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REORGANIZING STATE GOVERNMENT*

BY WALTER F. DODD**

Human institutions develop slowly and without plan. This statement applies with peculiar force to the growth of government in the American states. Government must adapt its organization and its work to changing human needs. The needs for governmental activity and the machinery of government have expanded rapidly.

Government is an historical institution, and does not rapidly discard old forms of organization, or promptly adopt new. This is natural and perhaps desirable, for the traditions of existing institutions are a part of ourselves. But we must adopt new methods when they become necessary to meet new problems, or government fails in the performance of its important functions as a social agency.

New needs for governmental activity are usually felt and dealt with singly. Need for complete analysis of the governmental mechanism as a whole does not present itself until forced upon the attention by the very magnitude of the task and the increased burdens of taxation.

State and local governments have until comparatively recent years developed in a manner almost entirely haphazard. With new needs there has been no systematic plan of development. As cities grew, independent departments or offices of city government were multiplied. Where functions of local government were not already provided for by cities or existing local bodies, there was and still continues a tendency to increase the number of local governing areas, or to authorize the creation of additional municipal corporations by local action. As new local needs developed, the map of local governing areas has thus become in most of the states a patchwork of overlapping municipal bodies with conflicting functions and powers. The intelligent citizen often finds it difficult to discover what local governing bodies have authority over

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** Of the Chicago Bar.
him, and what are their relations to each other and to the state government.

**Complexities in State Government**

In state government the same complexity has developed. As in local government, when it was desired to assume a new function, a new administrative agency was created, independent of other agencies, even though others may have been created for closely related purposes. So the state administrative functions came to be exercised in each state by a vast number of independent offices, boards and commissions, with overlapping and conflicting powers, and with no real supervision.

State constitutions provide for a governor who in formal language is the supreme executive power; but at the same time they provide for other state executive officers to be elected in the same manner as the governor. As new offices, boards and commissions came to be created by legislative action, the power to appoint to such offices was usually vested in the governor. But commissions were often created whose members enjoyed overlapping terms, and the terms of individual statutory offices were often made longer than those of the governor himself. In more than half the states the governor has a term of only two years.

Even where the governor had a legally effective power to appoint and remove statutory state officers, he was powerless to find his way through the intricate labyrinth of conflicting authorities numbering a hundred or more. It is beyond human capacity to supervise effectively more than a limited number of services; and in the face of the complexity of state government the governor was powerless to better administrative conditions.

In the judicial field we see the same development as in local and state government. As more complex social and industrial conditions presented added tasks to the courts, the immediate and most obvious remedy was to increase the number of judges or to create additional and independent courts.

Through mere mechanical multiplication, we thus came to have numerous independent local areas of government, and increased complexity within these areas; a great number of independent and conflicting state administrative offices, boards and commissions; and a complex judicial system. Through the separate creation of these instruments of government without reference to each other, there came to be a cumbersome and disorganized mechanism in the state executive and judicial departments, in local
governments, and in the relation between the state and its local areas. The state legislature was the only body with authority to preserve or restore order; and in this chaos of governments, its powers were in many respects limited by constitutional restriction. Yet the situation tended to become more complex and confusing because of successful outside pressure upon legislatures to continue the creation of new state offices and new local areas.

**Progress Toward Governmental Improvement in States**

Within recent years material progress has been made toward governmental improvement within the states. Five lines of progress may be briefly pointed out:

1. *City Government.* The leadership in the development of more simplified and responsible government was taken by the cities. In the progress of the cities the commission and commission-manager systems have borne a large part; and these movements have influenced the establishment of simpler organizations in cities that have not adopted the new systems themselves. Constitutional provisions for municipal home rule have aided by freeing cities from the control of state governments less progressive than themselves; though the constitutional grant of municipal home rule powers may in its final effect hinder the proper solution of the problem of relationships between the state and the local governments within the state. By simplifying their governments, reducing the number of administrative departments, and by grappling with their problems of personnel, purchasing and of budgetary and financial control, the cities to a large extent are responsible for giving an impetus to state administrative reorganization. Yet the cities have only begun to solve the great problems that face them, and many cities have not yet even begun.

2. *State Administration.* For some years there has been a tendency toward a consolidation of state offices and a simplification of state administration. This is particularly true of the management of state charitable institutions, which at first was largely vested in independent boards for each institution.

Since Illinois, under the leadership of Governor Frank O. Lowden, adopted a comprehensive administrative reorganization in 1917, a great impetus has been given to better state administrative organization. Eight states have now adopted comprehensive plans of administrative reorganization; and several others may perhaps

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1 This is but an outline. A full discussion will be found in the author's "State Government," Century Company, 1922.
properly be added to these eight, although the plans they have adopted are not so comprehensive. These reorganizations in all cases involve the abolition of numerous previously independent state offices, and some provision for a more coordinated state policy as to state purchases and budgetary and financial control.

3. State Courts. Although the American Judicature Society has for years been urging the necessity for a coordination of various separate courts into a really united judicial system, we are as yet only beginning to move toward an improvement in this respect. State courts are to a large extent constitutional creations, and progress through constitutional change will come slowly. As a witness to this may be recited the rejection by the people of Missouri, on February 26, 1924, of a proposal of the constitutional convention of that state involving the most constructive plan yet presented for the unification of a state judicial system. The Louisiana constitution of 1921 took some steps toward a more unified judicial system. The Louisiana constitutional provisions came into effect, perhaps because of the foresight of the constitutional convention of that state in not submitting its work to popular vote. But changes of this character cannot really become effective unless they have popular support.

Legislation can accomplish much toward the more effective organization of the state judicial system. Important steps in this direction are the laws of Ohio and Oregon, passed in 1923, for the creation of state judicial councils. Emphasis should here be placed upon the fact that problems of administration are not confined to the state executive department or to local government. The problem of effective administration in the courts is important, and with new types of questions presented by our complex social and industrial organization, these problems are becoming increasingly important. They must be solved if state government is to be efficient.

4. Relation of areas of local government to each other. Because of constitutional debt limits or for other reasons, the functions of local government throughout most of the country are divided among a number of local areas, organized independently of each other, but overlying the same territory, and oftentimes with overlapping boundaries and conflicting powers. Many of the local government areas have been created through local action under so-called "local option" laws; and in the creation of new governing areas, little or no attention is paid to their relationship with those already existing.
Consolidations have to some extent reduced the number and complexity of local governing bodies; but little has yet been accomplished toward a solution of this problem. The presence of several local governments over the same territory is wasteful and substantially destroys popular responsibility. The governor cannot effectively control a hundred or more independent state offices. The voter cannot keep himself informed about and control through the ballot the affairs of a number of local governments, each with a group of independent officers. Little attention has yet been addressed to the general problem of simplifying and reorganizing local areas of government; though some progress has been made. A Montana constitutional amendment of 1922, and legislation thereunder for the city and county of Butte in 1923, afford a striking illustration.

5. Relation between state and its local areas. The states use and will continue to use local governments as state agencies in their respective areas. Local governments also perform certain functions in which the state government as such is not primarily interested. But the state has an essential interest in the efficient performance of functions that are primarily local, as well as in having effective local agencies for the performance of state functions.

Not only this but functions that were once primarily local become, under changed circumstances, of vital interest to the state at large. A constitutional grant of municipal home rule to cities was once thought a solution of the relation between state and city; and the same principle has to some extent been applied to counties by California and Maryland.

But there is no sharp delimitation between purely state and purely local functions; and the effort to define certain powers as purely municipal cannot solve the problem, though it may have aided in the improvement of city government at the time when the cities were leading in the movement for better governmental organization. A larger state supervision over local areas of government in their capacity as state agents has developed, and has been accompanied by state subsidies in a number of fields, particularly education and road construction. Through state subsidies, powers of removal in certain cases, through the erection of state administrative machinery to supervise certain local actions, and through a state supervision of municipal accounts in a number of states, a large degree of state control is exercised over local government. But this control is haphazard and badly organized. The subject
of proper relationships has received little systematic attention. Until local governments themselves are more simply organized with respect to each other, the problem of state supervision and of state relationship is unduly complex.

All of the problems outlined above are intimately related. The state government is not merely the central government at the state capital, but is in addition all local and governmental agencies throughout the state's territory. An efficient state government is rendered possible only by simplification and definite responsibility throughout all parts of this complex mechanism. Only by this same method can popular government become effective, for complexity hides responsibility from the voter. The detailed work of government becomes increasingly complex, but it is necessary that the organization be such as to reveal the responsible officials to the voter. But changes come slowly, and the problems change at the same time. Government within the states has made progress, and must continue to do so, but the issue of improving it will be present so long as it is operated by human agencies.

STATE ADMINISTRATIVE REORGANIZATION

Within recent years perhaps the most rapid progress has been made in the state executive department. Illinois in 1917 adopted the first comprehensive administrative reorganization. Nebraska and Idaho followed in 1919; Washington and Ohio in 1921; Pennsylvania, Vermont and Tennessee in 1923.\(^2\) Massachusetts in 1919, Maryland in 1922, adopted comprehensive but less satisfactory reorganizations.\(^3\) California, Michigan and Utah in 1921 took steps in the same direction. The Missouri legislature of 1921 enacted a group of laws looking to the same end, most of which were defeated on a referendum. The Missouri Constitutional Convention submitted a proposed amendment requiring the legislative creation of a small group of executive departments and providing for a budget system, but this was defeated by popular vote on February 26, 1924.

The fundamental theory of these reorganizations has been the reduction of statutory state functions into a small number of related departments, each under the control of a director or other head appointed by and removable by the governor. The heads

\(^2\) A full review of administrative reorganization appears in the author's "STATE GOVERNMENT." Century Company, 1922, pp. 249-277. For Pennsylvania see Dr. Clyde L. King in AMERICAN POLITICAL SCIENCE REVIEW, XVII, 597-608; for Vermont see Edmund C. Mower in AMERICAN POLITICAL SCIENCE REVIEW, XVIII, 96-102.

\(^3\) For Maryland, see N. H. Debil in AMERICAN POLITICAL SCIENCE REVIEW, XVI, 640-647.
of these departments constitute a sort of governor's cabinet. An essential part of the system is the establishment of budgetary control and of a continuous financial supervision under an officer directly responsible to the governor. In all of the states that have adopted this plan, there are constitutional state officers other than the governor, who are not brought in any effective way, if at all, under the unitary executive plan. The scheme is that of consolidating control over the state executive department in the hands of the governor, so far as this may be done by legislation.

It may be worth while to comment briefly upon the extent to which these reorganizations have maintained themselves in the states where they have been adopted. In Nebraska and Ohio political campaigns have been waged against the reorganizations, and governors have been elected opposed to them. But although legislative sessions have been held in these states since the opposing and successful campaigns, the reorganizations remain.

The Massachusetts reorganization of 1919 has been referred to as unsatisfactory. It organized sixteen departments, in addition to its elective officers and to nine other substantially independent statutory offices. Some of the departments formally created were in reality not departments, but a grouping under one head of functions remaining substantially independent. A Commission on State Administration and Expenditures made to the Massachusetts General Court in January, 1922, a report that may well serve as a model of clear and systematic presentation. The chief recommendations of this report may be summarized: (1) The further consolidation of state activities into nine major administrative departments; (2) each under a responsible department head, appointed and removable by the governor with the consent of the council; (3) each departmental head to appoint and remove his departmental subordinates; (4) one of the departments was to be a department of administration and finance to replace the supervisor of administration and to be charged with budgetary, financial and personnel control, and with central purchasing; and (5) the nine heads of the department were to constitute an administrative cabinet, with the governor as chairman.

In the face of this report, the Massachusetts General Court took a backward step by providing, by legislation of 1922 (re-enacted in 1923), for the vesting of budgetary, financial purchasing and personnel control in a commission on Administration and Finance, composed of four members, appointed by the Governor with the consent of the council, for overlapping terms. This seeks again to
place the essential tasks of executive control in a commission. Fortunately, the governor's enlarged authority under the budget amendment to the constitution (1918) still leaves him some effective power.

Idaho legislation of 1923 also took a backward step. It makes the governor in formal terms the chief budget and accounting officer, but provides that his duties in these fields shall be exercised through the office of the state auditor. The preparation of the budget and continuous financial control cannot well be transferred from the immediate control of the governor to another elective state officer.

The argument is often heard that there is danger in vesting in the governor control over the state executive department. A departmental organization fixes responsibility, whereas without it there is no opportunity to hold anyone responsible for misconduct. Illinois adopted the plan under the leadership of a governor, who could well be entrusted with larger powers. Several years of experience under a different type of governor leads the author of this article to the conclusion that conditions would have been worse under the old disorganized system. A good system does not work best under a bad governor. No plan will work well under such conditions. Human factors are always more important than mechanisms, but a properly devised mechanism may prove of value, nevertheless.

**Need for Responsible Leadership by Governors**

So-called budget plans have now been adopted by almost all of the states, several by constitutional amendment; but in many cases they amount to little more than the presentation of consolidated estimates. The budget is a financial plan for the operation of government during the state's fiscal period. Where there is not a definite administrative control and responsibility, little opportunity exists for central budgetary and financial control. Such control is necessary in a consolidated state executive organization, but a consolidated and responsible organization is equally necessary to effective budgetary and financial control. Successful government will never be achieved by hiding responsibility in hundreds of little separate compartments. The governor is the most conspicuous officer of the state. From him responsible leadership must come. We will sometimes choose bad governors,

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*California, Maryland, Massachusetts, Nebraska and West Virginia.*
but if responsibility is placed upon them, we can discover their weakness, and place the blame. If then we re-elect them, the fault is ours alone.

Numerous problems present themselves in connection with the establishment of a more unified and a more responsible state administration. There is by no means full agreement as to the lines of possible improvement in this field. There will never be any certainty as to the precise methods that will obtain the most satisfactory results, for conditions are different in the several states; and the conditions themselves are changing while proposed reorganizations are under discussion.

**Legislation and Constitutional Change**

If it be assumed that a more effective and a more responsible organization lies in the direction of a small group of departments, and an increased responsibility in the governor for their administration, the question then presents itself as to the best method of obtaining these results. Substantially all of the changes so far accomplished have been achieved by legislation, without much aid from constitutional change. As already suggested, it is true that several states have established a budget system by constitutional amendment, and, except in West Virginia, the budget amendments have been in the direction of increasing the authority of the governor over the financial administration of the state. A constitutional amendment in Massachusetts (1918) ordered a reorganization of the state administration through legislative act. The defeated New York constitution of 1915, and a constitutional amendment now pending in New York, have sought to provide by constitutional change for administrative reorganization. An amendment to the Missouri constitution, proposed by the convention recently in session in that state, and rejected on February 26, 1924, contained a command for legislative reorganization of the executive department under prescribed constitutional limitations. On the whole, little has been accomplished up to the present time by constitutional changes in this field. The danger of constitutional amendments is that they tend to limit future development, at the same time that they may bring some immediate improvement. The combination of possible future limitation with present progress makes the method of constitutional amendment dangerous.

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in a field where the most desirable methods to be employed are in some respects still a matter of experiment.

**Relation Between Quasi-Judicial and Quasi-Legislative Functions**

With respect to problems still in the experimental stage, reference may be made particularly to the exercise of quasi-judicial and quasi-legislative functions by the administrative organization. Commissions, whose members usually have overlapping terms, have ordinarily been employed for the quasi-judicial and discretionary functions, such as have been invested in tax commissions, public utility commissions and commissions for the administration of workmen's compensation laws. The relationship between these functions and the more distinctly administrative work has not as yet been satisfactorily worked out. The Illinois reorganization leaves the commissions independent, and associates them with administrative departments substantially in name only. The Illinois plan has not worked satisfactorily, and the Ohio reorganization sought a closer coordination of the commissions with the administrative departments. A plan finding favor in some other states is that of having the head of the department the chairman and administrative head of a commission, but with the other members of the commission independent of his control. So far no plan has been sufficiently tested to demonstrate that it is fully satisfactory.

**Appointments Within Departments**

Another problem of state administrative reorganization is that of the relationship of heads of departments to the governor on the one side, and to the chief subordinate officers of the department on the other side. Under the Illinois reorganization the Governor appoints not only the heads of departments, but also the heads of divisions within each department. Under the Ohio reorganization, the Governor appoints the heads of departments, but with one or two exceptions, the heads of departments are themselves authorized to appoint the heads of the divisions within their respective departments. The report of the Massachusetts Commission on State Administration and Expenditures (1922) strongly recommends that the appointment of departmental officers should be lodged in the department heads, except where advisory or quasi-

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6 For a fuller discussion of this matter see the author's "State Government," 267-270.
judicial functions are involved. This recommendation is in direct line with the whole theory upon which the administrative reorganizations have been based. No officer in the position of governor can effectively supervise more than a limited number of department heads. A governor should choose with care the heads of departments, and place upon them the responsibility for results within their respective departments. They cannot be held fully responsible unless they are at the same time given authority to appoint those for whose activities they are responsible.

**Problem of Continuity of Policy**

Perhaps the most important single problem in connection with the state executive department is that of continuity of policy. In more than half the states the governors are elected for two-year terms, and in all of the others except New Jersey the term is now four years. With the retirement of a governor, a definite break in state administrative policy is likely to occur, even where the successor belongs to the same political party. This is to a greater extent true in the states where elections are likely to bring a successor of the opposite party. If each new state administration is to bring a change of personnel and a change of general policy, no scheme of executive responsibility can operate satisfactorily. The so-called presidential system of government, which exists both in the nation and in the states, contemplates responsibility for administrative policy in the president and in governors holding for fixed terms; and, when successful, implies also a leadership in the president or governor with respect to legislative policy. The terms of governors ordinarily begin just prior to a legislative session, in which appropriations must be made for the succeeding fiscal period of the state. A new governor comes into office to a large extent ignorant of a proposed budget necessarily prepared under his predecessor, and necessarily to a large extent at the same time ignorant as to the problems of the state executive department for which he must assume responsibility. It is largely for this reason that the California budget amendment of 1922 and the Virginia budget legislation seek to associate the governor-elect to some extent in the preparation or consideration of the budget at such times.

The problem is, however, an even more serious one. It is natural and proper that the heads of the great departments in Washington should change with changes in administration; and it is equally proper that, under a state administrative organization, the heads
of state administrative departments should change with changes in administration. The problem is that of developing a continuity of administration which will persist even though at frequent intervals there is a change in the responsible officers controlling the administration. This problem has been largely solved in England by a continuity in official personnel below the members of the cabinet. The permanent official personnel in reality operates all of the technical aspects of the government, leaving to the political heads of the departments the determination of issues of general policy.

Civil service legislation has as yet accomplished little toward the development of such a continuous policy in state government; although adoption of civil service by a small group of states has done something toward insuring permanency of tenure in subordinate positions. Much may be accomplished by the development of the principle that all officers of state government below the heads of departments should have a permanent tenure. Only thus can be developed an efficient and technical staff of persons familiar with the problems to be dealt with by governments. It is necessary at the same time that there be such a standardization of compensation in the state employ that governmental service in the states may constitute a career, with the guarantee of equal pay for equal service, and with the possibility of promotion to positions of responsibility as a reward for faithful and efficient service. Unfortunately, we have accomplished little in this direction in the American state governments, or in the national Government, though important steps toward salary standardization have been taken by New Jersey and Pennsylvania.

The problem of a continuous policy in state government is one that must be solved, if state governments are to be efficient agencies for the performance of their work. The main argument for the conduct of state government through boards or commissions, whose members are appointed for overlapping terms, is that such an organization brings a greater continuity of policy and a more permanent tenure for technical experts in governmental service.7 The policy of conducting governmental business through continuing commissions may maintain certain elements of continuity, but it does not necessarily make either for permanent tenure or for an efficient and continuous policy. It is for this reason that, after a trial over a period of years, the commission system has tended

7 See Henry C. Wright, Valuation of Administration of State Institutions Through One-Man Control as Operating in Illinois (1922).
to be replaced by a departmental organization with individual and responsible heads of departments. Under the plan of continuous commissions there is no possibility of handling state business as a single enterprise, or of developing plans for an efficient control of budgetry and financial policy, of personnel, of state purchasing, printing or building, or of state policy with respect to official reports. But some aid in maintaining continuity of policy may be given through advisory unpaid boards, whose members are in tenure largely independent of those charged with the administrative authority.

Permanency of tenure for governmental employees, with permanent under-directors of departments, would establish a continuous expert personnel; while at the same time avoiding a sharp break in administrative methods with frequent changes in the office of governor and heads of departments, who determine the general policy of the governmental organization. Such a plan does not involve the establishment of a bureaucracy, but rather the development of a permanent personnel such as is necessary for the efficient handling of the technical side of any private business, while leaving to the political officers of the government a control of matters of policy. Such a change cannot be brought about merely by constitutional amendment or by legislation. It involves a fundamental change of attitude upon the part of the American people. So long as we regard government as an organization of little personal concern to ourselves, but as one through which the winners in a political game may legitimately gain private profit, we lack the essential element of efficient and permanent administrative policy. If our government increases their functions during the next fifty years as rapidly as they have done during the past fifty years, the whole organization is likely to collapse unless we are able to change our attitude in this respect.

We have in reality no standards for the measurement of success or failure in governmental endeavor. When government is unsuccessful, it may increase taxes or issue bonds. But increased taxes or issuance of bonds are not in themselves evidences of governmental failure. Only by placing a definite responsibility, and by devising some methods of testing success or failure of administrative organization, can we in the long run improve the conduct of governmental business. Standards can be established only if there is responsibility and coordination.
OFFICIAL REPORTS

At the present time we have substantially nothing in the way of published official reports upon which the citizen may rely. The number of individual state offices and governmental bodies that make published reports is so great that the citizen would have time for little else, should he seek to obtain and study these reports for each governmental agency and authority over him. A simplified plan for the reporting of work done by government can come only with a unified government. A unified and responsible government can and should be required to report, briefly and intelligently, results that it has actually accomplished. Official reporting constitutes one of the most effective means of holding public officers to responsibility, but official reporting can come only with an effective governmental organization that can be held responsible. The state governments are throwing away millions of dollars each year for the printing of reports that mean little or nothing to anybody except the printer. The Massachusetts Commission on State Administration and Expenditures in speaking of the mass of reports in that state picturesquely says:

"If these copies were stacked one upon another, a pile of this one year's issue would reach the astounding height of about three and one-half miles, or thirty-six times the height of the Custom House tower. If placed end to end they would make a narrow foot path from the State House in Boston to Trenton, N. J., or well into Canada on the north."

Although many Massachusetts reports rank high in the field of state reports, it is hardly too much to say that the bulk of these reports would have accomplished more good had they been employed for the purpose of constructing such a footpath.

TENDENCY TOWARD RESPONSIBLE GOVERNMENT

The problems of effective state organization have not been solved, and so long as human government endures they will not be solved. New problems are presenting themselves constantly, but the tide is turning toward a more responsible and more unified governmental organization for the performance of both state and local functions. New creations of local government areas and of independent state offices and commissions go gaily on. New Jersey and some other states still adhere to government by independent and continuing commissions.

No state has solved its governmental problems, but the states
that have taken steps toward a more coordinated and unified executive have made the most important advance toward efficient government. Such a unified state government must develop definite policies as to state purchasing, printing and building activities. There must be a continuous budgetary and financial control and a definite policy with respect to administrative personnel. It must develop standards for measuring success or failure in governmental activities, and for reporting actual results accomplished; and it must be responsible to the people over whom it operates. Only through a responsible head of the state executive can the people hold to account those charged with the conduct of state government; and only through the application of similar principles can there be a popular control of local government, and an effective coordination of state and local activities.

**New Functions of Government**

But no form of organization can efficiently enforce state policies adopted in a haphazard and crude manner, without reference to the needs of the citizens. State governments have with great rapidity assumed new activities. This scattering of energies has naturally and necessarily resulted in a less efficient performance by government of its original and primary functions of maintaining order and administering justice. Legislative announcement of a new governmental policy is simple and easy. The enforcement of the policy is often difficult. The announcement of policy has outgrown the enforcement of policy. It would be wise for state legislators, when they contemplate a new state activity, to consider carefully the probable expense of the activity, and the means necessary for its efficient conduct. Little has as yet been done in this respect. State administrative organization is not a thing apart, but is an essential element of the whole government, of which the legislature is the policy-determining organ. It would be well for legislators to cease for a while the assumption of new state activities, and at periodic intervals to re-examine the functions they have assumed, in order to discover what they can satisfactorily do, and what functions may more properly be left to other agencies. If we continue to increase state governmental functions in as rapid and as haphazard a manner as we have done during the past fifty years, the problems of effective administration will be enormously increased; and the proper solution of these problems will be increasingly postponed.