

PART VIII

Public Policy and Its Administration

30. Scope and Limits of Government Activity



The National Archives

THUS far this book has carried its readers through an exploration of the roots of American government, the political process by which public policy is largely determined, and the most important organs that formulate and promulgate the law. From this point onward, its concern will be the tasks that the government performs, and the people who perform them. Specifically, the chapters that follow will examine the dozens of important functions of the agencies of the executive branch of government; describe how the agencies' workers are organized and controlled; and show how the public, interest groups, Congress, the President, and the courts enter again and again upon the decisions of those agencies.

To introduce such a large task demands an initial conception of the total problem of governmental activity. Else the grains of sand may blind one to the strand. Hundreds of different jobs are done by the federal government, and one might study each in turn without ever feeling that some overall question was involved—that question being: what does

a whole society become as a result of its sum of governmental activities? Hence this chapter inquires in turn: How far does American government enter into the lives of the American people? Is this intervention little or great, in absolute terms? Is it modest or immense by comparison with other nations? Finally, what limits do law and opinion fix to the growth of governmental functions?

THE VARIETY OF TASKS OF THE FEDERAL GOVERNMENT

Foremost among the tasks of government, of course, are those that have already been dealt with at length. They include the passage of laws and rules, the administration of justice, and the control of parties and pressure groups. Each of these contains a host of detailed functions. Also, many tasks are involved in the selection and supervision of millions of federal employees. The federal government is by far the nation's largest employer of help. Controlling the money and banking system of the nation affords additional functions. Preparing the taxing, borrowing, and spending plans of the national government, and seeing that they are carried out, occupy many thousands of men and women throughout the year.

Dozens of programs in the fields of health, education, welfare, and working conditions, establish close relations between the government and the majority of Americans. Working conditions and wages are also a major concern of the government. Along with the attention that it gives to the human resources of the nation, the government makes efforts to conserve the natural resources of the land. It also has numerous agricultural activities. The intervention of the government in agriculture is paralleled by many activities in the field of commerce and industry.

Indeed, it is not an easy matter to name areas of human activity that are not in some way affected directly by the government. For instance, one might suggest newspapers, for it is true that newspapers are among the least affected of businesses. Yet censorship of various kinds is always a problem—as in cases of libel, obscenity, disclosure of government secrets or court records—and newspapers are also interested in postal rates, labor relations laws, the conservation of forests that supply newsprint, and many other concerns of government. Furthermore, nothing has been said of the hundreds of State and local government functions that often duplicate but more often complement federal functions.

Obviously, there is no question that the federal government is related directly to the everyday lives of the whole population. Just as obviously, one should have some method of judging the total meaning of this activity and its limits; an American farmer, for all the government attention he

"Modern Justice" by Kindred McLeary. This study for a mural in the Pittsburgh Post Office and Court House is a result of government sponsorship of the arts. It was produced in the period of the Great Depression under Federal Government sponsorship as part of a "New Deal" emergency program to provide work for the unemployed. Thousands of artists were employed and much of their work has found its way into public buildings throughout the land.

receives, may still not feel its weight as much as the Dutch farmer or the Russian farmer feels the weight of *his* government. Consequently, it is worthwhile to state carefully and systematically just what are the actual degrees of intervention found in American and foreign societies.

THE MEANING OF GOVERNMENTAL POWER OVER PERSONS

The word *power* has been used here and there so far to mean the ability to influence the behavior of people. Whatever their form, whatever the number of people who possess power, and whatever the ways in which they exercise power, all governments are alike in that they influence the behavior of the population. Furthermore, the more powerful members of the government influence the behavior of the less powerful members. When all is said and done, probably most people would say that to them the most important aspect of government is how much it absorbs of their lives, time, money, and energies. Therefore, one should have clearly in mind what is meant by the extent of power of any given government, whatever its form or typical means for executing its policies.

In order to perceive this aspect of government, one might chart the various interests of different individuals so as to show the proportionate role of the government with respect to each of these interests. Figure 57 illustrates the intervention of the state in the life of John Doe. Let us assume that John Doe has eight important interests in his life; one is his family role, another his occupation, a third his leisure, a fourth his participation in a larger public, a fifth his religion, and so on. Richard Roe, another citizen, may have only five such general areas of interest; a third, Jack Smith, might have a dozen or more such areas. In each case the interest would mean more or less to one man than to another.

Now, taking up the case of John Doe, let us suppose that a bar can be raised to the height on the chart corresponding to the proportion of his total interest that is occupied by each given interest. This is represented in Figure 57. Now let us block into each bar the proportion of that given interest that the government is concerned with, if at all. Then, let that portion of the interest bar showing the portion that the government is deeply concerned with be blacked over. That is, the government may be concerned with the family, but only to the extent of giving a small bonus for the children in order to increase the population. On the other hand, the government might be concerned with the family to the extent of making all sorts of rules about the parent-child relationship, about taking the child out of the family and putting him into public schools, teaching the child certain trades and political beliefs, placing the child in certain kinds of youth groups governed by officials of the state, and so on. Where the government exercises a complete, monopolistic, or *totalitarian* power with respect to a given interest, the whole bar would be blacked over.

Operating in the same manner with the other interests, one might build up a profile of any individual in the society showing the scope and in-

tensity with which the state intervenes in his interests. If this were done for the whole of society and each individual were plotted similarly, one would have a notion of the domain of the government. The *domain* of the government differs from its *scope*: the former refers to the number of people involved, whereas the latter is concerned with the number of human functions the state is interested in. If, for example, a law were enacted by Congress absolutely prohibiting llama-ranching in the United States, the scope would amount to llama-ranching; the intensity of the state interest would be one hundred per cent; but the domain of the interest would be zero, since there are no llama-ranchers in the United States.

Thus power would have been broken down into the several elements that measure its extent: the *scope* of the power, consisting of those things or interests in which the government concerns itself; the *intensity* of the

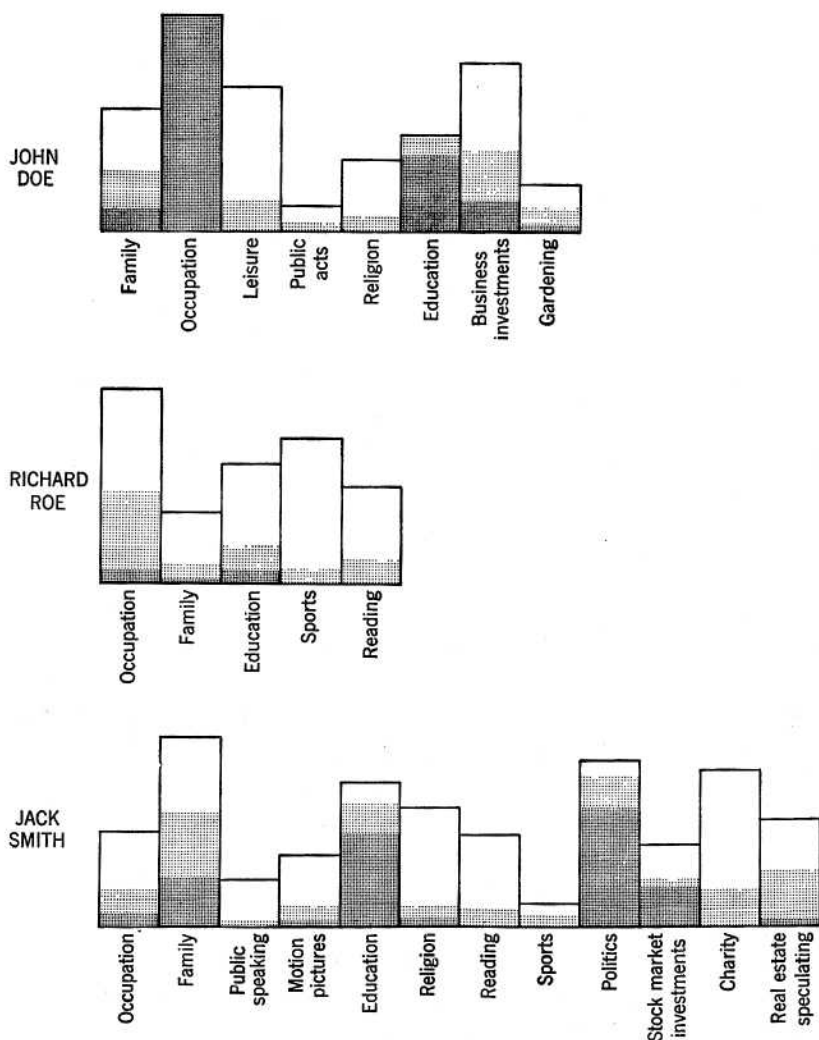


Figure 57. Intervention of the State in the Lives of Three Hypothetical Citizens.

power, comprising the weight the government bears within the scope of its interests; and the *domain* of the power, embracing the number of people over whom the power is exercised. The perfect and complete totalitarian society would be one in which the whole society would have individual bar profiles that would be entirely blacked over in the technique shown here. Complete anarchy, or the absence of government, would see all humanity possessing white barred profiles, for there would be no government to exercise power.

The power of government, therefore, is measured as that part of all human activity in which the government to some extent intervenes, together with the actual degree of intervention and the number of people affected by it. The major areas of governmental intervention that are of past and present significance are the economic area, the religious area, and the cultural area. The problem of governmental power in these three areas will be introduced here, with especial reference to the United States.

THE EXTENT OF GOVERNMENTAL INTERVENTION

The economic power of government

The economic power of government may be measured by the extent, intensity, and domain of its interference with the economic life of the nation. No two governments exercise precisely the same degree of control over industry, commerce, finance, and agriculture. For the purposes of analyzing the economic role of the state, however, governments may be divided into socialist, regulatory or promotional, and laissez-faire regimes. In the order in which they stand, these categories represent a descending scale of governmental intercession, from well-nigh complete to almost non-existent.

The Socialist or Planned Economy: Under a planned economy, the government either owns, or more or less rigidly controls, all means of production and their output. A centralized or decentralized state planning commission fixes production quotas, allocates labor and raw materials, and sets prices. The extent to which the government actually owns the means of production may vary from one state to another. In the Soviet Union, for example, the government does own all the major facilities of agriculture, industry, transportation, and communication. In Nazi Germany, on the other hand, most of the facilities remained in the possession of their original owners; however, they were rather strictly regulated by the government. The relations of the individual owners to their property in Fascist Italy remained much the same as that in Nazi Germany; however, the industrial magnates in Italy, to an even greater degree than in Germany, were installed in government posts.

Under the regime of the Labour Party from 1945 until 1950, the British government came to own the railroads, the coal mines, and the steel industry, along with various other aspects of the British economy. This government also established crop quotas for farmers, and it threatened those farmers who disregarded these quotas with confiscation of their

land. The Labour government also maintained a comprehensive system of rationing and price controls; probably these were more the consequences of World War II than they were of socialist inspiration. However, the Conservative Party was quick to abolish them.

It is quite evident that there are degrees to which an economy may be planned. One of the indexes to the degree of planning lies in the extent to which government ownership has superseded individual or private corporate ownership. On this basis Soviet Russia stands at the extreme of state planning; Nazi Germany, Fascist Italy, and England under the Labour Party are at a considerable remove from this extreme. There is a very rough pattern for the evolution of state ownership that governments progressing toward a planned economy may be said to follow. Such governments commonly own the so-called "natural monopolies"—the communication, transportation, and distributive industries, in which monopoly is an almost inevitable tendency because competition demands very expensive overlapping if the same customers are to be served. For example, it would appear somewhat ridiculous for two or more companies to try to pipe running water to a single community, since serving one customer on a block would require nearly as much pipe as serving twenty.

These governments likewise often own the munitions industries of the country. They may then, to a greater or lesser degree, expand their ownership to other heavy industries, frequently purchasing those segments that are losing money under private ownership; for instance, the British coal mines had been in an economic depression for many years. Then the socialist or communist government is in a position to enforce plans that it may draft for the whole national economy.

Planned economies have been numerous in both fact and theory down through the ages. Egypt under many of the Pharaohs might be termed a planned economy, as might also the later Roman Empire. One of the most attractive of such regimes was that proposed in a work entitled *Utopia* by Sir Thomas More (1478–1535), an English humanist who for a time held political office under King Henry VIII. Recent planned economies include not only those of Soviet Russia, Nazi Germany, Fascist Italy, and Great Britain under the Labour government, but also Falangist Spain, Titoist Yugoslavia, Communist China, and the Soviet satellites in Eastern Europe. It is important to bear in mind that in times of war all modern states adopt planned economies.

The motives beneath the foundation of a planned economy may be numerous. For those systems that exist only on paper, these motives often are quite humanitarian; for example, the system of More's *Utopia* was designed to permit each citizen to achieve moral and intellectual perfection. Upon close inspection, however, modern planned economies usually betray two cardinal motives whose proportion of the total vary according to circumstances; they are (1) to create domestic tranquillity, and (2) to prepare for foreign war. In Great Britain, however, preparation for war was certainly no more than a slight motivation; probably it played no role at all. Likewise, there was no question of maintaining or restoring domes-

tic order. The principal goal of the Labour government appears to have been the reduction or removal of large differences in wealth among the British citizenry.

The Regulatory or Promotional Government: The regulatory or promotional government, as its name implies, tends to confine its interference in the national economy to regulating and promoting that economy. Under this sort of regime the various interest groups in the country compete vigorously for control of the government, so that they may employ its regulatory and promotional machinery to further their own interests. There may be some amount of deliberate governmental planning for the economy, but this planning almost always bears the stamp of one of the interest groups in the nation. Sometimes the government may own a small fraction of the national means of production, usually in the area of the "natural monopolies"; it may also exploit its ownership so as indirectly to regulate privately-owned facilities of the same type.

There have been many instances of regulatory and promotional governments. This sort of principle flourished, especially in England and France, during the seventeenth and eighteenth centuries, under the name *mercantilism*. This policy held that the wealth of a nation was to be measured by its stocks of gold and silver, and that the economic role of the government was to so stimulate the national economy that it would produce more than it consumed, so as to increase its supply of precious metals through selling its products abroad. Indeed, the founding of the British colonies in North America was partly motivated by mercantilism, for these colonies were expected to provide both raw materials and markets for British enterprise.

The early colonists themselves were often convinced of the necessity for strict regulation of industry, as illustrated in Figure 58. The United States throughout its history has never completely departed from such a regime. The Constitution provides such promotional devices as patents, to encourage inventors. Shortly after the adoption of the Constitution the government began to practice regulation through a tariff on imported goods, a tax aimed also at stimulating native industry. American legislation ever since has often sought to promote the interests of those in power and regulate the activities of those out of power, regardless of the nature of these groups. Since about 1900 the American government has engaged to a considerably greater degree than before in regulatory and promotional efforts; and much of this later activity has been at least presented in the form of assistance to very large parts of the population. At the same time it has constructed certain producing facilities, such as the Tennessee Valley Authority, one of whose functions is to regulate the cost of electric power in neighboring regions by threatening competition through tax-supported, low-cost electricity.

The Laissez-Faire Government: The laissez-faire government is one in which the government takes no part in the national economy beyond preserving the rudiments of law and order. Under a laissez-faire government the national economy regulates itself through the operation of various

produce, to which end any Court or Commissioners authorized by the General Court may administer an oath to the parties or any others suspected to be privie in concealing his estate, but shall satisfie by service if the Creditor require it but shall not be sold to any but of the English nation. [1641: 1647] *See* *sec 1. page 1.*

Attachments.

It is ordered by this Court and Authoritie thereof that no attachment shall be granted in any civil action to any Forreigner against a settled Inhabitant in this Jurisdiction before he hath given sufficient securitie or caution to prosecute his action and to answer the defendant such costs as the Court shall award him. And further it is ordered that in all attachments of good and chattel, or of land, or hereditaments legall notice shall be given unto the parties or left in writing at his house, or place of usuall aboad, otherwise the sute shall not proceed; notwithstanding if he be out of this Jurisdiction on the cause shall then proceed to triall, but judgement shall not be entered before the next court. And if the Defendant doe not then appear judgement shall be entered but execution shall not be granted before the Plaintiff hath given securitie to be responfiall to the Defendant if he shall reverse the judgement within one year or such further time as the Court shall limit. [1644] *See* *instruments. See* *El. writs. See* *F. Resp. See* *Rules. See* *Accounts.*

Forreigner
shall not
attach
In
briars
out
court.

Refusal of
judgment
Of execution.

Bakers.

It is ordered by this Court and Authoritie thereof, that henceforth every Baker shall have a distinct mark for his bread, & keep the true affizes as hereafter is expressed

When wheat is ordinarily sold at these severall rates hereafter mentioned the peise white loaf by averdupois weight shall weigh when wheat is by the bushell -----
at 3 li. 0 d. The white 11 ounces 1 qr. wheaten 17 ounce. 1 qr. household 23 ounce. 0
at 3 6 10 1 1 20 2.
at 4 0 09 1 14 0 18 2.
at 4 6 08 1 11 3 16 2.
at 5 0 07 3 11 2 15 2.
at 5 6 07 0 10 2 14 0.
at 6 0 06 2 10 0 13 0.
at 6 6 06 0 09 2 12 2.

and so proportionally: under the penaltie of forfeiting all such bread as shall not be of the severall affizes as is aforementioned to the use of the poor of the towne where the offence is committed, and otherwise as is hereafter expressed: and for the better execution of this present Order; there shall be in every market towne, and all other townes needfull, one or two able persons annually chosen by each towne, who shall be sworn at the next county Court, or by the next Magistrate, unto the faithfull discharge of his or their office; who are hereby authorized to enter into all houses, either with a Constable or without where they shall suspect or be informed of any bread baked for sale: & also to weigh the said bread as oft as they see cause: and to seize all such as they finde defective. As also to weigh all butter made up for sale; and bringing unto, or being in the towne or market to be sold by weight: which if found light after notice once given shall be forfeited in like manner. The like penaltie shall be for not marking all bread made for sale: and the layd officer shall have one third part of all forfeiture, for his paines; the rest to the poor as aforesayd. [1646]

Bailast.

It is ordered by this Court and Authoritie thereof; that no ballast shall be taken from any towne there by any person whatsoever without allowance under the hands of the select men upon the penalty of suspension for every shovel-full so taken; unless such stones as they had layd there before. 2 It is also ordered by the Authoritie aforesayd; that no ship nor other vessell shall cast out any ballast in the chanel, or other place inconvenient, in any Harbour within this Jurisdiction upon the penaltie of ten pound. [1646-1642]

Barratry.

It is ordered, decreed and by this Court declared; that if any man be proved and

Penaltie.

Clerk of m. r.
his power.

Butter.

bread not mark-
ed.
Clerks fee.

Penaltie.

Penaltie.

Figure 58. Price Control in Puritan Massachusetts, 1646. Facsimile of a page from an early code of laws, showing that thoroughgoing regulation of one sphere of life often accompanies the regulation of other spheres, such as the religious.

economic laws, primarily that of supply and demand. The concept of a laissez-faire regime as it is expounded today stems largely from *The Wealth of Nations*, a treatise on political economy directed chiefly against the principles of mercantilism, by the Scottish moral philosopher Adam Smith (1723-1790).

There probably has never been a purely laissez-faire government. It is almost inconceivable that the political leading group—that is, the group that held the reins of government—would not try to use the institutions of the government to further its ideas of economic good. Certainly the United States never had a truly laissez-faire regime, for under this system the government does not even try to enact a tariff law, whereas the United States has always had a tariff. Moreover, the American government has consistently intervened into economic matters in ways other than by a tariff. However, the importance of possessing a large, as against a small, sphere of laissez-faire operations is great, for ensuring the flexibility of both the economic and political systems.

The religious power of government

The religious power of a government may be computed by the scope, intensity, and domain of its concern in the religious professions, attachments, and behavior of its citizens. The power of governments with respect to religion may end in a theocracy, a state religion, the separation of the church and the state, or state repression of religion. The first three of these categories comprise a declining scale of governmental interference with religion; the last actually is a sort of theocracy in reverse.

Theocracy: A theocracy is a form of government in which the church actually operates the state for the ends of religion, and in which the principal officers of the church are also the leaders of the government. There is today no important government that may be termed a theocracy. Indeed, among all modern countries perhaps only Tibet might be classified as a theocracy; since its absorption by the Communists it probably has lost, or will soon lose, its theocratic nature, for it was reported in the summer of 1954 that the lama, or ruler, had left Tibet for China to receive his "brain-washing"—Chinese Communist jargon for "purging of all anti-communist thoughts."

State Religion: A state religion is a religion that is closely associated with and supported by the state; commonly the state exploits the teachings of the religion to accomplish political ends. There are many varieties of institutional arrangements among different state religions. Sometimes, as in Spain during the sixteenth century, the whole population will be compelled to hold the state religion, while all other faiths are persecuted. Elsewhere, as in modern Spain, Sweden, and some Latin American countries, other faiths will not be officially persecuted but will be discouraged. Governmental positions may be limited to members of the state religion, as in the New England colonies. Sometimes the salaries of the clergy are paid by the state, a system prevailing in France from the time of Napoleon until the present century and in England from the Reformation to the

present day. Yet in England, although there is a state religion, all other faiths are tolerated.

Separation of the Church and the State: Under the system typified by the separation of the church and the state, the religious power of the government is confined to little more than preventing church members from violating commonly accepted principles of law and morality in their religious behavior. The United States is the outstanding example of a country in which church and state are separated. The First Amendment to the Constitution prohibits the American government from establishing a state religion. Although certain American States, notably Massachusetts, possessed state churches for a time after the Constitution was ratified, all have long since discarded these organizations. Furthermore, the American Constitution specifically bans the requirement of any religious oath for holding federal office.

Consequently all religions are officially tolerated. All that any American government, whether national, State, or local, may do with respect to religion is to forbid any person or group of persons to commit, in the name of religion, an act that would constitute a noxious crime under any other circumstances. For instance, there are laws and ordinances against disorderly meetings or assemblies; no church group may plead that the freedom of religion authorizes it to break such a law or ordinance because the meeting is for religious purposes. Under any conditions, however, the American national government has no institutional bond with any religious body.

State Repression of Religion: State repression of religion constitutes a political system in which the state represses, not one, but all religious faiths. It will be seen that such a system actually comprises a sort of theocracy in reverse, for the government that adopts this policy has done so chiefly because it believes that profession of any traditional faith amounts to disloyalty to the state.

The great exponent of this regime in recent times has been the Soviet Union. Under Soviet rule there emerged a government-sponsored organization called the Society of the Militant Godless whose function was to guide the Russian people away from Christianity. It must be remembered, however, that the fundamental doctrine for Soviet Russia, Marxism-Leninism, teaches that Christianity is but one of the many instruments used by the exploiting capitalist group to keep the toiling masses from claiming and enjoying their rights. It should also be borne in mind that the Russian Orthodox Church was a state church under the tsars which the government had employed as one means for controlling the population, and that this church was an immensely wealthy landholder.

Perhaps most important of all, an analysis of Marxism-Leninism as instituted in the USSR reveals that it in many ways partakes of the nature of a religion itself; it has its gods, its saints, its martyrs, its scriptures, and its Satan. Indeed, from one point of view the Communist Party of the Soviet Union is a religious body that has assumed political power. In fact, so far as morality is concerned—using the word in a neutral sense that

means neither "good" nor "bad" but strict adherence to a system that teaches a special version of good and bad—the Russians under Communism are one of the most moral people on earth. Hence the Soviet repression of religion might be considered as only one phase in the evolution of a new theocracy, that of Marxism-Leninism governing the Soviet people.

The cultural power of government

The cultural power of government includes the scope, intensity, and domain of governmental intercession into such matters as the arts, sciences, education, ideas, and expression. The terms controlled culture, sponsored culture, and free culture may be used to indicate a decreasing power of the government in cultural activities.

Controlled Culture: Under a controlled culture, the state rigorously controls, or at least endeavors to control, all cultural matters as implements for achieving the ends of the government. The two outstanding instances of such a regime in recent times have been Nazi Germany and Soviet Russia. In Germany, for example, Adolf Hitler decreed that most forms of art were "decadent," and prescribed that only a few types—those that many foreign critics denounced as most banal—merited production in the Nazi Reich. German education likewise was bent to the needs of the regime. The only kind of philosophy permitted was that which exalted the Nazis and clung to the official Nazi philosophy as expounded in Hitler's *Mein Kampf* and by the leading Nazi theorist, Alfred Rosenberg, in his *Myth of the Twentieth Century*.

The Soviet government has paralleled the Nazi in regimenting culture. For example, the noted Russian composer Dmitri Shostakovitch was severely criticized by the government because certain of his musical works did not comply with the official notion of "proletarian music"; indeed, his Fourth Symphony has never been publicly performed, for this reason. The Soviets like the Nazis have converted their educational system into a means for recruiting and training leaders devoted to the Soviet state and its principles. "Soviet science" has even attacked the fundamental theory of biological heredity developed by the Austrian monk Gregory Mendel (1822-1884). Following a Marxist theory, the Soviet government has claimed that heredity may be influenced by environmental conditions.

Sponsored Culture: A government whose position with respect to culture may be viewed as that of a sponsor is one that tends to stimulate artistic production and to influence, but not absolutely command, it to the goals of the state. Many governments of Western Europe and the Americas today sponsor culture. Most, for example, maintain public school systems that teach pupils to pay due and patriotic homage to their governments; at the same time most of the countries permit the existence of private schools, either religious or not, whose teachings are seldom a concern of the government provided that they adhere to the academic standards required by the state of its own schools, and do not exhort disloyalty to the government.

In late years the national government of the United States has paid increasing attention to American public schools. American education was

once thought to be the exclusive concern of State and local governments. However, the national government, which for many years did little more than grant the States a certain amount of land for the support of public schools, has begun to finance special educational programs, such as the teaching of agriculture and home economics at the high-school level. This new interest was signaled in 1953 by the creation of a new administrative Department and Cabinet post, the Department of Health, Education, and Welfare.

So far as the promotion of other facets of the national culture are concerned, the states of western Europe have probably been more active than the United States, where much of this promotion has been confided to private citizens and organizations. Even in this area the American government has shown some degree of interest; for it has exempted from federal income taxation the non-profit corporations or foundations, which have contributed vast sums to subsidize the arts and sciences, literature, and education. Finally, the Constitution itself contains one encouragement for culture, by empowering Congress to pass laws for the protection of copyrights.

Free Culture: A free culture would be one in which the state would show little or no interest and over which the state would exercise a minimum of power. Such a condition is inconceivable today, if only because no government can afford to relax its vigilance over its educational system. Moreover, national pride alone will demand that the government show some interest in, and promote to some degree, the artistic and literary creations of the population. Indeed, such has been and is the role of culture in society that a truly free culture would seem possible only in a state without recognizable culture.

Degrees of powers in different spheres

From the preceding discussion one may draw up a rough chart showing the various degrees of power that a government may employ in each of the three fields:

SPHERES OF POWER				
Degree	Economic	Religion	Culture	All Spheres
Low	Laissez-faire	Church-state separation	Free culture	"Law and order"
Medium	Regulatory-promotional	State religion	Sponsored culture	Positive state
High	Planned economy	Theocracy	Controlled culture	Totalitarian

In this chart, the term "low" means some general agreement that in a given society the spheres in question are of little concern, involve few regulations, and affect few people. The term "medium" indicates a similar type of agreement that the government is moderately concerned with these matters, that it exercises considerable regimentation, and that

roughly half the people in the country fall within the domain of any governmental activity. The term "high" embraces that sort of regime which practices almost total control over most of the activities of most people. Both the brief summary of the activities of American government and a comparison of its interests with those of other governments indicate its general placement. It is on the whole a positive government of the regulatory-promotional type, a somewhat reticent sponsor of culture and one that observes a separation of church and state.

THE LIMITS OF GOVERNMENT ACTIVITY

Although the technical capacity of governments to control thoroughly all spheres of life has greatly increased in the last hundred years, the development of such control is not inevitable, in the sense that human desires and ingenuity cannot restrict it. From its very beginnings the American way of government has experimented beyond all others in ways of limiting the rapid development of governmental activity. Most of these ways are incorporated into the Constitution and the interpretations placed upon it by political leaders in the courts. They are principally (1) the restriction of the powers of the national government to those delegated it by the Constitution, and (2) the rule that neither State nor nation should deprive persons of property without due process of law. Two related but narrower restrictions are the prohibition on State laws impairing the obligations of contracts and the requirement of payment of just compensation when any American government exercises its power of eminent domain—the taking of private property for public use. These are particularly the rights that will be discussed here; they are usually termed "property rights," and they are at issue in the many kinds of activity to be treated in the chapters to follow. However, it will be remembered that to these rights and limits must also be added those that guard against government interferences with freedom of religion and culture, which have been dealt with in earlier chapters. All three kinds of rights—property, political, and judicial—limit government activity or, at the very least, give it a special slant. Moreover, the barriers erected by the law are reinforced by public opinion. American opinion has numerous and strong resistances to government activity, as will be shown in conclusion.

Limits of delegated powers

The national government has powers of limited scope. Both the words of the Constitution and the prevailing opinion of judges and scholars attest to this fact. The Tenth Amendment declares that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The intent here was to avoid an expansion of federal powers and to permit an extension of State and individual activity. Yet this intent has not been fully borne out. The "reserved powers" Amendment has not proved to be a bulwark against increased federal action. In fact, like the French

Maginot Line its front was most formidable but its flanks were exposed to assault.

The fact is that federal activity has grown principally by way of victories in Congress and through new interpretations by the courts of other clauses of the Constitution—the interstate commerce clause, the taxation clauses, the “necessary and proper” powers clause, and the unmentioned “inherent powers” theory of federal authority. Plainly, when a broad construction was placed upon each of these clauses and theories of the Constitution, new activities might be undertaken by the federal government and justified as delegated powers.

“Substantive” due process

In earlier chapters, due process of law was mentioned in several connections. First it was pointed out that due process of law is a leading element in the principle of constitutionalism; that is, it is one of the cornerstones of the American system of preventing arbitrary, personal rule. Then later it was shown that due process of law is a principle under which the Supreme Court of the United States, in interpreting the Fourteenth Amendment, extended much of the Bill of Rights to the State governments; that is, free speech, free press, and the rights of a fair trial are implied in this phrase and hence must be observed by the State governments. Now, moreover, it should be understood that due process of law has been defined by the federal courts to limit the economic activity of State governments.

The federal courts have understood the proviso that no person shall be deprived of life, liberty, or property, without due process of law, to mean that burdensome State regulations on economic or other activities are unconstitutional. For example, the prohibition of private schools, or their severe restriction, in order to favor public schools, has been judged oppressive of liberty and a violation of due process of law. Until recent years, the Supreme Court was active in striking down attempts of State governments to regulate hours of work, wages, conditions of work, business practices, and prices charged by commercial and industrial enterprises. Many of such State laws fell victim to the due process clause of the Fourteenth Amendment. In a number of these cases, corporations were the beneficiaries of the Court's attitude; they were protected along with individual property-owners because the word “person” in the Amendment was held to include *artificial* persons, which is what legal theory views corporations to be.

In recent years, the federal courts have been more loath to strike down State regulation of business; many forms of regulation such as those limiting the hours of workers are regarded more tolerantly and considered “reasonable.” Yet, if a State government should engage in some drastic interference with business, it is likely that the courts would again strike down the State law as a violation of the guarantee of due process of law. In general, the same reasoning can be applied to actions of the *federal* government; onerous and “unreasonable” regulations upon private business, even if they do not violate other constitutional rights, may be deemed

unconstitutional for depriving persons of property without due process of law. In the cases of both the State and federal government, this kind of protection under the requirement of due process of law is called *substantive*, in contrast to the *procedural* protection given in court trials by the same requirement.

"Equal protection"

The Fourteenth Amendment also declares that no State shall deny to persons within its jurisdiction "the equal protection of the laws." This guarantee has come to be understood as demanding the same kind of "fairness" in controlling business as is granted by the due process guarantee. Generally speaking, any "shocking" discrimination against a particular business or class of business is likely to be considered a denial of the equal protection of the laws. However, any "reasonable" or administratively "necessary" distinctions among classes or types of business are regarded as constitutional. The quotation marks around the words "shocking," "reasonable," and "necessary" mean that these words are difficult to define and that the courts have the duty and power of defining them; nevertheless, it should be realized that their vagueness does not prevent them from warding off many potential and actual State laws and rules aimed at governing business and limiting property rights.

The obligation of contracts

Although Congress is not restricted in this manner, the State governments are denied the power to pass any law impairing the obligation of contracts. This constitutional provision has prevented State governments in a number of instances from taking the side of debtors against creditors. Today, it is true, the Supreme Court is more tolerant of State attempts to lessen the burdens of debtors during hard times; yet the degree of lessening is carefully watched, so that if it appears that a law will allow a substantial evasion of a private contract it will be declared unconstitutional. Furthermore, contracts that are against the public safety and morals are not granted protection against State prohibitions. Two men who have contracted to control the milk supply of a city cannot have their contract protected should the State forbid such agreements as being conspiracies.

Just compensation

The government has eminent domain; that is, it has the right to take private property for public use. This is a doctrine of law that is almost universally adhered to. In the United States, the doctrine has two narrowing limits: there must be reasonableness in the demand for the property; and the owner must receive "just compensation." For example, a vengeful Congress or legislature cannot simply decide that the government should own all mansions containing over fifteen rooms, even if it pays liberally for the transfer of rights. On the other hand, in the event that a road is being constructed on a line that traverses several such mansions, the properties may be "condemned" and, upon the payment of just compensation, be torn

down to allow passage of the road. Moreover, should the government in time of war be pressed for hospital and rehabilitation buildings, it might perhaps take the entire famed collection of mansions at Newport, Rhode Island, upon payment of just compensation. The amount of compensation that is "just" is often not what the owners think is "just," but first what the government believes is "just"; then, should the owners launch a legal protest, the amount becomes what the courts say is "just."

Public opinion and government activity

Upon a review of the several kinds of restrictions that are placed upon the growth of government activities, several facts emerge. The most important legal limit to federal activity is the construction placed upon the powers delegated to the federal government by the Constitution. The most important limit upon the economic activities of the State governments comes from the due process clause of the Fourteenth Amendment (and of course the fact that the States are prevented from acting in areas over which the federal government has exclusive control, such as interstate commerce). Other constitutional protections of property, such as those provided under the rights of contract and just compensation, are directed principally at blocking arbitrary special actions.

The laws cited are sufficient neither in themselves nor all together to prevent a government of minimal activity from becoming very active. However, the laws do not stand alone. They do have considerable force in themselves, but they are also fortified by the many other ways in which both federal and State constitutions exhibit a profound respect for private property and free enterprise. In addition, the political leaders of the nation and State, on the whole, have from the very beginning of the nation been committed to free enterprise and opposed to socialism. Furthermore, at times when one segment of the leadership—a majority of Congress, or a President, or a political party, or a single State government—was most bent upon increasing the scope, weight, and domain of government intervention in the economy, that element met with resistance and hostility from one or more other powerful elements in the leadership. To take only the most recent and well-known example, President Truman's Fair Deal Program, which would have expanded the activities of the federal government, excited opposition in Congress and failed almost completely.

The principal increase in government activity has occurred since 1900. The machine age, wars, and depressions have caused most of the increase. The emergence of the factory system after the Civil War had by 1900 aroused a demand that persists today, calling for the national government to provide goods and services once supplied by private groups or local authorities. By 1900 the older "liberal" philosophy of the laissez-faire state had been elbowed aside by a political theory requiring a positive and active state. Each of the two world wars has introduced numerous functions associated with the waging of hostilities, and left behind it such concerns as the management of veterans' affairs that are the inescapable residue of military struggle. The great depression that began in 1929

evoked public insistence that the federal government bring relief to the suffering, recovery to business, and reform to the entire national economy.

Probably, the beliefs of the many groups and people who make up the American public are not fixed on the question of "how much government." From decade to decade, year to year, and even from month to month, there are large changes in popular opinion regarding the virtues of a high level of government activity in general or of government intervention on a specific issue. Table 17 gives an example of change through time, showing that more Americans favored government ownership of the banks in the period before World War II than did so following the war.

TABLE 17. AMERICAN OPINION ON WHETHER THE GOVERNMENT SHOULD OWN THE BANKS 1936-1946¹

Date of Poll ²	Yes	No, Leave Alone	Undecided, Don't Know	Total
(a) November, 1936	36%	56%	8%	100%
(a) December, 1936	37	49	14	100
(a) July, 1937	45	40	15	100
(b) August, 1937	40	42	18	100
(c) May, 1945	27	61	12	100
(d) September, 1945	25	64	11	100
(e) December, 1946	26	66	8	100

¹ From surveys of a national sample of Americans by the American Institute of Public Opinion, in Cantril, Hadley, and Strunk, Mildred (eds.), *Public Opinion, 1935-1946* (Princeton: Princeton University Press, 1951), p. 272.

² The precise wording of the question in each case was as follows:

- (a) Do you favor government ownership of banks?
- (b) Would you like to have the government own and control the banks?
- (c) Do you believe the government should own the banks?
- (d) Do you think the government should own the banks in this country?
- (e) Do you think the United States government should own the banks in this country?

On the whole, over the past generation, large majorities of Americans have apparently favored social security measures, old-age pensions, job insurance, health insurance, aid for students, public works, relief in times of unemployment, and assistance to the sick and the young. A sizable proportion (depending on the issue) seems to favor government regulation of many businesses; and a minority is generally to be found supporting outright national ownership and operation of one or more businesses now in private hands.¹

In 1952, a year in which power was transferred from a Democratic to a Republican administration in Washington, the public's appetite for more government activity exceeded its inclinations against greater activity; the two together did not quite equal the number of people who were satisfied with the present degree of government activity. A sample of Americans had this question put to them:

¹ Cf. the summaries presented in Cantril and Strunk, and also Bruner, Jerome S., *Mandate from the People* (New York: Duell, Sloane and Pearce, 1944), Part II.

Some people think the national government should do more in trying to deal with such problems as unemployment, education, housing, and so on. Others think that the government is already doing too much. On the whole, would you say that what the government has done has been about right, too much, or not enough?

The replies are presented in Table 18.

TABLE 18. BELIEFS ABOUT THE LEVEL OF GOVERNMENT ACTIVITY, 1952¹

Extent of Government Activity	Number	Per Cent
Not enough	447	25
About right	878	49
Too much	322	18
Don't know	106	6
Not ascertained	46	2
Total	1,799	100

¹ From author's analysis of Survey Research Center Materials (Study 400).

The heavy weight of opinion, at that time at least, supported the existing level of national government functions. Under such circumstances, there is little incentive for any large number of political leaders to move vigorously to add to or cut government activities. Most changes are what might be called technical adjustments; for example, new groups of people are brought in under the Social Security Act, or various agencies receive budget cuts in the name of economy.

Yet, in conclusion, it should be repeated that this generally accepted level of government activity is by no means low. Though the level may be stable, and no longer controversial to most people, it is greatly above the level experienced by the fathers of modern college students when they themselves were of college age in the early 1930's. In turn, the level around 1930 was greatly higher than in 1900 or any previous time since 1789.

QUESTIONS AND PROBLEMS

1. Name ten specific functions of the national government in each of the following areas: law enforcement; health, education, and welfare; conservation of natural resources; business.

2. Following the method of Figure 57, as described in the text, prepare as best you can a series of bar charts that picture the degree of government intervention in *your* spheres of interest.

3. Describe briefly the characteristics of a laissez-faire government. How does it differ from a regulatory state and a planned economy?

4. Describe briefly the characteristics of a state religion. How does it differ from the condition in which state and church are separated and from a theocracy?

5. Describe briefly a culture controlled by the state. How does it differ from a sponsored culture and from a free culture?

6. What are the restrictions on the taking of private property for public use?

7. Assuming that the United States is at present a positive state, does the

country show any tendencies toward becoming a "law and order" state or a "totalitarian" state? Explain your answer.

8. What are the constitutional restrictions on the amount of economic activity in which the national government may engage?

9. What are the constitutional limits on the intervention of the American government into the sphere of religion and culture?

10. What are some of the limits, other than legal ones, to the intervention of the American government into the spheres of economics, religion, and culture?

11. Distinguish between the substantive and the procedural protections of the requirement of due process of law. Give an example of each.

12. Relating Table 17 back to what was learned of public opinion in Chapter 11, how would you explain the fluctuations in opinion as to whether the government should own the banks?

13. Under what circumstances could there occur a large rise in public demand for new or increased government activities?