 35 states the Constitution permits the Governor to disapprove specific items of appropriation bills, which items become void unless repassed by the legislature." Accepting the facts as stated, the need for veto of items of appropriation bills in the twenty-seven states that require that each bill (including appropriation bills) shall contain but one subject to be clearly expressed in the title, is slight. If each bill treats of one subject, the question is clearly put up to the executive as to whether he wants to allow a specific amount or amounts as the case may be. If it is insisted that the governor should

[1] How serviceable cabinet members might be on the floor of the legislature from other aspects of the budget problem is indicated in Chap. VIII.

not be confronted with a lump sum appropriation but with a very minutely detailed appropriation bill, the question shifts to the form of the legislative act. This question has been discussed elsewhere from the point of view of the administration.

But the actual situation as it confronts us is not fully presented in the above quoted summary. It may be presented somewhat more fully as follows.

Even assuming that the inclusion in the constitution represented a deliberate judgment of the electorate, one ought to hesitate a long time before declaring that the provisions of the present constitutions indicate any general public opinion in the United States on a general proposition of giving the executive power to veto items. Three governors have the general power, but eight governors do not have it. Twenty governors who have the power are severely limited in their use of it by the fact that only bills dealing with single subjects can come up to them. Nine additional governors are similarly restricted except as to general appropriation bills, which deal for the most part with the routine of present organization. Six governors have no power to veto items, but all bills presented to them deal with single subjects. Surely in the light of these facts there is no overwhelming public opinion in favor of granting the executive power to veto items.

The presence of these provisions by constitutional amendment in the state constitutions is supposedly presumptive evidence of the existence of this public opinion. But this presupposes that the public was asked to decide specifically the question of granting this power by constitutional amendment. Is this so?

PRESIDENTIAL EXPERIENCE

The essence of the second argument is that presidential experience is against the veto of bills and is in favor of the veto of items. Presidents are alleged to have rebelled against the present plan. Have they? Let us take first an example of substantive legislation. President Wilson (and Taft and Roosevelt, too), had presented to them an immigration bill made up of a large number of separate propositions. From a close study of the situation it may be said that the administrative reorganization of the immigration service and the strengthening of the hands of the administration provided for in the Burnet immigration bill made a very desirable piece of legislation in all but one particular, namely, the literacy test. Presidents Wilson, Taft and Roosevelt vetoed the bill solely because of the issue.[1] Why? Because they knew they had a fairly well organized definite public opinion behind them. The administrative reorganization of the immigration service would be greatly in the public interest but it could not arouse any very great amount of dynamic public opinion. The immigration service did its day-to-day work somehow, and we had no literacy test.

Why not adapt this method to appropriation measures? Why not raise the issue frankly? The President might very well defy Congress and go to the country. Such a procedure would secure by-products in public information and in civic education that would be worth the cost — whatever it is. But it may be

[1] The bill was finally passed over President Wilson's second veto.

urged that necessary and "permanent" public works and public service are held up because of a disagreement between the executive and Congress. In the analogy of the immigration service the public business would go on somehow; in the latter case the wheels of government would stop. The American people could make the situation exactly analogous if they would put all necessary public services and works on the basis of other laws of continuing in force until changed by positive action of the law-making agencies.[1] By thus reinforcing the President he would be encouraged to stand out for the national interests against the local or special interests provided for in the item. Such an exercise of the veto power would greatly enhance the Presidential office in popular estimation, for as Bryce long ago pointed out: "So far from exciting the displeasure of the people by resisting the will of their representatives, a President generally gains popularity by the bold use of his veto power. It conveys the impression of firmness; it shows that he has a view and does not fear to give effect to it. The nation, which has often good grounds for distrusting Congress, a body liable to be moved by sinister private influences, or to defer to the clamor of some noisy section outside, looks to the man of its choice to keep Congress in order, and has approved the extension which practice has given to the power."

The situation which is at the basis of the demand for the veto of items is the inclusion in appropriation bills of disparate unrelated subjects. The proposal of executive veto of items permits the situation to con-

[1] See chapter on "The Budget and the Administration."

tinue unchanged and proposed to deal with it remedially. The statement of the Merchants' Association itself suggests another remedy — permit the inclusion of but one subject in each bill unmistakably described in the title. So far as this method is effective, it is superior to the veto of items because it is preventive rather than remedial. But here the same difficulty arises as before. What is a subject? What is an item? Either method is patch-work.

SOME BAD RESULTS OF EXECUTIVE VETO OF ITEMS

No clear case for the executive veto of items has been made on the basis either of public opinion as expressed in constitutional provisions for the executive veto of items or of presidential or other executive experience. On the other hand, there are certain results of the executive veto of items that should be clearly kept in mind — results on legislation and on executive power. And the fundamental question of the adequacy of veto of items to correct the conditions which are at the basis of the demand for it may be seriously raised. These points will now be taken up in order.

LEGISLATIVE CONTROL BY EXECUTIVE AND A MINORITY

The executive veto of items affects seriously the number of votes necessary to pass or to prevent legislation. It is a very effective means for doing a great deal of political jobbing. The veto of items gives opportunity, in detailed budget bills, to legislate out of office a man here or a bureau there, particularly if it

is not possible to organize about either the man or the bureau an effective protesting public opinion. In states requiring a two-thirds vote to override a veto, the governor in coöperation with one more than one-third of those present in one house on the day the veto message comes up for vote can effectively abolish a bureau or other organization or functional unit of the government. In states requiring a majority vote to override a veto, a majority of one of those present in one house would be sufficient. Where the number of votes required to overturn a veto is stated in terms of full membership, absentees are disfranchised or become a means of obstruction. In any case, it is very difficult to stimulate or organize legislative opinion about the details of the bill, unless the public officer leaves his office for the lobby and is popular enough to cajole, convince or win the members of both houses of the legislature. The *veto of bills* raises clear questions and most likely large questions; the *veto of items* raises for the most part only petty or minor questions or questions in which it is difficult to interest the legislature,— after a veto. In appropriation bills which are usually passed toward the end and at the end of the session, this power to veto items is practically absolute over the governmental structure — is, in fact, the "power of the purse."

AGGRANDIZEMENT OF EXECUTIVE POWER

The report of the Committee on Finance, Revenues and Expenditures of the New York Constitutional Convention, 1915, has a remarkable statement in it regarding the executive veto of items. It discusses

this subject under the heading: "The present system reverses the real relations of the executive to the legislature and surrenders important powers to the executive." The report says the executive veto of items "*has nearly resulted in an abandonment to the executive of the priceless legislative function of holding the purse.*" [1] And again, wherever the legislature adjourns and leaves the appropriation bill in the hands of the governor, "he can make it an instrument of reward and punishment." (Budget Systems, p. 437.)

It can be readily seen how the veto of items may easily become an instrument of reward and punishment after a session. The legislature is gone home, and there is no possibility of passing a bill over the executive veto. The executive, therefore, has full power to cut where he will. His power of reward and punishment is correspondingly greater and specific as the appropriation bills are specific.

Nor is this power of reward and punishment limited to the time after the session. A very blunt statement of possibilities was made at a hearing [2] of a Congressional Committee. It was pointed out that instead of stopping log-rolling in the legislature it was merely transferred to the executive office.[3] Congressman Morgan said:

[1] Italics ours.

[2] Hearing before Committee on Judiciary on H. J. Res. 15. 63d Congress, Sept. 9, 1913.

[3] But compare Congressman Morgan's statement at the same hearing: "Suppose that I have an appropriation that I expect to get through the House and Congress, knowing that the President has that power, would not that have a tendency on the average man to say, 'Well, I will kind of compliment the President a little; I will do what he wants'—would not that have influence over the average legislator?"

"You say that it would do away with log-rolling. It might do away with log-rolling in the House and Senate among Senators and Representatives, but would it not simply transfer the log-rolling to the White House? Would not the man who has influence with the President get his appropriation through, while the man without such influence or power would have his appropriation vetoed?"

Congressman Nelson, after pointing out from his experience on the Public Buildings and Grounds Committee that "the President is also interested in projects in that bill," continued:

"By this provision would you not simply make it obligatory upon every Member who wanted a project in a bill to see the President and get him not to object it, and bring such pressure to bear upon him as he could?"

And Mr. Morgan in this same hearing made another good point: that while the executive's direct influence over legislation would not be greatly increased his indirect power would be enormously increased: "This amendment would not largely increase the power of the President over legislation, but would largely increase his influence and dominating power over every member of Congress."

POWER TO VETO ITEMS INSUFFICIENT

It was necessary to take up the various phases of the subject that have been discussed. The veto of items to be effective depends on a very detailed itemized appropriation bill. This need really shifts the question to the question of lump sum or detailed appropriations and must take into account, as already discussed, many other factors.

But in spite of all the points raised, let it be assumed that an executive who has the power to veto items really wants to cut appropriations, and there is presented to him a fairly detailed appropriation. Is the power effective?

An Idaho Case — A rather remarkable situation was created by Governor Hawley of Idaho in 1911. The governor has the power to veto items, but this power the Governor of Idaho felt to be inadequate and assumed the power of disallowing *part of an item.* His action may be illustrated by a single instance. The appropriation bill for the state university contained an item of $99,800 for maintenance. Regarding this item the Governor said: "I disapprove the item of $99,800 to the university and cut it down to $80,000." The Governor approved the general bill as indicated in the following statement:

"'The bill received by the Governor on the 4th day of March, 1911, at 11:30 P. M., and approved on the 14th day of March except as to items disallowed and disapproved as a whole and allowed in part as shown in the annexed message.'" (Portland *Oregonian,* May 4, 1911.)

In a letter of explanation of his action the Governor took an amazingly frank position: that the university had better take what he offered or it would get nothing. The Governor, after explaining that a decision of the Supreme Court of Pennsylvania had given the governor the power to reduce items, added:

"'While this decision of a very high court is not binding upon us here, and while I doubt very much whether our Supreme Court would affirm that doctrine, I concluded it

would be better to follow such a rule than to strike out any appropriations in their entirety or to call a special session of the legislature. I apprehend no difficulty on this score, however, as the courts would undoubtedly hold the entire item was disapproved if it were contended before them that the Governor did not have the right to reduce.'" (Portland *Oregonian,* May 4, 1911.)

In this case the veto of items led the Governor into what is obviously executive usurpation of power — and consciously so. At any rate, it is a clear indication of the inadequacy of veto of items.

An Illinois Case — A recent Illinois experience is particularly illuminating in connection with this whole question of the veto of items. Governor Dunne disapproved strongly of the amount of certain items in an appropriation bill. He thought the amounts were excessive and he wanted to disapprove the excess — exactly as the Governor of Idaho had done. He felt his power to veto items included also the power to veto "parts and portions of items," and acted on this assumption. He reduced certain appropriations directly and others by striking out the words "per annum," thus halving the appropriation. His action in these two particulars may be illustrated by quoting two items from the veto message:

"In section 1, paragraph eleventh, line 32, item 'for publication of decisions of the Court of Claims, the sum of $2,500' 'per annum,' I disapprove of the words 'per annum' after the figures $2,500, leaving the item to read, 'for publication of decisions of the court of claims, the sum of $2,500.'

"In section 1, paragraph eleventh, line 32, item '$4,500 per annum,' I approve in the sum of $3,500 per annum and veto and withhold my approval of all of the sum in said item in

excess of said sum of $3,500 per annum." ("Opinion of the Supreme Court in the Fergus Case," Filed November 6, 1915, p. 39.)

Legally and practically there is no difference in these methods of disapproving a part of an appropriation, and hence separate treatment is not necessary.

A taxpayer's suit was instituted and the case finally reached the Supreme Court. The Supreme Court of the state decided that under the Illinois Constitution the Governor has no power to veto items except in their entirety.

Those who look upon the veto of items as being a solution for the problem of excessive or extravagant appropriations should well consider Governor Dunne's words to the legislature in calling a special session to correct the situation resulting from the Supreme Court decision. Governor Dunne said:

"Under the decision in the Fergus case, the Governor has not the constitutional right to reduce the amount of an appropriation in an item. His only right is to approve items in their entirety or disapprove them in their entirety. If the Governor be of the opinion that an appropriation in any item is excessive his only right is to destroy the whole item by veto, or let it stand or take no action at all. It results from this situation that a Governor may frequently be compelled to allow items to stand in an appropriation bill, which, in his judgment are in excess of the needs of the State, and that he cannot in fact control the amount of the appropriation. If the item in its entirety be vetoed, the department of the State government for which the appropriation is made may be seriously crippled and its efficiency destroyed, and if the item be allowed to stand in its entirety excessive appropriations may result. As the Executive cannot in the present

situation be placed in a position by a constitutional amendment where he can originate and control appropriations by recommendations to the Legislature, the next best thing, in my judgment, is to give the Executive power to control appropriations by giving him the *right to veto parts and portions of items in an appropriation bill.*"[1] (Governor's Message (Illinois), Nov. 22, 1915, p. 5.)

Governor Dunne's experience shows clearly that in order to secure the results that are claimed for the veto of items in appropriation bills the supplementary power of vetoing part or portion of an item must also be given. And by that very fact the case against the veto of items stands out in bolder relief.

In all but one state, Pennsylvania, the power to veto parts of items is denied to the governor. The courts have uniformly, except in Pennsylvania, viewed such power as executive usurpation. The Supreme Court of Mississippi says that to permit such a thing is to "distort and pervert legislative action." (State vs. Holder, 76 Miss. 158.) "Such a proposition," says the Supreme Court of Texas, "involves such an intolerable tyranny and hurtful usurpation as not to be entertained for one minute." (Fulmore v. Lane, 140 S. W. 405.)

The Illinois Supreme Court is equally emphatic in denying power to the Governor to veto part of items. "To permit such a practice would be a clear encroachment by the executive upon the rights of the legislative department of the state." It would practically deny to the legislature the discretion vested in it "to determine the amount which should be appropriated for any

[1] Italics ours.

particular object." The decision is also called "an invasion by the Governor of the functions of the legislative department." (State v. Holder, 76 Miss., 158.) "While it is true that in one sense the Governor, when engaged in considering bills, is acting in a legislative capacity, and is for that purpose a part of the legislative department of the State, he is exercising only a qualified and destructive legislative function and not a creative legislative power." (Opinion of the Supreme Court in the Fergus Case, Filed November 6, 1915, pp. 40–41.)

SUMMARY

The veto of appropriation bills, like other parts of the budget problem, is not a problem by itself, disconnected from or unrelated to the other parts of the budget program. To so consider it would be to disregard the actual situation. The veto problem is a part, and a related part, of the whole and it must be so considered.

The veto power of the executive is a negative power, not a positive power; a destructive, not a creative power. It expresses executive doubt as to the wisdom or need of the proposed legislation. It aims to prevent unwise or unnecessary action rather than to secure wise or necessary action. Or rather, its purpose is not primarily to prevent legislation but to provide the opportunity for the legislature to give the matter second thought before it becomes law. It was this fundamental conception of the veto power that was at the bottom of the discussion of this chapter.

In the executive budget there is, as explained, no

need for the executive veto. The legislature is merely a ratifying agency of executive proposals, and the dominating influence of the executive throughout the whole budget procedure, including the legislative phase, makes it unnecessary. There is, however, an exception to this statement for the executive is given power to veto proposals legislatively initiated, but such proposals are not encouraged in the executive budget plan.

In a budget plan in which the executive presents the plan and the legislature is not restricted in the action it may take, the executive veto may and does serve a very useful negative purpose, particularly if departments are on the basis of continuing appropriations so that only the question of increase or decrease is raised by the veto. The veto of bills as a whole raises no serious question.

Serious question is raised, however, over the proposal to give the executive power to veto items. The first question is: What is an item? If an appropriation act is framed in very great detail, the veto of items will have its maximum effect. But a detailed budget act ties up funds so minutely and limits administrative discretion so completely that the "cure" is worse than the disease. In lump sum appropriations the veto of items is of decreasing value according to the degree of "lumpness." And so the problem of the executive veto of items is merely a phase of the problem of the segregation of the budget act, which is elsewhere rejected for its evil effects on administration.

Two arguments are urged in favor of the veto of items: (1) an increasing favorable public sentiment, and (2) executive experience. The case for a favor-

able public sentiment is based upon the fact that a large number of constitutions have provisions for the executive veto of items. Even assuming that such provisions indicate a definite public sentiment on the subject, the case for the executive veto of items is not at all clear when the provisions are examined in the light of other constitutional provisions, particularly those providing that each bill shall treat of one subject. Executive experience is not decisive, particularly if it is kept in mind that the " qualified negative " of the executive is intended to prevent hasty and bad legislation rather than to permit of executive domination of the legislature. The positive influence of the executive in legislation is primarily in his initiative through recommendation and through representatives of the administration on the floor of the legislature with the right to speak but no right to vote.

Certain evil results inevitably follow in the train of the executive veto of items. Control over legislation is placed in the executive supported by a legislative minority. It is claimed that the veto of items would destroy log-rolling. It would remove it in a great degree, at least from the legislative halls, but it would not destroy it. It would merely transfer it to the Executive Mansion in a more invidious and dangerous form, and the executive would become a kind of Providence — an instrument of reward and punishment.

But the surprising thing is that the power to veto items is inadequate to accomplish the purposes which are urged as a basis for its adoption. Two rather striking instances — and rather ordinary instances, let it be added — of the inadequacy of the veto of items

are given from Idaho and Illinois. Both show clearly that to the veto of items must be added the power to veto "parts and portions of items," if the problem is to be met in this way. That way lies, in the expressive language of a committee of the New York Constitutional Convention, "the abandonment to the executive of the priceless legislative function of holding the purse."