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PREFACE

Modern democratic governments find themselves obliged to solve important problems of political and constitutional organization in order to maintain an equilibrium between the necessity for prompt and decisive executive action, on the one hand, and the ethical necessity for continuous popular control on the other. Traditionally, such controls over the executive have been exercised by representative legislatures. But legislatures were evolved for a political frame of reference which differs from the contemporary one, and find it increasingly difficult to perform their traditional functions adequately under modern conditions. The concentration of real authority in the hands of the executive in an era of exceedingly rapid economic and social change has exposed the anachronisms of older institutional control mechanisms.

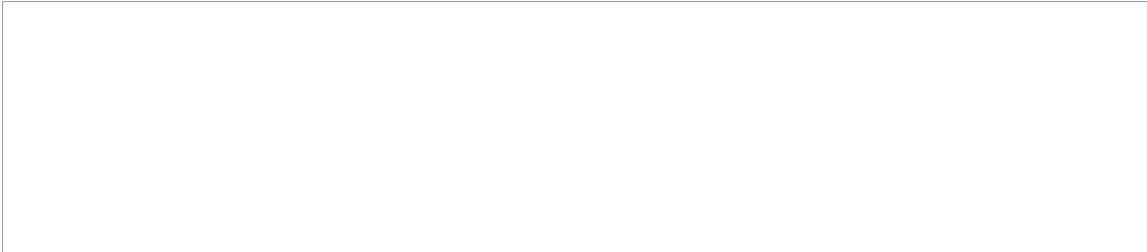
Modern governments are placed under increasingly heavy pressure to find solutions in the area of public policy, and through the organs of the state, for economic and social maladjustments of a quasi-permanent character. Inevitably, the power to search for and apply these solutions has been assigned to the more flexible and compact branch

the extent to which older forms of control over the executive respond to the needs of contemporary democracy. So far as France and the United Kingdom are concerned, the subject has its own intrinsic importance; but because similar problems are encountered elsewhere, the experience of France and the United Kingdom may also have some pre-ceptoral value.

To analyze executive authority in Western Europe from a locus of operation in Southern California has its obvious limitations. The opportunity for personal contact and observation of the actual scene has been absent; nor was it possible to obtain authentic materials to support research on all aspects of the problem. Working entirely in the contemporary period, it becomes difficult to assess developments to reach more than tentative conclusions and judgments which may be reversed by tomorrow's events. Because the subject of administrative adjudication, an important area of related activity, has been competently treated by others, that field has been excluded from the present study except as briefly considered in the chapter on public corporations.

So far as possible, this research was based on official texts and documents, but because the official record has not been completely adequate, current periodical and newspaper sources have also been consulted. The materials have been widely scattered and it has been necessary

to make use of the facilities of a number of libraries:
The Library of the University of California, Los Angeles;
The Hoover Library on War, Peace and Revolution, Stanford
University; The Law Library, County of Los Angeles; The
New York Public Library, New York City; and the Los Angeles
Public Library. The staff personnel of these libraries
has been most helpful in the location of useful materials,
placing me heavily in their debt. I am also grateful to
the British Information Services and the Information Service
of the French Embassy in the United States for providing
access to documents and texts not readily available else-
where.



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Chapter I

ECONOMIC AND POLITICAL CLIMATE:

1945 - 1949

The United Kingdom and France were probably the most successful examples of the typical economic and political order of Western Europe in 1939. Each of these nations had long been historically identified with western political conceptions of individual freedom, responsible government and economic systems of an essentially laissez faire character. Peripheral dents had been inflicted upon the political and economic foundations of pre-World War II France and Britain, but the framework was basically unshaken.

In some respects the old order seemed to be more secure in 1939 than previously. The Third French Republic had survived the anti-constitutional attacks of Maurras' Action Francaise and Colonel de la Rocque's Croix de Feu, fascist movements of the right, as well as the attacks of Maurice Thorez and his Communists of the left. Until 1935 the Communists, with their battlecry, "All power to the Soviets," had demanded the destruction of the Republic. The Stavisky scandal of 1933, however, emphasized the danger from the fascist right, and brought about the participation of the Left in the

Popular Front of 1936. Although the Popular Front did not endure, Daladier's National Government of Defense in 1938 was a positive force for the perpetuation of the old order because it united the country against the threat posed by Hitlerite Germany. In the United Kingdom, where the fundamental consensus about the political order had not been disturbed in comparable degree, the social and economic pattern identified with capitalism remained in the ascendancy. The Labour Party had not completely recovered from the Ramsay MacDonald fiasco of 1931, and the Conservatives held power unchallenged.

1. The Economic Setting in 1945-1946:
France and the United Kingdom

Five years of total war from 1940 to 1945 brought latent political and economic forces to the foreground and produced new problems of so basic a character that important changes in the political and economic order could be expected. In France and the United Kingdom the basic problems to be dealt with were essentially the same. These were: first, a desperate internal economic situation, resulting from the physical drain occasioned by years of grinding war; second, the low point to which the international economic position of each country had sunk; third, the popular endorsement of a postwar political leadership espousing a broad program of collective economic and social organization; fourth, internal modifications in the organization and operations of the party systems in each

nation; and fifth, the creation of a new international political environment almost as deleterious in its effects on domestic politics as open war itself.

The Domestic Economic Situation. The French economy was prostrate in 1945. Between 1937 and 1944 general industrial production in France fell from an index of 100 to 30.¹ Coal production, for example, decreased more than one-third, averaging 2,000,000 metric tons monthly in 1944, as compared with 3,500,000 metric tons per month in 1937. Steel production in 1945 dropped to barely one-sixth of the 1937 figure, while cement production was reduced to one-third. The manufacture of wool yarn in 1944 dropped to one-fifth of the 1937 production.²

The United Kingdom fared better only by comparison. There the general industrial production index declined from 100 in 1937 to 90 in 1945.³ Coal production dropped twenty-five per cent and cement production by almost half. Even steel production had not advanced despite wartime demand for it.⁴

In addition to the stark statistics for such basic industries, even more serious deficiencies were obvious. Purchasing power declined due to inflation; the apparatus of

¹Statistical Office of the United Nations, Monthly Bulletin of Statistics, Vol. IV, No. 4 (April, 1950).

²Ibid. See also, Statistical Office of the United Nations, National Income Statistics, 1938-1947.

³Op. cit., Monthly Bulletin of Statistics.

industrial production was obsolete, while housing requirements were astronomical as a result of the physical destruction of war and obsolescence. Possibly even more important were the dislocations within the economic structure arising from the war -- dependence on lend-lease, conversion of industry from production of war materiel to consumer goods, and the dislocation of man-power -- which seriously impaired the capacity of the economic order to restore normal production and recapture foreign markets.

War was only one of the factors which produced the economic crisis of France and the United Kingdom in 1945. In addition, the population of the United Kingdom grew beyond the point where its nutritional needs could be met from domestic production alone. Short sightedness, cartelism and restrictive trade practices in both countries hastened decline in industrial output. Failure during the war to train scientific and technical specialists for peacetime careers also took its toll.

The International Economic Position. In the golden era of the last century the United Kingdom produced the goods, carried them to all parts of the world in its own bottoms, and was banker to the world. London above all other cities was the world center of banking and shipping. Free trade and free enterprise were the bulwarks of a vast industrial

⁴Ibid.

empire. Gradually the situation changed, especially at the turn of the century, when American and German competition began to make inroads. Meanwhile, the rest of the world was outgrowing industrial adolescence and attaining a higher standard of living as a consequence. The tariff barriers accompanying modern nationalism compelled the United Kingdom to seek bilateral agreements with foreign countries and to maintain schemes of colonial and imperial preference. Even these methods began to fail when the bulk of British foreign investment, in empire areas and elsewhere, was rapidly consumed early in the war to pay for essential imports. At the war's end Britain had become a heavy debtor nation, struggling to stay out of bankruptcy. The extent of the British metamorphosis from a creditor to a debtor nation was dramatized by the Conservative Party's Industrial Charter which observed that: "Before 1914 the people of this country were owed by the rest of the world a debt equal to £100 each. Today each one of us in Britain owes the rest of the world £100."⁵

The French international economic position was equally serious. The balance of payments for international trade was completely altered. Before the war approximately one-fifth of French imports were financed by foreign investment which no longer existed in 1946. Total French exports in 1945-1946 paid for only about one-third of its imports. Meanwhile, also, the French colonial empire began to disintegrate. Indo-

⁵Conservative Party, Industrial Charter, p. 3 (London, May, 1947).

China, its major economic component, was cut off from France throughout the war. Soon after the cessation of hostilities, an independence movement there quickly assumed such proportions and such hostility toward France that trade could not be revived on the pre-war scale. France was unable, in any event, to supply its import needs and new economic relations outside the French sphere were developed. Other possessions, from Algeria to Martinique, were clamoring for some measure of self-government as the price for their economic cooperation and France considered it a high and profitless price to pay.

2. The Changed Political Situation of 1945-1946

New Political Leadership. France rejected and condemned the "Vichyites," as the sympathizers of the Petain Government of 1940-1944 were termed,⁶ and immediately became the battleground of both new and rejuvenated prewar political parties, of new and old political ideologies. The Communist Party, with its economic doctrines of planning, centralization and nationalization, was loudest in proclaiming its desire for "a strong, free and happy France," and convinced some observers that its objective was not a revolutionary coup d'état but

⁶Between late 1944 and 1946 when the special Jury of Honor for trying collaborationists was dissolved, over 100,000 accusations were made and about two-thirds of those accused were brought to trial. "At the top," reports Gordon Wright, "the High Court of Justice assumed jurisdiction over leading Vichy officials, including Petain himself; at the bottom, Chambres Civiques in each department dealt with petty offenders ranging from women conspicuously guilty of 'horizontal collaboration' up to the members of the Vichy milice." The Reshaping of French Democracy, p. 58 (New York, 1948).

a continuation of the basic French parliamentary tradition⁷ with but slight modifications. Communist propaganda and the record of the party participation in the wartime resistance movement gave it a high place in public favor. Between 1944 and 1946, party membership reportedly doubled.⁸ At the opposite political pole were the political sympathizers of Provisional President, Charles de Gaulle. The general himself had an impeccable patriotic record during the war and his French Committee of National Liberation, the strongest quasi-official political group in exile, was accorded de jure recognition as the Provisional Government of the French Republic immediately after the liberation in the Fall of 1944. De Gaulle's position was enigmatic: he spoke, on the one hand, in "liberal" terms of the need for a planned economy and of the speedy nationalization of key industries, projects normally identified with the Socialists and the Communists; on the other, he openly expressed distrust of "radical" party government, and spoke of a vague, nationalistic rebirth of the "spirit of France" reminiscent of the corporate doctrines of fascism.⁹

Between the Socialists, whose ranks were smaller in 1945 than before the war, and the parties of the Right, appeared a new force. This was the Mouvement Républicain Populaire, a

⁷See Harold Callender, "The Great Challenge that Confronts France," New York Times Magazine, pp. 7, 32, 33, 34 (December 7, 1947). See also Gordon Wright, op. cit.

⁸Gordon Wright, op. cit., p. 67.

⁹Charles de Gaulle, Discours aux Français (Paris, 1945), 2 Vols.

party with a clerical base, which sought to fill the ideological gap between the Socialists and the Right. At first, the members who formed the party nucleus were called Christian Socialists, in consequence of their philosophic position, deriving from the organic theory of the state and constituting a "Catholic attack on individualism and totalitarianism."¹⁰

At the basis of MRP political theory was the doctrine of "Solidarism," the Party's answer to totalitarianism either of the Right or the Left. "Solidarism" entailed the recognition of the social interdependence of human beings and a consequent acceptance by all elements in the society of the increased authority of the state to serve the common interest, while simultaneously retaining the principle of respect for individual dignity.¹¹ Although the term "corporativism" was

¹⁰Gabriel A. Almond, "The Political Ideas of Christian Democracy," Journal of Politics, Vol. 10, No. 4, p. 754 (November, 1948).

¹¹A statement of the party doctrine contained in Mouvement Républicain Populaire: Travaux du V^e Congrès National, Strasbourg, 26-29 mai, 1949 will, perhaps, illustrate the point: L'autorité de l'Etat, lui-même investi par le suffrage universel, demeure la clef de voute du régime démocratique. Nous n'avons pas cessé de la soutenir. Et nous continuerons opiniâtement, dans le cadre de la solidarité actuelle. Cette solidarité relie des éléments différents, bien sur, et chacun ne peut prétendre s'y comporter comme s'il était seul. Le MRP constate qu'une coalition gouvernementale n'incarne pas et ne peut incarner toute sa politique à lui. Mais chaque élément constitutif, tout aussi normalement, et en acceptant loyalement les règles de la responsabilité commune, y introduit sa part d'action et d'influence. Celle du MRP doit consister à faire comprendre à ses associés que les grandes échéances de l'avenir commandent les actes immédiats, que le salut exige que le pays vive habituellement dans un climat d'effort et non de facilité,

carefully excluded from its pronouncements, the MRP ideal was to organize the "work community" along lines of councils inspired by the papal encyclicals Rerum Novarum and Quadragesimo Anno, comprising employers, employees and representatives of the state.¹² The MRP became the second largest party in France within a year of its founding. The resurgence of Catholic doctrine in a new form, which MRP ascendancy amounted to, was a political factor of first importance.

In the United Kingdom, a reaction against the long

que cet effort enfin, pour être l'effort de toute la nation, sera compromis si toutes les catégories sociales ne sont pas associées aux résultats du développement économique en proportion de leur travail, pp. 34-35.

Compare also the remarks of J. F. Compeyrot, in the Revue politique et parlementaire:

Où est-ce, donc le MRP? Personne ne croit à un pareil développement soudain du socialisme Chrétien ou des démocrates populaires qui, avant la guerre, empruntaient ça et là des électeurs à M. Louis Marin. Il est incontestable qu'il s'agit d'une formation politique dont le conformisme religieux est la base la plus apparente. Le clergé Catholique s'est presque partout engagé dans la propagande en sa faveur. Il est tout évident que le corps de doctrine du MRP en matière sociale, pour avancé qu'il soit--et on peut dire sans partialité que sa démagogie ne se laisse pas distancer--ne justifie pas la création d'une étiquette essentiellement différente du socialisme, voire du communisme. En réalité, le lien religieux a permis de rassembler, dans un but politique qui reste assez trouble, des éléments hétérogènes dont l'adhésion à un programme social révolutionnaire n'est peut-être pas toujours certaine et sincère.

Le MRP est peut-être une formule de réconciliation nationale sur une base de religion, de patriotisme et de progrès social.

"Entre Talleyrand et Fouché," Revue politique et parlementaire, No. 550, p. 99 (November, 1945).

¹²MRP statement cited above, pp. 56-57. Also see Paul Bacon, La réforme de l'entreprise capitaliste (Paris, 1947).

Conservative tenure culminated in the overwhelming acceptance by the electorate of the socialist Labour Party in the 1945 general elections.¹³ The way was paved for what has variously been defined as a "peaceful revolution" and a "silent revolution." A fundamental recasting of the social order was the explicit aim of the Labour Government. That the Labourites contemplated nothing less than a peaceful revolution was emphasized by Prime Minister Attlee in a declaration to the Labour Party Annual Conference in 1947:

We came in with a double purpose, first to deal with the very difficult conditions, internally and externally, resulting from a long war and second, to lay the foundations of a new social order evolving from the old. We had to effect two transitions, one from a war to a peace economy and one from a capitalism based on a private enterprise and private property to a Socialist economy based on the control and direction of the wealth and resources of this country in the interests of all people.¹⁴

The elements of the Labour Party program included (1) the transfer to public ownership of basic industries; (2) the extension of public controls over remaining areas of private ownership to insure their conformity with socialist planning; (3) a vast program of publicly administered social services; and, (4) full employment through economic planning. Each of these objectives required an extension of state activity into new areas and a quantitative increase in the governmental apparatus, particularly in the executive departments. The

¹³After the 1945 elections the state of parties in terms of House of Commons seats was: Labour, 393; Conservative, 189; National, 2; Ulster Unionist, 9; Liberal National, 13; Liberal, 12; Independent Labour Party, 3; Commonwealth, 1; Communist, 2; Irish Nationalist, 2; Independent, 4. Cf. British Information Services, ID 990, February, 1950.

¹⁴Report, Labour Party Annual Conference, 26-30 May, 1947, pp. 118.

Labour Party was convinced that the transition could be democratically effected and that the new system could be democratically operated. Herbert Morrison, Labour Leader of the House of Commons, indicated the Party's awareness of the problems involved in the peaceful revolution when he said in 1946 that the policy of full employment in a managed economy had never been attempted in the United Kingdom nor "in any country in the world with our form of democratic government and our standards of personal freedom."¹⁵ The task which lay before the Party was to maintain the essentials of personal freedom while attaining the objectives of socialist theory.

The Significance of the Shift in Political Power in the United Kingdom. Possibly the most significant aspect of the total political situation in the United Kingdom and France in 1945 was that formal political power was conferred on parties advocating a vastly increased state control of the national economy and a wide extension of executive authority to exercise this control. In the United Kingdom, the Labour Party in 1945 was in a far stronger moral and political situation than that enjoyed by the two previous Labour ministries. Not only had Labour an absolute Parliamentary majority for the first time in its history, but the new Government also had at its disposal an accumulation of wartime legal powers and numerous administrative

¹⁵Report, Labour Party Annual Conference, 1946, p. 177.

precedents, the net effect of which had been to increase public power and widen the area of state intervention. The Labour Party proceeded on the assumption that it held a clear "mandate" to act decisively.

The Labour Government of 1945 was created at precisely the moment when war-derived public power was at a peak, and before a popular reaction against decisive state authority occurred. The various war-time emergency powers granted to the executive after 1939 were intact, and could now be used to serve the purposes of the Labour Government. The electorate still took an acceptant attitude toward the direction of private affairs by the state. All that was needed was to rechannel the controls from war objectives to those of a planned economy.

In the United Kingdom the two party system was intensified. The Independent Labour Party disbanded in 1948¹⁶ after disappointment at the polls in 1945.¹⁷ The once powerful Liberal Party continued to decline, falling from twenty seats in the 1935 election to twelve in 1945.¹⁸ Meanwhile the Labour Party was returned in 1945 with a majority of 146 over all other parties and groups combined.¹⁹

¹⁶At its fifty-sixth annual conference on March 28, 1948 the Independent Labour Party approved a resolution ending its political activities. New York Times, p. 7 (March 29, 1948).

¹⁷In 1945 the Party obtained three seats in the House of Commons; in 1935 the number was four. See British Information Services, Background to the British General Election, February, 1950, ID 990 (New York, 1950).

¹⁸Ibid.

¹⁹Ibid.

The Political Reorientation in Post-war France. In France, the Communist Party, although still a minority, emerged from the 1945 elections to the Constituent Assembly as the largest and strongest political party,²⁰ displacing the Socialist Party as the power nucleus of leftist politics in France. The large Communist bloc in the constituent assemblies of 1946 strongly influenced the kind of constitutional system France would have under the Fourth Republic. The refusal of the same bloc to cooperate with other parties in the National Assembly after May, 1947, precipitated the formation of the so-called "Third Force," a political coalition organized to counteract the anti-parliamentary attitude of the Communists. Political power in 1945, however it was to be used, had perceptibly been transferred to new hands.

A further significant feature of the post-war French political situation was that power tended to become canalized into three or four major parties²¹ instead of being widely dispersed among the dozen or more influential parties which operated before the war. Many of the smaller parties, to be sure, maintained themselves after the war but found themselves

²⁰The Communists held 152 seats in the First Constituent Assembly, representing a popular vote of 5,004,121, or 25.1%; the MRP obtained 150 seats, representing a popular vote of 4,580,222, or 23.9%. The first elections to the National Assembly in November, 1946, produced 5,475,955 votes for the Communists, giving them 28% of the popular vote; the MRP received 5,033,430 popular votes, or 26.3% of the total.

²¹"Les événements politiques a la suite des élections," Revue politique et parlementaire, No. 572, pp. 191-192 (November, 1947).

in an entirely new political atmosphere.

The highly organized MRP and Communist Parties were to become the principal protagonists in the constitutional struggles of 1946, and set an example for center and rightist parties which realized that they, too, must be strongly organized if they were to exert parliamentary influence. On the eve of the elections to the second constituent assembly on June 2, 1946, a coalition known as the Rassemblement des Gauches Républicaines was effected between Le Parti Radical Socialiste²² and L'Union Démocratique et Socialiste de la Résistance, center parties which found themselves unable to swallow the Socialist program. The extreme right was slower to reorganize. The Républicain Parti de Liberté, one conservative coalition, attracted the support of about half the rightist deputies in the Assembly. Others were loosely banded together in Parliament to form the Independent Republican Group, and a few rightists resurrected the pre-war, ultra-conservative Peasant Action Party. Certain conservative holdouts refused to cooperate with any group.²³ The resurgence of de Gaullism in the 1947 municipal elections precipitated the formation of a new rightist group called the Rassemblement du Peuple Français, an organization which de Gaulle insisted was above party strife and represented a great, patriotic reawakening of the

²²"Les partis a la veille des élections," Revue politique et parlementaire, No. 555, pp. 76-77 (April, 1946).

²³Gordon Wright, op. cit., p. 107.

French people. Composed chiefly of dissidents from other parties, dissatisfied with the refusal of successive Governments to suppress the Communists or disappointed at the conspicuous lack of success of political institutions in the Fourth Republic, the RPF actually did not formally sponsor a parliamentary delegation. Deputies simply adhered to the political line adopted by de Gaulle, retained individual party labels, and refused to cooperate with other groups of the National Assembly.

Change in Party Attitude. Probably the most significant change in the political parties of France was the new emphasis on internal party discipline. Edouard Herriot once characterized his own Radical Socialist Party as a state of mind, epitomizing the lack of party discipline which, except for the Communist Party, was typical of the Third Republic. The parties of the Fourth Republic are highly disciplined organisms in contrast to their pre-war counterparts. The new Mouvement Républicain Populaire of 1945, for example, deliberately modeled its organization on the lines previously used by the Communists. This group set out to build a monolithic, highly centralized machine with direct instruction from central headquarters to local units. For these purposes

They established training schools to prepare party workers for the arduous tasks of modern politics. In propaganda methods too--notably in the use of posters--they imitated the Communists. Never before had a French republican party abandoned the French tradition that a party should be a collection of individuals loosely grouped together around a common ideal. If the MRP's strategy proved successful, it would mean the beginning

of a new era in French politics--the age of the monoliths.²⁴

The Gaullists showed a similar unity in opposing successive governments. The Socialists alone displayed an inability to unite their moderate and extremist wings. Leon Blum and Guy Mollet were the leaders of the opposing factions.²⁵

In the United Kingdom, the Labour Party continued to maintain the discipline which had been essential to its effectiveness during the long years as an opposition party. It successfully extended this discipline over the much larger parliamentary delegation which carried the party label after July, 1945.

The attitude of the Labour Party, however, underwent changes. The Party was conscious even before the 1945 parliamentary elections of its power potential. Awareness of its new role and a profound belief in the efficacy of its program gave its spokesmen a supreme self-confidence which was reflected throughout the proceedings of the Labour Party Annual Conference in 1945. To attain its ends, the Party was prepared to alter the procedure of Parliament. Aneurin Bevan demanded that the Party take any other steps needed to assure the Party its permanent role as "natural custodian"

²⁴Gordon Wright, *op. cit.*, p. 76.

²⁵See dispatch of Lansing Warren, "Left-Wingers Rule French Socialism," New York Times, p. 7 (August 18, 1947).

of the national destiny despite the tradition of the two party government. Bevan's assertions were grossly out of keeping with the tradition of British political moderation and his concept of the mission of the Labour Party portended the actual elimination of the two-party system:

It is in no pure Party spirit that we are going into this election. We know that in us, and in us alone, lies the economic salvation of this country and the opportunity of providing a great example to the world. Therefore, remember in the elections that are immediately ahead, we are the memories of those bitter years; we are the voice of the British people; we are the natural custodians of the interests of those young men and women in the Services abroad. We are the builders. We have been the sufferers; we are the builders and we enter this campaign at this General Election not merely to get rid of the Tory majority --that will not be enough for our task. It will not be merely sufficient to get a Parliamentary majority. We want the complete political extinction of the Tory Party, and 25 years of Labour Government.²⁶

For Bevan, who presumably represented a sizeable segment of the Labour Party and who was one of its single most important members, the Socialist program was truth. An individual either accepted it and became a part of the redeeming movement, or refused to accept it and had therefore to be removed from the political scene. Class struggle found clear expression. Bevanism, in this form, was totally incompatible with compromise and displayed an evangelistic belief in the essential rightness of principle, to such an extent that means become secondary to ends. Such a concept was foreign to the traditional politics of the United Kingdom, and its uncontested

²⁶Report, Labour Party Annual Conference, 1945, op. cit., p. 95.

acceptance could well result in arbitrary use of executive power.

The International and the National Political Struggles. France and Britain reacted differently to the changed international scene and their reaction to the international struggle for power had its effect upon domestic politics. One factor was of utmost importance: each had declined from the status of a Great Power to an international position of secondary importance. This was frankly recognized in the United Kingdom during the war, when the burden of waging the military struggle against the Axis shifted decisively to the United States and to the Soviet Union. France, on the other hand, was immobilized during much of the war by reason of her military defeat in 1940 and, in the flush of confidence which accompanied the liberation in 1944, the nation's political leadership tended, either consciously or unconsciously, to minimize the significant shifts in power which had altered the international political picture during the preceding four years. Domestic politics, therefore, were pegged to an analysis of the international situation which was later seen to be mistaken. The British escaped a similar dilemma by reconciling themselves to a subsidiary role and by aligning the nation closely with the United States. British domestic politics were thus conducted within this rationale without the confusion that characterized the French situation until mid-1947.

The French delusions from 1945 to 1947 were dual: first that a friendly Soviet Union would assist Frenchmen to keep the German menace from ever rising again and, second, that, in the event of a future war, a neutral France could rise to greater heights as the natural leader of a neutral Europe. These views were deliberately promoted by the Communist party as the single strongest political group in France. Even Gaullists and the clerically oriented MRP rationalized in such terms. The general's goal was a powerful France which needed to cultivate the protection of no nation, neither of the East nor of the West. The Catholic Popular Republicans also succumbed to the popular delusion, since the common dangers which they shared with the Communists in the Underground markedly reduced their suspicion of the Party and of the Soviet Union. One observer commented in 1947 that "Neither the United States in the Harding Administration nor England during the Chamberlain period made more persistent efforts at self-deception than France has made since the liberation."²⁷ Moreover, the deception was carried into the realms of specific action. De Gaulle signed a twenty year defensive treaty with the Soviet Union in 1944.²⁸ French leaders indirectly assisted the Soviets by refusing to cooperate in the Anglo-American

²⁷Harold Callender, "The Great Challenge that Confronts France, New York Times Magazine, p. 32 (December 7, 1947).

²⁸New York Times (December 11, 1944).

program for a limited revival of Western Germany. Finally, and most unfortunately for France in terms of later events, the Communist Party was accepted as a bona fide republican party.²⁹

In the United Kingdom the situation was quite different. The Coalition Government had already developed extremely close ties with the United States before the Labour Government came into power in 1945. The wartime lend-lease agreements, the joint military planning and subsequent joint campaigns and, finally, the loan of almost four billion dollars which was arranged between the two countries late in 1945 virtually guaranteed that British internal politics would be oriented toward the West rather than the East.

Apart from such ties to the United States, it needs to be emphasized that certain doctrinal factors militated against the identification of British with Soviet Socialism. The Labour Party's socialism was of Fabian origin, and emphasized neither the class struggle nor the need for revolutionary tactics. The Party could not afford to lose the identity and purpose which its history conferred by associating itself with the Communists; hence specific steps were taken to disavow the proposals espoused by its own "East Wing." At the

²⁹Callender, op. cit., p. 33.

1946 Labour Party Conference Herbert Morrison, in moving the adoption of that section of Party policy refusing affiliation with the Communist Party, said:

We have every reason to believe, both by their doctrine as set out from time to time and by their practice, that the Communist Party believes neither in constitutional government nor in parliamentary democracy.³⁰

Despite the strong anti-communist position which the Party officially adopted, recalcitrants within its ranks--especially during 1945 and 1946, before the "cold war" developed between the Soviet Union and the United States--pressed for closer association with the USSR in the interests of world socialism.³¹ Prime Minister Attlee and Foreign Secretary Bevin were confronted in 1946 with a "revolt" on the part of some Labour members of Parliament,³² and as late as the 1947 Annual Conference, the Party was forced to listen to scattered diatribes against the United States.³³ The complete calm with which the Government approached these incidents, however, served to emphasize the certainty of mind characterizing most of the important Labour leaders. They were convinced that,

³⁰Report, Labour Party Annual Conference, 1946, op. cit., p. 169.

³¹See Report, Labour Party Annual Conference, 1946, op. cit., statement of delegate J. Tanner, p. 173; statements of delegate E. Cook, p. 158.

³²New York Times, p. 1 (November 14, 1946).

³³Cf. Statement of Tom Driberg, M. P., Report, Labour Party Annual Conference, 1947, op. cit., p. 173.

in the international issue between East and West, Labour's
role was to support the West.

Chapter II

EXECUTIVE POWER AND THE PLANNED ECONOMY

Possibly the single most distinctive feature of post-war society in France and in the United Kingdom has been the rise of the planned or controlled economy. Economic planning has been realistically defined as "the conscious and deliberate choice of economic priorities by some public authority."¹ The added functions and jurisdiction which the state has assumed in the process of economic planning have mainly been entrusted to the executive in both France and the United Kingdom, even though planning theory and practice vary between the two nations. Emphasis upon economic factors in social life has tended to obliterate distinctions between politics and economics within the executive branch. Economic decisions have become also political, because executive leadership, especially in the United Kingdom, has held office under a mandate from the electorate posited upon faith in its promise to solve economic problems. Relationships within cabinets have also been modified: the political importance of those cabinet members engaged in economic planning has sharply increased.

¹Barbara Wootton, Freedom Under Planning (Chapel Hill, 1945), p. 6.

1. French and British Planning Contrasted

In essentials, planning in France and the United Kingdom have had much in common even though in the United Kingdom the tendencies toward nationalization have been further advanced. In both cases, the public authority of the nation has been applied to the determination of "economic priorities" as part of a concept of state-planned economy. In France, the question has been complicated by the fact that less cohesive governments have failed to operate in the economic sphere with the precision and singleness of purpose that has been evident in the United Kingdom. Actually, this has created a situation in which consistent planning in France has been much more difficult to achieve than in the United Kingdom.

Planning Authority and Political Power. If the basic technology of a society is considered to be the system of formulae or techniques by which goods and services are produced, it becomes clear that this technology will be directed and organized in terms of the economic and political views which are dominant in the society. In the words of MacIver,

the processes of the basic technology must be carried out in accordance with some socially established arrangement, and the products of the basic technology must be exchanged and distributed in accordance with some socially established arrangement.²

In the theory of economic planning, an essential characteristic

²Robert M. MacIver, Social Causation (New York, 1942), p. 284.

is that the decision as to which arrangement will be utilized is undertaken by those officers and agencies possessing the power to make their decisions prevail, if necessary by the employment of legal force. Economic planning essentially turns on the locus of the authority to decide. Both British and French planning recognize this thesis. In each country executive agencies have been permitted to assume the planning function, thus increasing in each the total amount of executive power in the period, 1945-1949.³ Moreover, the immediately compelling reason for launching wide-scale planning has, in each case, been precipitated by an overriding need for economic reconstruction following the destruction of economies and of physical assets during World War II.

But the similarity between the origins of British and French planning stops abruptly at this point because British planning is the product of a half century of development of a working class political movement, personified by a single political party which has gradually adopted principles of socialist planning espoused by intellectuals such as Bernard Shaw, Harold Laski and Beatrice and Sidney Webb.⁴ In France,

³See infra., pp.31 ff.

⁴See G. D. H. Cole, A History of the Labour Party from 1914 (London, 1948); George Bernard Shaw, Socialism: The Fabian Essays (Boston, 1894), and Intelligent Women's Guide to Capitalism and Socialism (London, 1928); Beatrice and Sidney Webb, The History of Trade Unionism (London, 1920); Harold J. Laski, Parliamentary Government in England (New York, 1938) and Liberty in the Modern State (New York, 1930). Cf. also British Labour Party, Let Us Face the Future (London, 1945).

on the other hand, the planning machinery of 1945-1949--excluding that of the nationalized industries--has been the result of expediency and fortuitous multi-party agreement. The chief architect of planning in post-war France, Jean Monnet, is not a socialist but a practising capitalist,⁵ and the present French economic plan has been influenced, in part at least, by such non-socialist, American economists as Robert Nathan.⁶ Thus while British planning expresses the social philosophy of the Labour Party, French planning is perhaps more a matter of expediency than of conscious application of doctrine.

The impetus behind British planning was emphasized in the declaration of Prime Minister Attlee before the Labour Party Annual Conference in May, 1947, when he remarked that the Party's purpose was to "lay the foundations of a new social order," for the accomplishment of which the Party had the three-fold advantage of "our Socialist faith as our guide and inspir-

⁵The Commissioner General of French economic planning, Count Jean Monnet, formerly Deputy Secretary General of the League of Nations, is the owner of a vast brandy business in Cognac, France. He represented the interests of the French Government in London after World War I and negotiated the French loan to Poland in 1927. In 1928 he became European partner of Blair and Company, New York investment bankers. He was formerly Vice Chairman of Trans America Corporation. As financial advisor to China, he arranged a \$50,000,000 American loan to China. He was appointed Economic Director for the Allies shortly after France and the United Kingdom declared war on Germany in 1939. He was Commissioner for Armament, Supplies and Reconstruction of the French Committee of National Liberation, 1943-44, and he has been Commissioner-General of the French National Planning Commission since 1946.

⁶See Report général sur le premier plan de modernisation et d'équipement (Paris, 1946).

ation; secondly we had a clear program integrated into a definite plan; and thirdly we had a fine majority in Parliament."⁷ Planners in France had none of these advantages; instead of a hand-tailored plan for producing a new social order, the French found it necessary to begin to plan on a very unglamorous basis. A paper basis for national planning was laid by the French Committee of National Liberation which proposed an "Advisory Economic Committee" in April, 1944. Five months later, after de Gaulle had recreated the Ministry of National Economy in Paris, on September 4, 1944,⁸ the head of this ministry became vice-president of the Advisory Economic Committee. Early in 1946 a National Planning Council known as the Commissariat Général du Plan, was established with a secretariat and operational headquarters.⁹ Shortly thereafter, this advisory body drafted the Monnet Plan, a four year program formulated in conjunction with, and on the recommendations of, over eight hundred representatives of diverse social and economic elements.¹⁰

⁷Report, Labour Party Annual Conference, 1947 (London, 1947), p. 118.

⁸Ordinance of November 23, 1944, Journal Officiel, December 7, 1944, pp. 1724-1725.

⁹Decree of January 3, 1946, Journal Officiel, January 4, 1946, p. 130.

¹⁰Op. cit.: note 6, ante.

In contrast, the British Labour Party's economic plan was much more complete, centrally determined, and much broader in scope. At the Party Conference, in June, 1946, Herbert Morrison, Deputy Prime Minister and Leader of the House of Commons, told the delegates that:

We made up our minds on taking office--and it was implicit in Let Us Face the Future--that we would develop a strong organisation under the Government, and as part of the Government, for economic planning. This involves a break with the past. It means a Socialist breaking of new ground in the relationship between the state and industrial affairs.¹¹

Prime Minister Attlee could therefore speak to the 1947 Labour Party Conference of an "integrated plan," that had been motivated from the beginning by practical necessity:

Our action in bringing great spheres of economic activity under national control and ownership was not the result of some academic theory; it was the essential part of our plan, a plan conceived in relation to the actual conditions of the world today and the actual problems we had to solve.¹²

It was clear from 1945, therefore, that the British contemplated an overall public planning machine which would control all phases of the economy, while the French contemplated a less comprehensive plan which, in the absence of a strong governmental majority, would depend for its effective-

¹¹Report, Labour Party Annual Conference, 1946 (London, 1946), p. 177.

¹²Report, Labour Party Annual Conference, 1947, op. cit., p. 118.

ness upon the particular French Government in power at any particular moment. The political significance of the contrast lies in the fact that, since the planners in both instances sought to give power to the executive, the substantive increase in British executive power resulting from acceptance of the planning principle was likely to be greater and more permanent than the corresponding increase in French executive power.

The French and British Plans. The differences in the origins and philosophy of the planning schemes in the United Kingdom and in France were speedily carried over into the plans themselves. The permanent plan in the United Kingdom comprises four distinct parts: (1) a central plan to assess the correct allocation of raw materials, and the human and financial resources of the nation in the light of national needs; (2) a long-term special development plan for basic industries, whether actually nationalized or not; (3) a long-term development program for agriculture to assure adequate foodstuffs for the population; and, (4) a development plan for non-basic industries to assure their conformity to the roles assigned to them by the planning organization.¹³ When considered in such terms, Mr. Attlee's "new social order" assumed much more definite shape and the degree of executive control necessary to achieve such inclusive objectives obviously became very great. The underlying purpose of the economic

¹³See Francis Williams, Socialist Britain (New York, 1949), Ch. 7.

plan was to transform Britain into a socialist state. By contrast, le premier plan de modernisation et d'équipement of France, or the Monnet Plan, as it is popularly called, was primarily a scheme of state assistance for the reconstruction, modernization and expansion of the productive equipment and plants of France. The Plan is concerned with limited controls in respect of the allocation of priorities for materials, labor, finances and other resources needed to accomplish reconstruction, modernization and expansion.¹⁴ The British plan is to effect a transition from "a capitalism based on private enterprise and private property to a Socialist economy based on the control and direction of the wealth and resources of this country in the interests of all the people."¹⁵ The French scheme is mainly to set production targets for a four year (1947-1950) development program in the basic industries of coal, power, steel, cement, agricultural machinery and transport. While British planning contemplates permanent, complete direction of the basic technology in all important aspects, the French plan is not detailed except in the cases of the six basic industries and is, moreover, based upon the assumption that if the six key industries are reconstructed, the remainder of the French economy will recover without specific planning being required.

Planning Machinery Contrasted: (1) Theory. Sharp

¹⁴Rapport général sur le premier plan . . . op. cit.

¹⁵Prime Minister Attlee in Report, Labour Party Annual Conference, 1947, op. cit., p. 118.

differences between French and British theories of the organization of planning systems, the definition of their powers and responsibilities, and their relation to the cabinet executive are discovered by contrasting the organization of the planning apparatus and the extent of its operations in each country. The evidence suggests that, while both systems grant new power to the executive, the British planning program concentrates powers much more heavily in the cabinet than does the French.

It is clear, first, that the cabinet is the center of British planning machinery. As Herman Finer enthusiastically declares: "In plan formulation and plan execution it [the cabinet] is the supreme engineer, compact of responsible will and dynamic initiative, epitomizing knowledge and the general welfare, and enforcing the plans through the civil service."¹⁶ The French National Planning Council includes, in addition to cabinet ministers, other interest groups. This is the actual operational headquarters for French planning. Only the ministries of Finance, National Economy and National Production are concerned directly with the secretariat of the Council. This secretariat, the Commissariat Général du Plan, is an autonomous agency with the specific function of recording the progress of the Plan and making appropriate recommendations to the National Planning Council.¹⁷ Many planning decisions

¹⁶Herman Finer, "Central Planning System in Britain," Public Administration Review, Vol. VIII, no. 4, p. 240 (Autumn, 1948).

are made by the French Cabinet in the drafting of ministerial decrees and of Government proposals for legislation for submission to the National Assembly after filtering through the medium of the new French National Economic Council, but the formulation of plans is the function of the National Planning Council. The day to day administration of planning projects is apparently left largely in the hands of the Commissariat, a body two levels removed from the cabinet.

The British rejected the notion of establishing a body of planners operating independently of cabinet or department;¹⁸ they also rejected for two years the Franco-German conception of a public economic council, based upon functional representation, to act as a consulting body. Instead, the British placed initial reliance on cabinet committees, official auxiliary agencies of the cabinet, and executive departments-- in other words, a central planning system directly related to the cabinet. This somewhat doctrinaire attitude¹⁹ was modified with the passage of time, when it was learned that a broader machinery would produce a more favorable public response and better cooperation from those whose interests were affected.

The French depend upon both the National Planning

¹⁷A Decree 16 January 1947, Journal Officiel, January 17, 1947, p. 590, continued the life of the Commissariat Général as an agency of the Planning Council. The Commissioner General was required to make periodic progress reports.

¹⁸Finer, op. cit., p. 241.

Council--and its secretariat, the Commissariat du Plan--and upon the National Economic Council, created by Article 25 of the Constitution of the Fourth Republic. While the final power of decision with regard to planning recommendations rests, in France, as in the United Kingdom, with the cabinet, nevertheless in France the plans to be considered are not the product of a closed corporation, namely the top political officeholders of the Labour Party and a fraction of the administrative class of the civil service, but rather they are the product at least of the deliberations of the multi-party National Planning Council. What needs to be emphasized is that the executive in the United Kingdom fulfills the triple role of planning formulation, planning decision and planning execution. Moreover, throughout this period the cabinet had secure control of a commanding Labour majority in the Parliament. In France, the executive had primarily only the power to accept or reject the suggestions of the Planning Council. Policy formulation was influenced but scarcely dominated by the cabinet, and planning execution was dependent upon agreement within the multi-party cabinets before Government priorities, enabling or supplementary decrees could be issued.

¹⁹Finer contends, with respect to the idea of an extra-cabinet economic general staff that "statesmen were rightly skeptical of an arrangement which would vest a planning function in a group of men who are not inside the administrative organs, not saturated with detailed knowledge of operating possibilities, not responsible for final decision and responsible execution." Ibid., p. 249.

Planning Machinery Contrasted: (2) Structure. The planning mechanism of the United Kingdom is highly inclusive and centralized; the French system reflects the recent Gallic tendency to burden the executive with the advice of widely representative advisory bodies.

At the apex of the British system stands the cabinet and its internal committees. Their composition is secret. According to Finer, the secrecy is necessary in order to "preserve the principle of collective responsibility." Each committee within the cabinet consists of several ministers and a chairman who is ordinarily the minister most concerned with the business of the committee. There are temporary and standing committees, and at any particular time a score or more of them may be functioning.²⁰ The standing committees of the cabinet include those on Legislation, Defence, Policy, Production and the Lord President's committee. In addition to these, Robson speaks of another cabinet committee devoted to questions related to the machinery of government whose "very existence is unknown to all but a tiny circle of ministers, ex-ministers and civil servants."²¹ According to Finer, the various British cabinet committees concerned with economic planning are tightly intermeshed and quite powerful.²² The apparent tendency is to permit a few individuals to occupy several key positions. In addition to serving as Chancellor of the Exchequer, Sir Stafford Cripps, for example, was con-

²⁰The number is Finer's estimate.

²¹W. A. Robson, "The Machinery of Government," The Political Quarterly, Vol. XIX, no. 1, p. 14 (January-March, 1948).

currently Minister of Economic Affairs and after September, 1947, Chairman of the Cabinet's Production Committee.²³ The planning structure was clearly designed to centralize planning procedures, protect planning security, and to concentrate planning decisions at the highest political level.

The French avoided this high degree of concentration in planning organization, and executive planning authority was less precisely defined than in the United Kingdom. In France all the cabinet ministers participate in the work of the National Planning Council, but only in conjunction with a group of specialists in public affairs and a number of representatives of national interest groups. The cabinet ministers thus do not have a monopoly of planning authority. Diffusion of responsibility, rather than concentration, is the controlling difference between the French and British systems.

The Economic Section of the British Cabinet Secretariat, established in 1941, may be compared with the Commissariat Général du Plan in France. The Commissariat was the agency which drafted the French Four Year Plan of Reconstruction, Modernization and Expansion in 1946, and which was continued after January, 1947, as an advisory agency to the new National Planning Council. The functions of the two secretarial agencies appear to be similar in some respects. Both collect economic data and offer suggestions bearing upon the plans in progress.

²²Finer, op. cit., pp. 241-243.

²³See New York Times, September 30, 1947, p. 1.

The Commissariat, however, is responsible to the National Planning Council,²⁴ itself an official consultative body to the Government, whereas in the United Kingdom the Economic Section of the Cabinet Secretariat is directly answerable to the cabinet.²⁵ Thus it operates to intensify the power and responsibility of the cabinet. The French Commissariat seems to have a closer connection with and a greater responsibility for the practical application of the plan than does its British counterpart. This is a further illustration of the diffusive tendencies observable in France.

²⁴Decree of January 16, 1947 in Journal Officiel, January 17, 1947, p. 590. The entire Commissariat comprises 38 persons.

²⁵See "Britain's Planning Machinery," Labour and Industry in Britain, p. 93 (June, 1948). It is extremely difficult to obtain precise information concerning the Economic Section of the Cabinet Secretariat, a situation congenital to the whole range of planning machinery in the United Kingdom. The following exchange in the House of Commons on June 22, 1947, illustrates the point:

Mr. W. Shepherd asked the Prime Minister, if he will issue, as a White Paper or in some other convenient form, a statement giving a description of the existing Governmental machinery of economic planning and control.

The Lord President of the Council (Mr. Herbert Morrison): I have been asked to reply. The Governmental machinery for economic planning and control has been described from time to time and announcements have already been made about all recent developments. My Right Hon. Friend the Prime Minister does not think that the issue of a further statement would be appropriate at the present time.

Mr. Shepherd: Is not the Lord President aware that there is as much confusion in the public mind about this machinery as about what comes out of the machinery, and would it not be a good thing to have a real statement of what actually happens behind the scenes..

Mr. Morrison: I think the assumption on which Hon. Gentleman's supplementary question is put is unfounded.

The Commissariat Général is headed by Jean Monnet, author of the French Four Year Plan, whose title is Commissi-
sioner Général du Plan. He is assisted by a deputy, Robert Marjolin, sometime Director of Foreign Economic Relations of the Ministry of National Economy, and a Chef de Cabinet, Felix Gaillard, who is also Inspector of France. These individuals direct the activity of the four small divisions of the Commissariat, i. e., technical, statistical, financial and administrative. In contrast to these prominent personages and the well publicized work of the Commissariat, the Economic Section of the Cabinet Secretariat in the United Kingdom comprises a corps of anonymous, professional economists which is referred to by Herbert Morrison simply as "a body of trained and skilled economists, with a very high proportion of young men and women among them."

Further differences appear when the planning agencies in the two countries are compared at the higher staff level. The principal staff planning agency in the United Kingdom is the Central Economic Planning Staff, created in March, 1947, to supersede the Official Steering Committee, an interdepartmental organization including permanent heads of the principal

Mr. Frank Byers: Might I ask the Lord President to reconsider this, because a considerable number of people would be extremely interested to know exactly what is the planning set-up, and in a democracy surely, they have the right to know? Would he not consider it seriously and favorably?

Mr. Morrison: The Hon. Gentleman is begging the question. I have already answered the Question of the Paper which dealt with that very point.
H. of C. Debates, June 23, 1947, Cols. 23-24.

economic departments, representatives of the Cabinet Secretariat, the Central Statistical Office and the Lord President's Committee.²⁶ The eclipse of the Steering Committee occurred, according to Finer, because, "it was found that the machinery was not integrated enough to cope with the urgent short-term problems of a siege economy."²⁷ The new Central Economic Planning Staff, according to Sir Stafford Cripps, is a joint planning staff whose main strength is departmental planning officers.²⁸ Each executive department is required to maintain a full-time planning staff and the senior planning officer of each department is given a place on the joint staff. Cripps was careful to emphasize, however, that the group would need effective direction from a superior source. This was accomplished by the appointment of a full-time executive head responsible to the cabinet.²⁹ All of the senior planning staff officers are to be chosen from civil servants of the highest category of the administrative class. The interdepartmental planning staff formulates alternative plans for the realization of the economic objective of the cabinet. It should be emphasized that the

²⁶See remarks of Herbert Morrison in Report, Labour Party Annual Conference, 1946, op. cit., p. 178.

²⁷Finer, op. cit., p. 245.

²⁸Sir Stafford Cripps, H. of C. Debates, March 10, 1947, Cols. 968-970.

²⁹Ibid.

staff is advisory; it has no executive functions. Planning decisions are made by the cabinet, to which alone the Planning Staff is responsible. The effect has been to destroy the planning autonomy of the executive departments and, in the characteristic British fashion, to intensify the great powers exclusively assigned to the cabinet.

The French National Planning Council was also created as an advisory body, but it was not placed under the complete control of the French Council of Ministers or under the domination of permanent officials. It includes ministers and officials as well as representatives of national interest groups. When the Council was created in January, 1946, the Premier-President of France was designated as its president and the following ministries were included: National Economy (vice-president of the Council), Foreign Affairs, Armaments, Finance, Agriculture and Food, Industrial Production, Public Works and Transport, Labor, Colonies, Urbanism and Reconstruction, Public Health and Population, National Education, Armies and Posts, Telephone and Telegraphs. The non-ministerial representation on the Council outnumbered the ministerial membership. It included the Commissioner General of the Plan, his Deputy, the Commissioner General for German and Austrian Affairs, the Secretary General of the Government, the Under Secretary of State for National Economy, the Secretary of the Inter-ministerial Economic Committee, the

Director General of Economic Affairs in the Ministry of Foreign Affairs, the Chief of the General Staff for National Defense, the Vice President of the National Credit Council, the High Commissioner for Atomic Energy, a Deputy of the National Assembly, a Councilor of State and the President of the Agricultural Commission of the Constituent Assembly. The roster of the Council also included two secretaries general of the Confédération Général du Travail, the Secretary General of the Confédération Française des Travailleurs Chrétiens, representatives each of the Confederations of Agriculture and of small and medium business, representatives of the National Council of French Employers, the Director General of Citroen, the Director General of Hauts Fourneaux de Saulne, the President of the Wool Committee, the Secretary of the Miners' Union, a farmer and two civil engineers.³⁰

The large number of private interests and public agencies represented on the French Council militate against the possibility that plans might reflect narrow political interest, although final decision regarding any plan must be made, as in the United Kingdom, by the cabinet. As contrasted with the decisive substantive control exercised by the British cabinet, the French cabinet tends to make decisions on the basis of plans whose content it does not fully control.

³⁰Membership of the National Planning Council compiled from Journal Officiel, January 4, 1946, p. 130; March 12, 1946, pp. 2038-39; March 26, 1946, p. 2470; March 28, 1946, p. 2535; May 1, 1946, p. 3656; September 18, 1946, p. 8007.

In actual practice, however, the British learned that their planning procedures had to be broadened and, in the course of time and without consciously imitating the French, they determined upon the integration of non-cabinet elements into the planning process. In July, 1947, a new agency was added to the general planning machinery. This is the Economic Planning Board, composed of industrialists, members of the planning staff, and the permanent secretary of each of the three departments chiefly responsible for dealing with problems of trade and industry. Herbert Morrison explained this departure in terms of the necessity for an organ "to advise His Majesty's Government on the best use of our economic resources."³¹ A later characterization identified it with the objective of giving "men of wide practical experience in important representative positions a chance to examine and discuss the analyses prepared by the Planning Staff, in terms of the country's ability to put them into effect."³² These broad remarks convey the impression that the Government may have been prompted by a desire to build greater national support for the existing planning apparatus, especially since a short time later the Government instituted a National Production Advisory Council for Industry, consisting entirely of non-public interest groups, and an Economic Information Unit

³¹H. of C. Debates, July 7, 1947, Col. 1804.

³²"Britain's Planning Machinery," Labour and Industry in Britain, p. 93 (June, 1948).

for propaganda purposes.³³

The economic planning system of the United Kingdom by 1949 had come to include several additional consultative groups. The National Production Advisory Council for Industry, referred to above, consisted of government officials, industrialists, and trade union representatives, and was to promote industrial acceptance of the substantive plans through regional boards.³⁴ A Joint Advisory Board, comprising employers and employees, was instituted to assist in the determination of wage rates and pricing matters. Working parties, made up of employer, employee and lay personnel, were set up in various industries by the Board of Trade to make on-the-spot reports concerning the status of particular industries with respect to the national plan,³⁵ and, finally, the Trade Union

³³Ibid., p. 94. The Economic Information Unit conducts a sustained publicity campaign in the press called Report to the Nation.

³⁴Idem.

³⁵The Industrial Organization and Development Act, 1947, Article 25, permits ministers to make orders creating development councils in industries for the purpose of increasing their efficiency. Ministers may also levy assessments on industries to bring about "scientific research, promotion of export trade or the improvement of design," such activity to be conducted by a "body" created for the purpose by the same authorities who are empowered to create development councils, i. e., the Board of Trade, the Ministers of Agriculture and Fisheries, Supply, Food, Works, Fuel and Power, the Admiralty, and the Secretary of State.

Congress has been informally consulted from time to time.

In contrast to the somewhat belated British decisions to extend consultative roles in the field of economic planning to various interest groups, the French planning machinery included from the beginning an Economic Council provided by the constitution of the Fourth Republic. This Council "must be consulted concerning the establishment of a national economic plan for full employment and the rational utilization of our economic resources." Moreover, the National Assembly is under obligation to send bills of an economic character to the Council for its consideration. The Council consists of more than 170 members drawn, according to the familiar post-war formula, from a large number of interest groups to afford the maximum degree of functional representation.³⁶

³⁶The Law of October 27, 1946, relative to the composition and functions of the Economic Council, Journal Officiel, October 29, 1946, pp. 9177-9178, specifies that the Economic Council shall consist of (1) forty-five representatives designated by organizations which are the most representative of workers, officials, technicians and engineers, (2) twenty representatives of industrial enterprises composed as follows: six representatives of nationalized enterprises, fourteen representatives of private enterprises, among which a distinct and proportionate representation will be assured to the largest, the smallest and the medium enterprises; (3) ten representatives of commercial enterprises, among which a distinct and proportionate representation will be accorded to small commerce; (4) ten representatives of artisans [the above four categories of persons were to be designated partly by the most representative professional agencies, partly by territorial groups, chambers of commerce and chambers of crafts]; (5) thirty-five representatives designated by the most representative agricultural associations; (6) nine representatives of cooperatives [two from production, two from consumption and five from agricultural cooperatives]; (7) fifteen representatives of overseas territories; (8) ten qualified representatives of French thought, particularly those engaged in intellectual endeavor in the economic and scientific areas; (9) ten representatives of family associations; and (10)

Significantly, the inclusion in the French Constitution of an Economic Council was a gesture of the constituent assemblies to satisfy the demands of the MRP and Rightist parties for a second chamber which would curb the power of the Assembly.³⁷ While it was advocated by the proponents of a stronger executive, the requirement of consultation with the Council may actually operate to restrict the latitude of the Government in planning.

The Unique Position of the British Treasury. The position of the British Chancellor of the Exchequer had, by 1949, become unique in the planning apparatus of the United Kingdom. The Treasury in the United Kingdom is the master planning agency in the sense that it prescribes the qualifications and salary of all individuals who have planning duties in the civil service. Nationalization statutes also made the Treasury the financial director of the public corporations for coal, gas, electricity, communications and other industries. In addition, with the nationalization of the Bank of England, the last link between private and public fiscal policy was forged. Finally, in November, 1947, when the posts of Chancellor of the Exchequer and of Economic Affairs were placed under one minister the metamorphosis to an extremely highly centralized planning apparatus in the United Kingdom was complete. The

two representatives of disaster organizations.

³⁷Cf. Gordon Wright, The Reshaping of French Democracy (New York, 1948), p. 151.

personal planning staff, which had been under the tutelage of the Lord President, was transferred to the Treasury at the same time.³⁸

Belief in the Plan. British planning executives have recognized that they possess tremendous authority and apparently have not been averse to exercising it in order to attain socialist goals. "Economic planning is the firm basis for true living,"³⁹ according to Herbert Morrison, and the implication is that the socialists know what "true living" is and the way to achieve it. "We know that in us, and in us alone lies the economic salvation of this country,"⁴⁰ Aneurin Bevan declared in 1945 on the eve of the Labour victory at the polls. The evangelistic attitude of Bevan was frequently repeated or implied in British executive pronouncements from 1945 to 1949. Thus, in 1946, Hugh Dalton, then Chancellor of the Exchequer, replied to a resolution on the Labour Party Conference agenda calling for an inquiry into local finance by the Party National Executive, with this statement:

The one thing with regard to which I warn you is that in this case ministers may move quicker than the National Executive, because by the time the National

³⁸"Britain's Planning Machinery," Labour and Industry in Britain, op. cit., pp. 92-93. Eventually the term "Minister of Economic Affairs" was dropped from usage.

³⁹Report, Labour Party Annual Conference, 1946, op. cit., p. 180.

⁴⁰Report, Labour Party Annual Conference, 1945, op. cit., p. 132.

Executive has completed its inquiry, Aneurin Bevan and I may have settled the business. This concerns Aneurin Bevan and myself primarily, because he as Minister of Health has to consider the finances of the local authorities, and he and I have been working together on this.⁴¹

The attitude is basically one of confidence in socialist principles and in the ability of the executive to plan their successful operation. Hesitancy apparently cannot be tolerated for fear of the political reactions of the supporting electorate.

Dissatisfaction with Planning. The concentration of executive power which wholesale economic planning entailed in the United Kingdom during the period, 1945-1949, was sometimes severely criticized and the results of the 1950 elections suggest that a substantial portion of the electorate agreed with the critics. Dissatisfaction with the system was a major reason why Ivor Thomas, formerly Labour Undersecretary for Colonies, crossed the aisle to the Conservative benches in 1948. According to Thomas, "There is a difference between planning which seeks to supply what the consumer wants, and planning, with a capital 'P' which tells the consumer what he ought to want. This is the Government's type of planning."⁴² Outbursts against planning occurred at Labour Party Conferences, originating especially with worker elements of the Party. One delegate in 1947 characterized the reaction of the worker

⁴¹Report, Labour Party Annual Conference, 1946, op. cit., p. 202.

⁴²H. of C. Debates, October 27, 1946, Col. 113.

as follows:

He is told that it is his economic plan; but that plan, in so far as it affects his own sector of industry, is discussed in a board room whose doors are slammed in his face, between an official that he has not learned to trust and a capitalist that he has learned to hate, very often over a decanter containing drinks well beyond his income.

Numerous objections were voiced against the Government's exhortations to workers to produce more and consume less in order that the national planning scheme might be fulfilled. At the 1947 Labour Conference, Will Lawthor, head of the National Union of Mineworkers, emphasized that "you cannot treat people in a certain way for more than a century in any industry and expect, within the first few weeks of a Labour Government, that those men and their offspring should suddenly become Stakhanovite conscious."⁴⁴ A woman delegate at the 1947 Conference was "sure that this Crippsian method of telling people that they must either 'work or want' is not going to do anything with the women of this country."⁴⁵ Other complaints of Party members have alleged that "departments of the Government [are] at cross purposes with one another because no one mind or economic general staff has got them to work together on a common plan,"⁴⁶ while some delegates requested the Party

⁴³Remarks of Mr. Karl Westwood reproduced in Report, Labour Party Annual Conference, 1947, op. cit., p. 139.

⁴⁴Ibid., p. 142.

⁴⁵Remarks of Mrs. Leah Manning, ibid., p. 151.

⁴⁶Remarks of Mr. Tom Sargent, ibid., p. 138.

National Executive "to find a means of bringing this whole machinery of planning and what it is intended to do each year before Parliament in a formal way."⁴⁷

Successive French governments during the 1945-1949 period were forced gradually to abandon aggressive planning because an accentuation of the struggle between communism and anti-communism steadily reduced the support which could be assured for an implemented program. After May, 1947, the Communists opposed all measures, economic or otherwise, proposed by Governments. Eventually economic planning came under the fire of the conservative parties and by the end of 1947 it was obvious that the goals of the Monnet economic plan could not be met.⁴⁸ Although French planning machinery was maintained to administer the current plan, moderate French premiers beginning with Schuman, tended to minimize economic controls. This development was opposed by the Socialists and an uncertainty over planning policy resulted.

2. Cabinet Hierarchy: United Kingdom

Some cabinet positions in France and the United Kingdom were always considered to confer more prestige on the occupants than others. The posts of Chancellor of the Exchequer

⁴⁷Remarks of Mr. P. Gordon Walker, Report, Labour Party Annual Conference, 1946, op. cit., p. 181.

⁴⁸See Elizabeth R. Cameron, French Reconstruction (New Haven, Yale Institute of International Studies, Monograph No. 27, 1948).

and Secretary of State for Foreign Affairs, in Great Britain offered more responsibility and greater prominence than other posts but neither these nor other ministries afforded pre-eminence of the kind which certain economic ministers seem to possess today within the cabinet. During the post-war period a hierarchy developed within the cabinet to cope with the economic morass in which the nation found itself. The ministers concerned with highest level economic planning emerged at the apex of the hierarchy. The new hierarchy had the double feature of emphasizing economic ministers and party personalities.

Hierarchy of Party Personalities. In consequence of the roles of economic saviours which Labour Party leaders assumed, they tended to become more powerful. Therefore, an emphasis was placed upon personality as well as title. The case of Hugh Dalton illustrates the influence of the man upon the status of the position. When Dalton was forced to resign as Chancellor of the Exchequer on November 13, 1947, for his premature disclosure of budget statistics, he lost his status as cabinet minister.⁴⁹ On May 31, 1948, apparently because

⁴⁹The New York Times dispatch of November 13, 1947, p. 13, related:

The sequence of events began before budget time yesterday afternoon when John Carvel, lobby correspondent of The Star, a London evening newspaper, stopped Mr. Dalton and engaged him in conversation.

At 3:43 P.M., fifteen minutes before Mr. Dalton began reading his budget speech in the House of Commons, The Star came out with headlines reading: 'Penny on Beer';

of his personal prestige,⁵⁰ he was reappointed to the Cabinet in the position of Chancellor of the Duchy of Lancaster, a post which under his predecessor, Lord Pakenham, had not been of cabinet status. The Chancellorship immediately became one of cabinet rank. In 1950 Mr. Dalton became Minister of Town and Country Planning, and this ministry, too, was quickly raised to cabinet status.⁵¹

Emmanuel Shinwell, Chairman of the Labour Party, 1947-1948, offers another example of the position rising or declining with the personality. As long as Shinwell occupied the position of Minister of Fuel and Power, it was a cabinet post. When he was demoted to Secretary of State for War,⁵²

'Tax on pools and dogs likely.' A story credited to The Star political correspondent then followed which gave a number of other details on the budget, all of which proved to be true.

The next thing that the public knew was when a Conservative M.P., H. V. A. Raikes, asked Mr. Dalton during question time in the House today to explain how The Star could have made so accurate a forecast of the budget proposals.

See also H. of C. Debates, November 13, 1947, Col. 551. Dalton told the House:

I very much regret to tell the House that the publication to which the Hon. Member refers arose out of an incident which occurred as I was entering the Chamber to make my speech yesterday. In reply to questions put me by the Lobby correspondent of the 'Star' newspaper, I indicated to him the subject matter contained in the publication in question. I appreciate that this was a grave indiscretion on my part, for which I offer my deep apologies to the House.

⁵⁰See New York Times, November 14, 1947, p. 13; also Report, Labour Party Annual Conference, 1948 (London, 1948).

Hugh Gositskell, a young professor of economics, was appointed Minister of Fuel and Power. Soon afterward the ministry was dropped from the cabinet.⁵³

Hierarchy of Planners. Planning has had the specific effect of bringing into very close association the half dozen major leaders and thus has probably speeded the tendency for an inner circle to develop. Planning requires a oneness of purpose and attitude which cannot be expected except from the smallest group. It also requires an overall view rather than a narrow one: thus of the six major economic departments added since 1939, i.e., the Ministries of Fuel and Power, Supply, Food, National Insurance, Civil Aviation, and Town and Country Planning, none are included within the higher level of the cabinet. The general purpose minister such as Morrison is more suited to overall planning, along with the Chancellor of the Exchequer who has a general control of economic affairs through manipulation of financial devices. Aside, in fact from Shinwell's tenure as Minister of Fuel and Power until 1947, and Dalton's appointment as Minister of Town and Country Planning in early 1950, none of the new economic departments

⁵¹British Information Services, ID 702 (March, 1950).

⁵²New York Times, October 8, 1947, pp. 1, 16.

⁵³British Information Services, ID 702, op. cit.

even achieved cabinet status despite the economic and political power which accrued to the men who headed them.

The Dalton and Shinwell cases also suggest that prominence in the Party and the power to control the Cabinet itself are not always synonymous. Dalton, at the time he was dropped, was the favorite of the Government back benchers, and Shinwell was Chairman of the Labour Party when his demotion occurred.

Apex of Control. Ultimate power in the British executive between 1945 and 1949 appeared to reside with fewer than a half dozen individuals at the highest level of the Cabinet hierarchy. These were Prime Minister Clement Attlee, Herbert Morrison, Leader of the House of Commons, Stafford Cripps, Chancellor of the Exchequer from November, 1947, and Ernest Bevin, Minister of Foreign Affairs. This hypothesis is supported by W. A. Robson⁵⁴ who in 1948 distinguished two separate levels in the Cabinet, the upper one including Attlee, Cripps, Morrison, Bevin and Victor Alexander.⁵⁵ A

⁵⁴W. A. Robson, "The Machinery of Government," The Political Quarterly, Vol. XIX, No. 1, pp. 1-4 (January-March, 1948).

⁵⁵Alexander was Minister of Defence until transferred to the Duchy of Lancaster in 1950 at the same time that Shinwell was appointed to the Defense position and Dalton was transferred from the Duchy of Lancaster and became Minister of Town and Country Planning.

similar conclusion was reached by J. T. Murphy⁵⁶ and Donald G. MacRae,⁵⁷ both of whom have indicated that decisions emanate from a few men to the remainder of the Cabinet where they are formally ratified as official Cabinet policy.

Morrison and Bevin: Social Theory. Full assumption of the planning function by the Cabinet appears to have created a division within the inner circle itself. The origins of the division date from the earlier careers of the men who wield the power. Herbert Morrison, for example, was trained in the Fabian tradition which minimized the class struggle. His contribution to current socialist thought in the United Kingdom was the theory of the public corporation, expounded in his treatise Socialization of Transport, which was a broad philosophical examination of the problems a socialist government might be expected to encounter in a transition from capitalism to socialism. Morrison emphasized the role of the citizen and moralized against the class struggle which he attempted to transcend. In examining Morrison's philosophy, Murphy observes that he "resented the claims of the organized working class, denouncing them as 'syndicalist' and incompatible with his ideological conceptions."⁵⁸

⁵⁶J. T. Murphy's, Labour's Big Three (London, 1948). Murphy, formerly General Secretary of the defunct Socialist League headed by Sir Stafford Cripps, concluded that Attlee, Morrison and Bevin are the "Big Three."

⁵⁷Donald G. MacRae, "Domestic Record of the Labour Government," The Political Quarterly, Vol. XX, No. 1, pp. 1-11 (January-March, 1949).

⁵⁸J. T. Murphy, op. cit., p. 245.

This philosophy runs counter to that of Ernest Bevin, whose life has been itself a history of the fight of the trade unions for equality for the worker with other classes, and for a share in management as the ownership of productive resources passed from private to public ownership.⁵⁹ The struggle between Bevin and Morrison, who felt that the personnel of public corporations should be recruited from the "public" rather than from the working class only, was carried into the terms of the nationalization statutes which reflect both lines of thought.⁶⁰

Cripps: Chief Economic Planner. Cripps represents still a different strain of socialism. With Attlee, Harold J. Laski, G. D. H. Cole, R. H. Tawney, Aneurin Bevan, Ellen Wilkinson and others, he founded the Socialist League in 1932. His history with that organization, and two similar ones which followed it, the United Front and the Popular Front, was the steady pursuit of "a policy based clearly and firmly upon the need for working class unity in a class fight against the ruling class of Great Britain."⁶¹ He was subsequently dismissed from the Labour Party and was readmitted formally by the Party Executive Council only in February, 1945. His

⁵⁹Ibid., p. 243.

⁶⁰Robert A. Dahl, "Workers' Control of Industry and the British Labour Party," American Political Science Review, Vol. LII, No. 5, pp. 875-900 (October, 1947).

⁶¹Eric Estorick, Stafford Cripps, p. 162.

close early association with Attlee in the Socialist League seems to explain his meteoric rise since 1945. From the Presidency of the Board of Trade he moved, in 1947, to the specially created Ministry of Economic Affairs and was given planning authority over all the economic departments, thus displacing the Lord President's Committee which had performed roughly the same function. His decisions were subject only to review by the Prime Minister.⁶² A few months later he was appointed Chancellor of the Exchequer and the functions of the two Ministries were combined.

The power of Cripps in economic planning and the significance of his double cabinet position was immediately reflected in events. Thus George R. Strauss, an intimate friend of Cripps from Socialist League days, who had been readmitted to the Labour Party in 1939, soon became Minister of Supply.⁶³ Hugh Gaitskell, another intimate, was appointed Minister of Fuel and Power in October, 1947, although a coal miner had been expected to succeed Shinwell in the post.⁶⁴ Only a week before these two appointments, another young official, James Harold Wilson, member of Cripps' former staff on the Board of Trade, was appointed President of the Board.⁶⁵ In two weeks time Cripps apparently secured three young administrators of his choice as heads of economic ministries to assist him in

⁶²Finer, op. cit.

⁶³New York Times, October 8, 1947, p. 1.

⁶⁴Idem.

⁶⁵New York Times, September 30, 1947, p. 1.

his planning function as Minister of Economic Affairs.

The rise of Cripps during 1947, accompanied as it was by the transfer of some of his friends to the new positions indicated, coincided with an altered Cabinet approach to domestic policy which emphasized a new nationalism as reflected in the Crippsian program of austerity and national sacrifice. Cripps appealed for an awareness of the duties and obligations which the people owed to the nation if it were to survive. A parallel is suggested between this plea and the appeal to nationalism which he used beginning in 1938, to combat the threat of fascist aggression.⁶⁶

Cripps' ascendancy to the top financial and planning positions and the installation of his intimates in positions of economic authority, on the one hand, and the policy of economic and political nationalism upon which the Cabinet soon embarked, on the other, appear to have been more than coincidental. Bevin's beloved trade unions were not beneficiaries of the new policy but instead were forced into the "work or want" category with everyone else, while Morrison

⁶⁶Historick, op. cit., p. 169, declares that:
 After the signing of the Munich Pact he [Cripps] proceeded to abandon class struggle principles in favor of the national principles of the Labour Party Now all classes were involved as was the very existence of the institutions which he had previously criticized: "Monarchy," "Parliament," "Democracy." Nation was about to fight nation. All his native, traditional patriotism demanded of him that he follow the logic of these circumstances as fearlessly as he had followed the other. Hence, the claims of the "nation" began to supercede the claims of any class.

was displaced as chief economic planner. The obvious deduction from these facts is that Cripps in 1947 stepped over the political heads of Bevin and Morrison and that he and the Prime Minister are at the apex of executive power in the United Kingdom.⁶⁷ The further deduction is, if J. T. Murphy is correct in asserting Attlee's ability as being principally administrative,⁶⁸ that planning in the United Kingdom today is largely the creation of Stafford Cripps.

The peculiar amalgam of nationalism and socialism with which Cripps is personally identified goes far to explain why his economic and financial policy is felt to be less distasteful to British industrialists than those of his predecessor, Hugh Dalton.⁶⁹ On the other hand, left wing members of the Cabinet have retained their importance and the Government has tenaciously held to its socialization plan despite a series

⁶⁷Remarking that Cripps in September, 1947 got "the job of economic dictator, which many believed Mr. Bevin should have had and would have liked," Mallory Browne concluded in the New York Times that:

Politically, the change means that Sir Stafford has suddenly and decisively shot ahead of both Herbert Morrison and Ernest Bevin as the Number Two man in the British Government. In fact, except that Mr. Attlee remains Prime Minister, it looks very much as if Sir Stafford will be Number One man in all that matters most at the moment, namely meeting Britain's grave economic crisis. September 30, 1947, p. 6.

⁶⁸Murphy, op. cit., p. 251.

⁶⁹See New York Times, November 14, 1947, p. 1.

of financial reverses within the nationalized industries.⁷⁰ Cabinet discussions on the plan for iron and steel nationalization proposals suggested that Cripps and Attlee were torn between a tendency to proceed cautiously with further nationalization while the nation was in severe economic straits and an opposite tendency to rush further nationalization legislation. According to reports,⁷¹ cabinet differences arose in 1948 between Aneurin Bevan and Hugh Dalton on the one hand and Cripps, Attlee and Morrison on the other over whether the Government should nationalize steel immediately. Solution of the problem was reached by providing that steel nationalization legislation, although subsequently enacted, should not become effective until after the 1950 general elections which would serve as a referendum.⁷²

Cripps' attitude reflected a concern for the maintenance of national strength which might be impaired temporarily by hasty nationalization, thus causing industrialists to prefer Cripps to a Dalton or Bevan.

Yet Cripps' personal history is one of close association

⁷⁰See Report for 1948 of the British Coal Board. See also New York Times, May 23, 1948, p. E5, and "The King's Speech," official text, issued by British Information Services, T. 90, Washington, D. C., March 7, 1950.

⁷¹New York Times, May 23, 1948, p. E5; June 15, 1948, p. 6.

⁷²See Iron and Steel Act, 1949, in Ch. 72, Public General Acts, 1949.

with the near extremists of the Party such as Bevan.⁷³ He is a strong doctrinaire socialist who basically is opposed to the "ruling" capitalist.⁷⁴ Therefore Bevan was retained in the Cabinet and Dalton and Shinwell were allowed to regain their former prominence.

Thus the Cripps theory emerges as one which attempts to reconcile national and class interests in a new form of socialism directed by a central planning staff at his disposal. The reconciliation is, however, difficult. When he framed a system of distribution of labor in 1946, Cripps announced that the objective was "to carry through a planned economy without compulsion of labour,"⁷⁵ but by August, 1947, labor conscription was a fact.⁷⁶ Similarly, after repeated assurances that the pound sterling would not be devalued, the Chancellor of the Exchequer suddenly announced in October, 1949, that it had been cut in value by a third. If the new national socialism is to prove successful it is at least probable that its chief architect will need to manufacture more theory as he goes along.

3. Cabinet Hierarchy: France

The presence of a cabinet hierarchy resulting from the

⁷³ Cf. Historick, op. cit.

⁷⁴ Ibid.

⁷⁵ H. of C. Debates, February 28, 1946, Col. 2211.

⁷⁶ H. of C. Debates, August 7, 1947, Cols. 1500-1501.

assumption of the planning function by the state is more difficult to discern in France because planning there did not assume the same proportions as in the United Kingdom, and the rapid turnover of governments interrupted central planning. Nevertheless, the emphasis upon economic and financial ministries, occasioned by the general concern over the French economic situation, tended to increase the powers of ministers in these categories.⁷⁷ Since the same men tended to be reappointed to the same ministerial positions in successive governments, those who dominated the economic ministries did form a hierarchy, although it was scarcely as strong a one as that which developed in the United Kingdom. Moreover, these officials actually performed a triple function. As ministers of departments they possessed power to make orders of a specific nature. As members of the French National Planning Council they had power to participate in the formulation of plans. As members of the Cabinet they could reject or adopt completed planning schemes.

The Hierarchy and Its Members. The primarily economic positions in the French Cabinet during the period 1945-1949 were the Ministries of Finance, National Economy, Agriculture and Food, Industrial Production, Public Works and Transport, Labor, and Urbanism and Reconstruction. Four of these posts tended to be filled by the same individuals regardless of the

⁷⁷ Supra, pp. 23-26.

composition of the remainder of any particular Cabinet. Robert Lacoste (Socialist), for example, held the important economic post of Minister of Industrial Production without interruption from the time he was appointed by Leon Blum in December, 1946, until the end of 1949,⁷⁸ a period which encompassed seven premiers. Before him the position had been held for three consecutive cabinets by Marcel Paul (Communist). Pierre Tanguy-Prigent (Socialist) and Pierre Pflimlin (MRP) alternated in the position of Ministry of Agriculture and Food from the time of de Gaulle's second cabinet in November, 1945, to the end of 1949. The Ministry of National Economy, held by a Communist until that Party was excluded from the Government in May, 1947, was later headed twice by André Philip (Socialist), once by René Mayer (Radical), and once by Paul Reynaud (Independent). After the exclusion of the Communists in the Spring of 1947 the Ministry of Labor was filled three times by Daniel Mayer (Socialist) and once by Pierre Segelle (Socialist), who was the minister at the end of 1949. Jules Moch (Socialist) was appointed to the Ministry of Public Works and Transport five times and Christian Pineau (Socialist) was appointed to the position three times.

The Ministry of Finance of this group of Cabinet posts was shifted with each ministry, the post having had seven occupants since 1945. But three of the seven -- André

⁷⁸Appendix No. II, "Occupants of Economic Ministries, France, November, 1945 - November, 1949," indicates the economic ministries for each Cabinet.

Philip, René Mayer and Paul Reynaud -- served in the double capacity of Minister of Finance and National Economy. It was these individuals who constituted the planning hierarchy in the French Cabinet from 1945 to 1949. However, a fundamental trend away from Socialist ideas of a planned society began to appear in France in 1947 and the planning hierarchy was unable to implement its authority as its counterpart had done in the United Kingdom where a contrary trend existed.

The Move Toward a Free Economy. The fundamental trend against detailed planning which characterized French ministries from Schuman (November, 1947) through Bidault (October, 1949) arrested the power of a planning hierarchy in the French cabinet since fewer areas of jurisdiction were open to economic departments. Moderate elements insisted, for example, upon monetary stabilization as a prerequisite for carrying out the Monnet Plan, a condition which the National Planning Council itself had indicated was essential for the success of the plan.⁷⁹ René Mayer, Minister of Finance under Schuman,

⁷⁹See "Plan Monnet: Deuxième et troisième rapports semestriels: extraits," Notes Documentaires et Études, No. 931 (1948), No. 1043 (1948); "Plan Monnet: quatrième rapport: résumé," Problèmes Économiques, No. 74 (1948); "Réalisation du plan d'équipement pour les deux premières années," France d'Outre-Mer (Bulletin d'Informations) (1948). All of these are publications of La Documentation Française, issued through the Secrétariat Général du Gouvernement, Direction de la Documentation, Paris.

forced public purchase of state bonds to combat inflation, and to strengthen the Government's financial position⁸⁰ and, when this did not produce stabilization, resort was had to devaluation of the franc and the establishment of a free market in gold.⁸¹

The Socialists were antagonized by these moves toward "hard money" because they were basically expressions of the liberal school of economics expounded by Mayer's Radical Socialist Party which had always been a center of resistance against planned economy. But the Socialists were caught between "hard money" and "austerity" programs on the one hand and the threat of failure of the Monnet Plan for lack of ability to finance it on the other. Moreover, Marshall Plan aid from the United States was conditioned on a partial unravelling, at least, of the tangled French financial and economic situation. The Socialists, therefore, continued grudgingly to participate in the Schuman, Marie, Queuille and Bidault Cabinets, each of which moved away from controls and total planning toward a freer economy, a balanced budget and "hard money." Since production rose⁸² the policies were

⁸⁰The Schuman-Mayer anti-inflation program, which became law in the Spring of 1948, involved a special levy on profits and on incomes in excess of \$6000, or an alternative option to purchase ten-year government bonds carrying three per cent interest. See Elizabeth R. Cameron, French Reconstruction, op. cit.

⁸¹Ibid.

⁸²See "Plan Monnet: quatrieme rapport," op. cit.

vindicated. Areas of activity for economic departments were reduced because of the changed emphasis and economic power was not concentrated in them as a result of planning to the same degree as in the United Kingdom.

Chapter III

THE PUBLIC CORPORATION AND EXECUTIVE POWER

The employment of public corporations as a device for government control of national economy produced an important expansion of executive power in the United Kingdom and France in 1945 - 1949. In both countries, the public corporation became the principal instrument for managing state controlled sectors of economic production and social services. In the United Kingdom the post-war expansion of the public corporation occurred under the rule of one political party. The theory of British public corporations, their activities, and their political and legal status all reflect the political, economic and social ideas of the British Labour Party. The relationship between executive power and public corporations in the United Kingdom is thus also a reflection of Labour views. The impact of public corporations on executive power in France differs from the British experience because French public corporations were created by multi-party governments and represent several theories. But in both countries a major result of the growth of the public corporation has been to increase executive power in an absolute sense, even though there may be differences in the amount and direction of increase.

1. The Rationale of the Public Corporation

The speed and scope of the development of public corporations since 1945 is unprecedented in democratic political life. Public corporations are operating in the historic areas of private enterprise on a scale unparalleled by private enterprise itself.¹ Public corporate authority is so broad as essentially to control national economic life and to affect directly or indirectly the lives of all individuals in the state. The public corporation is the favored vehicle for the administration of vast new public enterprises because new corporations could be projected from successful pre-war experiences and because its advocates are convinced that it retains the management advantages of the privately controlled joint-stock company. After the financial "break even" point is reached, the public corporation is free to formulate policy on the basis of social considerations without regard for the policy of increasing profits which is generally adopted by private management.²

¹"The Coal Board and the Transport Board rule each an industrial empire of three-quarters of a million men. The biggest American business -- General Motors -- accounts for one third of that, a mere 250,000." P. C. Hooper, "Management in the Public Services," Public Administration, Vol. XXVI, No. 4, p. 217 (Winter, 1948).

²Cf., Herman Finer, The Road to Reaction (Boston, 1945); and Barbara Wootton, Freedom Under Planning (Chapel Hill, 1945), Ch. I.

Pre World War II Public Corporations in United Kingdom. The British Broadcasting Corporation, the London Passenger Transport Board and the Central Electricity Board were the principal public corporations in the United Kingdom prior to 1945. These entities were created by non-socialist governments. The principal reason for state intervention in each case was that the government could not permit the sacrifice of social productivity to private gain in such areas of natural monopoly. A fundamental aim was to free certain industrial operations from the profit motive. To accomplish this, the special management apparatus of the public corporation was employed. It was an attempt "to apply to public administration when extended to commercial enterprise the type of organization evolved for large-scale private commercial administration by the joint-stock company."³

Except for specified ministerial purposes, the public corporation was to be independent of political controls. Unlike the post-office, for example, it was not to be operated as part of the state administrative apparatus. Typical management machinery comprised an expert, nonpartisan board, selected by the appropriate minister, to exercise complete operational and financial control under a corporate charter. The governing body had to be capable of good judgment, a requirement which involved wise ministerial choice of board members, and the corporation needed to have the authority

³Lincoln Gordon, The Public Corporation in Great Britain (London, 1938), p. 3.

necessary to carry policy into action. At the same time, it was appreciated that, to protect the public interest, the managing boards needed to be susceptible to parliamentary and popular criticism, while retaining their freedom of administration. It was believed that the ideal management board should be small, consisting of from five to nine members chosen by the appropriate minister, and that it should be non-representative in character.

Early Nationalization in France. Public enterprise had also appeared in France prior to 1940, although the agency of the public corporation had not progressed as far in France as in the United Kingdom. Two stimuli to nationalization can be traced. The social doctrine of solidarite' and the economic theory of socialism of the last quarter of the nineteenth century proclaimed the notion that the proper sphere of state activity should include positive contributions to social and economic welfare. Recurrent crises--military, financial, political and psychological--gave further impetus to nationalization.

As early as 1878 certain economically wasteful railroads were nationalized by state purchase.⁴ Telegraph and telephone services were in state hands almost from their inception.⁵ In the cases of maritime navigation and alcohol only financial control was acquired. Tobacco, match and powder

⁴Law of May 18, 1878.

⁵See Shepard B. Clough, France: A History of National Economics, 1789-1939 (New York, 1939), Ch. VII.

manufacture all became state monopolies.⁶ State control was also gradually extended by subsidy.⁷ Thus gradual or piece-meal nationalization of certain monopolies began to develop. By 1930, the major French labor unions were advocating comprehensive nationalization schemes for the fundamental industries, although these reflected different approaches and objectives resulting from the sharp differences between the syndicalist and collectivist creeds.⁸

Public Corporations in the United Kingdom and France, 1944-1947. In the four year period 1944-1947 nationalization legislation in both France and the United Kingdom transferred to state ownership major portions of the national economy. In the United Kingdom the process went further than in France, but it should be emphasized that in each country the industries affected were fundamental to national existence. The

⁶See John H. Clapham, The Economic Development of France and Germany, 1815-1914 (Cambridge, 1921).

⁷For a discussion of nationalization and regulatory activity in France prior to World War II consult Walter R. Sharp, The Government of the French Republic, especially Chapter VIII, "Economic Etatism," pp. 206-249.

⁸L. Julliot de la Morandière and Maurice Byé, Les Nationalisations en France et à l'Étranger, Vol. I, Les Nationalisations en France (Paris, 1948). This is a volume of essays on nationalization theory and practice in France undertaken by the Institute of Comparative Law of the University of Paris.

immediate reason for nationalization in France was the fulfillment of the agreed socialization program of the Resistance parties.⁹ In the United Kingdom the compelling reason was attainment of the nationalization goals of the British Labour Party.¹⁰ In both countries the programs were part of a desperate effort to revive national economic security after the devastation of World War II, and to restore some measure of equilibrium in international trade.

Under the de Gaulle Government, public corporations were established in France in 1944 and 1945 to manage state owned coal fields (Houillères Nationales du Nord et du Pas-de-Calais),¹¹ a leading automobile concern (Regie Nationale des Usines Renault),¹² an aircraft manufacturing company

⁹A Resistance Charter drawn up by the National Resistance Council early in 1944 asked for the return to the nation of the great monopolies, power resources, mineral wealth, insurance companies and large banks. For a translated copy of the Charter see David Thomson, "Building the Fourth Republic," Contemporary Review, No. 962, pp. 69-71 (February, 1946). Cf. also Notes documentaires et études, No. 182 (November 17, 1945).

¹⁰See British Labour Party, Let Us Face the Future (London, 1945).

¹¹See Ordinance of December 13, 1944, Journal Officiel, December 13, 1944, pp. 1876-1879.

¹²Ordinance of January 16, 1945, Journal Officiel, January 17, 1945, pp. 222-224.

(Société Anonyme des Moteurs Gnome-Rhone),¹³ civil airlines (Air France),¹⁴ and certain large banks (Banque Nationale du Crédit, Crédit Lyonnais), including the Bank of France.¹⁵

In the Spring of 1946, the Socialist Government of Felix Gouin achieved the nationalization of gas and electricity,¹⁶ certain large insurance companies and investment banks,¹⁷ and the entire coal mining industry.¹⁸ A public corporation was created to control each of these enterprises. Only in the cases of gas and electricity was opposition substantial enough to delay the nationalization program.¹⁹

In the United Kingdom, nationalization of basic industries and the creation of public corporations proceeded even

¹³Ordinance of May 29, 1945, Journal Officiel, May 30, 1945, p. 3082.

¹⁴Ordinance of June 26, 1945, Journal Officiel, June 27, 1945, pp. 3890-3891.

¹⁵Law of December 2, 1945, Journal Officiel, December 3, 1945, pp. 8001-8004.

¹⁶Law of April 8, 1946, Journal Officiel, April 9, 1946, pp. 2951-2957.

¹⁷Law of April 25, 1946, Journal Officiel, April 29, 1946, pp. 3566-3570.

¹⁸Law of May 17, 1946, Journal Officiel, May 18, 1946, pp. 4272-4276.

¹⁹The gas and electricity bill was delayed both in the Cabinet and in Committee because of MRP objections to the proposals for indemnifying stockholders. See David H. Pinkney, "Nationalization of Key Industries and Credit in France after the Liberation," Political Science Quarterly, Vol. LXII, No. 3, pp. 368-380 (September, 1947).

more rapidly. Public corporations were provided for the Bank of England,²⁰ the coal industry,²¹ civil airways,²² and cable and wireless²³ in 1946. Corporations were authorized for nationalized transportation,²⁴ and electricity²⁵ in 1947. In 1948 a public corporation was inaugurated for the newly nationalized gas industry.²⁶ Also, two 1947 statutes concerning land development authorized the creation of the Central Land Board²⁷ and the Agricultural Land Commission,²⁸ both public corporations, while an indefinite number of

²⁰Bank of England Act, 1946, Public General Acts, 1946, Ch. 27, pp. 41-47.

²¹Coal Industry Nationalization Act, 1946, Public General Acts, 1946, Ch. 59, pp. 399-468.

²²Civil Aviation Act, 1946, Public General Acts, 1946, pp. 867-925.

²³Cable and Wireless Act, 1946, Public General Acts, 1946, Ch. 82, pp. 1215-1221.

²⁴Transport Act, 1947, Public General Acts, 1947, Ch. 49, pp. 1169-1342.

²⁵Electricity Act, 1947, Public General Acts, 1947, Ch. 54, pp. 1809-1932.

²⁶Gas Act, 1948, Public General Acts, 1948, Ch. 67, pp. 939-987.

²⁷Town and Country Planning Act, 1947, Public General Acts, 1947, Ch. 51, pp. 1347-1555.

²⁸Agriculture Act, 1947, Public General Acts, 1947, Ch. 48, pp. 1049-1144.

"developmental corporations"²⁹ were authorized under a New Towns Act of 1946.

2. Comparison of French and British Theories of Public Corporations

Representation. French theory of the organization of public corporations is one that wavers between the centralization identified with the collectivist doctrines of 19th Century French socialism and the decentralization identified with French syndicalism. The result, a compromise, is not a particularly workable one.

Organization of all the public corporations in France adheres generally to the pattern recommended by the Confédération Général du Travail in 1920. The keynote is representation.³⁰

²⁹New Towns Act, 1946, Public General Acts, 1946, Ch. 68, pp. 819-864.

³⁰In France a complex, multi-group arrangement for policy making was included in the original Banque nationalization act. In the United Kingdom the original Bank Nationalization Bill of 1946 was supplemented by an Investment (Control and Guarantees) Act, 1946, which created further agencies of credit control. See, Investment (Control and Guarantees) Bill, Memorandum and Draft of Order to be made under Clause 1 of the Bill; and, Borrowing (Control and Guarantees) Act, 1946, Public General Acts, 1946, Ch. 58, July 12, 1946.

In each country transfer of ownership of the central bank was a comparatively simple procedure. Activity of each bank continued as before nationalization. The locus of control changed and, in the United Kingdom, was frankly subordinated to the control of the Treasury. Shareholders were compensated by issuance of guaranteed government stock.

In France the national credit organization, which emerged along with nationalization of certain banks, included a National Credit Council under the supervision of a minister designated by the Government. The minister may delegate his powers to the Governor of the Bank of France. The National Credit Council is an example of extremely unwieldy functional represen-

Thus at the head of each corporation there is a board of directors drawn from three representative sources; the state, the consumers and the employees. Within the structure of each corporation the same theme is carried out--often to an extreme--by specifying types of consumers within the consumer representation category, the numbers and types of government representatives within the state representation category, and comparable divisions within the employee classifications.

In the United Kingdom, in sharp contrast to French practice, the principle of representation in the constitution of the directing board is rejected in favor of the principle of expert control. The relatively large and unwieldy administrative board of French practice becomes, in British

tion, comprising 38 members. Interest groups whose representatives sit on the Council are the General Confederation of Agriculture; agricultural, consumer and producer cooperatives; foreign and domestic commerce promotional organizations; labor organizations, and financial experts, including specialists of the nationalized and private banks. At the apex of the French credit system is a control commission of five members including the Governor of the Bank of France, the President of the Financial Section of the Council of State, the Director of the Treasury of the Ministry of Finance, the Chief of the Credit Section of the Ministry of National Economy and one representative of the Federation of Bank Employees. It is significant that this arrangement is an abandonment of the functional representation principle at the top of the hierarchy.

The English counterpart of this elaborate credit structure is a model of simplicity, the elements of which have clear responsibility and control relationships. The British system, moreover, seeks to control public and private investment and credit, "not merely in the narrow financial sense of controlling borrowing, but also in the wider sense of planning real capital development of all kinds." Investment (Control and Guarantees) Bill, Memo and Draft Order, Cmd., 6726 (January, 1946), p. 2. To secure these ends a National Investment Council was created, headed by the Chancellor of the Exchequer, The Governor of the Bank of England, the Chairman of the London Stock Exchange and the Chairman, respectively, of the Capital Issues Committee and the Public Works Loan Board are members.

experience, a small body of experts. British theory consciously favors non-representation at higher levels of organization; possibly because it is so closely linked with the dominant political party, the British Trade Union Congress does not exert pressure for representation as does the Confédération Général du Travail. The principle of representation does appear in the lower levels of the British public corporation structure, but not to the extent to which it is found in France.³¹

³¹The British Gas Council has fourteen non-representative members, chosen by the Minister of Fuel and Power and consisting of twelve Area Gas Board Chairmen, an independent chairman and a deputy chairman. Corresponding Gaz de France Service National has an Administrative Council of eighteen members appointed by decree of the Minister of Industrial Production in accordance with a detailed representative scheme: (1) six members represent the state, one nominated by the Minister of National Economy, two nominated by the Minister of National Production, one nominated by the Minister of Agriculture, and one nominated by the Minister of Public Works; (2) six represent consumers, four of them representatives of "functional units," one from the principal consuming industries, and one from either agricultural or family associations; (3) six are representatives of employees, three of whom represent the administrative and technical personnel, one the clerical personnel and two the laboring personnel. The Administrative Council nominates a Director of the National Gas Service for appointment by decree of the Council of Ministers with approval by the Minister of National Economy and the Minister of National Production. A precisely similar arrangement was employed in the case of Electricité de France Service National, as contrasted with its counterpart, the British Electricity Authority, which comprises simply a chairman and not more than eleven other members appointed by the Minister of Fuel and Power.

An Intermediate Financial Agency. Aside from the difference in representative character of the corporations in France as contrasted with those in the United Kingdom, the French corporative board is normally subject to the financial supervision of a smaller agency which is controlled by the Minister of Finance and appointed by the Council of Ministers. A Commission de Vérification des Comptes des Entreprises Publiques performs this function of financial audit and control for Gaz de France Service National and for Électricité de France Service National. Standard British practice interposes no intermediate agency of financial control between the corporations and the minister. Financial policies are determined by the appropriate minister on the basis of the corporation's recommendations and after approval by the Treasury.³² Moreover, the minister is required to lay before Parliament annual reports of the corporation's accounts.

Autonomy. Observers have agreed that the juridical position of the nationalized services in France is not satisfactory.³³ Poor management and the generally unsatisfactory

³²The Coal Nationalization Act, 1946 affords a typical example of financial control by the minister. Sec. 27 specifies that "The [Coal] Board may, with the consent of the ministerborrow [to the extent of] ten million pounds." Sec. 28 provides that "the Board shall make to the minister payments of such amounts as he may direct, by way of recouping Crown expenses"

³³Cf. "Tour d'horizon," Revue politique et parlementaire, No. 578, pp. 197-199 (May, 1948); Pierre le Brun, "Le problème du statut des entreprises publiques," Revue politique et parlementaire, No. 577, pp. 16-23 (April, 1948). David H. Pinkney, "Nationalization of Key Industries and Credit in France after the Liberation," op. cit.

status of the nationalized industries were blamed for the financial losses suffered by the coal, electricity and gas industries.³⁴ The law of August 17, 1948, empowered the Government to proceed with the reorganization of all publicly owned industries,³⁵ to take account of the lessons of experience.

In the meantime the MRP and the Communist Parties had expressed deep opposition to the operation of the nationalized industries, but on different grounds. The Communists in 1947 proposed a general statute, sufficiently flexible to cover all state enterprises, under which tripartite administrative councils in each area of state enterprise would be endowed with real autonomy. Whatever the Communists' motive, they called for a reduction in the ability of ministers to dominate corporate management, while retaining (and emphasizing) the principle³⁶ of functional representation.

The MRP proposal of 1947, on the contrary, proposed to recognize a sharp distinction between those industries subject to public operation because of their peculiarly vital

³⁴See M. J. R., "Coût et prix dans les entreprises publiques: les entreprises publiques et la théorie du déficit systématique," Droit social, pp. 206-209 (June, 1948).

³⁵Law of August 17, 1948, in Journal Officiel, August 18, 1948, p. 9082.

³⁶See Pierre Le Brun (Secretary C. G. T.) "Le problème du statut des entreprises publiques," Revue politique et parlementaire, No. 577, pp. 16-23 (April, 1948).

characteristics, and those national enterprises in which the state had hardly more than a commercial or business interest. For the first group, which performs functions which if interrupted would gravely prejudice the life of the state, considerations of profit should be secondary to the larger matter of public interest. The second group, on the other hand, being not indispensable to the life of the state, might be abandoned if they were not sufficiently productive.³⁷

Under the MRP plan, a director-general, appointed by and representing the government, would possess wide powers, while the administrative councils would perform a strictly limited function, principally consultative. The MRP proposal essentially abandoned the notion of functional representation, while the Communists proposed to enlarge its scope.

The Government's proposal for a general statute of public enterprises developed in 1948 and was closer to the view taken by the MRP. Two categories of industries were envisaged,³⁸ the first consisting of those affected with an obvious public interest and the second consisting of businesses not so affected. The financial autonomy of each would be maintained. A general director would be appointed for each industry by the Cabinet. While functional representation would be continued in the administering boards of each industry, the appropriate

³⁷ ibid.

³⁸ Projet de loi portant statut général des entreprises publiques, No. 6027, Assemblée Nationale, Annexe au procès-verbal de la séance du 31 décembre 1948.

minister would possess the right of prior approval for industry planning³⁹ and a special Government representative in each industry could veto decisions of administrative councils.⁴⁰ The Government proposal had not been enacted into law at the end of 1949. If it should be so enacted, the control of the Cabinet over nationalized industries would become more pronounced than in the United Kingdom.

The British organizational structure for nationalized industries frankly ties the corporation closely to the ministers, the latter having power to appoint and remove the members of corporation boards and to exercise powers of general direction and financial control. Perhaps because British ministers exercise ultimate control they are more willing to allow autonomy in practice. It is reported, for example, that ministers have frequently refused to answer questions in the House of Commons relating to the management of nationalized industries, insisting generally that the questions touched matters of day-to-day administration and therefore were the concern only of the corporations themselves.⁴¹ Again, the British Transport Commission reported that for the year 1948 it had received no formal directions from the Minister of Transport under the powers exercisable by him under the Transport Act, but it was emphasized that policy consultations

³⁹Ibid., Art. 36 and 37.

⁴⁰Ibid., Art. 39 and 41.

⁴¹(Unsigned Editorial), "Sauce for the Gander," Public Administration, Vol. XXVI, No. 2, p. 65 (Summer, 1948).

take place between the Minister and the Commission.⁴²

Contrasts on the Operational Level. A sharp contrast appears between British and French practice on the operational level of the public corporation. The British system results in greater decentralization of the actual production and distribution services than that of the French. In the United Kingdom, for instance, twelve ministerially appointed Area Gas Boards and fourteen Area Electricity Boards actually direct the production and distribution of these utilities.

⁴²British Transport Commission, First Annual Report, 1948 (London, 1949), p. 9. The British Transport Commission, a public authority of five members, became operator and controller of all British railways, canals, motor transport, harbor facilities and coastal shipping on January 1, 1948. The land and water transportation system and allied industries are contemplated by the nationalization legislation as falling into principal divisions. Thus an "Executive," appointed by the Minister of Transport and comprising no more than nine members, was created for each division as follows: Railway Executive, Docks and Inland Waterways Executive, Road Transport Executive, London Transport Executive and a Hotels Executive.

The former Railway Rates Tribunal, created under the Railways Act, 1921, is redesignated as the Transport Tribunal, a rate making body as well as a judicial agency for determining the liability of the Commission for loss or damage. The judicial powers of the Transport Tribunal apparently are envisaged to be so wide as to substitute the Tribunal for the High Court of Justice on justiciable matters. See Transport Act, 1947, Tenth Schedule.

Importance of the Transport Commission is emphasized by the fact that it controls an empire of about 750,000 transportation employees. In the process of nationalization a total of 59 railway companies and 18 canal and navigation companies were taken over. In practice the Commission has attempted to develop decentralized administration and to delegate its powers to the various "Executives" as speedily as possible. The members of the Commission are themselves not charged in the act with any specialist or functional responsibilities. See British Transport Commission, First Annual Report (London, 1949).

In France these functions are in the hands, respectively, of single gas and electricity distribution services, regionally operated and responsible to corporate national managing bodies. The French utility distribution services are also examples of functional representation in an extreme form⁴³ while the British services are governed by board members chosen by the minister for experience and proved capacity in commercial, financial, scientific or administrative matters.⁴⁴

Channels for Consumer Complaint. The principle of representation is found in British practice in the form of external consultative or consumer councils through which consumers may register criticism of corporation policy or action. The councils may appeal directly to the appropriate minister. Absence of analogous external representative machinery in the French system suggests a reliance upon the efficacy of internal consumer representation in the administrative hierarchy as a substitute for the external councils.

The French Paradox. French theory of the organization of the public corporation corresponds to the French political theory of gouvernement conventionnel, or government by an all-powerful assembly. In both instances the assumption is that power should be diffused in a broadly representative and

⁴³ Each distribution service is administered by an administrative council nominated by the National service on a representative basis, including four representatives of the national service, six representatives of various categories of workers designated by the most representative syndicats and eight representatives of consumers.

⁴⁴ See, for example, Electricity Act, 1947, Section 3.

numerous body. France, however, has had enormous difficulty in reconciling democracy and political government as indicated by the uneven record of assembly government in the Third Republic. As Karl Loewenstein observes, "it is a matter of historical record that assembly government from the start served merely as the facade for the installation of the strong executive."⁴⁵ Is not the same result to be expected in the case of the economic government of the French public corporation? French administrative councils are so large as to be unwieldy and so diverse in composition as to hinder, if not preclude, agreement on policy and operations. It is in these circumstances, according to the Loewenstein thesis, that actual power is exercised by persons other than those constitutionally intended. Thus the paradox of French political democracy may also be the paradox of French economic democracy.

3. Increased Ministerial Jurisdiction over Governmental Agencies

The legal relationships between ministers and public corporations have produced substantial increases in the jurisdiction of ministers, both in France and the United Kingdom. The sheer volume of the ministerial business created by the corporations results in more ministerial orders, to more persons, in more situations, than was the case before the era

⁴⁵Karl Loewenstein, "The Presidency Outside the United States," Journal of Politics, Vol. 2, No. 3, p. 476 (August, 1949).

of the corporations. A number of functions relating to the corporation are specifically conferred upon ministers by the nationalization statutes and practice tends to add more functions. As ministerial jurisdiction enlarges, executive power increases.

The Planning Function. Planning bulks large among the new areas of ministerial jurisdiction created by the public corporations. In each nationalized industry where physical production is involved, planning becomes a major element of the management process. Under terms of statutes which authorize the British public corporations, "works of development" shall be "in accordance with a general program settled from time to time in consultation with the minister."⁴⁶ The minister is thus drawn into the business of planning for future developments. Borrowing schemes, plans for stockholder indemnification, and comprehensive safety measures all are aspects of the planning as well as of other functions. The Coal Industry Nationalisation Act states specifically that, "it shall be the duty of the Minister to secure the prosecution of research into methods of advancing the safety and promoting the health of persons employed" ⁴⁷ Other examples are found throughout the statutes.

⁴⁶ See Electricity Act, Section 5, para. 1; Coal Industry Nationalisation Act, Section 3, para. 2; Transport Act, Section 4, para. 2.

⁴⁷ Coal Industry Nationalisation Act, Section 42, para. 1.

The greatest single area of planning assigned to the British executive is that concentrated in the Ministry of Town and Country Planning by the Town and Country Planning and New Towns Acts. Under the former statute, the Minister must approve developmental schemes of local planning authorities and he may override their decisions to refuse or grant permission for development by a private concern or individual. In addition, he may devise his own planning scheme, and may modify or revoke those parts of a local plan which do not conform to his own concepts.⁴⁸ Similarly, his approval is required for plans of development corporations under the New Towns Act, which he may modify or revoke to bring them into conformity with plans of the central organs.⁴⁹

Under French nationalization legislation, the Minister of Finance and the Minister of National Economy plan the profit rate of the public coal corporation.⁵⁰ The Minister of Finance is the presiding officer of the National Council of Insurance, the main planning agency for the nationalized companies. The National Credit Council, the corporate manager of nationalized credit in France, is required to develop and implement credit in conjunction with the Ministers of National Economy and of Finance,⁵¹ while planning for the

⁴⁸Town and Country Planning Act, 1947, Section 6, 7.

⁴⁹New Towns Act, Section 3.

⁵⁰Title III, Law of May 17, 1946, op. cit.

⁵¹Title II, Law of April 25, 1946, op. cit.

nationalized banks is accomplished through a Control Commission which included among its members the senior specialists from the same two ministries.⁵² In each of these instances, ministers or their representatives are involved in new kinds of planning.

Appointment and Removal. An extensive practical control over the public corporations accrues to certain ministers in the United Kingdom by reason of their explicit power to appoint and, by implication, to remove members of the corporation boards. The typical clause conferring the power specifies that the minister shall appoint the members of the Board and "may make regulations with respect to . . . the tenure and vacation of office by the members of the Board."⁵³ Presumably if the minister may make regulations concerning the "tenure and vacation of office," the regulations could readily be framed to permit removal of undesirable persons as occasion requires. The transport Act and the proposed Iron and Steel Act close partially the removal loophole and

⁵²Title IV, Law of December 2, 1945, op. cit.

⁵³Coal Industry Nationalization Act, Section 2, para. 3, 7. Or see Electricity Act, Section 5, para. 7. D. N. Chester observes, in his work The Nationalized Industries: A Statutory Analysis (London, 1948), p. 5, that: "The chairman and the members of the post-war Boards are usually in a less independent statutory position. In the three pre-1939 corporations, for example, either the actual or the minimum term of office of a person appointed to the board was specifically stated in the Act. The normal pattern for the post-1945 corporation is to leave the Minister free to deal with the question of tenure by way of regulation."

are exceptions to the general rule. They provide that "every member of the [Transport] Commission shall hold and vacate his office in accordance with the terms of his appointment"⁵⁴ This clause guarantees a definite term of office to the Board member, and presumably restricts the minister's removal power.

In France the process of appointment to public corporate authorities involves ministers, consumers and representatives of the nationalized industries themselves. Therefore the power of ministerial appointment contributes qualitatively less to increasing the area of ministerial jurisdiction than it does in the United Kingdom. Nevertheless, ministerial appointment entails a notable volume of activity. No fewer than six ministers participate in the appointment of the twenty-one members of the National Insurance Council, and eight ministers in the case of the thirty-eight members of the National Credit Council. A similar ratio obtains for the gas, electricity and coal administrative councils. The Caisse National d'Équipement et de l'Électricité et du Gaz, the central financial agency for gas and electricity in France, is itself controlled by a smaller commission, the Commission de Vérification des Comptes des Entreprises Publiques, whose members are designated by the Council of Ministers on nomination of the Minister of Finance. The French statutes

⁵⁴Transport Act, Section 13, para. 3; Iron and Steel Act, Section 2, para. 4.

are not as clear as the British in the matter of removal. However, the general doctrine in French administrative law is that fonctionnaires, in the absence of regulations protecting their tenure, are at the mercy of ministers.⁵⁵

Directing Activities of Ministers. Specific powers of a directive nature were assigned to French ministers by the legislation which created the important French public corporations. The Minister of Finance, as exemplified in the insurance company nationalization act, was particularly affected. He was empowered to fix the types as well as the terms of the French government securities for indemnifying stockholders of the nationalized insurance concerns, while a Central Reinsurance Bank, authorized by the same law, was placed under the direct control of the Ministry of Finance. The statute which nationalized certain banks and credit agencies placed those institutions under the ultimate authority of a Control Commission of five persons, of whom one was the Director of the Treasury of the Ministry of Finance, an agent of the Minister of Finance. Again, the Minister of Finance was one of three ministers who was empowered to direct by decree the establishment of Les Charbonnages de France, the public corporation for coal production. Other executives

⁵⁵ Joseph Barthélémy, in his Traité élémentaire de droit administratif (Paris, 1930), p. 81, states the doctrine as follows:

A défaut de règlements qui les protègent, les fonctionnaires d'autorité sont à la merci des ministres, qui peuvent, s'ils estiment que l'intérêt du service l'exige, leur retirer la fonction dont l'investiture leur a été donnée.

who possess directive powers at various points in the several French public corporations include the Ministers of National Economy, Industrial Production, Public Works and Transport and of Reconstruction and Urbanization.

New directive activities exercised by British Ministers with respect to public corporations are of the broadest nature. Authority conferred on ministers by the nationalization statutes appears to be almost unlimited. The clause in the British Coal Industry Nationalisation Act, 1946, setting forth the powers of the Minister in relation to the corporation, will illustrate the potential scope of ministerial power:

The Minister may, after consultation with the Coal Board, give to the Board directions of a general character as to the exercise and performance by the Board of their functions in relation to matters appearing to the Minister to affect the national interest, and the Board shall give effect to any such directions. ⁵⁶

⁵⁶Section 3, para. 1. Almost identical clauses are found in the Electricity Act, the Transport Act and the Iron and Steel Act.

The British National Coal Board, created under the terms of the Coal Nationalisation Act, 1946, is, from the standpoint of the significance of the coal industry in Great Britain, the most important public corporation. The Board comprises a chairman and eight members, all appointed by the Minister of Fuel and Power who has the authority to give the Board "directions of a general character as to exercise and performance." The Minister has also the power of removal of Board members. The Board has exclusive right to all the activities identified in the act, from the mining of coal to colliery welfare activities and price setting.

In contrast, French nationalization of coal is another example of the Gallic tendency to heap administrative tiers, one on the other. At the apex stands a "central public

At what point the minister could be successfully accused of having acted ultra vires is indeed difficult to ascertain under these terms. Moreover, no precedents exist as yardsticks and no cases were recorded, from passage of the act through the year 1949, questioning a minister's power to act in respect to a public corporation.⁵⁷

establishment called Les Charbonnages de France, an agency of directional, coordinative, planning, pricing, reimbursing, developmental, personnel and financial functions. An eighteen member Administrative Council appointed by decree of the Council of Ministers is the administering body. Its organization illustrates the French penchant for extreme functionalism: (1) six representatives of the state, two of these nominated by the Minister of Mines and one each by the Ministers of National Economy, Finance, Labor, and Transport; (2) six representatives of consumers of combustible minerals, three of whom represent principal industries and three who represent domestic users; (3) six representing employees, nominated by various national labor organizations. The Administrative Council has a president. A director-general is named by decree of the Council of Ministers on proposal of the Administrative Council of the Charbonnages. The diffuse structure is accountable, as in the case of utility enterprises, to the Chambre des Comptes with respect to financial and administrative responsibility.

The British Coal Nationalisation Act, 1946, does not itself specify operational divisions under the National Coal Board's supervision although in practice Divisional and Area Boards, and Pit Organizations have been created. Thus the first two annual reports (years 1946, 1947) of the Board lay stress on the function of the Area General Manager but do not delineate the precise relations between the administrative divisions and sub-divisions noted above. See Report, National Coal Board, 1946, H. of C. 174 of 1948; Report, National Coal Board, 1947, H. of C. 175 of 1948.

Operating machinery under the French system is a great deal more complicated because of French insistence on functional representation. Area Administrative Councils of 19 members each were created. Six members of each council represent the Charbonnages and are named by the national Administrative Council; (2) six represent economic interests, of whom two represent consumer industries and are nominated by the Chamber of Commerce, two others represent domestic users and are nominated by the general council of the Departement in which the area is situated, while two more represent the general interests of consumers and are nominated by the Minister of National Economy; (3) seven members represent various categories of employees.

The broadened directional activity of the ministry is sharply reflected by the powers accorded the Ministry of Town and Country Planning under the Town and Country Planning Act (1947) and the New Towns Act (1946). Under the New Towns Act, the Minister may designate an area as a townsite by his order. He then may create a corporation, issue directives concerning its program and operations, and dissolve it when its mission has been performed. The development corporation must obtain the Minister's approval for its development plans before they can be carried out, subject to the requirement that he "consult with" local authorities before approving the plan. But this requirement need impose no very serious restraint upon the Minister. In determining whether the required consultation between the Minister and local authorities took place in accordance with Section 1 of the New Towns Act, Morris, J., took the view that "consultation" might be a continuing process, not requiring formal procedures in all cases. He said:

The word 'consultation' is one which is in general use and that is well understood. No useful purpose would be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place. The Act does not prescribe any particular form of consultation. If a complaint is made of failure to consult, it will be for the court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held. Consultation may often be a somewhat continuous process and

⁵⁷ A thorough search of the All England Reports from the date of passage of each act through 1949 disclosed only a few cases regarding legislation, these mostly involved ministerial relationships with individuals under the New Towns Act or the Town and Country Planning Act.

the happenings at one meeting may form the background of a later one.⁵⁸

The opinion of Lord Thankerton in the celebrated Stevenage Case in July, 1947, made it clear that all the minister is bound to do is genuinely to consider any objections to a proposed development scheme and not to come to those matters with a "foreclosed mind."⁵⁹ The same jurist, in another case involving adequacy of consultation, emphasized that if local authorities do not contend that they have not been consulted, it is then not open to others to put forward that contention.⁶⁰

After consultation the minister may issue a special interim development order granting planning permission to private developers for any development which is in accord with the ministerially approved plans of the development corporation.

In carrying out the plans, the Corporation may "acquire, hold, manage, and dispose of land and other property, to carry out building and other operations...."⁶¹ An extreme power

⁵⁸ Fletcher and Others v. Minister of Town and Country Planning, King's Bench Division, July, 1947, All E. R., 1947, Vol. 2, p. 497.

⁵⁹ Rollo v. Minister of Town and Country Planning, King's Bench Division, July, 1947, All E. R., 1947, Vol. 2, pp. 495-496.

⁶⁰ Franklin and Others v. Minister of Town and Country Planning, House of Lords, July, 1947, All E. R., Vol. 2, 1947, pp. 289-290.

⁶¹ New Towns Act, 1946, Section 2, para. 2.

of land acquisition is given both the corporation and the Minister by incorporation of Section 2 of the Acquisition of Land (Authorisation Procedure) Act in the New Towns Act. This permits the acquiring authority, in certain cases of immediate urgency, to "enter on and take possession of the land to which the authorisation relates, notwithstanding that the purchase of the land has not been completed."⁶² The effect of permitting Section 2 of the Acquisition of Land (Authorisation Procedure) Act to be applied to the development corporation is to nullify relevant procedural property guarantees. All that is required for taking possession of the land is certification by the Minister to the development corporation of the urgency of the proposed step.

Financial Functions. In addition to substantially increased ministerial jurisdiction in areas of planning, direction, and appointment and removal, executive authority exercises wider financial powers over other agencies of government as a result of the rise of the public corporation. In France, the Minister of Finance participates in the certification of the accounts of all public corporations and other financial functions are assigned to him by numerous provisions of various French nationalization statutes. It is his duty, for example, to assist in developing national credit by issue of appropriate regulations and the exercise of

⁶² New Towns Act, 1946, Section 4, para. 3.

necessary controls. Banking policy of nationalized banks is framed, in part, by the Minister of Finance, and he is charged with coordinating Government financial policy with that of the new agencies of national credit. It is also his function to specify the rate of profit for the gas and electricity industries and, with the assistance of the Minister of National Economy, to perform the same function for the coal industry. Several other ministers in France are involved in financial activities of the National Credit Council since the statute of nationalization provides that their agents will be included among members of the Council.

The British laws establishing public corporations charge ministers with greater specific financial functions than is the case in the French counterparts. Each of the public corporations dealing with industrial production or the supplying of services in the United Kingdom is under obligation "in framing programs of reorganization or development involving substantial outlay on capital account to... act on lines settled from time to time with the approval of the Minister."⁶³ In addition to this general financial responsibility, the Minister may make financial advances to British public corporations within statutory limits, permit corporations to borrow money, receive payments from corporations and direct the management and disposition of surplus corporate reserve

⁶³Coal Industry Nationalisation Act, Section 3, para. 2.

funds. The Minister has the power to specify the form of corporation accounts, to appoint annual auditors of the accounts, and is required to lay before Parliament annually the statements of accounts, and reports of corporation audits.

The prerogatives of the Minister of Town and Country Planning under the Town and Country Planning Act and the New Towns Act involve control of the financial relations of the Central Land Board and of the many development corporations which may be established. The real and potential authority in this sphere is one of the most important extensions of executive power to result from the establishment of the public corporation in the United Kingdom.

The Town and Country Planning Act confers upon the Central Land Board the technical task of land valuation in a monopoly field with the object of stabilizing land values on the basis of their existing use. The Board, in making land valuations, assessing development charges, and determining compensation, is involved in financial arrangements which determine a large part of the public and private landed net worth of the United Kingdom. In making these financial decisions the Board is subject to such directions of a "general character" as may be given to it by the Minister. Under the New Towns Act, the Minister of Town and Country Planning is placed in very close financial relationship with local development corporations. These corporations are completely dependent upon the Minister for funds. The Minister, in turn,

secures such monies upon Treasury approval from the Consolidated Fund.⁶⁴ Moreover, the Minister must approve the financial conditions for land acquisition and disposal, the primary activity of the development corporation.⁶⁵

Summary. Post-war nationalization legislation in France and the United Kingdom confers specific authority upon ministers to participate in the creation and operation of the new public corporations under which the nationalized industries are organized. In the United Kingdom, in particular, ministers clearly possess statutory power to a degree that insures their eventual control over the planning and financial affairs of the corporations. Since the appropriate minister in the United Kingdom also appoints the members of the corporational board, makes tenure regulations and is empowered to give "directions of a general character" to which "the board shall give effect," the essential elements of a managerial function also reside in ministers. Although the power to control post-war French public corporations was intended to be distributed among ministers, corporational personnel, and consumers, ministerial control of corporations appears to be in the process of growing at the expense of the other groups.⁶⁶

⁶⁴New Towns Act, 1946, Section 12, para. 2,3.

⁶⁵Ibid., Section 4, para. 1.

⁶⁶Statutory authorization to regularize the growth of ministerial power in France is still pending. See pp. 78-79, supra.

The public corporation was also the instrument chosen in the United Kingdom for application of the principle of controlled land development. Thus the Central Land Board, a corporation under the general direction of the Minister of Town and Country Planning, was organized for the purpose. In addition, under the terms of the New Towns Act of 1946, the Minister of Town and Country Planning was authorized to create and direct the activities of a series of local development corporations. The employment of the public corporation to direct a controlled land development program was a qualitatively new usage of the device. Public corporations under ministerial direction control many aspects of individual and group economic life, and engage in activities which affect the content of individual legal rights. Under the statutes, ministers are assigned the role of arbiter between the public corporations and private individuals. They have also assumed broad power to interpret the statutes.⁶⁷

4. The Ministerial Determination of Property Rights in the United Kingdom

The Ministers of Agriculture and of Town and Country Planning have gained important new jurisdiction over the

⁶⁷ Cf. Franklin and Others v. Minister of Town and Country Planning, op. cit.; Fletcher and Others v. Minister of Town and Country Planning, op. cit.; Rollo v. Minister of Town and Country Planning, op. cit. These cases involved statutory interpretations by the Minister.

determination of individual property rights, by means of the corporate agencies authorized in the Town and Country Planning Act, 1947,⁶⁸ the New Towns Act, 1946,⁶⁹ and the Agriculture Act, 1947.⁷⁰ Analogous legislation has not been enacted in France.

These acts have as their basic objective the control of development and the utilization of land in the interests of

⁶⁸Town and Country Planning Act, 1947, Public General Acts, 1947, Ch. 51, pp. 1341-1555. The object of the Town and Country Planning Act, 1947, is "to secure that all the land in the country is put to the use which is best from the point of view of the community." See "Town and Country Planning Bill, 1947: Explanatory Memorandum," Cmd. 7006 (January, 1947). The act seeks to provide: (1) The making of plans, i.e., settling the policy on which land is to be allocated among the various uses; (2) The administration of planning control (or control of development) to secure that when an owner wishes to change the use of his land the new use is in accordance with the plan; (3) Positive action to promote the execution of the plan.

Under the system plans are prepared by county councils and by county boroughs. Every plan must be submitted by the planning authority to the Minister whose approval can be given only after an appropriate public local inquiry takes place for the purpose of hearing objections to the planning scheme. The county councils and borough councils have absolute power to give or refuse permission to develop in all cases except where direct ministerial intervention takes place. The planning authorities have wide power also to buy land compulsorily for leasing to a private developer. Full authority, moreover, is conferred on the planning authorities themselves to carry out developments which private developers will not undertake. On payment of compensation by the local planning authority, the alteration or removal of existing buildings or the stoppage of existing uses which do not conform to planning needs may be required of an owner. Finally, the planning authority has the power to control advertisements and to secure the preservation of buildings of special architectural or historical interest.

⁶⁹New Towns Act, 1946, Public General Acts, 1946, Ch. 68, pp. 819-864.

⁷⁰Agriculture Act, 1947, Public General Acts, 1947, Ch. 48, pp. 1049-1144.

social productivity. Planning is the keynote in achieving this end. According to the official explanation of the purpose of the program, planning "operates to achieve this by controlling changes in the use of land, by securing that development of the right kind takes place, and by eliminating wrong uses."⁷¹ The phrases "development of the right kind" and "eliminating wrong uses," invite careful attention. Determination of each of these two sides of the same question is a matter delegated to the corporate agencies authorized in the legislation. Authority is so broad, for example, that County Agricultural Executive Committees may, under terms of the Agricultural Act, force an owner or occupier off agricultural units which are not, in the estimation of the Committee, being properly farmed.⁷² Similarly, under town and country planning procedure, once the planning authorities determine what they believe to be necessary, their "development plan shall not, either before or after it has been approved or made, be questioned in any legal proceedings whatsoever."⁷³ However, an individual may make application to the High Court for

⁷¹"Town and Country Planning Bill, 1947: Explanatory Memorandum," Cmd. 7006 (January, 1947).

⁷²Agricultural Act, 1947, Section 19. See also Ministry of Agriculture and Fisheries, Rights and Obligations of Landlords, Tenants and Owner-Occupiers of Agricultural Land (1949), para. 14.

⁷³Town and Country Planning Act, 1947, Section 11, para. 3.

suspension of the order on the grounds of ultra vires within six weeks of the publishing of the order.⁷⁴ Under the terms of the New Towns Act the local developmental corporations have such sweeping powers that recourse to the doctrine of ultra vires as a consequence of their operation is apparently precluded.⁷⁵

The Ministers of Town and Country Planning and Agriculture exert controlling force on individuals through the operation of these corporations, either directly or indirectly, as follows:

(1) By approving or disapproving the development plans of development corporations⁷⁶ under the New Towns Act. The development plan will specify what land will be needed for the site of the new town and the Minister's approval will immediately involve the landowners of the designated site.

(2) By approving or disapproving the voluntary or compulsory purchase of particular land under the New Towns Act.⁷⁷ This is also a statutory requirement which directly

⁷⁴Ibid., Section 11, para. 2 (a).

⁷⁵The New Towns Act, 1946, Section 2, para. 2, states: . . . every such [development] corporation shall have power to acquire, hold, manage and dispose of land and other property, to carry out building and other operations, to provide water, electricity, gas, sewerage and other services, to carry on any business or undertaking in or for the purposes of the new town, and generally to do anything necessary or expedient for the purposes of the new town or for purposes incidental thereto.

⁷⁶Ibid., Section 3, para. 1.

⁷⁷Ibid., Section 4, para. 1.

concerns the individual landowner.

(3) By authorizing the application by the acquiring authority of Section 2, Acquisition of Land (Authorisation) Act, the Minister automatically empowers the development corporation under the New Towns Act to take possession of the land even before compulsory purchase is completed.⁷⁸ Procedural rights normally applying under eminent domain are thus abandoned.

(4) By approving or disapproving the planning arrangement of local planning authorities under the Town and Country Planning Act the Minister determines the permanent future status of landowners' property.⁷⁹

Each of these ministerial prerogatives so obviously affects the legal status of individual property rights as to make further comment needless.⁸⁰

5. The Public Corporation and Executive Power: An Appraisal

D. N. Chester observed in a recent article that "the choice of the public corporation is said to be due to a desire

⁷⁸Ibid., Section 4, para. 3.

⁷⁹Town and Country Planning Act, 1947, Section 5, para. 4; Section 11; Section 12.

⁸⁰Cf. Geoffrey Crowther, "British Socialism on Trial," Atlantic Monthly, Vol. 183, No. 5, pp. 24-29 (May, 1949); Frederick A. Hayek, The Road to Serfdom (New York, 1944); R. F. Harrod, Are These Hardships Necessary (London, 1947); John Jewkes, Ordeal By Planning (London, 1948); Sir Hubert Henderson, The Uses and Abuses of Economic Planning (London, 1947).

to get the best of both possible worlds."⁸¹ Whether the new form can successfully provide the link between the organizational qualities attributed to the private corporation and the social benefits which socialism promises will arise from public ownership, is largely a question of what the political executive does with the corporation. It is, so to speak, his progeny. There is little doubt that the executive ultimately controls it and there is no doubt that the executive's political future is closely related to the success or failure of the public corporation wherever the device is introduced. Even those who contend that the new corporations are really autonomous and that the executive depends upon "persuasion" in dealing with them⁸² surely will admit that the appropriate minister must defend the corporation's activities in Parliament and before the public. The minister individually and the cabinet collectively are, rightly, or wrongly, held responsible.

Unfortunately, while he is attempting to achieve the "best of both possible worlds," the executive may come against difficulties. Private corporations suffer reverses so why exempt public corporations from the same possibility? The political executive, however, is not as free to admit reversals as is the president of a private corporation. Political considerations regarding his tenure of office stand in the polit-

⁸¹"Organization of the Nationalized Industries," Political Quarterly, Vol. XXI, No. 2, p. 122 (April-June, 1950).

⁸²Herbert Morrison, "Public Control of the Socialized Industries," Public Administration, Vol. XXVIII, pp. 3-9 (Spring, 1950).

ician's way. To admit too great difficulties would be tantamount to asking for defeat at the next election. Since analyses of political behavior from Aristotle forward show that men do not habitually turn away from political power, the rise of the public corporation makes more difficult for the executive the choice between conscientiously attending to the welfare of the public and forwarding his own political needs. The ultimate question is whether the executive will be driven to using the corporation in his own political interests to avoid suffering political extinction.

Economic Power and Political Expediency. Each of the enterprises managed by public corporations in the United Kingdom is basic to the national economy. Fuel, power, transport, communication and credit are in the hands of public administrators, with the possibility that iron and steel may yet be added to the list. In France, nationalization since 1945 has affected fewer industries, but those affected--insurance, credit, combustible minerals and power--have been fundamental to national economic life. National society could not survive if the goods and services of these industries were curtailed, nor could the private sector of the national economy operate without them. Since the appropriate minister may issue directions of a "general nature" to the public corporation with which he is associated and because he exercises control of the corporate financial structure, he enjoys a decisive influence

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on corporation policy. Questions of wages, production, pricing, and others which directly affect individuals may thus be decided by the exercise of ministerial power at the highest level. Under the circumstances, such decisions are affected by political as well as purely economic considerations.

A minister is a politician who is required to have the highest regard for his party's interests, and who has his own political ambition or future close to heart. If, for example, his tenure of office requires him to satisfy the wage demands of the Transport Workers Union as the price for political support, the minister can hardly be precluded from construing his authority to attain the politically desired result. The possibility that the control of economic life could lead to a prostitution of power for the sake of political expediency is hardly as remote as apologists for economic planning suggest.⁸³

⁸³Cf. Barbara Wootton, Freedom Under Planning, op. cit.

Chapter IV

THE BRITISH EXECUTIVE AND
DELEGATED LEGISLATION

In British constitutional theory Parliament has the power to delegate to the King-in-council, individual ministers of the Crown, or to other persons or agencies, the legislative task of making rules and regulations.¹ The practice of delegating legislative power to agents is a favored device that has many advantages: (1) the delegation of matters of legislative detail to the executive permits Parliament, in theory, at least, to give greater attention to policies and principles; (2) delegated legislation is a flexible device which permits rules and regulations to be amended quickly; (3) it is well suited to periods of emergency when immediate executive action may be necessary; (4) it rapidly adapts the legal system to changing needs and requirements; and (5) permits

¹cf. Hugh Molson, "Delegated Legislation," in Papers on Parliament: A Symposium (London, 1949), pp. 96-114; Report from the Committee on Ministers' Powers, 1931-32, Cmd. 4060; C. K. Allen, Law and Orders: An Inquiry into the Nature and Scope of Delegated Legislation and Executive Powers in England (London, 1945); Lord Hewart, The New Despotism (London, New Ed. 1945); Sir W. M. Graham-Harrison, Notes on the Delegation by Parliament of Legislative Powers, with a Particular Examination of the Case of the Institute of Patent Agents v. Lockwood, and some Considerations with Respect to the Future Granting, Exercise and Control of such Powers (Privately printed by Eyre and Spottiswoode, London, 1931); Bernard Schwartz, Law and the Executive in Great Britain (New York, 1949).

a greater leeway to the government to experiment with solutions for intricate problems. The various forms of delegated legislation--orders, warrants, regulations and rules--are now officially known, in the words of the Statutory Instruments Act of 1946, as "statutory instruments."²

1. The Constitutional Problems Created by Delegated Legislation

Delegated legislation raises serious problems for constitutional government in the United Kingdom because (1) Parliament has increasingly conferred on Ministers "exceptional" power to make regulations, and (2) Parliament has found it progressively more difficult to supervise the exercise of this power. Yet, it seems generally understood that the scope and the quantity of delegated legislation must almost necessarily continue to increase,³ given the semi-permanent economic and social maladjustments of the mid-twentieth century, and the inescapable demands for increased governmental action. The situation might not be so serious had not the

²Statutory Instruments Act, 1946, Section 1, para. 1(b).

³British statutes for 1947 were published in two volumes and covered about 2000 pages. Statutory Instruments were published in three and filled 4,397 pages. There were 1706 statutory instruments in 1945, 2287 in 1946, 2918 in 1947 and 2855 in 1948. See K. C. Wheare, "Controlling Delegated Legislation: A British Experiment," Journal of Politics, Vol. 11, No. 4, pp. 748-768 (November, 1949). Sir John Anderson, answering a question in the House of Commons on April, 10, 1945, said that some 11,902 statutory instruments were issued between August 25, 1939 and March 31, 1945. The peak year was 1942, with 2937. Between 1922 and 1939 an average of 1500 instruments per year were issued. See H. of C. Debates, Vol. 409, Cols. 1678-1680.

parliamentary safeguards against arbitrary executive use of delegated power been conspicuously weakened between 1945 and 1949, as will be demonstrated, by the Government's manipulation of the time available for debate in the House of Commons, and the order of business, to nullify the residual authority of the House.

Exceptional Delegation. A distinction must be made between the "exceptional" authority of ministers to legislate and the "normal" exercise of applications of the power of delegated legislation.⁴ The parliamentary Committee that investigated this question in 1942 pointed out four different categories of delegated legislation which, by this definition, were "exceptional."⁵ In the first place, some permitted a minister to legislate on matters of principle or policy rather than to confine his action to the establishment of rules and regulations to enforce a policy determined by Parliament. Secondly, the executive has been permitted to amend the provisions of an act "to bring it into operation." Under this so-called "Henry VIII Clause," limitations may or may not be placed on the scope of ministerial amendment. In the third

⁴Report from the Committee on Ministers' Powers of 1932, Cmd. 4060, op. cit. Popularly known as the Donoughmore Committee (in recognition of its Chairman, Sir William Donoughmore) the Report remains even today the single most important document in the field of delegated legislation.

⁵Op. cit. The literature of protest against these types of exceptional legislation includes the well-known works of Lord Hewart.

place, statutes have assigned powers to ministers in such broad terms that it becomes almost impossible to know what limit Parliament intended to impose on the discretion of the Minister. Finally, statutes have relieved ministers of the possibility of judicial interference in determining the legality of ministerial orders, rules and regulations issued under the alleged authority of the statute.

In the opinion of the Committee on Ministers' Powers, exceptional delegation should be clearly labeled by the statute which authorizes it, and "Henry VIII" clauses, as well as clauses designed to exclude the jurisdiction of the courts, should not be utilized except in the "most exceptional" cases.⁶ Despite the Committee's recommendations, the nationalization acts of 1945-1949, the Acquisition of Land (Authorization Procedure) Act, 1946, the New Towns Act, 1946, and the Town and Country Planning Act, 1947, all authorize the kinds of exceptional delegation to which the Committee was opposed.⁷ In actual practice, Labour ministers have exercised their powers on a wide scale and much of the substantive content of the Labour economic program finds expression in statutory instruments of various kinds.

The Failure of Parliament to Control Delegated Legislation. Parliamentary machinery for the control of executive

⁶Report, op. cit., p. 65.

⁷See infra, pp. 108-111.

use of the powers has not kept pace with the rapid growth in the number of areas governed by delegated legislation. The new Select Committee on Statutory Instruments, which has been charged since 1944 with calling the attention of the House to unusual statutory orders of various categories, has had only a limited influence in the House. Moreover, the rank and file of Labour members of the House have been concerned with the results and have displayed little interest in the legal and constitutional questions arising from delegated legislation. Those of the Opposition who tried to curb these tendencies found their voices stifled by strict Government control of time available for discussion.

2. Exceptional Delegation in Recent Legislation

Nationalization Legislation. The Coal Industry Nationalisation Act, 1946, authorizes the Minister of Fuel and Power to give the National Coal Board "directions of a general character as to the exercise and performance by the Board of their functions in relation to matters appearing to the Minister to affect the national interest."⁸ This type of regulative authority might be considered as an abdication by Parliament of its power to determine many issues of "national interest"--certainly questions which by orthodox concepts touch at the root of the legislative power of Parliament.

⁸Coal Industry Nationalisation Act, 1946, Section 3, para. 1.

A similar authority is conferred on the Treasury in its relations with the Bank of England,⁹ on the Minister of Aviation in connection with the British Airways Corporation,¹⁰ on the Minister of Fuel and Power in his relations with the Central Electricity Authority¹¹ and with the Gas Council,¹² and on the Minister of Transport in his relations with the Transport Commission.¹³

Although ministerial "directions" generally, but not always, take the form of statutory instruments which must be laid before Parliament, no practical limitation on the Minister's authority to regulate in areas "affecting the national interest" appears in the legislation. In each case the minister is apparently delegated the exceptional authority to legislate on basic principles if this should "appear" to him to be in the national interest.

The Acquisition of Land (Authorisation Procedure) Act.

Implementation of the land development program was sought in 1946 by the Labour Government in the passage of the Acquisition of Land (Authorisation Procedure) Act. This legislation

⁹Bank of England Act, 1946, Section 2.

¹⁰Civil Aviation Act, 1946, Section 4.

¹¹Electricity Act, 1947, Section 5.

¹²Gas Act, 1948, Section 4.

¹³Transport Act, 1947, Section 4.

confers "temporary powers for speedy acquisition of land in urgent cases." The power which the Act confers is absolute under Section 2, the heart of the Act, since land which the minister considers it "urgently necessary in the public interest to acquire" may be so acquired "without notice to or the consent of any person."¹⁴ The right of the former landholder to judicial recourse is apparently completely excluded. This type of legislation illustrates the extent to which ministerial orders may be exempted from judicial examination, and the extent to which individual or private rights may be decisively affected by ministerial action.

The Land Planning Acts. The New Towns Act of 1946 authorized local development corporations, as was indicated earlier in this study,¹⁵ "generally to do anything necessary or expedient for the purposes of the new town or for purposes incidental thereto,"¹⁶ provided the Minister of Town and Country Planning approves. The Central Land Board, authorized under the Town and Country Planning Act of 1947, is charged with what in practice is the determination of the net worth of land in the United Kingdom through a system of development

¹⁴Acquisition of Land (Authorisation Procedure) Act, Section 2, para. 1, 3, 5.

¹⁵See Chapter III, supra, pp. 90-92.

¹⁶New Towns Act, op. cit., Section 2.

charges on land values.¹⁷ The Board is bound to "comply with such directions of a general character as may be given to them by the minister."¹⁸ In neither of these cases does the enabling legislation prescribe limits on the discretion of the Minister, not even requiring these to be subjected to such a vague limitation as "the national interest."

3. The Executive and the Statutory Instruments Committee

It goes without saying that Parliament has the basic power to enact, and authority to revoke or amend, the sweeping rule-making power presently assigned to ministers. As will be shown later, this basic authority has become more theoretical than real. In practical terms, since the reversal of present tendencies would turn on the parliamentary defeat of the present Government, it is more important to examine the various methods open for the review of ministerial acts and their effectiveness in preserving legislative control over the great mass of statutory instruments.

Five principal channels are open to the House for its supervision over statutory instruments. First, a statute may require that orders made in pursuance thereof shall be simpliciter laid before the House, but relatively few statutory instruments are subject to this procedure.¹⁹ Second, an order

¹⁷Town and Country Planning Act, 1947, Sections 69-74.

¹⁸Ibid., Section 3.

¹⁹The Third Report, Select Committee on Procedure in Public

may be "quarantined" for a forty day period after it has been laid before the House, automatically coming into effect at the end of the "quarantine period" unless challenged in the meantime. Third, an order may be laid before the House effective, subject to a resolution or "prayer" for amendment or for revocation, during the time it is before the House. This is the method of the negative resolution. Fourth, certain orders lapse unless the House specifically approves them within a specified period. Sometimes, finally, an executive order may be laid in draft form before the house, subject to affirmative resolution.²⁰

The Select Committee on Statutory Instruments, which has been maintained since 1944, is an attempt by Parliament to make more efficient use of these channels of supervision in the control of delegated legislation. From this, it must not be inferred, however, that Parliament requires all of the statutory instruments issued under the authority of its acts to be subjected to these controls.

History and Powers of the Committee. In its report of April, 1932, the Committee on Ministers' Powers recommended

Business, H. of C. 189-1 of 1945-46, observes that "for the great majority of Instruments the governing Act provides no parliamentary control at all. In the year 1944, 291 Instruments out of a total of 1,483 registered, were subject or liable to parliamentary proceedings."

²⁰A detailed presentation of each of the methods may be found in C. K. Allen, Law and Orders, op. cit., pp. 65-75.

the creation of a standing committee in each House "(a) to consider and report on every Bill containing a proposal to confer law-making power on a Minister," and "(b) to consider and report on every regulation and rule made in the exercise of delegated legislative power, and laid before the Houses in pursuance of statutory requirements."²¹ Succeeding Governments declined to give effect to this recommendation until Sir Herbert Williams and his "Active Back Benchers" group generated considerable parliamentary pressure for a "scrutinizing" committee in 1943,²² and finally persuaded a somewhat unenthusiastic coalition Government to accept the project on May 17, 1944.²³ The immediate motion to appoint the Committee was made by Hugh Molson, who before and since has filled a "watch-dog" role with respect to delegated legislation. He was supported by 140 members and the motion was accepted for the Government by Home Secretary Herbert Morrison with the understanding that "the function of the scrutinizing committee is ... to protect the authority of Parliament and not the interests of a particular party or group."²⁴ The tenor of Morrison's remarks was that the Committee's function should be limited to the review of statutory instruments, and he emphasized that "we must avoid getting terms of reference under

²¹Report, op. cit., p. 67.

²²H. of C. Debates, May 26, 1943, Cols. 1593-1703.

²³H. of C. Debates, May 17, 1944, Cols. 268-276.

²⁴Ibid., Col. 269.

which the issues of the principal statute can be argued over again."²⁵ "The terms of the reference," he said, "must be such that the Committee does not try to do the work of the courts of law."²⁶

The Committee may consider only those statutory instruments which are subject or liable to parliamentary proceedings, i.e., those instruments which are made in pursuance of an act of Parliament which requires that they be laid before Parliament, and that they will have effect either upon the passing of an affirmative resolution or upon the failure to pass a negative resolution within a specified time. This type of statutory instrument by no means comprises all or even a majority of those annually registered and published.²⁷ Moreover, since the Committee is only a select one established

²⁵ Ibid., Col. 273.

²⁶ Ibid., Col. 274.

²⁷ Cf. Third Report, Select Committee on Procedure in the Public Business, H. of C. 189-1 of 1945-46, op. cit., K. C. Wheare has computed the number of instruments subject to parliamentary proceedings as contrasted to the number officially registered for the years, 1945-1947, as follows:

INSTRUMENTS		
Registered:	Subject to Parliamentary Proceedings:	Percentage of subject to Parliamentary Proceedings:
1945 1706	375	22%
1946 2287	994	44%
1947 2918	1069	37%

See K. C. Wheare, "Controlling Delegated Legislation: A British Experiment," Journal of Politics, Vol. 11, No. 4, pp. 748-768 (November, 1949).

by sessional rather than by standing order, it expires unless a motion is made at each session to set it up. Thus the continued existence of the Statutory Committee is dependent upon the Government's willingness to allow it.

The specific authority which the Committee possesses is to draw the attention of the House to a statutory instrument on any one of the following grounds: (1) that it imposes a charge on public revenues; (2) that it is made in pursuance of an enactment containing specific provisions excluding it from challenge in the courts, either permanently or temporarily; (3) that it appears to make unusual or unexpected use of statutorily-conferred powers; (4) that it proposes to have retroactive effect without specific statutory sanction; (5) that there appears to have been unjustifiable delay in notifying the Speaker that instruments have come into operation before being laid on the table; (6) that there appears to have been unjustifiable delay in carrying out a provision of the Statutory Instruments Act; (7) that for any special reason its form or purport calls for elucidation.²⁸

To assist it in its work the Committee is empowered to require Government departments concerned to submit memoranda explaining any instrument under its consideration and to obtain from departments documents needed for the use of the House. However, before the Committee can call the special attention of the House to a particular statutory instrument, it must give

²⁸Cf. A. H. Hanson, "The Select Committee on Statutory Instruments, 1944-49," Public Administration, Vol. XXVII, No. 4, pp. 278-279 (Winter, 1949).

the department concerned an opportunity to present, either orally or in writing, such explanations as the department sees fit.

The Committee's Activity, 1945-49. The activity of the Select Committee on Statutory Instruments between 1945 and 1949 centered on bringing to the attention of the House various statutory instruments, making recommendations concerning statutory instruments as a whole, and presenting of requests for the enlargement of its own jurisdiction. The first of these activities took the form of ordinary reports to the House, while the second and third were accomplished by special reports.

In the session, 1944-45, the Committee reported four instruments to the House of Commons; in 1945-46 a total of 33 instruments were cited. Far fewer instruments were reported for the sessions of 1946-47 and 1947-48; six were reported in 1946-47 and ten were brought before the House in 1947-48. All instruments reported by the Committee have been cited for one or more of the following reasons: (1) unusual or unexpected use of statutory power, (2) retroactive effect, (3) unjustifiable delay in presentation, or (4) need of elucidation.²⁹

In the six special reports which were issued by the Committee a number of valuable recommendations were made, some

²⁹ Cf. Wheare, *op. cit.*, in all, 42 ordinary reports of the Committee were issued between 1944-45 and 1947-48.

of which have had a demonstrable effect on Government policy. A special report of 1944,³⁰ issued shortly after the creation of the Committee, apparently gave impetus to the movement which resulted in the Statutory Instruments Act, 1946. The report had suggested introduction of a uniform time period during which proposed orders should lie before the House, and the Act of 1946 specifically provided a forty day period. The Committee's request for the substitution of a more definite phraseology than the usual statutory specification that regulations shall be laid before the House "as soon as may be" was granted by the inclusion in the 1946 Act of a provision requiring that instruments must be laid before Parliament prior to coming into operation. Finally, the Committee's suggestion for a clarification of the meanings of such overlapping terms as "orders," "rules," and "regulations" was adopted in the 1946 Act by inclusion of the provision that henceforth the term "statutory instruments" should be used instead of "statutory rules and orders."

Other recommendations of the Committee have also borne fruit. Thus after the Chairman, Sir Charles MacAndrew, complained that the Committee's reports were not brought to the attention of departments,³¹ a Treasury circular was issued which instructed departments to take note of the Committee's

³⁰H. of C. 113 of 1943-44.

³¹H. of C. 189-1 of 1945-46, *op. cit.*, evidence given before the Committee, May 30, 1946, question 4659.

special reports and their recommendations.³² The Committee has acknowledged that recent orders have included more and better explanatory notes³³ and it has noted that the practice of sub-delegation³⁴ was curtailed in at least one department during 1948.³⁵ The Committee's repeated recommendation that long series of orders, made complex and voluminous by amendment, should be consolidated,³⁶ and that short titles with plain meanings³⁷ should be substituted for the verbosity and unintelligibility of much delegated legislation, has apparently not been resisted by the Government even if specific application is difficult to uncover.

Government Resistance to Work of the Committee. Despite the cooperation of the Government with the Committee in a number of instances, some notable refusals are also on record. In at least three important areas of executive power the Government has declined to follow Committee recommendations. The attitude of the Government in these areas of action seems to negate the constructive approach to parliamentary supervision.

³²H. C. 187 of 1945-46, Second Special Report, para. 18.

³³H. C. 201 of 1947-48, Third Special Report, para. 8.

³⁴For an up to date and exhaustive analysis of the practice of sub-delegation see J. F. Garner, "The Delegation of Administrative Discretion," Public Administration, Vol. XXVII, No. 2, pp. 115-122 (Summer, 1949).

³⁵H. C. 201 of 1947-48, Third Special Report, para. 3.

³⁶H. C. 187 of 1945-46, Second Special Report, para. 4; H. C. 141 of 1946-47, Special Report, para. 4; H. C. 201 of 1947-48, Special Report, para. 10.

³⁷H. C. 187 of 1945-46, Second Special Report, para. 5; Third Special Report, para. 11-15.

of executive power which the Government originally demonstrated by creating the Committee.

The Government, first of all, has declined to take action with respect to the concern expressed by the Committee over "the apparent absence of any principle determining the choice between the procedure . . . by affirmative resolution and the procedure for the annulment of rules and orders by adverse prayer."³⁸ Neither the Statutory Orders (Special Procedure) Act, 1945, the Statutory Instruments Act, 1946, nor the Laying of Documents Before Parliament (Interpretation) Act, 1948, include provisions respecting the matter. The Government is more likely to utilize the procedure of the adverse prayer or "negative resolution" because that method allows more certain and simpler parliamentary approval than does the "affirmative resolution" procedure. When the negative resolution device is employed the proposed order will become law without parliamentary scrutiny unless a member or a group becomes interested in the order to the extent that it is brought onto the floor of the House. While it is conceded by observers that probably most negative resolution orders which need Parliament's scrutiny will be searched out by the Statutory Instrument Committee, nevertheless some instruments should be made subject to affirmative resolution if parliamentary

³⁸ H. C. 113 of 1943-44, First Special Report, para. 2.

supervision over executive legislation is to be maintained.³⁹ Although the Government had positively resisted the inclusion of a statement of procedural principle in the Statutory Instruments Act,⁴⁰ the Committee returned to the matter during the sessions 1946-47 and 1947-48,⁴¹ stating flatly that instruments which impose taxes or modify the terms of an act of Parliament should be approved only by affirmative resolution.

The Committee has encountered Government resistance to its requests that instruments should always include an exact citation of statutory authority. When the Committee reported the Coal Industry Nationalisation Regulations of 1947⁴² on the ground that they did not "cite the sections of the Coal Industry Nationalisation Act, 1946, under which they were made,"⁴³ the Government rather curtly disposed of the parliamentary query of Mr. Boyd-Carpenter on grounds that it was not relevant to the matter.⁴⁴ Debate was also precipitated in the House on

³⁹See C. K. Allen, op. cit.; K. C. Wheare, op. cit.; A. H. Hanson, op. cit., and Hugh Molson, H. of C. Debates, October 18, 1945.

⁴⁰See K. C. Wheare, op. cit., p. 759.

⁴¹H. C. 141 of 1946-47, Special Report, para. 5-6; H. C. 201 of 1947-48, Special Report, para. 5.

⁴²S. R. and O., 1947, No. 395.

⁴³H. C. 141 of 1946-47, op. cit.

⁴⁴H. of C. Debates, April 24, 1947, Cols. 1237-1238.

April 15, 1947,⁴⁵ when Sir John Mellor, a champion of the Committee, attacked the "all other powers enabling" phrase used by the Treasury in its Regulation of Payments (General) Order of 1947⁴⁶ which was substituted for specific reference to statutory powers other than those contained in the enabling clause.

A third area of Committee activity toward which the Government has shown resistance is that of sub-delegation. A section of the Committee's Second Special Report of 1945-46⁴⁷ was devoted to an expose of what it termed the "Five-Tier" legislation permitted under the Emergency Powers (Defence) Act, 1939, parts of which were extended for five years in 1945-46. The "five-tier" system under the Act was set out by the Committee as follows: (a) the statute, (b) the defense regulations made under the statute, (c) the orders made under the defense regulations, (d) the directions made under the orders, (e) licenses issued under the directions. This legislative-administrative hierarchy was criticized as going far beyond the intention of Parliament. The Committee contended it acted "to postpone the formulation of an exact and definite law" and encouraged "the taking of powers meanwhile

⁴⁵H. of C. Debates, April 15, 1947, Cols. 107-127; March 27, 1947, Cols. 1404-5; March 18, 1947, Cols. 196-198.

⁴⁶S. R. and O., 1947, No. 343.

⁴⁷H. C. 187, op. cit.

in wider terms than may ultimately be required."⁴⁸ Departments were urged, moreover, "to be content with the grandchildren of the statute and not to bring its great grandchildren and great-great grandchildren upon the scene."⁴⁹ The subject was treated again in a 1947-48 Special Report when the Committee emphasized that it was:

. . . unconvicted that, when Parliament by statute delegates to a Minister a power to legislate by statutory instrument, the delegation can or should be interpreted (in the absence of specific provision to that effect in the statute) as authorising him to empower himself or other ministers to make other ranges of instruments.⁵⁰

The Committee, moreover, expressed the fear that subordinate rules which did not take the form of statutory instruments might evade the regulation in the parent statute requiring them to be laid before the House and be subject to annulment on motion.⁵¹

Attention was focused on the issue of sub-delegation⁵²

⁴⁸H. C. 186 of 1946-47, p. 7.

⁴⁹H. C. 187 of 1945-46, op. cit., para. 16.

⁵⁰H. C. 201 of 1947-48, para. 3.

⁵¹Idem.

⁵²Sub-delegation was a debated issue before World War II. See Cecil Carr, Delegated Legislation (London, 1921), and the same author's "Memorandum to the Committee on Ministers' Powers," in Cmd. 4060. The problem of determining whether a statute does or does not confer on a minister the power of sub-delegation is discussed by Willis, "Delegatus Protest Delegare," 21 Canadian Bar Review 257; de Smith, "Sub-delegation and Circulars," 12 Modern Law Review 37, and Garner "The Delegation of Administrative Discretion," op. cit. Recent cases involving sub-delegation include Blackpool Corporation v. Locker (1948), All E. R. 85; Allingham v. Minister of Agriculture and Fisheries (1948), All E. R. 780; Jackson Stansfield and Sons v. Butterworth (1948), All E. R. 558; Carltona, Ltd. v. Commissioner of Works (1943), 2 All E. R. 560.

by the Registration for Employment Order of 1947,⁵³ popularly known as the "Spivs and Drones" order. The terms of this order permitted the minister to issue a "public notice," not subject to laying before Parliament and, therefore, also exempt from the scrutiny of the Statutory Instruments Committee. Whatever category of persons which the minister should decree would be compelled by the public notice to report to the nearest Labour Exchange. The order itself was reported by the Committee to the House and a full scale debate⁵⁴ was precipitated. The motion to annul was defeated only by 223 votes to 178, after the Minister of Labour, George Isaacs, strongly defended its purpose, although one observer reports he "seemed much less happy when dealing with the question of its constitutional propriety."⁵⁵

Frame of Reference Limitations. The frame of reference within which the Committee on Statutory Instruments must operate is exceedingly narrow, especially when it is recalled that the Committee is possibly the single most important device of the House of Commons for the maintenance of supervision over the executive power inherent in delegated legislation. While the Committee may analyze the constitutional adequacy and the intelligibility of a statutory instrument, it is specifically excluded from a consideration of the substantive policy.

⁵³S. R. and O., 1947, No. 2409.

⁵⁴H. of C. Debates, December 3, 1947, Cols. 483-538.

⁵⁵Hanson, op. cit., p. 280.

Thus the political connotations of instruments are entirely outside its ken even though in the House actual motions to annul are usually brought on grounds of political merit. Doubt is expressed by some observers whether the Committee can actually reinforce parliamentary supervision of delegated legislation given its present limited frame of reference. K. C. Wheare tends to gloss over this congenital defect of the Committee and speaks hopefully instead of the value inherent in raising objections to orders on grounds of merit by private members of the House.⁵⁶ But A. H. Henson states flatly that the Committee has neither appreciably assisted the conscientious MP who wants to make up his mind about orders on the basis of merit nor reinforced parliamentary control.

The important potentiality of the Statutory Instruments Committee for supervising executive power by determination of merit will probably remain undeveloped since it is unlikely that the Committee's frame of reference will be altered to include analysis of the substance of orders. A proposal to that effect by the Clerk of the House, Sir Gilbert Campion, was unacceptable both to the Government and to a number of individual students of the problem of delegated legislation. Campion proposed that the Committee be empowered to consider the merits of those instruments which:

⁵⁶ K. C. Wheare, op. cit., pp. 763-768.

. . . would not come before the House, except on a 'prayer' for their annulment . . . [and] to inquire into and report on any grievances arising out of Instruments actually in operation, whether or not the statutory period during which the control of the House could be exercised had expired.⁵⁷

Sir Charles MacAndrew, Chairman of the Statutory Instruments Committee, took the view while testifying before the Select Committee on Procedure, that if the Committee were to consider the merits of orders it would lose its "semi-judicial" character and degenerate into "wrangles on party lines." He could see no advantages for the proposal since any Government would be certain to have a majority on the Committee, making an adverse report unlikely and he also felt it would be unsuitable for a select committee to report on grievances arising from instruments actually in operation.⁵⁸

Sir Cecil Carr, Counsel to Mr. Speaker and Assistant to the Select Committee on Statutory Instruments, was also hostile to the proposal on the ground that "the Government might feel obliged to prepare itself to resist challenge on party lines and the present impartial scrutiny would change its character."⁵⁹ Dr. C. K. Allen, author of several works on delegated legislation and administrative law, expressed

⁵⁷Sir Gilbert Campion, "Suggestions for Reform in Procedure," Appendix to H. C. 189-1 of 1945-46, pp. xlv, xlv.

⁵⁸"Minutes of Evidence Taken Before the Select Committee on Procedure," H. C. 189-1 of 1945-46, op. cit., p. 243.

⁵⁹Ibid., p. 244

"grave doubt whether the Committee . . . could possibly add 'merits' to its Order of Reference without at once becoming an arena of party controversy." Allen also felt that "the proper method for the redress of grievances under delegated legislation already in operation is recourse to the courts of law" rather than to the Statutory Instruments Committee.⁶⁰

The Labour Government presented a Memorandum against the proposals, declaring that if the Committee considered the merits of proposed instruments the ministers involved would, of necessity, need to attend the Committee meetings to defend the policy embodied in the subordinate legislation. The Government objected also to having the Committee inquire into all phases of Government administration which, it said, would be the case if the Committee were to entertain grievances arising from statutory instruments already in operation.⁶¹

In rebuttal to these criticisms Campion reiterated that by merits he meant the merits of a statutory instrument "as an exercise of the powers delegated."⁶² These can be separated from the policy of the parent statute, he asserted, since the Speaker regularly enforces this distinction when prayers are debated in the House. Moreover, with respect to grievances, the Committee would be delving not into specific

⁶⁰Ibid., pp. 262-263.

⁶¹Ibid., p. 100.

⁶²Ibid., p. 353.

complaints but "into the operation of instruments which had been the subject of reasonable complaint."⁶³ A. H. Hanson, writing in defense of the Campion proposals, which were not adopted, remarks that the Estimates Committee uses its power in making critiques of the efficiency of administrative methods employed to achieve certain results. Thus, he reasons, if the terms of reference were widened perhaps the Statutory Instruments Committee could produce, as does the Estimates Committee, reports of real value "instead of the little two and four page things consisting mainly of lists of instruments considered but not reported on, which today--apart from the Special Reports--are the only outward manifestation of its very considerable labors."⁶⁴

Are Prayers to Annul Delegated Legislation Effective?

Regardless of conflicting views about the appropriate frame of reference for the Committee on Statutory Instruments, recent experience indicates that the House of Commons itself, including the official Opposition, is largely indifferent to the work of the Committee as well as to the possibility of enforcing parliamentary supervision of executive power through prayers to annul statutory instruments. Christopher Hughes notes that in the twenty-eight completed debates on prayers against statutory instruments during the 1947-48

⁶³ Ibid., p. 354.

⁶⁴ Hanson, op. cit., p. 284.

session, six of the objections were brought on constitutional undesirability and the remainder on political grounds, but in no case was interest anything more than nominal.⁶⁵ The point is not that prayers to annul do not prevail. Actually no one expects them to do so since the Government will always win if debate is pressed to a vote. The danger seems rather to be the amount of complacency which prevails. Thus the Statutory Instruments Committee points out that only 1.6 days per session is currently devoted to discussing delegated legislation⁶⁶ and Hanson notes that even when departments are "caught in flagrante in constitutional improprieties the penalty is rarely more than subjecting the Department to a tongue-lashing by an opposition back bencher."⁶⁷ Even more revealing is Hughes' analysis of Opposition voting on prayers to annul in 1947-48. Out of thirty debates on prayers, only fourteen divisions occurred and in nine of these the Opposition tally was less than sixty.⁶⁸ One vote taken at 10 P. M. on

⁶⁵Christopher J. Hughes, "Prayers to Annul Delegated Legislation: House of Commons, 1947-48," Public Administration, Vol. XXVII, No. 2, pp. 111-114 (Summer, 1949).

⁶⁶Third Report, op. cit.

⁶⁷Hanson, op. cit., p. 281.

⁶⁸Hughes, op. cit., p. 113. Hughes' analysis follows:

a matter of constitutional interest drew a total of only sixteen Opposition votes, leading Hughes to conclude that since "the Quorum is 40, the divisions where the opposition raised under 38 votes represent debate carried on virtually by permission of the Government back benchers."⁶⁹

Hughes also analyzed the Government vote on prayers

Opposition Voting on Prayers to Annul, 1947-48

<u>Time Debate Started P.M.</u>	<u>Subject of Debate</u>	<u>No. of Opposition Votes on Division Main Questions</u>
8:43	Registration for Employment	178
10:15	Petrol Rationing	160 Closed
3:31	Control of Engagement	144 Closed
6:17	Rationing	82
10:25	Controls	63 Closed
11:46	Rationing	59 Closed
7:45	Rationing	55
8:33	National Health	45
10:10	Rationing	40
11:35	Rationing	39
10:10	Constitutional Interest	32
10:35	Investment of Fund in "Dalton's" etc.	31
9:55	Exchange Control	30
10:00	Constitutional Interest	16

⁶⁹ Idem.

to annul during the 1947-48 session⁷⁰ and found that, regardless of the particular subject, Government members of the House showed very little interest. "When the division bell rang," he asserts, "the body of the faithful descended like a blanket, performed the ritual of voting, and took the tube home."⁷¹ If the vote occurred after 10:30 P. M. noticeably fewer members were present.

The reasons for the striking indifference which these analyses indicate must be culled from a combination of factors. At best, the Labour Government was not enthusiastic about the

⁷⁰ Idem. Hughes' analysis follows:
Government Votes at Prayers to Annul, 1947-48

A. Full Press Debates

<u>Time First Div. Taken, P.M.</u>	<u>Govt. Votes on Main Questions</u>
9:28	252 (a)
11:46	191 (a)
11:55	191 (a)
11:20	223 (b)
12:14	205 (c)
12:39	187 (a)

- (a) Closed
- (b) Employment Registration Order
- (c) Sweets Rationing

B. Other Debates on Prayers

<u>Time of Division</u>	<u>Government Votes</u>
7:44	211 over 200
9:15	227
10:40	199 150 to 200
10:56	170
11:11	129
11:15	147 100 to 150
11:20	95
11:34	146

⁷¹ Idem., p. 114.

principle behind the creation of the Statutory Instruments Committee and apparently never allows free votes on prayers involving constitutional questions.⁷² Second, the Labour members expected a great deal of delegated legislation in connection with the immense social and economic program to which the Party was dedicated. And, conversely, the Conservative opposition realized the hopelessness of tempering it through objections. Third, a strong feeling that the existing parliamentary institutions and machinery are adequate to control the use of power, even in an era of emergency, apparently is rooted deeply in the mind of the average British politician.

⁷²See Hanson, op. cit.

Chapter V

PARLIAMENTARY PROCEDURE AND EXECUTIVE

POWER: UNITED KINGDOM, 1945 - 1949

The relationship between the House of Commons and British Cabinet was significantly altered to the advantage of the Cabinet by a series of modifications in parliamentary procedure during the years 1945 - 1949. In consequence of the changes, the Government has freed itself of a number of restrictions on the exercise of the new powers conferred upon it by nationalization and planning legislation. Certain innovations in parliamentary procedure, designed ostensibly to strengthen and to define more clearly the supervisory role of the House of Commons over the Government, actually gave ministers a freer hand. Other procedural modifications have amounted to outright restrictions on parliamentary authority. Throughout the period, the modification of important Government bills by the House of Commons was extremely limited.

1. Modifications in Parliamentary Procedure

A series of authorizations, measures and recommendations concerning parliamentary procedure initiated by the

Labour Government in 1945-1948, demonstrate how executive power has been affected. These fall into three categories: (1) Acts of Parliament which have as their expressed objective the clarification of the supervisory role of Parliament with respect to executive action. These include the Statutory Orders (Special Procedure) Act of 1945, Statutory Instruments Act of 1946, and the Laying of Documents before Parliament (Interpretation) Act of 1948. (2) Internal arrangements adopted by the House of Commons have further reduced the role of the private member. These include use for the first time of a "guillotine" on bills in the committee stage, and suspension of private members' facilities for initiation of debate and legislation. (3) A series of reports by the Select Committee on Procedure in the Public Business have set forth inadequacies in the parliamentary process which are conducive to increased executive power.

Procedural Decisions under the Statutory Orders (Special Procedure) Act of 1945. The extensive legislative program of the Labour Government included a number of proposals which would confer on the ministers the power to make orders for purposes which, until 1945, had been dealt with by private legislation, either as private or provisional order bills.¹ The Government, in October, 1945, announced² that it

¹The various national services statutes, i. e., health, insurance, labor, are examples of measures under which the appropriate ministers have power to make such orders.

²"Explanatory Memorandum," to Statutory Orders (Special Procedure) Bill.

was necessary to find a new and quicker procedure for attaining effective parliamentary supervision over the exercise of such powers, whether affecting broader questions of national policy or questions of detail involving private individuals, and passed a Statutory Orders (Special Procedure) Bill for that purpose.³

Formerly two procedures were available for securing parliamentary approval of statutory orders: (1) in cases where questions of policy were involved, a ministerial order was subjected to the ordinary affirmative or negative resolution procedure of the House, and (2) in cases of questions of detail which affected private individuals the order remained provisional until approved by Parliament in a provisional order bill.

The Statutory Orders (Special Procedure) Bill was intended to improve these procedures by combining certain existing procedures with a method of distinguishing objections to ministerial orders based on grounds of policy from those based on individual interests so that the former might be decided on the floor of the House and the latter referred to joint committee. The Act thus provided that, when petitions are lodged against orders made "subject to special parliamentary procedure" by future acts, the Lord Chairman of Committees

³The provisions of the Statutory Orders (Special Procedure) Act were specifically extended to eleven acts already on the statute books by Parliamentary action on November 9, 1949. See H. of C. Debates, November 9, 1949, Col. 1349-1361.

in the House of Lords and the Chairman of the Committee on Ways and Means must determine whether any such petitions comprise a general objection to the order or are merely of amendatory nature. The two chairmen were charged, furthermore, to report each order to Parliament, certifying which petitions disclose a substantial ground of objection "proper to be received."

In effect, the act substituted the judgment of the Lord Chairman of Committees and the Chairman of the Ways and Means Committee for the judgment of the legislature or of its expert committees. Whether such practice strengthens parliamentary control is questionable, especially when it is considered that the Chairman of the Ways and Means Committee already has, in the words of Mr. Charles Williams, M. P., an "enormous amount of work to do," and that he is a government appointee.⁴ Moreover another member, who is also a professional writer on Parliamentary procedure, Hugh Molson,⁵ suggested in debate that to decide whether a petition against an order raises questions of policy will necessitate an inquiry which the Chairmen are not authorized to undertake. Molson pointed out that the two officials could hardly be expected to understand orders which are highly technical without benefit of the testimony afforded by Government representatives of the Departments concerned, nor were they

⁴See H. of C. Debates, October 18, 1945, Cols. 1412-1413.

⁵Cf. Hugh Molson, "Delegated Legislation," in Papers on Parliament, op. cit.

likely to fare any better in understanding legal petitions unless they should have counsel at their disposal.⁶

The remainder of the Act specifies that, if no annulment has carried against a reported order after 14 days, any unsuccessful petitions against it will be committed to a joint committee of both houses. The joint committee's report on the petitions will subsequently be laid before both houses and the order becomes operative, subject to the committee's amendments, if any, unless the minister drops the order. If the joint committee disapproves the order, it is nullified unless the minister ask Parliament to reconsider the committee's decision.

It seems significant that at no point after making his original petition does an individual petitioner have opportunity to plead his case before Parliament, or a committee, or an individual official.⁷ The two chairmen determine the reasonableness of his objection without hearing him and the joint committee disposes of it in the same way. Only while it lies before Parliament can a petitioner press his case, and then only through a member of Parliament. Since the Government invariably postpones pleas to annul provisional orders till late in the evening when Government

⁶H. of C. Debates, October 18, 1945, Col. 1394.

⁷With respect to this feature of the Bill, Molson remarked: "It is extremely unwise for this House to pass legislation setting up a procedure which enables the Government, if they so wish, to drive legislation or Provisional Orders through the House without giving a fair and adequate opportunity to the petitioner to make his voice heard." H. of C. Debates, October 18, 1945, Col. 1398.

business is completed and members are anxious to go home, it is difficult, at best, for a petitioner to enlist their services against the order.⁸

Parliamentary control of orders issued by the Ministry of Health and effecting local authorities, may be reduced to mere formality by the provision that:

The reasonable costs incurred by a local authority in applying for or supporting an order to which this Act applies, or in opposing any such order, including costs incurred in connection with any local inquiry preliminary thereto, shall, to such extent as may be sanctioned by the Minister of Health, be deemed to be expenses properly incurred by the local authority.⁹

Unless the local authority has the use of funds to petition effectively, its objection to an order--given the other congenital difficulties attending petitions as described above--could scarcely be successful. Apparently the local authority, if it can supply no money of its own, is limited to funds for petitioning purposes in the amount which the Minister of Health deems reasonable.

Procedural Loopholes and the Statutory Instruments Act, 1946. The immense value of an alert opposition in the conduct of parliamentary government was sharply emphasized

⁸According to Molson:

He has to go round and try to persuade his friends and acquaintances, who are not interested in the concerns of his constituency, to stay behind late at night when a House is being kept by the Government whips, and then to divide against the Government with all the opprobrium that always involves and the castigations that come afterwards from the Front Bench. Idem.

⁹Statutory Orders (Special Procedure) Act, Section 7, para. 3.

by the debates on the Statutory Instruments Act of 1946,¹⁰ the second of the Labour Government's measures to modify Parliamentary procedure for supervising ministerially delegated legislation. The Government explained the bill as intended to clarify and make uniform the laying before Parliament of ministerial orders and Orders-in-Council issued under statutory authority.¹¹ It also was described as introducing new procedures for the numbering, publication and public sale of copies of orders. During the vigorous debate which followed, a number of serious weaknesses and loopholes were uncovered by the official Opposition led by Sir Charles MacAndrew, chairman of the Select Committee on Statutory Rules and Orders.¹² While the Government refused to abandon the bill, despite the apparent inability of the Solicitor-General to meet a number of questions raised in the debate,¹³ the bill later emerged from Standing Committee B with the more glaring defects removed, although its net effect was a further contraction of the dwindling power of

¹⁰Statutory Instruments Act, 1946, in Public General Acts, 1946

¹¹See motion for reading the bill a second time made by the Solicitor-General, Sir Frank Soskice, H. of C. Debates, November 6, 1945, Col. 1095.

¹²MacAndrew has a long and distinguished Parliamentary record and is described by one observer as "a Conservative whose authority and impartiality are beyond question." See K. C. Wheare, "Controlling Delegated Legislation: A British Experiment," Journal of Politics, Vol. 11, No. 4, pp. 748-768 (November, 1949). Other prominent members who criticized the bill severely included Sir John Mellor, who is regarded as the champion "Prayer" to annul ministerial orders, and Hugh Molson, who has published works in the field of delegated legislation.

¹³See H. of C. Debates, November 6, 1945, Cols. 1103-1110.

Parliament to supervise ministerial legislation.

In its original form the Bill permitted statutory instruments to become operative prior to being laid before Parliament. This possibility was disclosed when the Solicitor-General admitted that the phrase specifying that such instruments would be laid before Parliament by ministers "as soon as may be"¹⁴ actually meant the orders could be in operation indefinitely without being placed before Parliament. MacAndrew's remarks of astonishment at the end of the Solicitor-General's explanation of the bill seem genuine enough:

I have been very much shocked by what I have heard the Solicitor-General say this afternoon. The phrase 'as soon as may be' I have always taken to mean 'as quickly as possible'. Now we know--and I think I am not being unfair--that it probably means six months. There is no obligation on the Departments to lay their Statutory Instruments before this House.¹⁵

MacAndrew's remarks supplemented those of other members on both sides of the House.¹⁶

The authors of these objections had the satisfaction of finding such carte blanche authority for the executive deleted from the amended bill, which then plainly specified that statutory instruments, subject to special parliamentary

¹⁴ See Statutory Instruments Bill, Bills: Public, 1945-1946, Vol. IV, Section 3, para. 1.

¹⁵ H. of C. Debates, November 6, 1945, Col. 1127.

¹⁶ See remarks of Messrs. Reid, Pickthorn, Mitchison, Low, Silverman, et, al., Cols. 113-1155, for similar objections which came from Labour as well as Conservative members.

procedure and made in pursuance of an act conferring such authority on ministers, must be laid before Parliament prior to coming into operation.¹⁷

The Government, however, managed to retain a definite loophole in the bill by exempting from the requirement "essential" orders which may come into operation before being submitted to Parliament. In these cases it was provided that "notification" should "forthwith" be sent to the Lord Chancellor and to the Speaker of the House of Commons with an explanation. In practice, as will later be shown, this emergency clause tended to become accepted as the normal procedure by Departments.

Another subtlety of the original bill which impaired parliamentary supervision was the vague requirement that "as soon as may after the making of any statutory instrument, it shall be sent to the King's printer"¹⁸ This also met with prompt objection from members who pointed out that this ambiguous language would permit an order to take effect before it had been published, and thus impair not only parliamentary supervision but individual rights as well, since an individual might be prosecuted "for having done something at a time when the law against that something existed, but

¹⁷ Statutory Instruments Bill (As amended in Standing Committee B) Clause 3 (1), Bills: Public, 1945-46, Vol. IV.

¹⁸ Statutory Instruments Bill, Section 2, para. 1.

he could not possibly know that the law existed because it had not been published."¹⁹ This aspect of the bill was also amended in Committee by specifying that "immediately after the making of any statutory instrument, it shall be sent to the King's printer"²⁰ So far as the procedures of publication were concerned these modifications in the original bill succeeded in retaining substantially the same degree of supervision over statutory instruments which obtained before introduction of the bill. Unfortunately for the cause of parliamentary supervision, however, other clauses of the bill dissipated such supervision rather thoroughly. Thus, a later clause in the act permits the Treasury, with the concurrence of the Lord Chancellor and of the Speaker of the House of Commons, to exempt any classes or descriptions of statutory instruments from the requirements of publication.²¹ The denouement comes, moreover, in Section 7, paragraph 1 of the act wherein the Treasury, with the concurrence again of the Lord Chancellor and of the Speaker, may exempt by statutory instrument²² "any classes or descriptions of statutory instrument" which may be contemplated in the future. It

¹⁹Statement by Mr. J. S. C. Reid, H. of C. Debates, November 6, 1945, Col. 1114.

²⁰Statutory Instruments Bill (As Amended in Standing Committee B), Section 2, para. 1.

²¹Statutory Instruments Act, Section 7.

²²Italics mine.

would scarcely be accurate to contend that the Statutory Instruments Act of 1946 is the safeguard against an increase in executive power which its sponsors professed it to be.

Presentation of Standing Order No. 94. After passage of the Statutory Instruments Act of 1946 it became apparent that the Government would prefer to bring ministerial orders into operation prior to laying them before Parliament despite the formal requirement of the 1946 Act. Two developments illustrate the Government's preference: (1) The ministers tended to rely on Clause 4 of the Statutory Instruments Act which permits "essential" orders to come into operation, even when Parliament is dissolved, without requiring their prior submission to Parliament, provided notification is given to the Speaker and the Lord Chancellor together with an explanation.²³ (2) The Government, at 3:58 A. M. on

²³See remarks of Sir John Mellor, H. of C. Debates, July 23, 1948, Colis. 805-806. In part he said:

I think it was the intention of Parliament, at the time the Statutory Instruments Bill was in the course of passage, that only in exceptional circumstances should Departments avail themselves of the proviso to bring orders into operation without prior submission to Parliament --only when it was really essential--and then they should explain to Mr. Speaker why it was essential. What they do now is automatically to bring them into operation, and we see on the first page of the Votes and Proceedings, when the House resumes, a list of these documents--dozens of them--which have been reported to Mr. Speaker. If one goes to the library and looks for the explanation, all one finds is a statement that this was necessary simply because the House had not

November 5, 1947, had secured House approval of Standing Order 94. This new regulation provided that the laying of orders before Parliament could be accomplished by delivery of a copy of the instrument to the Votes and Proceedings office on any day during the existence of a Parliament.²⁴

This order really rendered the requirement useless, since orders would be physically seen only by those members of the House who took pains to find them at the Votes office.

However, according to Sir Frank Soskice, the Solicitor-General, a conflict later developed over the meaning attached to the term "laid" as used in the Statutory Instruments Act of 1946. The Government, in sponsoring Standing Order 94, took the view that the word meant whatever Parliament should decide it to mean.²⁵ Doubt was expressed whether the view of the Government was correct or whether to lay before

been sitting. That does not convey that they were essential.

See also the remarks of Mr. Lennox-Boyd, Ibid., Cols. 816-817, who said in part:

A practice has grown up lately under which it is adequate for a minister to say that the essential nature of a ministerial order is proved by the fact that Parliament is dissolved. We ought to insist that if this practice is followed a real reason should be given for the essential nature of the order and it should not be adequate to say that it is essential to bring it in because Parliament is dissolved.

²⁴H. of C. Debates, November 4, 1947, Col. 1783.

²⁵H. of C. Debates, July 23, 1948, Cols. 810-811.

Parliament, under the terms of the 1946 Act, meant that instruments subject to laying must be physically brought before the assembled Houses.²⁶ Because of this doubt, the Government introduced in the House of Commons on July 23, 1948, a bill entitled the Laying of Documents Before Parliament (Interpretation) Bill, with the express objective, in the words of the Solicitor-General, "that Parliament should say by way of an enactment exactly what it meant by the word 'laid' in the Statutory Instruments Act of 1946."²⁷ According to the terms of the bill, the word "laying" will be construed as meaning whatever the House from time to time through its practice on standing orders chooses that it shall mean.²⁸ The bill seemed to circumscribe completely the safeguard against executive power contained in the 1946 Act.

Immediate and violent objections were raised against the bill by several members. Sir Charles MacAndrew contended that Standing Order 94 and the bill in question were "designed to lessen Parliamentary supervision, and to cut down the safeguard" against executive usurpation.²⁹ Mr. Boyd-Carpenter protested:

²⁶ Among other places, in the House of Lords, see H. of L. Debates, July 14, 1948.

²⁷ Sir Frank Soskice, H. of C. Debates, July 23, 1948, Col. 812.

²⁸ Laying of Documents before Parliament (Interpretation) Bill, Bills: Public, 1947-48, Vol. II, Section 1.

²⁹ H. of C. Debates, July 23, 1948, Col. 800.

When we are dealing with the very small degree of effective control which we have in this House over this immense mass of Governmental and executive power, we are entitled to be treated with far more consideration than we have been shown in this matter.³⁰

Protests were in vain, however, since the bill became law without modification in July, 1948.

Suspension of Private Members Bills. Upon its accession to power in 1945, the Labour Government secured Commons' approval for indefinite suspension of private members' facilities to initiate debate and legislation.³¹ Private members' time, as these facilities are called, was frequently suspended for temporary periods before World War II as well as during much of the war period itself. Objections were raised, however, against the Government's action of August 16 on the ground that it amounted to an usurpation of parliamentary prerogative by the executive because the war emergency was past and because the Government refused to set a definite limit to the period of time during which the suspension would operate.³² The Government restriction actually remained in effect during the entire

³⁰ Ibid., Col. 807, the reference was to the Government's objective of putting the bill through all its stages in one day.

³¹ See H. of C. Debates, August 16, 1945, Cols. 133-178. Private business might be brought up only during the last half hour before adjournment after August 16, 1945.

³² Ibid., Col. 138.

four years August, 1945, to December, 1949. As late as November 15, 1949, the Speaker, in answering the question of a member as to how private members' bills might be brought forth for consideration after the committee stage, announced that:

The answer is that Hon. Members must persuade the Government to take up their Bills. There is no private members' time now, and therefore one depends upon the goodwill of the government. If the Government does not approve of a Bill, I am afraid that there is no other way.

New "Cloture Regulations." Another Government parliamentary advantage at the expense of the Commons was the introduction of a time-table (Guillotine) for the Town and Country Planning Bill and the Transport Bill of 1947 while those bills were in committee. While the device of cloture has been used in committee for a number of years, the time-table has never been so used. Mr. Churchill led the Conservative Opposition against the proposal in these words:

I have never seen anything like it on the Order Paper of the House of Commons; I do not think that there is any case of the occupation and domination of the House by the Executive similar to this. It always has been thought an advantage to Governments to have their measures put through the Parliamentary mill. I have sat in a lot of Governments, and I do not think that any of them would not have been rather afraid of just having their own ideas, shaped by their officials, driven through onto the Statute Book.³⁴

³³H. of C. Debates, November 15, 1949, Col. 1940.

³⁴H. of C. Debates, March 3, 1947.

Although in his eloquence Mr. Churchill perhaps overstated the case, it does appear that the Government's action created a precedent upon which to build further executive power.

Recommendations Relative to Parliamentary Procedure.

A Select Committee on Procedure in Public Business was appointed by the House of Commons in August, 1945, to consider the procedure of the House with respect to public business and to report its recommendations for any desirable alterations. The several reports of the Committee, issued over a period of a year, bring into clear focus in a variety of ways the relationship between the executive and the House. The Committee recommendations reflect an apprehension about the growth of executive power at the expense of the latter, and are largely directed toward reaffirming and strengthening the status of the House. In its first report for example, the Committee found itself unable to give unqualified endorsement to a proposal, submitted to it by the Government as a basis of discussion, that a guillotine resolution should be adopted for proceedings in standing committees.³⁵ The Committee was careful also, in its second report, to insist that the right to put questions to ministers is "perhaps the readiest and most effective method of parliamentary control over the action

³⁵See First Report, Select Committee on Procedure in Public Business, H. C. 9 of 1945-46.

of the executive."³⁶ In a third report the Committee returned to the subject with the statement that "they would deprecate anything which tended to diminish the effectiveness of this right."³⁷ In the same report, the recommendation was made that questions not for oral answer should be answered in writing within seven days after their appearance, although the Committee had no objection to a proposal for increasing the period of notice for oral questions from one to two days.

The Committee was emphatic in rejecting the scheme of the Clerk of the House, Sir Gilbert Campion, for removing the report stage of bills from the floor of the House and delegating it to committees because, in its view, such procedure would interfere with the rights of private members and would also adversely affect smaller parties. It rejected also the proposal of Government representatives that debate should be restricted to Government amendments at the report stage of bills which have been considered in Committee of the Whole House.³⁸ A section of the Third Report of the Committee was devoted to a plea for the restoration of members' privileges with respect to initiation of private bills.³⁹

³⁶Second Report, Select Committee on Procedure in Public Business, H. C. 58 of 1945-46.

³⁷See Third Report, Select Committee on Procedure in Public Business, H. C. 109 of 1945-46, para. 10, 11.

³⁸Ibid., para. 12.

³⁹Ibid., para. 47-52.

The Special Position of the Committee on Supply. In the formulation of recommendations for its Third Report, the Select Committee on Procedure in Public Business utilized as a basis of discussion Sir Gilbert Campion's "Suggestions for Reform in Procedure."⁴⁰ The Campion study points out that the special value to the House in connection with procedure in Committee of Supply is that such procedure is a means of controlling general executive policy rather than reviewing financial policy. In Campion's words:

It should now be recognized that, so far as debate is concerned, the consideration of the main Estimates is a method of controlling administration under financial forms, and that the voting of the Estimates, though it is necessary to preserve it as a fundamental right, has little connection with the preceding debate, and is in ordinary instances a foregone conclusion."⁴¹

Proceeding on the basis that debates in Supply should be considered as a principal method of controlling general executive policy, Campion found the following defects in existing procedure: (1) Opportunities for criticizing executive policy which are provided by the days allotted to Supply are concentrated in a short period of the session between March and July, whereas they are needed throughout the session. (2)

⁴⁰The Campion study is appended to the Third Report.

⁴¹Third Report, Committee on Procedure, op. cit., p. 36. Actually, as Campion remarks, this explains why the bulk of the Estimates are voted without discussion under the guillotine.

Debate is governed by a rule that reference to matters requiring legislation is out of order. This excludes the discussion of remedies which require legislation by statute, but allows the discussion of remedies which can be effected by statutory instrument. Therefore the probability is heightened that the body of delegated legislation will become even greater. (3) The discussion of Supplementary Estimates, which is not controlled by guillotine, takes up too much of the allotted time needed for analysis of executive and administrative policy.⁴²

The Committee took substantially the same view of the function of the House sitting as Committee on Supply. It emphasized that Supply proceedings constitute the chief instrument for control of general Government policy. According to Campion's statistics, which the Committee accepted, proceedings in Supply occupied an average of 28.6 days--out of the average 58.5 days per session which were utilized in exerting control of executive policy--during the period, 1919-1938.⁴³ The Committee recommended, therefore, that the number of days allotted to Committee of Supply be increased and that they be spaced evenly over the session but without diminishing the normal claims of the Opposition on the time of the House. Unfortunately, the Committee's various recommendations for improving parliamentary supervision of execu-

⁴² Ibid., pp. 36-37.

⁴³ Ibid., para. 17, and Appendices 1-1c, "Distribution of Time, 1906-13 and 1919-1937/38," Suggestions for Reform in Procedure, itself an Appendix to the Third Report, op. cit.

tive power were not accepted by the Government.

The Committee's recommendations and Campion's proposals are well organized and considered analyses of the problems which confront the House of Commons in an era of rapid governmental change and consolidation of executive authority. Yet discussion of them in Commons was slight indeed. Members of the House appear to have reacted negatively for the most part and the Government apparently reacted not at all, for no attempt was made to put the proposals into operation. The value of the analyses, however, is great because they emphasize the legislative conditions favorable to an ascendancy of executive power.

2. Parliamentary Modification of Government Bills

On September 18, 1948, Herbert Morrison, Leader of the House of Commons, told the Southern Regional Council of the British Labour Party that "Tory propagandists" were presenting

a picture of a Parliament in which the Government has monopolised the whole of the time, which has had a mass of legislation pushed down its throat without reasonable time for consideration, a Parliament in which the Opposition has been gagged and steamrollered.⁴⁴

⁴⁴Reproduced in a volume of Morrison's speeches entitled, The Peaceful Revolution (London, 1949), p. 87. Morrison said further:

Apart from Finance Bills, legislation of various kinds only occupied 88½ days on the Floor of the House --that is to say about half of the available parliamentary time. This relatively small proportion of

Mr. Morrison denied this charge categorically and asserted that the amount of parliamentary time reserved for the Opposition allowed the fullest debate and criticism of Government proposals and policies. During the 1947-48 session, according to Morrison, $82\frac{1}{2}$ out of the 171 total sitting days were taken up by essential Government business and of

time spent on legislation completely destroys the story about Parliament being nothing but a legislative sausage machine.

At the opening of the session, there was a debate lasting six and a half days on the Address which gives the House the widest opportunity to discuss the Government's program and general policy.

A further $12\frac{1}{2}$ days were devoted to discussion on Government motions put down for the purpose of enabling Parliament to challenge Government policy if it so wished, and for Debates on the Adjournment provided out of Government time for special Debates to meet Opposition requests on general wishes of the House.

Twenty-six days were devoted to Business of Supply, when it is the right of the Opposition, and on certain days of private members, to choose the aspects of administration and policy which they desire to criticize. In addition, there were four days Debates on the Consolidated Fund and Appropriation Bills--time which was also under the control of the Opposition.

Four days were devoted to Debate on the Adjournment at Recesses, which provided opportunities for Back Benchers of all parties to ventilate grievances.

Two days were given to motions relating to Orders, quite apart from the time found for discussing whether some of the large number of Orders laid before Parliament should be disapproved.

There were $6\frac{1}{2}$ days for House of Commons and procedural business.

The Budget and Finance Bills involve legislation but they give extensive opportunities to the Opposition and to all Back Benchers to criticize and review the financial and economic policy of the Government. In this latest session there were two Budgets and two Finance Bills and they occupied in all 21 Parliamentary days.

these 32½ days some 55 were devoted to Opposition criticism. Somewhat more than a year earlier, Prime Minister Attlee, replying to complaints of rushed legislation, told the Annual Labour Party Conference that he had "never known an Opposition to fail to make that complaint" and he declared further that the Opposition would "have to learn how to make the best use of the time" given to it just as the Labour Party had learned to do during its many years as the Opposition.⁴⁵

The technical validity of the Morrison and Attlee statements cannot be questioned. Moreover, the division of parliamentary time between the Government and the official Opposition did not differ significantly during the four years of Labour majority, 1945-1949, from the division before world war II. But the absolute time afforded for parliamentary deliberations of executive proposals is scarcely as significant as formerly since the political chasm in the House of Commons is so wide that at times additional debate on a measure has only served to crystallize further two polar attitudes regarding the role of the state in economic life. The plain fact seems to be that the Conservative Opposition could not learn how to make the best use of its time, as suggested by the Prime Minister, because on matters of nationalization legislation, at least, it was so directly

⁴⁵ Report, Labour Party Annual Conference, 1947, op.cit.,
p. 118.

opposed to Government proposals that no area of compromise arose. As a result of this situation executive power increased and executive proposals suffered relatively little modification by Parliament between 1945 and 1949. Most of them, particularly the great nationalization acts, were anathema to the Conservative Opposition, whose tactics were largely confined to urging such minor modifications as the indemnification of stockholders and the settlement of individual and corporate claims against the new public corporations.

The Modification of Nationalization Bills. The diminution of the role of the legislature may be demonstrated by contrasting original Government bills and actual statutes in the case of several of the nationalization proposals. Out of eleven modifications of the original which⁴⁶ appear in the final text⁴⁷ of the Transport Act, 1947, four involved compensatory matters, one removed certain restrictions on the private carriage of goods, one clarified the "taking over" procedure, three defined technical aspects of the legal status of the Transport Commission more sharply, one concerned haulage licenses and one actually expanded the scope of the Act by empowering the minister to acquire companies

⁴⁶ Bill No. 12, Session 1946-47, ordered to be printed November 27, 1946.

⁴⁷ Transport Act, August 6, 1947, in Ch. 49, Public General Acts, 1947.

which provide port facilities. If anything, the final act was an even greater addition to executive power than the original proposal.

Fewer changes were made in the Electricity Act⁴⁸ as contrasted with the original Government bill,⁴⁹ but these changes were similar to those in the Transport Act. Thus, out of eight modifications in the final act, three concerned matters of compensation and the procedure therefor, two identified the companies to which nationalization would be extended, one clarified "taking over" procedure, one granted a preemptive right to local authorities to land vested in an Electricity Area Board, and one provided a separate procedure for dealing with "composite companies."

The Coal Industry Nationalisation Act, 1946,⁵⁰ probably the single most important nationalization statute, appears to have been modified in only five respects, most of them minor, in its journey from the Government draftsmen through the various parliamentary stages⁵¹ and into the statute books. One of the changes in the final act concerned monies in the Miners' Welfare Fund, another extended certain legal protection to persons having a monetary interest in coal companies, a third modification required consultation

⁴⁸ Electricity Act, 1947, in Ch. 54, Public General Acts, 1947.

⁴⁹ Bill No. 25, Session 1946-47, ordered to be printed December 20, 1946.

⁵⁰ Coal Industry Nationalisation Act, 1946, in Ch. 59, Public General Acts, 1946.

of the Coal Board with workers' organizations regarding terms of employment, the fourth excluded certain terms of the Coal Act, 1938, from affecting the newly nationalized coal industry, and a final change merely involved administrative provisions concerning drainage district and docks undertakings.

Possibly the most significant deductions to be drawn are, first, that the rank and file of the Labour majority exerted very little influence on the composition of these bills, either because they were whipped into line by the Government or because they were indifferent to all but the principle contained in the bills, or a combination of both. Second, the official Opposition, despairing of defeating the bills, confined itself to attempting to secure more favorable provisions for stockholder indemnification and to obstructionist tactics. The debates seem also to bear out this hypothesis. Third, the committees which handled the bills performed the traditional British standing committee function of perfecting details.

Modification of the Planning Bills. A consideration of the differences between the original bills and the final acts in the cases of the two important planning acts of 1946 and 1947 reveals additional manifestations of the

⁵¹ Bill No. 62, Session 1945-46, ordered to be printed December 19, 1945.

tendencies noted above. The Town and Country Planning Act, 1947,⁵² is rather longer than the original bill⁵³ and much of the addition clarifies and, in some respects, increases executive power and authority of the minister. The final act, as contrasted with the original bill, gives new power to the minister in four different respects, clarifies two types of appeal procedure, amends the existing law relative to compensation for compulsory acquisition of land, and gives certain powers to local authorities with regard to land development. Four clauses, two relating to the development charge and two relating to local authorities' participation, are deleted in the final act. These changes, as in the case of the nationalization bills, are invariably in the direction of centralizing, clarifying and generally tightening the control of the ministry over activity conducted under terms of the statute. The only deviation from this pattern is with regard to strengthening the appeals procedure of individuals affected by the act.

The New Towns Act, 1946,⁵⁴ an earlier and more specialized planning measure, was changed in only two respects from the text of the Government bill.⁵⁵ Section 17

⁵²Town and Country Planning Act, 1947, in Ch. 51, Public General Acts, 1947.

⁵³Bill No. 26, Session 1946-47, ordered to be printed December 20, 1947.

⁵⁴New Towns Act, 1946, in Ch. 68, Public General Acts, 1946.

⁵⁵Bill No. 110, Session 1945-46, ordered to be printed April 17, 1946.

set forth the legal liability of development corporations and Section 21 forbade such corporations to engage in certain types of activity without authority of a specific enactment. Otherwise the bill and the act appear to be precisely similar.

Modification of the Emergency Laws. The Supplies and Services (Transitional Powers) Act of 1945 extended for five years the powers accorded the executive by the Defence Regulations of 1939 for the purpose of controlling prices and charges. The Act was the Government's answer to the problem of controlling post-war inflation and the securing of the most equitable distribution of goods and services which were in short supply. The final act⁵⁶ differs from the original bill⁵⁷ in only two respects. The objectives of the bill are broadened slightly and a provision appears which restricts the executive from interfering under the terms of the Act with the powers of the Parliaments of Northern Ireland. In every other respect the original bill and the final act are identical. When a motion for a second reading of the bill was made on October 9, 1945, it proved unnecessary to divide the House. The Conservative Opposition

⁵⁶Supplies and Services (Transitional Powers) Act, 1945, Public General Acts, 1945.

⁵⁷Bill No. 2, Session 1945-46, ordered to be printed August, 1945.

did not request a vote although they had led a lively debate and apparently were displeased with the powers the bill conferred upon the executive.⁵⁸

The complete acquiescence of the House in the case of the Supplies and Services (Transitional Powers) Bill in October, 1945, was duplicated when the Government introduced a supplemental Emergency Laws (Transitional Provisions) Bill a little more than a month later. The objectives of the second bill were: to continue in force for a limited period after the expiration of the Emergency Powers (Defence) Act, 1939, a number of Defence Regulations which fell outside the scope of the Supplies and Services Bill; to enact permanently certain Defence Regulations, and to extend certain enactments linked with the Emergency Powers (Defence) Act, 1939. Each of these objectives, if accomplished, would draw away from Parliament and place in the hands of the executive a substantial amount of power. It was not unreasonable to expect, therefore, that an attempt might be made on the House floor to modify the terms of the bill, possibly even by Government supporters as well as by the Opposition; or, failing there, that the bi-party standing committee which processed the bill might decide to qualify some of its details. Such was not the case, however. While a division was actually taken on party lines in the House on

⁵⁸H. of C. Debates, October 9, 1945, Cols. 111-130.

November 20, 1945, the only objections during debate came from a very small band of Opposition back benchers led, on this occasion, by Mr. J. S. C. Reid.⁵⁹ The Emergency Laws measure,⁶⁰ which emerged as law in December, differed from the original bill⁶¹ in only a single clause. Under the terms of the Act the authority of the executive to issue Orders-in-Council is somewhat wider than it was under the original bill.

Modification of Other Acts. Other representative examples also indicate that neither the House as a whole nor the standing committees exercised more than nominal influence over the substance of the legislation introduced by the Government, and that the general results of the enactments have been to increase executive power at the expense of Parliament. This tendency is shown in the legislative history of the National Health Service Act, 1946,⁶² The

⁵⁹H. of C. Debates, November 20, 1945, Cols. 315-316 especially.

⁶⁰Emergency Laws (Transitional Provisions) Act, 1945, Public General Acts, 1945.

⁶¹Bill No. 33, Session 1945-46, ordered to be printed October, 1945.

⁶²Contrast the National Health Service Act, 1946, in Ch. 81, Public General Acts, 1946, and Bill No. 94, Session 1945-46, ordered to be printed March 19, 1946.

Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948,⁶³ and the Acquisition of Land (Authorisation Procedure) Act, 1946.⁶⁴

An examination of parliamentary debates and committee deliberations discloses that these measures, all of overwhelming importance in British national life, were only cursorily examined for the most part. Labour members made scarcely any attempts to offer amendments of improvement and the Conservatives confined themselves largely to offering modifications designed to placate property holders. Such disinterest suggests a diminution of Parliament's traditional supervisory role.

⁶³ Contrast the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, in Ch. 66, Public General Acts, 1948, and Bill No. 67, Session 1947-48, ordered to be printed March 25, 1948.

⁶⁴ Contrast the Acquisition of Land (Authorisation Procedure) Act, 1946, in Ch. 49, Public General Acts, 1946, and Bill No. 55, Session 1945-46, ordered to be printed December 14, 1945.

Chapter VI

EXECUTIVE POWER IN THE FRENCH PARLIAMENTARY
SYSTEM, 1945 - 1949

Political developments of the years 1945 - 1949 indicate that the French National Assembly has failed to discharge executive functions as the 1946 constitution apparently intended that it should. Whether a Government will continue in office as its agent has not normally been determined by the Assembly, which has directly brought about the fall of only one of the ten French Governments since the liberation in 1945. On the other hand, predominant executive power scarcely has resided in the French Premier and his Cabinet as is the case in their British counterparts. Essentially, the position of the working executive has remained the same as it was in pre-war France. Government coalitions, led usually by a moderate party, have proved even more fragile than formerly. The only really cohesive force which has held coalitions together has been their common conviction that neither Gaullism nor Communism must accede to power. Executive power in post-war France has been founded, as formerly, upon party personalities who individually have carried the support of their respective parties into each new

cabinet where they have exerted as much power as the relative strength of their parties permitted.

1. Constitutional Rationale of the French Republic

A weakness as well as a charm of France is that she is haunted by history. Issues of the past continue to divide the nation. Unlike the United Kingdom she has never succeeded in reaching a general agreement on fundamentals. The generalization that a workable democratic system is impossible without agreement as to the area of disagreement¹ is particularly appropriate in characterizing the morass out of which French political institutions developed. The mortal weakness of the Third Republic was its failure to reconcile government and democracy. French divisiveness precluded a durable amalgam of parliamentary institutions with firm yet responsible administration. Neither the doctrine known as gouvernement conventionnel (deriving its name from its first application in the French Convention of 1792), in which Parliament was omnipotent, nor the granting of pleins pouvoirs to an otherwise nondescript executive apparatus, was the answer. France found herself liberated in 1944, but the basic problem of a workable and responsible relationship between executive functions and the role of parliament was still

¹Jose Ortéga y Gasset, The Revolt of the Masses (New York, 1932), pp. 80-85.

unsolved

Les Deux Frances. The struggle involved in this French political problem is between what Roger Soltau has called "Les Deux Frances--the eternal dualism between the France of the Church and the France of the Revolution, the France of the Syllabus and the France of the Declaration of the Rights of Man, in a word, between Black France and Red France."² Philosophical and political divisions of this nature are reflected in the history of the Third Republic. No permanent or harmonious equilibrium was established between the Black France of the clerics, the monarchists, the proponents of a strong executive, and the Red France of the socialists, the men of the Commune, the Communists, the proponents of gouvernement conventionnel. The political device of pleins pouvoirs, the instrument of executive ascendancy, was a symbol of the struggle in France prior to 1940. Governments which obtained pleins pouvoirs by means of enabling acts and then skillfully applied the décret-loi, the formal device of ministerial legislation, enjoyed an ascendancy of power.

The Eclipse of the President. A cardinal fact which shaped later French constitutionalism was that the constitutional laws of 1875, which were voted by a royalist majority in the National Assembly, were capable of being applied to a

²Roger Soltau, French Political Thought in the Nineteenth Century, p. 486.

monarchy as well as to a republic. French bicameralism, for example, was given an aristocratic cast by the provision of life tenure for some members of the Senate. This counter-balanced the more democratic character of the Chamber of Deputies. According to Article 3 of the Law of February 24, 1875, the two chambers possessed equal legislative powers except for financial measures, although in practice--particularly after the attempted coup of MacMahon in 1879--the Senate never seriously opposed the lower chamber on fundamental issues.

Under the organic laws of 1875 the French President appeared to be endowed with greater powers than he was permitted to exercise. The election of Marshal MacMahon, military leader and monarchist, in 1873, was a deliberate attempt by the royalists to bring about a restoration. MacMahon attempted an anti-republican coup, failed, and was forced out of office in 1879. In the process, the status of the French presidency suffered such a decline as to prevent permanently the assumption of the degree of authority permitted by the laws of 1875.

Subsequent presidents of France exercised only a nominal power. Poincaré, for example, reportedly was forced to accept the Treaty of Versailles from his ministers against his will.³ Presidents who searched for devices to circumvent

³See Maurice Duverger, Les constitutions de la France (Paris, 1946), p. 96.

or obviate their disability were invariably unsuccessful. Casimir-Perier, after finding himself excluded from state affairs, resigned in bitterness, remarking: "Ye tous les pouvoirs que la Constitution reconnaît au Président de la République, il n'en exerce plus qu'un: la présidence des solennités nationales."⁴

Gouvernement Conventionnel: Pre-19th. Unlike the executive in the United Kingdom, where the power of parliamentary dissolution and the solidity of a parliamentary majority under a two party system permit the maintenance of cabinet power, the French Council of Ministers could secure no comparable advantage. The power of dissolution was already lost, and the multi-party system with its fragile coalition majorities allowed no minister effective authority. A dominance of the executive by the legislature was the result, despite the completely contrary intent of the Assembly of 1875. Parliamentary government was transformed into government by assembly.

Ascendancy of the Premier. Secrecy and rapidity, the two necessary instruments of government waging war, were the means for restoring executive power in France between 1914-1918. It was to be exercised by the Premier, however, instead of the President of the Republic. The war government of Premier Briand and the ensuing quasi-dictatorship of

⁴ noted by Fuverger, op. cit., p. 97.

Premier Clemenceau overcame parliamentary resistance. Two specific developments within these governments were responsible for the change: (1) Concentration of ordinary ministerial powers in the hands of the Président du Conseil, whose authority before 1914 was more theoretical than real. As this development proceeded a hierarchy appeared in the Cabinet and military necessity produced a broadening of many ministerial powers. Ministers obtained an appreciable degree of liberty of maneuverability from Parliament. (2) The novel practice of décrets-lois was perfected by which ministerial legislation was substituted for parliamentary legislation.

Briand, on December 14, 1916, requested parliamentary authority to modify by decree certain existing laws in the interest of national defense.⁵ The Chamber of Deputies, with Pierre Laval leading the opposition, denied the request,⁶ but under Clemenceau's ministry a little more than a year later the Chamber voted the authority.⁷

⁵Journal Officiel, débats, December 14, 1916, pp. 3675-3676.

⁶Journal Officiel, débats, December 15, 1916, pp. 3684-3692.

⁷Law of February 10, 1918. See also Maurice Hauriou, Précis de droit constitutionnel (Paris, 1929), Book II, Ch. 1, "Le pouvoir exécutif," especially pp. 448-456.

Executive authority was generally contracted following the war because of the disappearance of the emergency, but the new position of the Président du Conseil was assured. The administrative duties of his office steadily increased. In 1924 a law assigned to him "un ministre chargé de la Présidence du Conseil." Meanwhile, the device of the décret-loi began to lose its exceptional character and to be considered as a normal procedure of government. Premier Poincaré was permitted to use it in 1924⁸ and 1926.⁹ The Chamber of Deputies conferred the power on Doumergue in 1924, on Laval in 1925, and on Chautemps in 1928 (although Blum was refused it in 1937). The Deladier Government, deeply involved in international crisis, received three different authorizations for ministerial legislation within a year,¹⁰ and on December 8, 1939, the décret-loi was accepted as normal procedure for the duration of World War II.¹¹

The Rationale of Vichy. If it is true that a constitutional system is the product of total societal experience, the Vichy interlude in French politics was bound to leave a

⁸Law of March 22, 1924.

⁹Law of August 3, 1926.

¹⁰Law of July 17, 1938; Law of October 5, 1938; Law of March 19, 1939.

¹¹Law of December 8, 1939, Journal Officiel, December 10, 1939, p.13834.

mark on French constitutionalism. Vichy France, which characterized itself as L'État Français instead of République Française, was essentially a personal dictatorship under a Chef de l'État. Midway in the life of the Vichy regime a dualism was generated by creation of the office of Chef du Gouvernement. This action of April 18, 1942¹² presaged the gradual effacement of the Chief of State in favor of the Chief of Government, Pierre Laval, who controlled the French State until the German retreat from France in the fall of 1944. The nation's reaction against four years under a dictator appears to have had an effect on the new constitutional structure which emerged in 1946. The demand of the Communists and, to a large extent the Socialists, for unmitigated legislative supremacy was fully satisfied in the first, or Cot, constitution of April, 1946, and only slight modification occurred in the constitution of October, 1946, which was adopted as the legal basis of the Fourth French Republic.

2. The Constitutional Solution of 1945-1946

The struggle in France after the Second World War between the advocates of executive and legislative power began when the Allied Powers recognized the Gaullist French Committee of National Liberation as the Provisional Govern-

¹²Law of April 18, 1942, Journal Officiel de L'État Français, p. 1496.

ment of the French Republic in mid-1944.

The Gaullist Executive. In 1943 the de Gaulle organization had already existed in exile for three years and had tended to concentrate power in the hands of the General, who assumed the title President of the French Committee of National Liberation. Until September 17, 1943, when an Assemblée Consultative Provisoire was created as an advisory body to the Government, no national representative group existed. The Assemblée was merely consultative and in the course of its short history did not attain any real power. It seldom influenced the Government even though in certain matters the latter had originally agreed to consult the Assembly. On the other hand, interest in the Assembly lagged and it was seldom able to secure a quorum. Much of its time was devoted to an attempt to develop a right of interpellation, especially with respect to budgetary credits. Since the Assembly had no power to engage in votes of confidence, these "interpellations" had mere rhetorical and publicity value.

The Assembly, however, refused to submit to de Gaulle's desire for the election of a Constituent Assembly which would be restricted to ratifying a permanent instrument of government of the General's own making. Instead, it rallied public opinion to the extent that the Gaullist executive group became convinced of the political wisdom of allowing the election of a Constituent Assembly endowed with

real power to draft a constitution. The General's acquiescence marked the beginning of a decline in his personal executive power, which, in the opinion of some observers,¹³ set the stage for the permanent restrictions on executive power later incorporated into the constitution of the Fourth Republic.

The First Constituent Assembly. The deliberations of two separate constituent assemblies (November, 1945-April, 1946; June, 1946-September, 1946) were required to draft a legal basis for the Fourth French Republic acceptable to the French electorate. The first Assembly, in particular, was primarily interested in curtailing executive power as exercised by de Gaulle. On the extreme left, the Communist Party, the largest single party in the Constituent Assembly, stood flatly for unqualified legislative supremacy and a unicameral legislature. At the other extreme, the de Gaullist adherents stood just as squarely for a powerful executive personified by a single president. In the center, the new party of the Mouvement Républicain Populaire stood for a more balanced legislative-executive relationship.¹⁴ The Socialists, the remaining major group, stood somewhere between the Communists and the MRP.

The Communist strategy was to devise a constitutional

¹³See Foundation for Foreign Affairs, A Constitution for the Fourth Republic (Foundation Pamphlet No. 2, New York, 1946), pp. 5-6.

instrument which would give the majority free rein in an all-powerful legislature. The idea of checks and balances was completely at odds with party ideology. "Its constitutional plans were accordingly keyed to solutions which would most favor the transition of a multi-party to a one-party administration."¹⁵ In other words, the Communists were attempting to embroider a new gouvernement conventionnel on the ragged quilt of French constitutionalism. The attempt recalls the warning of Karl Loewenstein:

There is hardly a more telling demonstration of cleavage between constitutional intent and political reality than the historical experience with assembly government....There is no other form of constitutional government which lends itself so readily to the domination of the state by a strong personality, or group, faction or party. This may be the reason why it is favored by Communism.¹⁶

The First Post-war Draft Constitution. Constitutional debate at the first Constituent Assembly in the Spring of 1946 eventually narrowed to a personal struggle between the balanced system of executive and legislative power advocated by the MRP, and the Communist scheme. The Socialists, unable to bridge the gap between the antagonists, finally

¹⁴Robert Coste-Floret and Francois de Menthon, both MRP, during debates in March, 1946, in Annales de l'Assemblée nationale constituante élue le 21 octobre 1945: débats (Paris, 1946).

¹⁵A Constitution for the Fourth Republic, op. cit., p. 15.

¹⁶Karl Loewenstein, "The Presidency Outside the United States," Journal of Politics, Vol. 11. No. 3, p. 476 (August, 1949).

capitulated to the Communists, and the Assembly voted approval of the first draft constitution on April 20, 1948. Executive authority was severely limited in the draft document. The Council of Ministers was placed under the complete control of the Assembly. A committee of the Assembly would assure the Council's continued subjugation during Assembly recesses. The President of the Council shared the right of legislative initiative with the Assembly. The Assembly was expressly forbidden to delegate its legislative authority in a provision which apparently was designed to prevent enactment of pleins pouvoirs and the promulgation of décrets-lois. Despite this, it appears that even Pierre Cot, the general rapporteur of the first draft constitution and its principal public supporter, envisaged that the Assembly would confine itself under the document primarily to the setting of general rules.¹⁷ Actually the draft document offered no solution but depended upon the experience of the Assembly to distinguish between

¹⁷ Constitution for the Fourth Republic, op. cit., p. 26. Pierre Cot is an ex-Radical Socialist who promoted the Communist proposals in the first, and Communist-dominated Constituent Assembly. According to Cot:

If you do not want to close your eyes to realities you have to face the fact that one ought to talk no more of separation of powers, but of the collaboration of organs charged with different functions. There are functions, there are organs of government, but there is no place for different powers under a democratic regime. To the contrary, unity of power is the rule of democracy and this power belongs to the people and to its representatives who exercise it.

general rules and the area of executive order. Precaution was taken in the draft constitution against executive ascendancy by prescribing a two-thirds majority vote of the Assembly as a prerequisite for emergency executive action, such action in no case to include the prerogative of dissolution.

The first Constituent Assembly attempted to compromise with the MRP by agreeing to the creation of two advisory bodies: an economic council, to which the Assembly might refer economic questions for advice,¹⁸ and a Council of the French Union, an omnibus body ostensibly designed as an advisory, deliberative group which would allow expression to representatives from the French empire.¹⁹ Neither of these gestures, however, satisfied the MRP and Rightist demands for diminution of the commanding position which the draft constitution conferred upon the Assembly.

The Executive in the First Draft Constitution. In the draft document actual control of the executive departments was given to the Assembly rather than to the President

¹⁸Draft Constitution of April 20, 1946, Art. 25. Under the Third Republic a Conseil National Economique was created in 1926. Designed as a device of functional representation, it consisted mostly of the delegates of labor, directly responsible to the Président du Conseil.

¹⁹Draft Constitution, op. cit., Art. 63-72.

of the Republic. The latter was reduced, as Herriot commented, to the role of "postman president" because he merely communicated to the Assembly a list of possible candidates for the office of President of the Council rather than actively participating in the Premier's election, and "filing clerk president" because he was custodian of Council records.²⁰

The President of the Republic was, however, given nominal command of the armed forces, although appointments therein were the prerogative of the President of the Council. The President was to be elected for seven years by two-thirds vote of the Assembly, or by three-fifths vote if the first figure was unattainable after three ballots. The President was given a very weak suspensory veto which merely guaranteed reconsideration of a measure by the Assembly.

Executive power was formally divided in this draft between the President of the Republic, whose functions were noted above, the President of the Council and the Council of Ministers considered as a collective body. The momentum of the Socialist-Communist majority in the first Constituent Assembly proved strong enough to limit profoundly the power of dissolution so that it bears little resemblance to the classic English form. The right of dissolution

²⁰See Séances de la commission de la constitution: comptes rendus analytiques, imprimés en exécution de la résolution votée par l'Assemblée le 25 avril 1946 (Paris, 1946).

could not be exercised during the first two and one half years of the life of an assembly. In the interim, the President of the Council or a member of the Assembly could precipitate a vote of confidence or censure on demand. Two full days were then required to elapse before the vote, which was required to be by roll call. A negative vote in the Assembly would force the collective resignation of the cabinet. Dissolution could take place after two and one-half years if two such cabinet crises as described above occurred within one year and if the cabinet, acting collectively, issued the order over the signature of the President of the Republic, after obtaining the advice of the President of the Assembly.²¹

In the main, the first draft constitution embodied principles espoused by both the Communists and the Socialists, and reflected the draft proposals which each of these parties had themselves drawn up. The first draft constitution formally legalized the insignificant position of the President of the Republic which years of gouvernement conventionnel under the Third Republic had assigned to him. The three principal areas of disagreement, between the MRP and the parties of the right on the one hand, and the Communist-led left on the other, were the dissolution of

²¹Draft Constitution of April 20, 1946, Art. 80-84.

of the assembly, the manner of electing the President of the Republic, and the status of a second chamber. The Communists had actually compromised on none of these points, although the provision for the Council of the French Union and the circumscribed dissolution procedure allowed to the President, were gestures of compromise which illustrate the political maxim: "Give the enemy that which does not count."

Defeat of the First Draft Constitution. France, the first modern European nation to combine republicanism and parliamentary institutions, was also the first to reject a constitution prepared by an elected constituent assembly. This was the fate of the first draft Constitution on May 5, 1946, when 10,584,035 votes were recorded against it and 9,444,034 for it.²²

The rejection of the draft Constitution placed the French nation in a difficult situation. The document had been approved in the Constituent Assembly by a Communist-Socialist majority of 309, against the Center and Right opposition of 249 votes. The vote in the Assembly corresponded fairly closely to the expressions of political ideology expressed by the electorate in the 1945 elections to

²²"The Constitution of the Fourth French Republic," a one page fact sheet issued by the French Embassy, Press and Information Division, 610 Fifth Avenue, New York. (n.d.).

the Constituent Assembly. The fact was that the Left was unable to persuade a majority of the voters to accept in the referendum an instrument which was a logical outgrowth of the political sentiments an electoral majority had expressed in 1945. The situation was reminiscent of the reputation ascribed to Frenchmen of voting further left than their individual political philosophies might require. Fifty years ago French peasants voted Radical-Socialist because it seemed to be the progressive thing to do. Today the quantitative ratio between the Communist party and communicants of the Catholic Church would suggest that some Frenchmen attend mass on Sunday morning and vote Communist on Sunday afternoon.

It now was necessary for the voters to express themselves again. The issue once more was how much power to entrust to the executive. A second assembly was elected in June, 1946, with a center of gravity slightly less to the left.²³ A struggle developed again in the new Assembly²⁴ between the Center and Right, led by the MRP, and the Communist-Socialist left, the former groups having a relative advantage due to the tenor of the elections. The moderates

²³Cf. Analysis of Robert K. Gooch, "Recent Constitution Making in France," American Political Science Review, Vol. 41, pp. 429-446 (June, 1947).

²⁴The official text of the deliberations of the second Constituent Assembly is published as Séances de la commission de la constitution: Comptes rendus analytiques imprimés en exécution de la résolution votée par l'assemblée de 2 Octobre

used this advantage to attempt to extract an increase in executive power from the left.

Resolving the Major Issues. The major constitutional struggle in the first Constituent Assembly had centered in the relationship which should exist between executive authority and the Assembly. A series of compromises was resorted to in an attempt to reach agreement at the second Assembly. First, article 81 of the first draft constitution relative to assembly self-dissolution was omitted entirely. Second, provisions concerning questions of censure and confidence were modified to permit voting to take place one full day after being put before the Assembly instead of two days as in the first draft.²⁵ Article 51, referring to dissolution,

1946. Draft texts were submitted to the second constituent assembly by the MRP, Communist and Socialist parties as well as the Republican Party of Liberty. A fifth was sponsored by a single deputy, Jacques Bordoux.

These drafts and a draft of the constitution of April 15, 1946, are published in a convenient form in Notes documentaires et études, No. 209 (August, 1946).

²⁵Constitution, Article 45, 50. An official text of the Constitution is available in several forms: "Constitution de la république française," in Journal Officiel de la république française, 1946, pp. 9166-9175; "Constitution de la république française," in Recueil des lois adoptées par l'Assemblée nationale constituante, élue le 2 juin 1946 et promulguées du 12 juillet 1946 au 30 octobre 1946; Constitution of the French Republic, issued by Press and Information Division of the French Embassy, 610 Fifth Avenue, New York, and Constitution de la république française . . ., a 24 page pamphlet issued by the Imprimerie des Journaux Officiels, Paris, including also the laws of October, 1946, relative to the Conseil de la République, the Conseil Economique, the Assemblée de l'Union Française, the Haut Cour de Justice and the election of members of the Assemblée Nationale.

was altered to allow the Council of Ministers to dissolve the Assembly if two ministerial crises occur within eighteen months, instead of a year as in the first draft constitution.²⁶

Another troublesome facet of executive-legislative relations in the deliberations of the first Constituent Assembly had been the method of electing the president. The first document required a two-thirds Assembly majority for his election, or, failing to obtain this in three attempts, he could be elected by a three-fifths majority. An open ballot was required.²⁷ In contrast, the constitution of September, 1946, stated only that the President shall be elected by Parliament. In the first presidential election after the new constitution took effect, the National Assembly decided to elect the president by an absolute majority of both houses on secret ballot.²⁸

The issue of whether a second chamber would be created to supplement the National Assembly was settled by partly meeting MRP demands for an upper house. Article 5

²⁶ Constitution, Art. 51. The exception was retained that "no ministerial crisis occurring within the fifteen-day period after the appointment of ministers shall require the application of Article 51."

²⁷ First draft Constitution, Art. 90.

²⁸ See Journal Officiel: débats, Jan. 17, 1947, for a record of the discussion on election procedure.

provides: "Parliament shall be composed of the National Assembly and the Council of the Republic." The Council of the Republic is an integral although unequal element of Parliament. It is elected, according to Article 6, by indirect and universal suffrage through "communal and departmental collectivities," although "the National Assembly may itself elect, by proportional representation, councillors whose number shall not exceed one sixth of the total number of members of the Council of the Republic."²⁹ Limited participation in the legislative process is granted the Council by Article 90. It may initiate non-financial bills and reject Assembly bills. The Council's rejections, however, may be overridden by an absolute Assembly majority. Since the Constitution specifies that "the President of the Republic shall be elected by Parliament," the Council shares this power with the National Assembly. The Council also has the right to be consulted on constitutional amendments as on ordinary laws. The role of the Council militates against Assembly government and, in certain cases, might encourage an increase in executive power.

Acceptance of the Constitution. Despite the intensive campaign against what its enemies called gouvernement conventionnel, the French people accepted, on October 13, 1946, a constitution basically the same as the one they had

²⁹Constitution, Art. 6.

previously rejected. Abstentions from the polls resulted in an affirmative vote of only 9,297,470, or less than the negative or affirmative vote in the May 5, 1946 referendum,³⁰ suggesting the impatience of the public rather than its genuine conviction.

Magistratures Morales. Some constitutional devices for securing stronger cabinet power were incorporated into the new document, but they all are indirect and depend for their effectiveness upon the skill with which they are employed. Coste-Floret, the MRP general rapporteur of the second Constituent Assembly, coined the term magistratures morales in describing how the devices might be used.³¹ It is possible, for example, that the relatively slight participation of the Council of the Republic in the ordinary legislative process may be of less long-run significance in qualifying assembly-centered government than its right to share in the amending and revising of the constitution and the election of a president. An articulate Council majority, differing widely in its conception of political values from an assembly majority, could perhaps combine with a disciplined assembly minority to facilitate reestablishment of

³⁰French Embassy, "The Constitution of the French Republic," op. cit.

³¹A Constitution for the Fourth Republic, op. cit., p. 65.

independent executive power. Similarly, as will next be analyzed, the status of the President of the Council of Ministers under the Constitution makes possible some dilution of assembly government since a larger adverse vote is required to secure his resignation than for his original designation. Moreover, the Premier is juridically distinguished from his cabinet and does not always share the fate of his colleagues.

7. Weakening of Assembly Government: (1) Exploitation of the Premier's Status

From 1945 to 1949 French Governments were continuously in the hands of the moderate parties of the so-called third force. The various Premiers they supported generally attempted to improve their power positions, often at the expense of the Assembly. They were, however, only partially successful in these efforts to establish constitutional precedent in favor of greater ministerial authority and to interpret the constitution in terms of greater executive power.

Legal Status of the Premier. In the Fourth Republic the President of the Republic chooses the Premier after consultations (consultations d'usage). The latter then must present himself to the Assembly for the process of l'investiture. Investiture, or confirmation, confers a

special legal status on the Premier which distinguishes his position from that of the cabinet which he forms, even though subsequently the cabinet also is subjected to the scrutiny of the Assembly. This system departs in several respects from previous French parliamentary practice and the changes it involves are of interest in assessing the position of the Premier with respect to the Assembly.

The development began with the Law of November 2, 1945,³² which prescribed a definite legal procedure (recrutement propre) for designation of the Premier. Heretofore, under the laws of 1875, the Premier was simply primus inter pares. He and his colleagues were directly named by the President of the Republic. The 1945 law required that he be elected by an absolute majority of the Assembly and, after having constituted his Government, that he appear before the Assembly a second time to obtain its approbation for the remaining ministers and for the program contemplated by the Government. The draft constitution of April, 1946, went even further in asserting the supremacy of the Assembly. Under its terms the Premier was elected by absolute majority of the Assembly, by public ballot and without any prior reference to the desire of the "chief magistrate," the term applied to the strictly ornamental president envisaged in the draft constitution. This

³²Journal Officiel, November 3, 1945, p. 7159.

election of the Premier was entirely divorced from the question of confidence. Following the election, and not later than the fourth day of the legislative session, the Premier was required again to present himself and his cabinet to the Assembly, which had the prerogative at the second stage either to accord or refuse its confidence in the entire Government, including the newly elected Premier.³³

In contrast to this, the "designation" of the Premier by the President of the Republic, under the terms of the Constitution of September 28, 1946, introduced an anterior step into the process and permitted some definite gain in executive power. The Assembly retains the right to determine by absolute majority whether it will permit the Premier's confirmation, but if confirmation occurs the Premier is not subject to further scrutiny as are his proposed cabinet and program.³⁴

One effect of the modification in September of this element of the draft constitution of April, is to strengthen the constitutional position and executive authority of the President of the Council at the expense of the Assembly. In addition, the shield with which confirmation surrounds the Premier improves his position in comparison with the

³³Draft Constitution of April, 1946, Art. 77.

³⁴See André Sauvageot, "Le cabinet Ramadier et la pratique constitutionnelle," Revue politique et parlementaire, Tome CLXXXIV, No. 576, pp. 239-252 (March, 1948).

position of the Premier in the Third Republic, since earlier constitutional practice did not separate the President of the Council from his program or his cabinet, all three being approved or disapproved at the same time.

The new system was first put to use on January 21, 1947, when Premier-designate Paul Ramadier appeared before the Assembly. André Siegfried reports that the candidate, having been designated by President Vincent Auriol, arose as a deputy instead of from the Ministers' Bench. His speech was not a collective, ministerial declaration but a personal discourse.³⁵ After reading it he sat down alone on the Ministers' Bench among two rows of empty seats. Siegfried likened his position to that of l'infans conceptus of the law manuals.³⁶ After his confirmation by the Assembly on January 21, Ramadier communicated the names of the members of the Government which he had chosen to President Auriol. These were immediately incorporated into a nomination decree by Auriol on January 22 and transmitted to the Assembly. Acceptance of them by the Assembly on the same day brought into being the first Government of the Fourth Republic.³⁷

³⁵ Journal Officiel: débats, January 22, 1947.

³⁶ André Siegfried, "D'une République à l'autre: nouvelle procédure, nouvel esprit," Le Figaro, January 22, 1947.

³⁷ Journal Officiel, January 23, 1947, p. 939.

The Significance of Confirmation. Since the process of confirmation gives the Premier a special juridical personality, it has the effect of partially safeguarding his Government from collapse even though one, or even a group, of ministers are rejected or resign. In May, 1947, for example, Premier Ramadier terminated the appointments of the four communist ministers of his cabinet because they had voted against the Government's anti-inflation policy. President Auriol upheld the action on constitutional grounds.³⁸ Similarly, Ramadier himself remained Premier after the resignation of part of his cabinet in the political crisis following the municipal elections of October, 1947.³⁹ Since the Assembly was not in session to register its decision, Ramadier continued as Premier on the authority of a mandate nine months old. Moreover, by retaining members of the former cabinet, who were his close associates, Ramadier demonstrated that the Premier does have considerable latitude in carrying out the mandate which investiture confers upon him.

³⁸For the text of Auriol's decree of May 4, 1947, see Appendix No. IV.

³⁹See New York Times, October 20, 1947, p. 1, for an account of the Gaullist victories in the municipal elections. The political importance of the RPF after the elections vis-à-vis other political groups was so great as to destroy the Cabinet's confidence in itself as the collective agency of a majority of the Assembly deputies.

An additional support for the Premier's position results from the terms of Article 49 of the Constitution which specifies that a vote of confidence may not be refused except by an absolute majority. A legal distinction thus exists between majorité d'investiture and majorité de confiance, the former attainable only by absolute majority and the latter merely by simple majority. On October 30, 1947, for example, Ramadier was able to retain the Assembly's confidence with 300 votes⁴⁰ but three weeks later, on November 21, the same number of votes was not sufficient for Leon Blum to obtain confirmation.⁴¹ The Assembly itself gave expression to the distinction when the next Premier, Robert Schuman, was confirmed on November 22, 1947, by a vote of 412 against 184, while a few days later the Cabinet and program of M. Schuman were endorsed only by 322 votes against 180.

4. Weakening of Assembly Government: (2) Lack of Control Over Cabinet Tenure

From the first de Gaulle regime, which began September 11, 1944, to the second Bidault Government, inaugurated on October 28, 1949, ten men have served as Premier

⁴⁰ Journal Officiel, October 31, 1947.

⁴¹ On the same day the Assembly fixed the absolute or "constitutional" majority at 309 votes. This decision was taken on the basis of the actual number of deputies rather than the legal number.

of France, three of them twice. Cabinets have been formed ten times, but only in the case of the Schuman cabinet has a vote of no confidence been the cause of cabinet resignation. The National Assembly has thus hardly controlled the tenure of the French Premier as the constitution intended, and the decisions about cabinet continuation usually have been made in the cabinet itself.

The Two de Gaulle Ministries. When General Charles de Gaulle resigned in November, 1945, as President of the Provisional Government and Premier, he was merely exercising a form of courtesy, freeing the newly elected Constituent Assembly from any moral obligation to continue him in office, although his re-election was almost assured.⁴² The resignation was a brilliant move politically, since the Constituent Assembly hastened to bring him back on November 23, 1945, by unanimous decision, to carry out a program which he termed one of "progressive nationalization."⁴³

During de Gaulle's second experience as head of the Provisional Government his views of executive power clashed sharply with those of a majority of the Assembly. When de Gaulle decided upon the tactical move of putting the question of confidence in the matter of military credits, the disagreement about how much power the executive should

⁴²See New York Times, November 7, 1945, p. 16.

⁴³New York Times, November 24, 1945, p. 1.

wild flared into open and violent argument. Some Socialist deputies contended that in putting the question of confidence, de Gaulle had exceeded the authority bestowed upon him in the referendum and that a refusal to vote credits could not be construed as a lack of confidence.⁴⁴ The General was temporarily successful in maintaining his views but resigned suddenly on January 20, 1946, in what was apparently another tactical move which he expected would enhance his popularity and put the Communists in a difficult position.⁴⁵ No leader in any party appeared, at the moment of de Gaulle's resignation, to have the slightest chance of securing a solid Assembly majority.⁴⁶ De Gaulle was not called back by acclamation after his second resignation, but it is significant that he--not the Assembly--brought about the action.

Resignation for Lack of Mandate. Felix Gouin, de Gaulle's Socialist successor, resigned in circumstances resembling those of de Gaulle's first resignation. Gouin was Premier-President during the period of the first Constituent Assembly. He was not under any particular pressure when he resigned at the first meeting of the second Constituent Assembly on June 11, 1946, nor was any crisis immediately anticipated. The Communists, in fact, indicated a

⁴⁴New York Times, January 2, 1946, p. 5.

⁴⁵New York Times, January 21, 1946, p. 4.

⁴⁶Idem.

preference for the Gouin Government over that of Bidault, which followed.⁴⁷ Similarly, the Cabinet headed by the Popular Republican Georges Bidault announced on November 17, 1946, that it would resign at the first meeting of the new National Assembly on November 28, because Bidault felt that his mandate was at an end. The Assembly did not extend or withhold its confidence since that question was not raised, although Bidault subsequently failed of reelection as Provisional Premier.⁴⁸ Leon Blum, the last interim Premier, took the position only with the understanding that he would resign in January, 1947.

The Ramadier Cabinet. Paul Ramadier conducted a tenacious ten-month struggle as the first Premier of the Fourth French Republic. Under his leadership the Cabinet eliminated the four Communist ministers who refused to vote for the Government's decision to prevent wage increases although it was under pressure to lift wage ceilings because of a strike at the Renault motor plant. In dropping the Communists from the Government, Ramadier departed from precedent in French executive practice and successfully gave

⁴⁷ New York Times, June 12, 1946, p. 13.

⁴⁸ Bidault on December 5, 1946, received 240 votes compared with 254 the previous day for the Communist candidate, Maurice Thorez. Neither was chosen and Leon Blum, dean of the Socialist Party, was finally given an overwhelming mandate of 544 votes to 2 to head a temporary all-Socialist Cabinet until January, 1947.

expression to the distinction between a Premier and his Cabinet which the new constitution affords. Moreover, he won a vote of confidence by a comfortable majority after dropping them. Ramadier eventually resigned in November, 1947, because the October local elections resulted in an outstanding victory for de Gaulle's newly organized Rassemblement du Peuple Français and thus increased the menace to the Ramadier Government from the Right. The decision was the Premier's own, not that of the Assembly. In Ramadier's entire term as Premier he never lost a confidence vote.

The Assembly Asserts Itself. Paradoxically, the Cabinet of the Popular Republican, Robert Schuman, was both one of the most successful of French post-war ministries as well as the only one whose demise was precipitated by a vote of no confidence. In overthrowing the Schuman Government the French Assembly asserted the dominant role envisaged for it by the Constitution of 1946. The occasion was a Socialist revolt which split the Government coalition in the Assembly and which was based on the party's insistence for a twelve-billion franc reduction in military credits as a means of forcing reform in national defense.⁴⁹ The result was the defeat of the Schuman Government on the

⁴⁹ See New York Times, July 20, 1948, p. 1.

question of confidence.⁵⁰

Even this display of Assembly authority over the executive was more formal than real. In a sense the French National Assembly is merely a vehicle to which prominent party personalities in the executive branch periodically repair to gauge respective party strength and to estimate the discipline which each party maintains in the Assembly. The vote against Schuman reflected differences within the cabinet which were only crystallized on the floor of the Assembly. Actually, the Socialist revolt in the Schuman case was a strategically faulty move by the Socialists since the assistance of the Communists was strictly a one-way trade. The latter had steadily refused since May, 1947, to support any French Government in which they did not participate. The Socialists stood little chance of achieving the reduction of military credits which they desired unless the moderate parties should agree since, on the one hand, the Socialist and Communist deputies together were not, from 1945-1949, numerous enough to constitute an Assembly majority upon which a Government could be formed; on the other hand the Communists would certainly oppose any Socialist coalition Government which contained "capitalist" elements even though such groups might agree with the Socialist view on the budget.

⁵⁰Journal officiel: débats, July 20, 1948.

Party Leaders Repudiate Premiers. If the relatively long ministry of Henri Queuille (September 10, 1948 - October 5, 1949) is excluded, the bewildering succession of six additional French Premiers in 1948-1949 suggests the false conclusion that the National Assembly controls the tenure of the cabinet in practice as well as in theory. A closer examination of several situations, however, reveals quite the opposite tendency. The resignations of Jules Moch (October 17, 1949) and René Mayer (October 23, 1949) were due to the inability of these Premiers to obtain ministers for their proposed Governments despite the fact that each had been formally confirmed by absolute majority vote in the Assembly--a vote that was afforded by the very parties whose leaders subsequently repudiated the two Premiers in negotiations to form cabinets.

Jules Moch, a Socialist of moderate strain, accepted President Auriol's designation as Premier on October 11, 1949, and appeared before the Assembly on October 13, where he received 311 votes, exactly enough for confirmation despite exceedingly bitter attacks upon him by the Communist, Jacques Duclos.⁵¹ In three hectic days which followed his confirmation, Moch was unable successfully to negotiate with the leaders of the MRP, Socialist and Radical parties

⁵¹ Duclos singled out Moch for abuse because the latter, in a ministerial capacity, had utilized the police to break up Communist strikes in the fall of 1948. See New York Times, October 14, 1949, pp. 1, 10.

to form a cabinet. Moch resigned on October 17 without appearing again before the Assembly. Neither a program nor a cabinet could be presented for the Assembly's examination and the Assembly itself had nothing to do with determination of what would or would not happen in the process of negotiation with party leaders.

René Mayer, Radical Minister of Finance in the earlier Schuman Ministry, agreed to designation by President Auriol following Moch's resignation.⁵² After successfully passing the confirmation hurdle before the Assembly, Mayer attempted a new tactical move by obtaining from his Radical Party and from the MRP statements endorsing his right to name the ministers himself. But the Socialist leaders were recalcitrant. They demanded that if Maurice Petsche, the former Minister of Finance, were appointed to that post again, that Daniel Mayer, Socialist, whose dispute with Petsche and former Premier Henri Queuille led to the disintegration of the previous cabinet, must again be named Minister of Labor.⁵³ The demands of the Socialist leaders prompted Mayer to resign on October 23. Once again it became apparent that decisions are not made by the Assembly

⁵² Robert Schuman and François de Menthon (MRP), and Henri Queuille (Radical) had all refused Auriol's requests to submit to designation. See New York Times, October 19, 1949, p. 24.

⁵³ New York Times, October 23, 1949, p. 22.

with respect to who shall wield executive power or what policies will be followed. These questions are answered instead by the party manipulators.

Repudiation of Assembly Policy. In addition to repudiation of Premiers by party leaders during the cabinet forming stage as in the cases of Moch and Mayer, cabinet disagreement over the means for carrying out authority delegated to it by the Assembly has sometimes resulted in wholesale repudiation of the Assembly's intentions. The short-lived ministry of André Marie is a striking example. Marie, a Radical, who had been in office only a month in August, 1948, found his Cabinet hopelessly split over the application of the proposed financial and economic reforms of his Minister of Finance, Paul Reynaud. The Socialist Ministers refused to support part of the enforcement measures and Reynaud declined to continue his term of office unless he got complete support. A subsequent cabinet meeting on the issues lasted through all of August 27 and the decision to resign collectively was reached early on August 28. In resigning, the Cabinet refused to support the Assembly which, after three weeks of delicate debate, had just accorded pleins pouvoirs to the Government to inaugurate the Reynaud reforms by decree.⁵⁴ President Auriol accepted

⁵⁴ New York Times, August 28, 1948, p. 1.

the resignations of the Marie Cabinet but he later indicated that he felt he had made a mistake in doing so without first securing an Assembly vote on the matter.⁵⁵ Auriol's recrimination over the Marie Cabinet perhaps involved recognition that Assembly control of the cabinet is rather less actual than theoretical.

The Failure of Schuman's Second Effort. The resignation of the Marie Cabinet in August, 1948, was followed by the designation of former Premier Robert Schuman who agreed to try to settle the crisis after another former Premier, Paul Ramadier, had been approached unofficially on the matter by President Auriol. Schuman approached his task with a cautious policy statement before the Assembly and was rewarded by a comfortable investiture margin of 322 votes to 185 on August 31,⁵⁶ but the spectre of the Reynaud reforms appeared again to wreck his cabinet plans. Schuman gave up the effort on September 3 but Auriol refused to accept his resignation, insisting that the Assembly's endorsement of Schuman remained in effect, and implying that Schuman had at least a moral obligation to the Assembly to try again to form a cabinet. Schuman complied on September 4, and formed a cabinet the next day which the Socialists joined upon condition that their demands for wage increases

⁵⁵See New York Times, October 6, 1949, p. 7. This was more than a year later.

⁵⁶New York Times, September 1, 1948, pp. 1, 7.

to labor would be met. But his hopes were dashed on September 7 when the Assembly, by vote of 289 to 295, refused to accede to the Premier's request for postponement of interpellations on the make up of his cabinet. It should be emphasized that, while the Assembly's action was an assertion of its power and made Schuman's position difficult, nevertheless the question was a technical one. Schuman had specifically not asked for a vote of confidence so that the crisis could not be used as a basis for Assembly dissolution, a situation which the Gaullists were anxious to bring about and the moderate parties to avoid. Moreover, technically, Schuman was not required to resign as a result of the Assembly vote. He did so because he apparently had promised the Socialists that he would either secure a postponement of interpellation or, failing, would resign. The New York Times records his action in these words:

Keeping his promise, Premier Robert Schuman wearily went alone to the Élysée Palace and gave to Auriol the collective resignation of the Cabinet that had been so painfully constructed in an all night session three nights earlier. ⁵⁷

Thus, even in this instance of the participation of the Assembly in determination of a cabinet, Schuman's resignation actually resulted from the political situation within the Cabinet and not from the decision of the Assembly.

⁵⁷ New York Times, September 8, 1948, p. 1, 14.

The Queuille Resignation and the Assembly. Henri Queuille enjoys the distinction of having been Premier of the Fourth French Republic longer than any other during the years 1945-1949. He resigned of his own accord on October 5, 1948, after almost thirteen months in office, following a disagreement with his Socialist Minister of Labor, Daniel Mayer, over wage increases. The Assembly was not in session at the time of the resignation and was not consulted.

The Tactical Innovation of Bidault. After the failures of Moch and Mayer in October, 1949, the political combination of the Third Force, i. e., Radicals, Popular Republicans and Socialists, which up to that time had kept a republican regime in operation in France, appeared to be perilously close to permanent eclipse. The principal difficulty, in addition to danger from the extreme right and left, was rooted in the unfortunate effects of manipulation of executive position and of government policy by particular party leaders, the same ones participating in each negotiation for a new cabinet. In the midst of the crisis of October, 1949, the newest Premier-designate, Georges Bidault, inaugurated a tactical technique which has the practical effect of rendering unnecessary the second appearance of the new Premier before the Assembly to secure the approval of the latter for his ministerial choices. Bidault simply framed his cabinet before appearing for confirmation. The

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result was the amazingly successful confirmation vote for Bidault of 367 to 183, only the Communists voting against him. It would appear that this partial return to the procedure of the Third Republic may alleviate what came to be during the years 1945-1949 a somewhat superfluous complication in executive-legislative relationship, albeit one which was intended to strengthen the executive position. The Bidault tactic was so successful, at any rate, as to cause the introduction of a bill in the Assembly on October 28, 1949, to make the procedure permanent. The definitive answer as to whether the Premier is tied more closely to the fate of the Cabinet by reason of virtual joint confirmation is yet to be reached.

5. Inability of the Government to Influence the Assembly

The practices which tended to weaken Assembly control of executive power in 1945-1949, developed concurrently with another set of conditions which tended to restrict the influence of the Premier and his Cabinet over the Assembly. These conditions included (1) the presence of a large opposition bloc in the Assembly that was not congenial to republican institutions and which, as a consequence, tried deliberately to embarrass the Cabinet whenever possible; (2) the essentially negative character of the Government coalitions whose support of Governments was only nominal for

for the most part; (3) the instability of cabinets, several of which were not in office long enough to develop an adequate working relationship with the Assembly, and (4) the new and peculiarly "un-French" party discipline which proved to be so rigid that Governments were seldom able to penetrate it in the interest of national unity.

The Disloyal and the Disgruntled Opposition. The Communist Party was, in 1945-1949, the largest political party in France. It polled in excess of five and one-half million votes at the general elections to the National Assembly in the fall of 1946 and captured 183 seats. The Communist Party in France was disloyal to France in terms of its record during the four years under study. Its leader, Maurice Thorez, publicly urged his followers to assist the Soviet Union's troops if they should invade France.⁵⁸ The Party itself refused to support any Government, or any Government measure, in the French National Assembly after the dismissal of the four Communist ministers in the Ramadier Government on May 4, 1947, a dismissal which was condoned both by the President of the Republic and by Ramadier's own Socialist Party. The Communist Party of France tried, although unsuccessfully, to wreck Marshall Plan aid through a general strike in 1947.⁵⁹ In a Party speech reportedly made

⁵⁸ See extract of his statement of February 22, 1949, reproduced in the New York Times, February 23, 1949, p. 1.

⁵⁹ New York Times, October, 1947. Various issues.

by Thorez on February 6, 1949, he directed the Party to accelerate the sabotage of French national defense efforts by resorting to the tactics of "mass battle." It expressed discontent and opposition toward the Government of the Fourth Republic by intensifying and supporting every element of resistance to public authority that occurred in other groups. As far as constructive participation in the work of the National Assembly was concerned, the Communists were necessarily considered persona non grata by other parliamentary groups.

At the opposite extreme from the Communists was another threat to party government which Leon Blum identified as "Caesarism." This was the Rassemblement du Peuple Français of Charles de Gaulle, a group whose leader at least distrusts political parties⁶⁰ and which would apparently substitute for the present republican institutions a new and undefined check and balance system of government supervised by a powerful president of such calibre that he would be above the "tainting" influence of parties. Until the municipal elections of October, 1947, which resulted in a substantial Gaullist victory of some forty percent of the total vote, de Gaulle refused to allow his group to be called a political party, insisting instead that it be con-

⁶⁰ Harold Callender, "The Great Challenge that Confronts France," New York Times Magazine, December 7, 1947, p. 33.

sidered a great patriotic renaissance of the French people in the interests of the French nation. Shortly after the elections, however, those deputies who had previously shown Gaullist sympathies banded together into an Assembly bloc of some forty members and demanded to be seated between the Popular Republicans and the Socialists. From this ill-chosen physical position they proceeded to abstain from voting on, or to vote against, every successive attempt at a cabinet formation except that of Bidault in October, 1949.⁶¹ Meanwhile, on the fall of each successive Government, the General, who is himself not a deputy, unfailingly demanded dissolution of Parliament and new elections to the Assembly. The strength of the RPF in the Assembly appears to be about forty-six.⁶² It should be emphasized that the group is not a single party, but rather dissident elements of center parties as well as, on occasion, the complete delegations of some smaller rightist parties. While the Gaullist bloc should not be placed in the disloyal category with the

⁶¹The Bidault ministry included René Pleven of the Democratic Socialist Union as Minister of Defense. His group is considered to incline toward Gaullist doctrine. Pleven's inclusion in the cabinet may be an additional reason for the large investiture vote accorded Bidault of 367 to 183.

⁶²This figure is arrived at on the basis of the vote on a measure to defeat the so-called Barrachin interpellations on the conclusions to be drawn from the cantonal elections of April, 1949, in which the RPF secured thirty percent of the vote. The Barrachin interpellation was defeated by 358 votes to 46. Journal Officiel: débats, April, 1949.

Communists, nevertheless its general anti-republican political orientation has not permitted it to be influenced by democratic ministries, often of Socialist bent. Consequently the Gaullists usually have stood aloof in somewhat the same manner as did the Nazi deputies after the 1930 German elections. Cabinets have discounted them and the task of wielding executive authority has been more difficult because of them.

The Negativism of the Third Force. If the Communists and the Gaullists are so far apart that they can scarcely fit into the same parliamentary regime, the parties of the so-called French Third Force, i. e., the Socialists, Popular Republicans and the Radicals, are scarcely close enough together to agree on anything except the necessity of keeping power from Communism and Gaullism. The result is a great inertia of the Parliamentary working majority of coalition Governments. The unsolved problem of the Third Force is that the Popular Republicans and the Radicals are doomed to eternal compromise with the Socialists to maintain a Government. Since, however, socialist policy is scarcely more compatible with that of the Popular Republicans than Popular Republican policy is with that of the Gaullists, the parties of the coalition in the Assembly tend to allow themselves to be influenced only by ministers of their own political

persuasion.⁶³ One observer notes that "A given party usually holds several cabinet posts which it tends to regard as branches of the party rather than as coordinate parts of a unified administration."⁶⁴

Lack of positive support for executive measures prompted Georges Bidault deliberately to put the question of confidence in the hope that the deputies would vote the measure he sought rather than risk the danger implicit in a Cabinet overthrow. Thus Bidault, on December 24, 1949, hounded both by the Socialists on the left and the Reynaud Independents on the right, requested a vote of confidence on his proposals for the 1950 budget and won, although only by a margin of six votes.⁶⁵ In the case of this confidence vote, however, and the two which were carried by more comfortable margins on December 21, the Premier apparently reasoned that some deputies would be unwilling to vote down the Government's proposals for fear of precipitating a general election which is permitted by the Constitution if two Premiers are unseated by the Assembly in an eighteen

⁶³Cf. André Stibio, "The French Political Crisis," The National Review, Vol. 133, No. 180, pp. 425-430 (November, 1949).

⁶⁴New York Times, November 17, 1946, p. E5.

⁶⁵New York Times, December 24, 1949, p. 1.

month period.⁶⁶ Such tactics, however, will only be effective under such specialized circumstances as indicated.

The final and compelling reason for the inability of the Premier to exert effective influence on the Assembly lies further in the realm of political analysis. A legislature has several principal functions, including those of representation, deliberation⁶⁷ and policy formulation. These comprise the heart of constitutional democratic government, for through them is accomplished the task of reconciling and balancing group interests in the interest of the whole. "Ultimately," asserts Friedrich, "the representative function of elected assemblies depends upon the general recognition that not the majority alone, but majority and minority together represent the nation."⁶⁸ The process of integration and coordination, of balancing and of reconciling can not take place successfully unless a fundamental area of agreement underlies both the day to day internal relationships of the legislature as well as its relationships with the executive. Such agreement is not present in

⁶⁶ Schuman had been overthrown in July, 1948. It is common knowledge that French party leaders, except the Gaullists who might have benefited from a late 1949 parliamentary election, preferred to keep the way open to waiting until the autumn of 1952 for elections.

⁶⁷ Cf. Carl J. Friedrich, Constitutional Government and Democracy (New York, 1941), Ch. XX and XXI.

⁶⁸ Ibid., p. 442.

France. Even leaving aside completely the insoluble problem created by the presence in the Assembly of the Communists and Gaullists, the association of the Socialist party with the Radicals and the Catholic MRP is bound to produce only weak executive programs which will inspire no party in the Assembly, since they must be framed to offend no segment of the fragile coalition at the expense of pleasing none.

The Rapid Turn-Over Among Premiers. The unending procession of French Premiers so well known to French constitutional history was, unfortunately, a prominent characteristic of the years, 1945-1949. Specifically, cabinets were formed ten different times during the period, excluding the unsuccessful second attempt of Robert Schuman in September, 1948, and the unsuccessful attempts of Jules Moch and René Mayer in October, 1949.⁶⁹ Henri Queuille, who held

⁶⁹See Appendix No. III, "French Premiers Since September, 1946." French Premiers since the liberation who were able to form cabinets and their terms of office follow:

Charles de Gaulle, two terms, September 11, 1944, to November 6, 1945, and November 24, 1945, to January 20, 1946; Felix Gouin, January 29, 1946, to June 12, 1946; Georges Bidault, two terms, June 19, 1946, to November 27, 1946, and October 28, 1949, to present (Spring, 1950); Leon Blum, December 12, 1946, to January 17, 1947; Paul Ramadier, January 22, 1947, to November 19, 1947; Robert Schuman, November 22, 1947, to July 19, 1948; André Marie, July 24, 1948, to August 27, 1948; Henri Queuille, September 10, 1948, to October 5, 1949.

The first four post-war Premiers also served as Presidents of the Provisional Government. The terms of the various Premiers as given here are dated in each case from their first vote of confidence or investiture.

office from September 10, 1948, to October 5, 1949, was Premier for the longest single period and Andre Marie, whose term lasted only from July 24, 1948, to August 27, 1948, maintained a cabinet for the shortest period. Such rapid changes obviously reduce the prestige of Premier and Cabinet in the eyes of the Assembly and undermine relationships between the executive and the legislature which often have been created only after patient work. Thus the continual replacement of the chief working executive affects adversely the influence of the Premier and his Ministry over the Assembly.

Party Discipline in the Fourth Republic. French political parties, which before World War II were fluid organizations characterized by vaguely defined doctrinal boundaries and by loose individual allegiances, became more rigidly organized and disciplined in the first four years of the Fourth Republic.⁷⁰ The development of strict party discipline, probably provoked by the example of the Communists,⁷¹ resulted in the unswerving obedience of Assembly deputies to the orders of party leaders but left little flexibility for attaining the compromise solutions to

⁷⁰Cf. New York Times, December 7, 1947, p. E5.

⁷¹See Chapter I, supra, pp. 15 - 16, for earlier references to party discipline.

executive programs which were usual in the individualist Chamber of Deputies of Third Republic days. The progress of executive programs in the Assembly suffered as a consequence.

The character of the new party discipline is emphasized by developments in the Schuman cabinet in the days immediately preceding its overthrow on July 19, 1948. As early as July 4 the Socialist Party had announced its decision to accord the Premier only conditional support.⁷² Thus the Socialist deputies were alerted for the possibility that they would be directed to vote against the Premier on his next request for a vote of confidence. By July 7 Schuman had decided to stake his Cabinet's continuation on his conviction that the military credits in the budget should not be reduced to the extent demanded by the Socialists.⁷³ The Premier's action forced the issue between himself and the Socialists. The pleas of the Premier for support of his government on July 10⁷⁴ and July 11⁷⁵ were fruitless since the Socialists had been alienated by the Premier's decision to put the issue to a vote of confidence.

⁷² London Times, July 5, 1948, p. 3.

⁷³ New York Times, July 8, 1948, p. 8.

⁷⁴ New York Times, July 11, 1948, p. 20.

⁷⁵ New York Times, July 12, 1948, p. 7.

On July 19, when the vote was taken, the Socialist deputies voted obediently against the Government and Schuman resigned.⁷⁶ The plain fact was that the vote against the Premier amounted to a mere formality. Party solidarity was too strong for the deputies to be affected one way or the other by Schuman's defense. He could not influence the Assembly.

The necessity for maintenance of party discipline among the elements of the Third Force becomes obvious, however, if even a semblance of governmental stability is to be attained. The breaking of discipline by a small group of Radicals prevented Schuman from heading a new cabinet in September, 1948. The former Premier had agreed to the task of forming a Government after André Marie's ministry had resigned on August 28, and after Ramadier had failed to get agreement on a cabinet in unofficial conversations with the parties. Schuman successfully obtained confirmation on August 31 by a vote of 322 to 185, gave up on September 3 his attempt to form a cabinet, was urged to try again by Auriol and finally procured, after an all night session on September 5, a cabinet which was agreed to by the coalition parties. But a partial revolt of the rank and file of the Radical deputies caused him to lose the next day.⁷⁷

⁷⁶New York Times, July 20, 1948, p. 1.

⁷⁷New York Times, September 8, 1948, p. 1.

6. The Actual Locus of Executive Power in France

A broad area of executive power is discernible in France notwithstanding the fact that the Premier and his cabinet as formal entities are subject to severe constitutional and practical limitations. The locus of executive power must be sought in party personalities, especially those of the Socialist Party, in the bureaucracy and, to some extent, in the President of the Republic.

Party Personalities. Executive power in France appears to focus in those party leaders of the Third Force who are carried over from one cabinet to the next, sometimes in the same official position. The political positions of these persons are largely independent of the Assembly because as long as they can control their own parties, and as long as the parties themselves are necessary components of any Third Force coalition, some leaders are assured almost continuous term of political office. Since every Government of the Fourth French Republic from May 4, 1947, to the end of 1949, was based on a coalition of the Radical, Socialist and Popular Republican parties, it was the leaders of those three parties who dominated

executive authority.⁷⁸

An analysis of the nine French cabinets from the second de Gaulle ministry of November, 1945, to the second Bidault ministry of October, 1949,⁷⁹ reveals that Jules Moch, Socialist, has held official positions in eight cabinets; Pierre-Henri Teitgen, MRP, participated in seven; Robert Schuman and Georges Bidault, both MRP, and Robert Lacoste, Socialist, held office in six ministries; and Marcel Naegelen and Pierre Tanguy-Prigent, both Socialists, were appointed to five cabinets. Fourteen individuals participated in four cabinets each, eight others were each members of three cabinets and nine have been appointed to two ministries. On the basis of these statistics, it would appear that Moch, Lacoste, Naegelen and Tanguy-Prigent for the Socialists, and Schuman and Bidault--who between them also held the Premiership three times--for the Popular

⁷⁸The first and second "non-partisan" de Gaulle cabinets included equal elements of the three major parties--Socialists, Popular Republican and Communists--and a judiciously chosen representation from most of the smaller parties. This was before the emergence of the Third Force. The Ramadier Cabinet, the first under the Fourth Republic, included four Communists until May 4, 1947.

⁷⁹See Appendix, No. I, "French Ministers Occupying Cabinet Posts Four or More Times." The analysis excludes the first of the two "non-partisan" Cabinets of de Gaulle, those of Jules Moch and René Mayer, which were never completed, and the second Schuman Cabinet, which was defeated upon presentation to the Assembly.

Republicans, have enjoyed almost continuous political power. To this list of ministers should be added such other favorites as Paul Ramadier, Socialist, who was Premier in one ministry and held office in three others; Daniel Mayer, Socialist, who held the posts either of Social Security or Labor four times; André Marie, Radical, who was Premier once and Minister of Justice three times; Jean Souin, Socialist, also a former Premier, and three times minister without portfolio; Marius Moutet, Socialist, and four times Minister of France Overseas; Paul Coste-Louzet, Popular Republican, also Minister of France Overseas four times; Jean Estourneau, Popular Republican, who held the Ministries of Commerce and Overseas France each once, and that of Communications twice; François Mitterand, Radical Group, who was Secretary of State for Information twice and Minister of Veterans Affairs twice; Pierre Pflimlin, Popular Republican, who was Minister of Agriculture four times; Pierre Schneider, Popular Republican, who was Minister of Health twice and was once Secretary of State for Germany; Yvon Leibos, Radical, who was three times Minister of Education and once Minister without portfolio; Eugene Thomas, Socialist, who was three times Secretary of State for the Postal Service, and once was Minister of Communications, and Christian Pineau, Socialist, who was Minister of Public Works in three cabinets.³⁰

³⁰ See appendix No. I, op. cit., The four Communists,

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⁸⁰ See Appendix No. I, op. cit., The four Communists,

The evidence seems to indicate that these men were at once among the most effective political leaders in the Fourth Republic and that they exercised substantial executive powers in the Government.

Examination also reveals that some ministries have been dominated by one or two men of the same party. For example, the extremely important post of Minister of Foreign Affairs was held continuously by members of the Popular Republican party. Georges Bidault held it five times and Robert Schuman three times, thus accounting for the entire period from 1945 through 1949 with the exception of the two months of the all-Socialist, interim Government of Leon Blum late in 1946. If the Ministry of Foreign Affairs can be considered as an important locus of executive power which is dominated by one party and a few men, another such locus is the Ministry of Public Works which was completely dominated by the Socialist party. Either Jules Moch or Christian Pineau, both Socialists, was continuously the minister between 1945 and December, 1949.

Other ministries were monopolized by two men of different parties who alternated with each other according

Maurice Thorez, Charles Tillon, Marcel Paul and François Billoux, all were members of the de Gaulle, Gouin, (first) Bidault and Ramadier cabinets, but they hardly loom important in executive power because all were dropped by Ramadier on May 4, 1947, when they voted against the Government and no Communist ministers have participated in any subsequent Third Force cabinet.

to whether a Socialist or a Popular Republican Premier was in power. Thus the Ministry of Agriculture was in the hands of Pierre Tanguy-Prigent of the Socialist Party five times and under the control of Pierre Pflimlin of the Popular Republican party four times, while the Ministry of Education was headed by the Socialist, Naegelen, five times and by the Radical, Delbos, three times.

Socialists Hold the Balance. On this basis, the Socialists enjoyed proportionately the greater part of executive power for, although they held only one-sixth of the seats in the Assembly from 1945-1949 and although only three post-war French Premiers have been Socialists, more Socialist party leaders have occupied more ministerial positions than any other party.⁸¹ In the second place, the problems of the executive were principally economic in the post-war period. The difficult questions posed by inflation, insufficient production, strikes, poverty and exports--to list but a few--could not be answered except in terms of economic philosophy.

Socialist economic policy was more spectacular than the classical liberal policy and was closer to the post-war mood of the voters, judging from the size of the combined Communist and Socialist vote in 1946. The Socialists thus were able to exert an influence on policy during 1946

⁸¹See Appendix No. I, op. cit.

and 1947 greater than their numbers would ordinarily give them, although this influence appeared to have declined somewhat by the end of 1949. Moreover, the very fact that the Radicals and Popular Republicans were ideologically closely associated meant that they competed with each other for cabinet posts on the basis of personality rather than on the basis of how to approach economic and social problems. Judging from the composition of several cabinets in which Socialists held more posts than their party strength would otherwise warrant, this competition may have become severe enough that both the Radicals and Popular Republicans were more willing to support Socialists, especially since Socialist participation was needed to produce an Assembly majority of the Third Force, than to support one another.

The conflicting approaches to economic problems of the Radicals and the Popular Republicans on the one hand and of the Socialists on the other resulted, however, in a heavy mortality rate for Premiers, and economic questions tended to be kept off Cabinet agenda until an economic crisis demanded attention. When this happened, the spectre of the resignation of Socialist members who disagreed on approach to the problems threatened each Premier. The experience of Premier Queuille, who resigned in October, 1949, over the question of whether labor wage increases

should be granted, illustrates the point. The Socialist Minister of Labor, Daniel Mayer, disagreed violently with the Premier on the wages question. Queuille, preferring resignation to surrender, simply refused to continue in office.

By the end of 1949 the Bidault ministry had begun to show unexpected strength as indicated by the comfortable size of the vote of confidence of December 30,⁸² but the fundamental obstacles to executive equilibrium remained.

⁸² New York Times, December 31, 1949, p. 1. The vote was 306 to 288.

Chapter VII

EXECUTIVE POWER AND THE BUREAUCRACY

An adequate analysis of the political effect of bureaucracy on executive power in the immediate post-war period poses a problem beyond the scope and adequacy of materials now available. Governmental documentation and the general literature are not conspicuously helpful in assessing trends or formulating hypotheses that can be more than tentative. The tendencies and forces at work are scarcely suggested by contemporary observers for fairly obvious reasons. Public attention and emphasis today are naturally centered on the political aspects of public organization. Moreover, the bureaucracy is too often taken for granted; it operates in a formal atmosphere, and its transactions occur in semi-secrecy beyond the view of the casual eye. Yet the subject attracts interest,¹ and it may be in the long-run, that the bureaucracy will play the critical role in the processes of adjusting executive power to post-war conditions.

¹See George Green, "Civil Servants and Labour Party," Socialist Commentary, pp. 506-510 (December, 1946); Marcel Debré, "La Réforme de la fonction publique," Revue de l'École d'Administration (May, 1946); Herman Finer, The Theory and Practice of Modern Government, Rev. ed. (New York, 1949), Part Six, "The Civil Service," pp. 709-936.

1. The Increased Size of the Public Service in France and the United Kingdom

An obvious change in the public service of France and the United Kingdom is that of size. The administrative staffs in both countries increased steadily between 1938 and 1946, the greatest increase occurring in ministerial departments concerned with economic matters.

Size of the French Public Service. Between 1938 and 1946 ministerial staffs in the French civil service increased numerically from 745,000 to 1,017,700, or by approximately 36 per cent.² The Revue politique et parlementaire reported unofficially that non-military public administrative personnel in France in 1949 totaled 1,055,000.³ The early post-war increase in numbers coincided with the war years and the liberation, but between 1946 and 1949 the service has been stabilized in number. In addition to employees of the ministerial departments, some 400,000 persons are employed by local units of government, or are publicly paid teachers or employees of nationalized industries. The Ministry of National Education employed

²Institut national de la Statistique et des Études économiques: Statistique générale de la France, Annuaire Statistique, 1940-1946 (Paris, 1946), Vol. 56, p. 298, "Tableau 1, "Effectifs budgétaires du personnel civil de l'Etat."

³"Tour d'Horizon," Revue politique et parlementaire, No. 590, pp. 103-112 (July, 1949); Finer, op. cit., pp. 710-711.

244,000 persons, making it the single largest department. The Ministry of Foreign Affairs, employing only 2,200, was the smallest of the executive departments in terms of numbers.

Size of the British Civil Service. The public service in the United Kingdom enjoyed a greater net increase and rate of increase in comparison to France during the period 1938-1946. The total non-industrial staff employed in the civil service was 387,700 in 1938 in contrast to 679,700 on January 1, 1946,⁴ an increase of almost 75 percent. By October 1, 1948, the total had risen to 711,054,⁵ reducing slightly to 706,580 on January 1, 1949.⁶ A stabilization, therefore, occurred within a year of a similar leveling off in France. The department of Inland Revenue was largest in 1946, employing 49,158 persons, and was followed by the Ministry of National Insurance with 39,611 and the Ministry of Food with 39,490. By 1949, the Ministry of Food had become slightly larger than National Insurance and was in second place.

⁴Central Statistical Office, Monthly Digest of Statistics, No. 37, p. 14, table 19 (January, 1949).

⁵Staffs Employed in Government Departments, Cmd. 7646 (March, 1949).

⁶Ibid.

The Economic Ministries. A definite correlation appears in both countries between the increase in importance of economic ministries and an increase of personnel in economic departments compared to other executive departments. In France the personnel of the Ministry of the Interior, which was assigned new duties concerning nationalized industries and economic planning, had a spectacular increase from 14,120 employees in 1938, to 96,000 in 1946,⁷ almost a seven-fold increase. The Ministry of Labor and Public Health jumped from 8,200 to 16,350,⁸ an increase of 100 percent. But the rate of increase in the Ministry of Posts, Telegraphs and Telephones was much less spectacular. From a total of 187,000 in 1938, this Ministry increased its personnel only about 10 percent to 222,000;⁹ the gain of 42,000 in the Ministry of Education¹⁰ was in the same proportion.

In the United Kingdom, the economic ministries also experienced substantial increase in personnel. The Ministry of Labour and National Service increased between 1938 and

⁷Annuaire Statistique, op. cit., p. 298.

⁸Idem.

⁹Ibid. Posts, Telegraphs and Telephones, a state monopoly from the last century, was not materially affected by the new economic activity of the government.

¹⁰Ibid.

1946 by some 30 percent--from 28,300 to 37,200; the Ministry of Works gained 170 percent--from 6,300 to 16,600; the Board of Trade increased almost 100 percent--from 4,800 to 8,600; and the Ministry of Pensions increased from 3,000 to 12,600, a gain of 400 percent.¹¹ At the same time, the new ministries, created in pursuance of increased state economic activity during and immediately after the war, rose rapidly in numbers to displace some of the older departments. Thus by January 1, 1949, the Ministry of Food employed 38,922 persons; Civil Aviation, 5,689; Fuel and Power, 6,383, while the Ministry of National Insurance forged far ahead to 38,642.¹²

The Character of New Personnel. Contemporary literature is divided in its judgment of the character of new personnel in post-war public administration. Some observers take the view that contemporary public employees are inferior to the pre-war civil servants because they were recruited too quickly, promoted too rapidly and given tasks beyond their capabilities.¹³ Other commentators

¹¹All from Monthly Digest of Statistics (January, 1949), op. cit., p. 14.

¹²Staffs Employed in Government Departments (March, 1949), op. cit.

¹³For France see "Tour d'Horizon" in various issues of Revue politique et parlementaire (1949); for British observation see Sir Henry John Woods, "Administrative Problems of the Board of Trade," Public Administration, Vol. XXVI, No. 2, pp. 81-91 (Summer, 1948).

assume an infallibility in the public service which leads them to the conclusion that personnel, methods and organization are entirely adequate to new tasks. These observers minimize "growing pains" and suggest that the service has adjusted itself to the new conditions without dislocation.¹⁴ Another group of scholars¹⁵ adopt a middle view. Finer's emphasis on the supreme importance of recruitment policy is symbolic of his belief that the new personnel can make or break public administration. His approach suggests that the new service will be the product of the interaction of personnel and institutions. Therefore, recruitment policy becomes the key to the character of the public service. Finally, some literature is polemic in nature. It reflects the view that the bureaucracy is a monolith, simply grown larger and consequently even more formidable.¹⁶

¹⁴H. R. G. Greaves, The Civil Service and the Changing State (London, 1948); L. C. White, "Against the Purge," Socialist Commentary, Vol. 12, pp. 276-279 (Summer, 1948); E. N. Gladden's statement that the new personnel "tended to become more Roman than the permanent citizens of old Rome" probably places him in this category. See E. N. Gladden, The Civil Service: Its Problems and Future (London, 1948).

¹⁵Finer, op. cit., see especially Ch. 37, "The Public and the Services." See also Oliver S. Franks, "The Experience of a University Teacher in the Civil Service," (Barnett House Paper No. 29), Sidney Ball Lecture of May 9, 1947 (Oxford, 1947).

¹⁶See "Obedient Servants," Scope, pp. 48-57 (April, 1949). W. C. Desmond, "Scourge of the Spoilsmen," Survey, Vol. 85, pp. 602-604 (November, 1949).

2. Criticism of the Civil Service

Beginning in 1939, with the advent of the war, the public service was called upon to perform functions which imposed an immense burden upon its human resources. Following the war, the service was obliged to engage in new functions of a permanent nature in connection with industrial nationalization and economic planning. There was no respite; war time burdens were replaced by equally heavy peace time duties. It was inevitable that these increased functions could not be performed to the satisfaction of all.

Criticism in France. In France the inadequacies of the pre-war service appeared to threaten the success of post-war administration unless modifications were introduced. It was recognized that the formal education of administrators tended toward too great specialization. The predominantly intellectual education offered by the École Libre des Sciences Politiques, the main training institution for entrance into the higher French civil service, was theoretical in the extreme.¹⁷ Once an individual entered the civil service he received little or no further training.¹⁸ Cooperation between executive departments was

¹⁷ Cf. Walter R. Sharp, The French Civil Service: Bureaucracy in Transition (New York, 1931); Civil Service Abroad (New York, 1935).

¹⁸ Cf. Leonard D. White, "The Public Service in the Post-War World," Revue internationale des Sciences administratives, Nouvelle série, No. 1, pp. 7-16 (July, 1947).

difficult to obtain and departmental autonomy was widely practised. Moreover, departments differed widely in the quality of their personnel. Finally, the higher service was manned by the upper bourgeoisie, reflecting a class basis of recruitment which was open to sharp criticism.¹⁹ In light of these circumstances the political leadership of post-war France decided upon a fundamental reorganization of the service which will be discussed later.

Criticism in the United Kingdom. The public service in the United Kingdom assimilated the new post-war economic functions into an organizational structure which was essentially the same as in 1939. New economic departments were added and the service as a whole increased greatly in size, but civil service reorganization did not take place. The administrative staff in the United Kingdom enjoyed a more favorable repute, since the quality of its wartime work had generally been praised.²⁰ Nevertheless, this did not protect the post-war service from criticism in several respects.

The fuel crisis of February 1947 precipitated an administrative panic which was not unnoticed in the House

¹⁹Herman W. Finer, "The French Higher Civil Service," Public Personnel Review, Vol. 9, No. 4, pp. 167-176 (October, 1948).

²⁰See Greaves, op. cit., and Fabian Society, The Reform of the Higher Civil Service, (London, 1947).

of Commons. When Emmanuel Shinwell, Minister of Fuel and Power, announced the curtailment of electric power over large areas of the nation due to an acute coal shortage, the New York Times reported that "Labour members sat in embarrassed and unhappy silence but every one of them . . . was critical of his own Government's handling of the situation."²¹ Shinwell himself was accused, even by the Labourites, of lack of foresight, failure to plan properly and over-optimism, and the ability of the permanent members of his ministry was impugned.²² Major Lloyd-George, former Minister of Fuel, charged the ministry permanent officials with bad planning, lack of accurate estimation of national needs and failure to consider the effect of cold weather on coal mining. Before debate on the fuel situation was concluded, Shinwell was forced into silence by a request for an explanation of the London Times report that the Ministry of Fuel and Power had issued instructions to stop the loading of ship bunker coal if, as Shinwell insisted, such loading actually was taking place.²³

The "Belcher Case," in which a Royal Tribunal of Inquiry investigated charges against the integrity of a parliamentary Secretary and a Governor of the Bank of

²¹New York Times, February 8, 1947, p. 1.

²²H. of C. Debates, February 7, 1947, Col. 2194-2195.

²³Idem. The attack against permanent officials of the ministry was carried on by Earl Winterton and Clement Davies. See Cols. 2197-2200.

England,²⁴ roused wide interest. Members of the higher civil service came under suspicion in this instance although no charges were made.

Even the advisory economists of the administrative class who comprise the Economic Section of the Cabinet Secretariat have possibly been guilty of mistaken analysis since, prior to 1947, the Government assumed, supposedly on the basis of their forecasts, the imminence of an economic slump and widespread unemployment. But Samuel Beer notes that "events of 1947 revealed with brutal clarity the errors in forecasts and policy."²⁵ Instead of the difficulties of economic depression the problems were those of excessive demand, shortages and inflation.

One observer in the United Kingdom reports that:

Even those who watch Whitehall from afar can see that all is not well with the machine. The administrative panic surrounding the fuel crisis of February, 1947, was not a proud episode in the history of the British Government. The breakdown of the steel allocation system; the creaking machinery of bread rationing, of income tax collection and of the agricultural production programme; the catastrophic disappearance of

²⁴See "Report of the Tribunal Appointed to inquire into Allegations reflecting on the Official Conduct of Ministers of the Crown and other Public Servants," Cmd. 7616 (January, 1949). See also Peter G. Richards, "The Tribunals of Inquiry (Evidence) Act, 1921," Public Administration, Vol. XXVII, No. 2, pp. 115-122 (Summer, 1949). See also Rebecca West, "The Tribunal that Stirred England," Harper's Magazine, Vol. 198, No. 1189, pp. 21-23 (June, 1949).

²⁵See Samuel H. Beer, "British Planning Under the Labor Government," Social Research, Vol. 17, No. 1, pp. 35-64 (March, 1950).

American dollars; the strange decisions which emanate from the petrol rationing officer in respect of individual cases; the long delay in getting decisions from almost any Government department--surely these are signs of the approach of a malady even if the malady is not quite upon us.²⁶

Another British writer, after predicting that the pressure under which the central departments work today will steadily increase in a world of semi-permanent economic maladjustments, suggests:

If that is anything like a true prognosis, then I greatly fear for the central machine of Government. It seems to me very doubtful whether it can for long stand a continuation of present pressures. And I most seriously think that people should begin thinking now of the sort of measures, and pretty radical ones, which would lighten the load. I cannot pretend to have given the matter much coherent thought, but it seems to me that the problem can only be solved by some pretty drastic devolution of power from Whitehall to regional authorities.²⁷

3. The Movement for Reform

Some reform of the public service between 1945 and 1949 was accomplished in France by a thorough reorganization of the administrative service, and in England by a series of programs to expand and improve in-service training.

²⁶D. N. Chester, "The Efficiency of the Central Government," Public Administration, Vol. XXVI, No. 1. p. 11 (Spring, 1948).

²⁷Sir John Henry Woods, op. cit., p. 91.

The French Reorganization. A new basis for the entire French civil service was laid by the Statut général des fonctionnaires of October 19, 1945.²⁸ The French Premier became responsible for the general reorganization and continuing supervision of the civil service. An office of the Public Service (Direction de la fonction publique) was established under his supervision to serve as the central agency for the entire service. Under the authority of the Premier, a four-level classification of civil service positions was inaugurated, the highest tier comprising a group of civil administrators apparently corresponding to the British Administrative class.²⁹ In addition to the Premier's office of the Public Service, which is a staff agency, there was also created the Conseil Superior de la Fonction, a policy making body. The Conseil is an interest representation group, presided over by the Premier, and it is vested with "general competence" over all matters of concern to the public service.

The law also prescribed joint councils for each ministry. These have the function of recommending specific proposals for improving the quality of public administration through attention to recruitment, service records, promotion, assignment and discipline. A minimum wage in the public

²⁸Journal Officiel, October 20, 1946, pp. 8910-8919.

²⁹See Leonard D. White, "The Public Service in the Post-War World," op. cit.

service was guaranteed under subsequent legislation and a system of social security for the service was created by decree of December 31, 1946.³⁰

An important characteristic of French reorganization was the emphasis on education as a means of developing competent civil servants. Therefore, the reorganization law provided for an École Nationale d'Administration to train young men for careers in the public service. A series of Institutes for Political Studies, supervised by the Conseil d'État, was also created in various universities to supplement the work of the École Nationale.³¹ Unlike the system under the Third Republic, curricula of the schools emphasize a rounded instead of a purely intellectual education and entrance to the schools is strictly on a merit basis. Finally, a Centre des Hautes Études, an approximation to an administrative staff college, was established to afford refresher courses for persons in the technical and specialized services.³²

Reforms in the United Kingdom. The strengthening of the civil service in the United Kingdom began in 1942

³⁰ Journal Officiel, January 9, 1947, pp. 239-240.

³¹ See Herman Finer, "The French Higher Civil Service," op. cit.

³² Ibid.

When the Report of the Select Committee on National Expenditure³³ alerted the Government and the Treasury to the debilitated condition of the service at a time when the highest efficiency was necessary. A plan for systematized professional training grew out of the Assheton Report of 1944.³⁴ Sir Oliver Franks, an outstanding proponent of a planning role for the state, gave impetus to the movement for more adequate training programs when he emphasized in 1947 that central planning and control in peace requires more than the application of purely intellectual processes or formulae derived from scientific techniques.³⁵

Just as the business man depends upon his business sense or acumen, the public official who deals with the interrelations of commercial and industrial processes must possess a similar quality for which neither intelligence nor scientific approach can fully compensate. Sir Oliver Franks recognizes this by asserting that forecasting is, in the last analysis, "an art."³⁶ By 1947 an attempt was being made to supply this essential quality through extra training for the civil service. A privately organized

³³Select Committee on National Expenditure, 16th Report: The Organization and Control of the Civil Service, H.C. 120 of 1941-42.

³⁴Report of the Committee on the Training of Civil Servants Cmd. 6525 (1944).

³⁵See Oliver Franks, Central Planning in War and Peace, (Cambridge, 1947).

³⁶Ibid.

Administrative Staff College was operating, each ministry had its own training program, and the Treasury, which traditionally has exercised control over executive establishments through its decisions in determining the size of "complements" (i.e., the total of authorized staff posts for any particular job), had expanded its Training Division and had inaugurated an Organization and Methods Division corresponding to the Division of Administrative Management of the Bureau of the Budget in the United States.³⁷

An indication in the United Kingdom that a general need was felt for making the public service more attractive to prospective personnel was suggested by the Report of the Committee on the Political Activities of Civil Servants of June, 1949,³⁸ which recommends, for the first time in British history, a partial departure from the existing ban on political activities of higher civil servants. The Report suggests that a higher public servant (i.e., executive class or above) should be allowed during a five year experimental period to become a candidate for a local council under the auspices of a political party, provided he obtains his department's prior permission and on the premise that he will not concern himself with

³⁷White, op. cit. See also E. N. Gladden, The Civil Service: Its Problems and Future, op. cit.

³⁸Cmd. 7718 (1949).

other than local issues. In 1946, the Trade Disputes and Trade Union Act of 1927, which forbade civil service employees unions to affiliate with outside unions or with political parties, was repealed.³⁹

Each of the principal developments in the public service both in France and in the United Kingdom since 1945 was a liberalizing or strengthening device for the service itself. They appeared to be designed to give the service more training, more security and more freedom. None of the reforms was addressed to the correction of abuses of power alleged to have occurred in the process of remaking the national economy.

4. How Has the Bureaucracy Affected the Political Executive?

The Bifurcation of Interest. Traditionally, the bureaucracy has been regarded as an administrative system based on professionalization and hierarchical subordination.⁴⁰ More recent studies suggest that a bifurcation of interest between the political executive and the administrators develops which may eventually operate to defeat

³⁹Trade Disputes and Trade Unions Act, 1946, in Ch. 52, Public General Acts, 1946.

⁴⁰Cf. Carl J. Friedrich and Taylor Cole, Responsible Bureaucracy (Cambridge, 1932); Max Weber, "Bürokratie," in Wirtschaft und Gesellschaft, (Tübingen, 1922).

the objectives of the executive.⁴¹ Eventually, the bifurcation of interest brings to the foreground the issue of the control of the conditions which each group (i.e., the political executive on the one hand and the permanent administrator on the other) must manipulate in order to perpetuate itself.⁴² Thus bureaucracy may be expected to assume a power role vis à vis the political executive in proportion to its success in asserting control of the conditions necessary for self survival, and in resisting the principal whose agent it is formally supposed to be.⁴³

The Factor of the Work Load: (1) Volume. The obviously heavy work load which faced civil servants in post-war France and the United Kingdom, however, may have precluded this bifurcation of interest for the time being. After five years of wartime drain of personnel and necessarily hasty replacement, the services were subjected to a vast new amount of work arising from the nationalization of industry, the new planning role of the state, and the public administration of social services. D. N. Chester

⁴¹Philip Selznick, "An Approach to a Theory of Bureaucracy," American Sociological Review, Vol. 8, No. 1, pp. 47-54 (February, 1943).

⁴²Cr. Robert Michels, "The Iron Law of Oligarchy," in his Political Parties (New York, 1915).

⁴³Selznick, op. cit.; Cf. E. N. Gladden, The Civil Service: Its Problems and Future, op. cit., for a different view.

contends that when the administrative class in the United Kingdom has completed its day to day work it has no energy left to consider problems of long-term policy, or those which are not immediately urgent.⁴⁴ Moreover, the highest members of the administrative class are usually those who are called upon to represent the nation at the growing number of international conferences and they necessarily leave their duties in the hands of subordinates, increasing the work load of the latter and entrusting them with sudden added responsibility.

Bertrand de Jouvenel suggests that the transformation of the economy at the high rate of speed which the British executive attempted between 1945 and 1948 is alone enough to stifle the ascendancy of the bureaucracy:

The big nationalisation schemes, of the big control regulations dear to the heart of the Labour Government, presupposes profound study and complex provisions. The rhythm of nationalisation has been slowed down by the sheer physical difficulty of transplanting ministerial intentions into precise terms.⁴⁵

A similar situation is reported in France where the momentum for carrying out vast administrative tasks is possibly less strong than in the United Kingdom, where the Labour Government's political future was intimately tied to its success in solving economic problems. Suggestions

⁴⁴D. N. Chester, "Efficiency of the Central Government," op. cit.

⁴⁵Problems of Socialist England (London, 1948), p. 148

of administrative over-load were noted in connection with the nationalized industries in 1948.⁴⁶ The state financial deficit which seemed unavoidable in 1946-1947, prompted the French Government to dismiss thousands of persons from the public service,⁴⁷ thus counteracting the gains of the reorganization and throwing an additional burden on the remaining personnel.

The Factor of the Work Load: Kind. Quite aside from the physical volume of work such as increased committee work and minute writing, is the complex character of the new administrative tasks. Economic planning, for example, requires a highly discriminatory use of statistics. The financial control of nationalized industries, which is lodged with the executive departments both in France and in the United Kingdom, requires a detailed knowledge of statute law relative to public expenditure. Problems of staff management and of office organization become not only more numerous as the jurisdiction and authority of the executive are increased, but they also increase in complexity as the bureaucracy is given tasks with which it never

⁴⁶Pierre Le Brun, "Les problèmes du statut des entreprises publiques," Revue politique et parlementaire, No. 577, pp. 16-23 (April, 1948).

⁴⁷Decree of April 16, 1947, for carrying out the law of December 23, 1946, requiring reduction of the public service by 50,000 persons. Journal Officiel, April 18, 1947, p. 3071.

before had to cope.⁴⁸ These matters require abilities at least as keen as the highest bureaucracy in England possessed before World War II.⁴⁹ Yet, Chester concludes, that in the United Kingdom "generally speaking, the middle layer of most departments upon which so much of the efficiency of the department depends, is now much lower in quality than in 1938."⁵⁰

Economic Planning and the Social Scientist in Public Service. The new executive function of planning for the future economic and social well-being of the state has brought into the bureaucracy a staff of experts in the fields of economics, sociology and politics. Some of these specialists were "temporaries" who left the service at the end of the war, but many others became permanent civil servants.⁵¹ The responsibility for attempting to forecast future needs and to solve the future problems of society has fallen, in large part, to these social scientists who were untrained in the intricacies of public administration.

⁴⁸ Cf. "Recruiting Civil Servants," Planning (A Broad-sheet issued by PEP), May 23, 1947, No. 266.

⁴⁹ See E. W. Cohen, The Growth of the British Civil Service, 1780-1939 (New York, 1939); H. E. Dale, The Higher Civil Service of Great Britain (London, 1943); Herman Finer, The British Civil Service (New York, 1937); E. N. Gladden, Civil Service Staff Relationships (London, 1948); W. A. Robson (Ed.), The British Civil Service.

⁵⁰ D. N. Chester, "The Efficiency of the Central Government," op. cit.

⁵¹ Oliver Franks, Central Planning in War and Peace, op. cit.

Successful forecasts in this most difficult field require different conditions than those of the physical scientists, because the "pre-testing" for a social or economic plan is far less precise than the laboratory testing techniques of the physical scientist who may duplicate the exact conditions under which his apparatus will have to function. Conjecture and uncertainty cannot be avoided, and errors of analysis by the specialist may weaken the bureaucracy in the eyes of the policy-maker and the public.⁵² In the words of R. K. Merton:

It is by no means evident to the policy-maker that the expert has more competence in dealing with these problems [of human affairs] than the policy-maker himself. When the social scientist is virtually certain of the validity of his advice he is very often dealing with picayune affairs. When he deals with the larger issues, his relevant knowledge may not be as great as that acquired by the policy-maker through years of first hand experience. This is, perhaps, a reason for the unenviable plight of the social science intellectual who is consigned to purgatory, never quite clear whether he is destined for heaven or hell.⁵³

However, the accuracy of this analysis is difficult to determine in practice since data disclosing the percentage of right or wrong forecasts by social scientists in administrative positions are not available. Rather, it may

⁵²supra, p. 227

⁵³Robert K. Merton, Social Theory and Social Structure (New York, 1949), p. 164; cf. Harold D. Lasswell, "The Relation of Ideological Intelligence to Public Policy," Ethics, Vol. 53, pp. 26-34 (January, 1942).

be suggested merely that when social scientists are swept into public service in large numbers and within a short period of time, the bureaucracy may be less able to resist the political policy-makers.

Inertia and the Bureaucracy. A final clue to the status of post-war bureaucracy is suggested by the factor of inertia. Bureaucracies in general have long been notorious for a tendency to retain certain formal methods for conducting the public business.⁵⁴ Their preoccupation with details of the law induces a formal, rigorous approach to problems. Their personal economic security is related to how well they conform to a limited, legalistic frame of reference.

When conditions change rapidly, however, the inertia engendered by long attention to form may preclude a realization of the changes by administrative personnel. "In general," observes Merton, "one adopts measures in keeping with his past training and, under new conditions which are not recognized as significantly different, the very soundness of this training may lead to the adoption of the wrong procedures."⁵⁵ If this should happen, the ascendancy of the bureaucracy would be endangered.

⁵⁴ Cf. Carl J. Friedrich, Constitutional Government and Democracy (New York, 1946), especially Ch. II, "The Core of Modern Government: Bureaucracy," pp. 36-58.

⁵⁵ Social Theory and Social Structure, op. cit., pp. 154-155.

Summary. The post-war bureaucracy of France and the United Kingdom is spectacularly larger than in the immediate pre-war period. Moreover, ministerial departments concerned with economic matters have gained personnel generally at a faster rate than other departments. A thorough reorganization of the public service was undertaken in France in 1945 and 1946, while in the United Kingdom new personnel as well as new social and economic functions were grafted onto the pre-war organizational structure. Not surprisingly, criticism has been levied at the service on grounds of inefficiency. While it is too early to assess definitively the post-war power position of the bureaucracy, there seems to be little evidence to support the charge that the bureaucracy has in either country manipulated itself into a position where it might usurp the proper function of the political executive.

Chapter VIII

CONCLUSIONS

1. The Effect of Economic Planning in the United Kingdom

The Mandate to Public Authority. In the 1945 elections the British electorate conferred upon the Labour Party a political mandate to use decisive means to solve serious economic and social problems. The Party leaders set out consciously to reformulate the basic economic order in terms of socialist principles. They were convinced that they could effect the transition democratically, although the powers obtained from Parliament by the Government may be construed as nearly absolute in a number of cases. The task of the Government was to resolve the problem posed by the collision of the British tradition of executive responsibility to Parliament and the irresponsibility implicit in the new powers.

New Citizen-Executive Relationships. New and more intimate relationships between the individual citizen and the political executive in the United Kingdom were created during the period 1945-1949. They arose from the fact that full direction of economic life was accepted as the

proper role of the state. In consequence, a large volume of legislation was enacted which extended the jurisdictional and substantive powers of ministers to specific areas directly concerning the private affairs of individuals. In solving their personal economic equations the latter were obliged to consider the attitude of executives who had authority to canalize human and material resources in accordance with a plan. It became necessary for the citizen to redirect his life pursuant to such plans.

The Power of Economic Ministers. This study suggests a correlation in the United Kingdom between economic power in the Government and personal power within the British cabinet. Sir Stafford Cripps is the outstanding example, since his rise to extreme prominence exactly coincides with his assumption of the role of chief economic planner. The public corporation reinforced the power of economic ministers since the nationalization statutes conferred both specific and general control functions on appropriate ministers. A half dozen cabinet intimates bore primary responsibility for the economic state of affairs and for presenting Government policy to the public. Their preeminence was also a logical consequence of the relationships created between them and individual citizens as a result of their new jurisdictional and substantive authority. Controls were administered over their signatures.

Appeals for or against proposed action were directed to them during the unfolding of a Labour Government program that was essentially economic. Personal power in the Cabinet accrued primarily to the architects of the economic order by reason of these factors. Beginning in 1947, with the ascendancy of Cripps within the Cabinet planning hierarchy, socialism--and its attendant social leveling--was tempered by a new concern for national as distinct from class welfare.

The Promise of Success. A further conclusion which this analysis warrants is that the success of the political executive in maintaining itself was directly related to its promise to solve economic problems. The Labour Government came to power in 1945 on an unmistakable wave of popular belief in its ability to solve the economic debacle with which the nation was faced in the immediate post-war era. Its continuation in office was dependent, in a special way, upon the ability of the leaders to retain the confidence of the electorate in its promise to solve economic problems. A popular belief that the promise would eventually be fulfilled had to be nurtured, and sometimes propped up. If the socialist millenium was ever to occur the people needed to remain convinced that the program of the Party was the only way to achieve it. When difficulties arose the political leaders had to rationalize them by

giving the impression that they would nevertheless, in spite of difficulties, achieve success. Thus an amalgamation of politics and economics occurred in which political power was used to manipulate agencies of economic control to give the appearance of success.

2. The Effect of Economic Planning in France

Incomplete Planning and Executive Power. In France public planning was less complete than in the United Kingdom and the opportunity for increasing executive power was correspondingly reduced. The Monnet Plan was the amalgam of socialist theory, political and economic moderation and expediency, rather than the result of doctrinaire socialist planning as in the United Kingdom. Planning can take place without socialism, but socialism without planning is impossible.¹ Thus while British planning was a full socialist expression by a coherent, united, powerful political party, French planning was a halting, incomplete scheme which lacked impetus because it had to satisfy a number of political parties with varying philosophies. Basically, the Monnet Plan was capitalist in theory. It assumed the recovery of auxiliary industries if the basic ones could but regain their health. It minimized governmental intervention.

¹Of. Arthur W. Lewis, Principles of Economic Planning (London, 1950) or E. F. M. Durbin, Problems of Economic Planning (London, 1950).

The role of public authority in the scheme was primarily limited to the administration of controls which would insure economic priority for certain industries. The political executive was not expected and not permitted to assume the role of economic redeemer. His jurisdiction and substantive power increased but slightly in comparison with that of the executive in the United Kingdom. Since in French practice the planning mechanism originally encompassed the National Planning Council and the Economic Council, both being essentially media of functional representation, as well as the political executive, the latter had no monopoly on planning and thus was less able to manipulate the machinery of planning and control in the interests of its own political survival.

On the other hand, the political executive apparently was less conscious of a responsibility to achieve planning success, since the plan was scarcely the product of any one particular ministry or party. As a consequence, the drive for success and for the power to attain planning objectives seems to have been less.

Imprecision of Executive Control. The French program of industry nationalization extended to fewer sectors of the economy than did the British program. Moreover, authority over those industries transferred to public ownership was legally diffused and ministerial supervision was

less precise. The influence of the decentralization doctrines of French syndicalism pervades the nationalization statutes of 1945-1946 to such an extent that the multi-group control and administrative bodies which the statutes authorized were unable to function effectively. Since ministers lacked the clear supervisory functions, which corresponding British legislation provided, the nationalized industries were neither fish nor fowl. Ministerial control was projected over them by assumption of authority and by intermittent enabling acts. But a dichotomy was discernible between actual ministerial control and theoretical control based upon functional representation. Both the indecision implicit in the situation and the lack of a mandate for executive supervision reduced the variety of opportunities for increasing executive power.

The Weakness of the Coalitions. The French political situation of 1947-1949, wherein the Government parties barely mustered parliamentary majorities in support of ministries, precluded the inauguration of bold economic and social programs, since neither premier nor ministers had much assurance of continued support. Executive power devolved by default upon party leaders who appeared in successive governments, often in the same ministerial posts. These, however, were housekeepers rather than dynamic leaders with a positive program and a mandate to carry it

out. The larger French struggle between communism and anti-communism assumed the center of the political stage.

3. Political Responsibility and Centralized Controls

The larger problem which a study of this nature eventually must face is that of assessing the impact of centralized controls on the maintenance of effective political responsibility of government to the people.

The shift in power within cabinets probably reflects the changing concern of the public for economic problems and of new views concerning the primary function of government. In a period during which the major national energies are addressed to a central crisis of an economic character, it would seem to be consistent with the doctrine of responsible government that the internal cabinet structure continue to reflect the primary issues of the times.

The Role of Parliament. The role of the House of Commons in controlling the extent and the exercise of delegated legislative powers was reduced between 1945 and 1949. The amount of delegated legislation increased and modifications in parliamentary procedure were almost wholly in the direction of increased latitude for the Government. These changes accentuated a trend of many years standing and they emphasize the decline of the legislature as a vehicle of political

importance in an era of rapid increase in public authority.

Whether or not the change is a substantive one rather than merely a formal one would depend upon the use of, and the effective control exerted through, these procedures in the period previous to World War II, for many of them were, of course, suspended during the war years. The major development of British government from 1850 forward has been the continued growth of cabinet control over the legislature and the diminution of the importance of the legislature as a deliberative body. Not since 1886 has a clear party majority in the United Kingdom upset its own cabinet on an issue defined by the cabinet as one of major importance. What was taken away from the British Parliament between 1945 and 1949, may simply reflect a change in cabinet government which has actually been taking place over a long period, although a formal reformation may have been postponed because pressure and responsibility were not formerly so acute.

In France, the impracticality of conferring executive functions on a large representative assembly was demonstrated anew by the internal events of 1945-1949. The failure of the National Assembly to control the French Cabinet perhaps will force a formal recognition of the actual status of the legislature.

The Shift Away from Parliament. Whether or not this long-run diminution of the parliamentary role is dangerous to responsible government depends upon whether new forms of enforcing responsibility have developed. Before 1939, interpreters of the parliamentary system were assuming that, by and large, the responsibility had shifted from the responsibility of governments to parliaments, to the more direct responsibility of governments to the larger voting public. They had interpreted parliamentary elections not as a procedure whereby the voters chose parliamentary representatives to formulate policy and to hold the governments in check, but as a method of deciding which party or parties should rule. It was recognized that the significant issue of the elections was not what each member should do in Parliament as a person, but rather to which set of party leaders he would give his support. This means that the maintenance of democratic controls over the Government has for some time rested on the adequacy of the choice among several sets of governors. The new relationships accompanying the development under discussion serve to emphasize that this is the major remaining channel of control.

A growth in executive lobbying by various interest groups has accompanied the shift of the parliamentary role from that of deliberation and balancing of interests to that of registering popular choice of party leadership.

This would suggest that the responsibility for detailed criticism of policy, and the guaranteeing of individual rights, has shifted from the parliament to the organized associations of those whose interests are directly affected by government policy. This tendency developed in the United Kingdom and France long before the period, 1945-1949, and has many parallels in other countries of the world. However, it is likely that the increase in governmental control over economic affairs will mean an increase in the growth of lobbying and may give increased political and economic advantage to those who are sufficiently alert and whose interests are capable of being organized for such administrative representation.

Responsibility of the Bureaucracy. The preoccupation of the bureaucracy with the heavy tasks imposed upon it by current centralized economic controls suggests that the development of a bifurcation of interest between it and the political executive may have been impeded during the war and the period 1945-1949. Given this hypothesis, it seems reasonable to suggest that as long as new duties and functions continue to be added rapidly to the work of the bureaucracy, the administrative apparatus will not only reflect executive will but may also move toward a unity of purpose with the executive. The line of responsibility would be more clearly drawn and government might become more responsive to the desires of the electorate.

APPENDIX I (1)

French Ministers Occupying Cabinet
Posts Four or More Times, No. 1945 - Nov. 1945

Premier	(Soc) Pincau	(Com) Tillon	(Com) Billoux	(Com) Troizat	(Rad) Schuman	(Rad) Bidault	(Soc) Ramadier	(Soc) M. Mayer
de Gaulle (GIF)		Armaments	Natl. Econ.	Labor		For. Aff.		
Gouin (Soc)		Armaments	Reconstr.	Labor		For. Aff.		
Bidault (MRP)		Armaments	Reconstr.	Labor	Finance	For. Aff.		
Blum (Soc)							Justice	Social Security
Ramadier (Soc)		Reconstr.	Defense	Labor	Finance	For. Aff.	---	
Schuman (MRP)	Pub. Wks.					For. Aff.		Labor
Marie (Rad)	Pub. Wks.				For. Aff.		Min. of State	Social Security
Queuille (Rad)	Pub. Wks.				For. Aff.		Defense	Labor
Bidault (MRP)	Pub. Wks.				For. Aff.	---		

Sources:

Journal Officiel
New York Times

APPENDIX I (2)

French Ministers Occupying Cabinet
Posts Four or More Times

	(Rad)	(M.F)	(Com)	(Soc)	(Soc)	(Soc)	(Soc)	(Soc)
Premier	Marie	Zeitgen	Morez	Gouin	Hoch	Lacoste	Frigent	Maepelen
de Gaulle (M.F)		Justice	Min. of State		Pub. Wks.		Agric.	Educ.
Gouin (Soc)		Justice	Min. of State	- - -	Pub. Wks.		Agric.	Educ.
Bidault (M.F)		Justice	Min. of State	Min. of State	Pub. Wks.		Agric.	Educ.
Blun (Soc)				Four Year Plan	Pub. Wks.	Ind. Prod.	Agric.	Educ.
Ramadier (Soc)	Justice	Min. of State	Min. of State	Min. of State	Pub. Wks.	Ind. Prod.	Agric.	Educ.
Schuman (M.F)	Justice	Defense			Interior	Commerce		
Marie (Rad)	- - -	Min. of State			Interior	Commerce		
Queuille (Rad)	Min. of State					Ind. Prod.		
Bidault (M.F)		Min. of State			Min. of state	Commerce		

Sources:

Journal Officiel
New York Times

APPENDIX I (3)

French Ministers Occupying Cabinet

Premier	Posts Four or More Times							
	(Soc) Moutet	(MRP) Coste Floret	(MRP) Letourneau	(Rad) Mitterand	(MRP) Pflimlin	(MRP) Schneider	(Rad) Belbos	(Soc) Thomas
de Gaulle (RPF)								
Gouin (Soc)	Colonies		Posts&Tel.					
Bidault (MRP)	Colonies		Posts&Tel.					
Elum (Soc)	Colonies							Posts&Tel.
Hamadier (Soc)	Overseas France	Mar	Commerce	Veterans			Min. of State	
Schuman (MRP)	Overseas France			Veterans	Agric.	Sec. of St Germany		
Marie (Rad)	Overseas France			Information	Agric.	Health	Education	Posts&Tel.
Queuille (Rad)	Overseas France			Information	Agric.	Health	Education	Posts&Tel.
Bidault (MRP)			Overseas France		agric.	Health	Education	Posts&Tel.

Sources:

Journal Officiel
New York Times

APPENDIX II

Occupants of Economic Ministries
France, Nov. 1945 - Nov. 1949

Premier	Period	Nat'l Econ	Labor	Pub. Wks.	Agric-Food	Ind. Iron.	Reconstr.	Finance
de Gaulle (MRF)	Nov 45-Jan 46	Billoux (Com)	Croizat (Com)	Koch (Soc)	Tanguy-Frig (Soc)	Paul (Com)	Boutry (Ind)	Flevin (Rep Soc)
Gouin (Soc)	Jan 46-Je 46	Philip (Soc)	Croizat (Com)	Koch (Soc)	Tanguy-Frig (Soc)	Paul (Com)	Billoux (Com)	Philip (Soc)
Bidault (MRF)	Je 46-Aug 46	de Menthon (MRF)	Croizat (Com)	Koch (Soc)	Tanguy-Frig (Soc)	Paul (Com)	Billoux (Com)	Schuman (MRF)
Blum (Soc)	Dec 46-Jan 47	Philip (Soc)	D. Mayer (Soc)	Koch (Soc)	Tanguy-Frig (Soc)	Lacoste (Soc)	Koch (Soc)	Philip (Soc)
Madadier (Soc)	Jan 47-Mar 47	Philip (Soc)	Croizat (Com)	Koch (Soc)	Tanguy-Frig (Soc)	Lacoste (Soc)	Tillon (Com)	Schuman (MRF)
Schuman (MRF)	Mar 47-Jul 48	D. Mayer (Rad)	D. Mayer (Soc)	Pineau (Soc)	Pflislin (MRF)	Lacoste (Soc)	Coty (Indep)	D. Mayer (Rad)
Maris (Rad)	Jul 48-Sep 48	Reynaud (Ind)	D. Mayer (Soc)	Pineau (Soc)	Pflislin (MRF)	Lacoste (Soc)	Coty (Indep)	Reynaud (Ind)
Queuille (Rad)	Oct 48-Oct 49	Pinay (Ind)	D. Mayer (Soc)	Pineau (Soc)	Pflislin (MRF)	Lacoste (Soc)	Petit (MRF)	Queuille (Rad)
Bidault (MRF)	Nov 49-		Segelle (Soc)	Pineau (Soc)	Pflislin (MRF)	Lacoste (Soc)	Petit (MRF)	Petsche (Reas)

Sources:

Journal Officiel
New York Times

APPENDIX III

French Premiers Since September 1940

Premier	Date Confirmed	Date Cabinet Formed	Party Group	Reason for Replacement	Date of Exit
Georges Bidault	June 19, 1946	June 20, 1946	No. 1	Election of Nat. Ass.	Nov. 28, 1946
Leon Blum	Dec. 12, 1946	Dec. 16, 1946	No. 1	Election of President	Jan. 17, 1947
Paul Ramadier	Jan. 21, 1947	Jan. 22, 1947	No. 1-May 4th-No. 2	Resignation	Nov. 19, 1947
Robert Schuman	Nov. 22, 1947	Nov. 24, 1947	No. 2	No Confidence Vote	July 19, 1948
André Marie	July 24, 1948	July 27, 1948	No. 2	Resignation	August 28, 1948
Robert Schuman	Aug. 31, 1948	- - - -	No. 2	Resignation (Fail to form Cabn't)	Sept. 7, 1948
Henri Queuille	Sept. 10, 1948	Sept. 11, 1948	No. 2	Resignation	October 5, 1949
Jules Moch	Oct. 13, 1949	- - - -	No. 2	Resignation (Fail to form Cabn't)	Oct. 17, 1949
René Mayer	Oct. 21, 1949	- - - -	No. 2	Resignation (Fail to form Cabn't)	Oct. 23, 1949
Georges Bidault	Oct. 28, 1949	Oct. 28, 1949	No. 2		

Party Groups

No. 1: Communist, MRP, Socialists, Rassemblement Gauches Républicain, Republican Party of Liberty, Radical Socialists, Rassemblement Peuple Français
 No. 2: MRP, Socialists, Rassemblement Gauches Républicain, Republican Party of Liberty, Radical Socialists

Sources: Journal Officiel, New York Times

APPENDIX IV

Journal Officiel
May 5, 1947, p. 4213

Décret du 4 mai 1947 portant modification de la composition du Gouvernement et designation de ministres interinaires

Le Président de la République

Vu les articles 45 et 46 de la Constitution de la République française

Vu le décret en date du janvier 1947 portant nomination des membres du Gouvernement;

Vu la communication à lui faite le 4 mai 1947 laquelle M. Paul Ramadier, président du conseil des ministres, lui fait connaître les modifications qu'il propose d'apporter à la composition du Gouvernement.

Décrete:

Art 1^{er} - Les fonctions de MM Maurice Thorez, ministre d'Etat vice-président du Conseil, François Billoux, ministre de la défense nationale, Ambroise Croizat, ministre du travail et de la sécurité sociale, Charles Tillon, ministre de la reconstruction et de l'urbanisme, sont considérées comme ayant pris fin à la suite du vote qu'ils ont emis à l'Assemblée nationale le 4 mai 1947.

Art 2 - M. Yvon Delbos, ministre d'Etat est chargé de l'interim du ministère de la défense nationale.

M. Robert Lacoste, ministre de la production industrielle, est chargé de l'interim du ministère du travail et de la sécurité sociale.

M. Jules Moch, ministre des travaux public et des transports, est chargé de l'interim du ministre de la reconstruction et de l'urbanisme.

Art 3 - Les attributions déléguées à M. Maurice Thorez, ministre d'Etat vice-président du conseil en matière de fonction publique et de réforme administrative par le décret No. 47-292 du 19 février 1947 sont, à titre provisoire, déléguées dans les mêmes conditions à M. Pierre-Henri Teitgen, ministre d'Etat, vice-président du conseil.

Art 4 - Le present decret sera public au Journal
Officiel de la Republique Francaise

Fait a Paris, le 4 mai 1947

Vincent Auricel
Par le president de la Republique

Le president du Conseil des ministres
Paul Ramadier

Le garde des sceaux ministre de la justice
Andre Marie

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