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ORGANIZATION OF THE UNITED STATES GOVERNMENT

17 September 1947

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COLONEL NEIS: Gentlemen, we are particularly happy this morning to welcome back to the College one of the former members of our faculty, Dr. Holley. Dr. Holley's part under the auspices of the Organization and Administration Division is to give the first of our series of lectures.

You may be interested to know that Dr. Holley entered the Army as a private and rose to the rank of captain in the Army Air Forces. Later he joined the College here, where he assisted during the period of indoctrination in this program in the interim course. Last year he was assigned to the Research Division, where he developed several articles in this research area. He is the author of a very comprehensive study on ideas and weapons. I believe it would be to your advantage to get that document and read it. He did that under the auspices of the Research Division. At the close of the last academic year Dr. Holley was relieved from active duty, and is now a member of the History Department at Duke University. I am quite sure the message Dr. Holley will bring us this morning will be very interesting and stimulating. Dr. Holley.

DR. HOLLEY: Gentlemen, it is a real pleasure to be here this morning. I can say that without any cynical feeling at all. I used to sit in the audience and listen to lecturers come here and say, "It is a pleasure to be here," and think to myself, "I'll bet you wish you were somewhere else." But I finally have to eat my words, because I really do enjoy being here this morning.

The two years I spent in the Industrial College were probably the most intellectually stimulating two years I ever spent anywhere. The course here at this college presents opportunities in the way of opening an enormous number of new horizons. Most of you come to the Industrial College with a wide range of wartime experience. Some of you are production men, some are procurement experts, and many have had field commands. But, no matter what your wartime experience may have been, there is no question in my mind that you will find the course stimulating. You will meet a tremendous number of agencies, new ideas, new organizations. You will have alphabetical agencies thrown at you to the point of saturation. Within two weeks after your arrival here you are usually badly confused. That brings us to the purpose of this particular lecture.

This is a lecture on the United States Government. This lecture is designed to give you a framework on which to hang the entire course. You see, with all these agencies and with all these problems of economic mobilization, there is only one central thread, one common bond, that ties them all together. The Government is the central theme around which everything else builds.

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Now, I say that I am going to talk about the United States Government. Exactly what do we mean when we say "the Government"? "The Government" is an abstraction. It is like "the Army", which is also an abstraction. Does "the Army" mean the General Staff? Does "the Army" mean the Infantry Division? Does it mean a Cavalry troop? No. Obviously "the Army" is a complex compilation of many difficult ideas, many difficult things.

In that same sense the word "Government" is an abstraction which is difficult to grasp. It means many things to many people. To the Indian on an Oklahoma reservation, let us say, the Government resides in the person of the man who hands him ten yards of red calico every year. To a crowd of ten "the United States Government" means all those things up on the Hill. Obviously we are going to refer to government in a somewhat more sophisticated sense.

This morning we will try to break down this abstraction called "the Government" into three understandable parts. First, we will discuss the Government as form, that is, as organization, something with which you are all very familiar. Second, we will discuss the Government as substance; that is, we will treat that organization as a living organism, as something that is moving and growing. Finally we will discuss the Government as direction of growth, since, if the organism is one that is growing, we want to know where it is going.

Now, with these three objectives clearly in mind, let us consider the first, the form of government. I apologize for not having the chart which I used last year. Somehow or other it disappeared during the summer, and we will have to do the best we can on the blackboard. The form of government--this is by way of review. You are all perfectly familiar with the tripartite structure of the United States Government, the structure established by the Constitution. There are three bodies--the Legislative, the Executive and the Judicial.

These three bodies, set up by the Constitution, represent three complex organizations. Let us take the one in the center, the Executive. There is a tendency in the popular mind to think of the Executive as the President. The President is only the chief executive officer. The executive organization as contrived by the Constitution is the whole organization of the Executive Office, including the ten Cabinet members, the Executive Department heads, if you wish to call them that. It includes the entire structure of the Executive Offices. In your own terms, it includes the War Department and the Navy Department, which stem down from the powers of the Executive.

The Judiciary, another of the three blocks of the Government, as you know, has the Supreme Court at the top. Then, below the Supreme Court there are the many Federal courts, the district courts, and going down through the entire hierarchy to the local Justices of Peace at the bottom.

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Finally we have the Legislative Branch, with 430-odd representatives and 96 senators. We are all familiar with that. This is just by way of review, to get the picture in your minds.

Let us now consider the functions of these three branches as they are derived from the Constitution. Let us take first the Legislative. There is a tremendous tendency nowadays in the public mind to think of the Government in terms of the person of the President and to confuse the acts of Congress with the role of the President. We are going to try to make that distinction sharply.

The Constitution grants the Legislature the power to assess and collect taxes, something we all know too much about. The Constitution gives Congress the power to regulate commerce. That is not of any particular concern to us here. More to our interest, the Constitution gives Congress, or the Legislature, if you will, the power to raise and maintain the Military Establishment. Now we are getting close to home. The Constitution gives power to Congress to declare war. We are starting to get really interested now. Finally, the Legislature is endowed with a catch-all power to "make laws necessary to fulfill the functions of government." That is a big one. That is how the powers of the Legislature broaden. It is a general provision.

Let us now take the Judiciary. The Supreme Court is the court of last appeal from the inferior courts. That is its normal function and is a matter we are not particularly concerned with here. But in performing this function the Judiciary exerts a power of constitutional interpretation. The acts, the laws, of the legislature are subject to a review by the Judiciary. I repeat that phrase. The Supreme Court exerts a power of constitutional interpretation.

Now we will go to the third branch, the Executive. Obviously the Executive by the very nature of the word holds the general power of administrative direction. He is the general manager. But in addition to that the Executive has the power to appoint and remove the heads of the various operating departments.

So much for the form. That is all by way of review. Nothing I have said so far this morning is the slightest bit new. But I wanted to build up a picture of those three blocks--their form, their description, and their functions.

Now let us turn to the second problem, the substance of the Government. The form is what you find in the Constitution or what you find in the textbooks. But now what about the living relationships? I have mentioned powers--the powers of the Legislative, the powers of the Executive, the powers of the Judiciary. Let us see how these powers interplay with one another.

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The Legislature has the power of the purse, because it has the power to assess and collect taxes and to appropriate money. It is very sensitive to the public will. The Judiciary has the power of interpretation which we mentioned. Therefore when cases arise, not abstract cases, but when cases find their way up through the lower courts, the Judiciary can interpret and determine the application of the laws of Congress. That is an important power. Finally, I mentioned the Executive having the power of appointment, that is, having executive discretion. These powers form an interlocking system of checks and balances. The popular will keeps the Legislature in hand. The Executive is held in check by that power of the Legislature to hold the purse. Yet the Executive has the power of appointment of department heads, and that means an enormous amount of discretion in the operating business of government. The Judiciary can throw out, and on the basis of experience does, whole blocks of legislation. In other words, there is this system of balances so that no one of the three organizations is completely out of control of the other two.

I have used the word "power" repeatedly. I have said that the Executive has the power to do this, the Judiciary has the power to do that. All of these relationships are power relationships. That brings us to the question, What are the sources of power? That is another question that is very difficult to answer.

Well, primarily the quick answer, the textbook answer, is that the Constitution is the source of power. The Constitution is a document, but it is not just a set of rules. It is a document based on--to use the phrase again--the will of the people. That is a stock phrase, just as "consent of the governed" is a stock phrase. But these phrases are both exceptionally meaningful. They are historically real. They are the essence of the power of the Constitution, because the Constitution as a source of power stems from "we, the people." That is another stock phrase. You can describe practically all these things in traditional and well-worn phrases. But that leads to the question, If the Constitution stems from "we, the people," who are "we, the people"?

Well, let us see. In the 1940 census there were 131 million souls in the United States. I think a recent inter-census figure is 143 million. But let us take 131 million. Of those 131 million in 1940, 83 million were over twenty-one, but only 60 million had the franchise. That is worth thinking about, isn't it? 23 million people who are over twenty-one don't vote, and they are not all black! People disenfranchised because of having been in prison and for various other reasons account for a large number. I think a good many of those people just never bothered to register. That is an impressive fact when you stop to realize that 23 million people in 83 million over 21 out of a total of 131 million people just don't have the vote.

"We, the people" amount to 60 million-odd voters. But 60 million is merely a mechanical compilation. It is obviously not mere numbers of voters that count. It is what the voters think.

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That brings us down to this thought: It is the attitudes of the people which are the essential element of power of the Government. This power rests on the people, not as so many votes tabulated, but on what the people collectively think.

Now, to phrase that in another way, the power of the Government lies in the willing adherence of the people. Or, to drive that home in another fashion, the power of the Government rests in "allegiance freely given." The power of the Government means what the people are willing to accept-- in the way of taxes, in the way of regulation, and so on down the line. In other words, gentlemen, the power of the Government is what you think it is. The United States Government is what you want it to be, you collectively.

If this is true, if the United States Government, the Federal Government, is what you think it is and is what you want it to be, then it must obviously be a logical deduction that the concept of the Government must be in a constant state of flux, because we don't think the same thing constantly. Here is the State. We call it an organism, a living organism. It is based on the attitudes, the opinions, of the people. Well, opinions, attitudes, practices change. We grow older, we grow wiser, we grow more mature. Old generations die off and new generations come along which are less mature. Therefore this concept of the Government is constantly changing.

We have discussed form, dry organization if you care to call it that. We have discussed substance, the relationship of those parts. Now we come to the third point that we are going to make this morning, and this point is that it is important for us to determine the direction of growth. We have said that this living organism is in a constant state of flux. Let us find out where it is going. Let us explore the direction of growth of the Federal Government historically.

Now, it is very evident to the most superficial observer that there has been a changing concept of Government since the Constitution was drafted. This changing concept can best be summarized as a shift from the laissez-faire to the positive state, that is, a shift from the laissez-faire or passive state to the participationist state. I think you can consider this drift as best illustrated by the span of years between Thomas Jefferson and Franklin Roosevelt.

What do we mean by the drift from the passive to the positive state, from the laissez-faire state to the participationist state? I think the Federal expenditures will give us an index of what this trend is. In 1800 the annual Federal budget was 10 million dollars. In 1900 the annual Federal budget was 500 million dollars. In 1930 the annual Federal budget was 4.5 billion dollars. In 1940 the annual Federal budget was 9.3 billion dollars. In 1945 it was 100 billion dollars. Well, now, figures of that magnitude thrown at you vaguely are pretty tough to absorb. But you can see there is a rising graph of expenditures.

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Let us try to get something that is a little more positive in our minds, something that is a little more meaningful than mere funds. Let us take as an index Federal employment in relation to population. Let us use that as another index of this changing concept of Government. In 1870 this country had 38.5 million people in it, there were 50 thousand Federal employees, and the annual budget was 300 million dollars. In 1930 the population was 123 million people, there were 600 thousand Federal employees, and the annual budget was 4.5 billion dollars. In 1940 there were 131 million people, one million Federal employees, and 9.3 billion dollars Federal budget.

I am perfectly aware that when immense numbers are thrown at you in this fashion it is very difficult to see the meaningful relationship. You might well consider 1940 as a bad year to take. We had already gone into war expenditures, and that year does not give us a true indication of the normal operation of the Government. So we will take the span from 1870 to 1930. The population went up three fold, the Federal employment went up twelve fold, and the annual Federal budget went up sixteen fold.

Now, as the population grows we can expect the Federal Government to spend more money. But notice that this is not just the normal annual increment of growth, keeping pace with the expanding country. As the population went up threefold, Federal employment went up twelve fold and the budget went up sixteen fold. Gentlemen, that certainly spells a great deal in the changing concept of government.

To understand this direction of growth of the Federal Government let us explore this business of Federal employment more narrowly. Up through the Civil War this old tripartite balance, as conceived by the original framers of the Constitution, was retained almost completely. All new functions were assigned to the old-line departments, the old-Cabinet departments. That is why you get that peculiar situation where customs officials were tacked on to the Treasury. New functions were assigned wherever it seemed expedient at the moment. But in 1883 there came a decided break.

The Civil Service Commission was created by Congress, not as part of the standing departmental organization, but as an independent agency. Now, that little break in the armor proved to be an important one, because it was a turning point in the whole policy of governmental operation. The process which followed that break in 1883 marked a change in the concept of Government which amounted to, I won't say, a revolutionary change, but an evolutionary one. That is the definite point where this evolutionary change began externally.

Going back again to the Civil War, the freeing of hundreds of thousands of slaves all over the South produced enormous social problems. To solve these problems Congress established the Freedmen's Bureau. That happened to be a temporary agency. It was set up for a temporary purpose, for a local purpose. When the problem was considered solved, the bureau was

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dissolved. But when the Civil Service Commission was set up, it was set up as a permanent organization independent of the old-line departments. That change was continued in 1887, when the Interstate Commerce Commission was set up, as a rate-making agency to protect the farmers.

Having broken this tradition twice, it was very easy in 1918 to set up the Federal Reserve System as another regulatory body, in 1919 the Federal Trade Commission, and in 1920 the Federal Power Commission, each as an independent agency, dangling, as it had to dangle, from the Executive, not from the Legislative or from the Judicial, although all these agencies performed functions which were sometimes legislative and sometimes judicial.

In 1920, as I said, the Federal Power Commission was set up. In 1930 the Veterans Bureau was set up and in 1932 the Reconstruction Finance Corporation. Then during the New Deal period there was a tremendous growth of the agency organization. There was TVA in 1933. In 1934 the Securities and Exchange Commission, the Federal Housing Authority, and the Federal Communications Commission were set up. In 1935 the National Labor Relations Board was set up. In 1938 the Civil Aeronautics Authority was set up. These individual names may mean little or nothing to you, and there is no need to retain them in order or anything like that. But you can get the picture. Year after year more and more regulatory agencies were being organized by the Government, all of them outside of the regular, old-line, established departments.

Now, to emphasize that point it might be well for me to go into a little blackboard display. These blocks showing agencies dangling from the Executive mean nothing to you individually, but you can begin to see what has happened. More and more agencies were beginning to cluster about the Executive organization.

The organization of these agencies marked the penetration of the Government into the national economy. Let us look at that first one. We mentioned the Interstate Commerce Commission, that was set up in 1887 as a rate-making agency to protect the farmers, to protect a class, to protect a big group interest. The CAA, on the other hand, was set up not only as a regulatory agency, but as a supervisory agency. Those of you who are in the Air Forces know the CAA's function of setting up numerous standards of safety and security, and expanding beyond that into controlling the organization of new routes.

The Reconstruction Finance Corporation, on the other hand, not only was regulatory, but went beyond that and gave direct financial assistance to distressed industries. Originally I believe its emphasis was on rails. When we come down to 1933, to the TVA, we have more than regulation. We have active participation in the economy and competition with the existing industry. That is the pattern of gradual encroachment by the Government in the economic operations of the country.

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Now, we have studied the form; we have studied the substance, the relationships within the forms; and we have an inkling of the direction in which the Government has been moving in these past hundred-odd years. What conclusion can we draw from this discussion?

Well, it seems to me that at least one conclusion is that, first, there has been in the United States an increasing acceptance by the people of the positive state concept; and, second, more and more economic groups have been accustomed to government regulation, government supervision, and government participation.

I feel on the defensive here. I am not passing a moral judgment on this. I am not saying it is good; I am not saying it is bad. The men in the back row [members of the faculty of the College] who know me well know how much or how little I like this process. But, having reached this conclusion, having looked at these facts, which are relatively indisputable, what are we going to do with them?

What are the implications of this conclusion on economic mobilization, which is the problem which interests us here? It seems to me the principal implication of this conclusion for us is simply this: that this habituation of the people of the Nation, of the United States, to government control was the important factor in their willingness to accept wartime controls and emergency agencies; that it was in the past and will be in the future. It seems to me that that is the point of cardinal importance to those of you who are going to be making economic mobilization plans in deciding, to put it in the vernacular, how much you can get away with.

Let us summarize everything we have said this morning. This lecture has been somewhat of a pedagogic trick. It has attempted to provide a framework, an intellectual hat rack, if you will, on which to hang the course. When a speaker gets up here and starts talking about WPB and fifteen hundred subordinate agencies until you are thoroughly confused, if then you can remember this lecture, you will have something on which to hang what he says. You will have a mental picture on which to build the information which is going to be thrown at you awfully fast. That is one point to remember from this lecture: it provides a useful framework.

Now, we have discussed the Government as form, we have discussed the Government as a dynamic relationship between these organizations, and we have discussed the trend of changing concepts of government held by the people. What of all this are we going to carry away from the room when we leave by that door? How much are we going to remember?

Well, for my part, I believe we will do quite well if we remember two things: First, this picture of the United States Government, of the Federal Government organization, an organizational picture on which to hang the course as mentioned above. Second, if you carry away some understanding of why the people of the United States were led to accept wartime

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controls as easily as they did, I will have put over my point. That second thought should go a long way in coloring your thinking when you come to set up arbitrary agencies in your make-up of mobilization plans at the end of this term. That is all I have to say. If you can carry those things away, then I have accomplished something this morning.

From here on I would like to throw the motion upon to questions from the floor. I will do my best to answer them.

COLONEL WEIS: Gentlemen, Dr. Holley has provided a most excellent foundation on which you will build the balance of your structure. I think without the lecture that Dr. Holley has provided for us this morning it would have been exceedingly difficult for us to have very comprehensively gone ahead and built the structures that are going to be necessary to implement an economic mobilization plan. This is a very excellent opportunity, and I hope you take full advantage of some of what we call the dynamic thinking which I think Dr. Holley is prepared to afford you. Be generous with your questions, gentlemen. This is an excellent opportunity.

QUESTION: What are the tenets for setting up one of these independent agencies? Is that done by Executive order of the President or do the Legislative body and the Judiciary come into the picture?

DR. HOLLEY: That is an excellent question. When the framers of the Constitution set up this neatly balanced tripartite system, they conceived of it as something of a completed organization. They conceived of these three bodies as interlocking, self-correcting and self-adjusting. There was not any plan made for setting up this dangling series of agencies and emergency organizations. Therefore nothing was written into the Constitution which specifically prepared for organizational changes other than through the general operation of Congress. But emergencies often arise between congressional sessions or when there is a dominant personality in office as Chief Executive, such as a late President.

Now, what happens? The first Civil Service Commission was set up by Congress as an independent agency. They did it probably without thinking of the long-range implications behind it. You can look back and see that they were probably well-intentioned. They probably thought: "We won't put this under an old-line agency, because the Civil Service Commission is going to have to check the old-line agencies. Like the General Accounting Office, it must be somewhat administratively free from the people on whom it holds the reins. So we will make it an independent agency." You can see how that got through.

Then the Interstate Commerce Commission came along. There are these jealousies within the departments and rivalries between various Congressmen who are interested in specific old-line departments. Congress must never be able to interfere in the operations of the Interstate Commerce Commission. So they again said, "We will make this another independent agency

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like the last one." They didn't see the long-range implications of the step at the time.

That is how Congress makes independent agencies. How are they made in an emergency? We will take the depression. When President Roosevelt carried these changes out, he was thinking that by setting these agencies up by Executive order, he could get (1) fast action and (2) freedom from Congress. He had virtually a blank check from Congress in the early days. He could lay out an organization practically overnight by administrative order without forcing a bill through Congress, a bill which would necessarily suffer from all the checks and balances that various conflicting interests in the country would give.

So you have these two sources of independent agencies. One is by Executive order and the other is by congressional action. Obviously, these agencies that are set up by administrative order have some check on them. Their appropriations have to come from Congress; so that they are not utterly independent. But there are definitely two sources for setting up independent agencies.

Specifically answering your question, there is no formula, there is no pattern, there is no page 97 of the Constitution which says, "New agencies—How to set up." Does that answer your question?

QUESTION: Yes. That is very good.

You say the Constitution talks about various all-line departments. Isn't that merely a tradition?

DR. HOLLEY: That is quite correct.

QUESTION: So it is up to the Executive to organize them as he sees fit so long as he does not violate the law?

DR. HOLLEY: I have one modification to make in that. The Constitution does not set up administrative heads, but it does mention in sort of a vague way establishments, such as the Military Establishment. In other words, it was implied that they would be set up. The framer's left to the President the selection of the heads. There is no specific mention of Cabinet Members in the Constitution.

QUESTION: The Bureau of the Budget in its 1945 report said that the Executive Branch had some sixty agencies reporting to the President. I believe there were some twenty-four temporary agencies. That looks like a horrible example of organization from the actual executive standpoint for translating problems into solutions and into action. Would you care to comment on how such a situation could be prevented?

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DR. HOLLEY: We have had that question come up in previous years. Sixty agencies is not so good. The business school manuals talk about the "span of five." The ASF Manual says that no efficient organization can handle more than about five subordinates reporting to the chief.

Obviously it is not organizationally ideal. It is a political consideration, a political compromise, which brings this situation into being. Congress doesn't trust the Administration. The Administration hates to set up agencies over which Congress has control. Agencies themselves hate to be under direct Congressional control, because they can't get anything. Everything has to be subjected to the Congressional debating society.

Who am I to talk? Every gentleman in this room, whether from the War Department or the Navy Department, has worked on the budget. You know what it is like. It is much nicer to be under the boss.

DR. YOSHPE: In a previous meeting the speaker expressed an opinion on the question of utilizing different government departments and independent agencies in our war mobilization program. I wonder if you would care to comment on the comparative advantages and disadvantages of utilizing existing government agencies in planning for economic mobilization, and, also in carrying out a war mobilization program.

DR. HOLLEY: That is a good question, Dr. Yoshpe. Last year we had a group of students who actually threw out all the emergency wartime agencies and said, "Let the old-line agencies do it."

This problem came to my attention with regard to the scientific organization. When World War I broke out, there was an organization on the books called the National Academy of Sciences, which had been inaugurated during the Civil War by President Lincoln to mobilize science for the Federal Government. Why didn't Woodrow Wilson use the National Academy of Sciences? Because there was a doddering old gentleman of about ninety who was at the head of it. So what did they do? They set up the National Research Council, which had a dynamic youngster of about fifty at the head of it. The National Research Council operated during World War I to mobilize science for the war effort.

When World War II came along, the National Research Council was still on the books. So was the National Academy of Sciences. What happened? Dr. Vannevar Bush spark-plugged an organization known as OSRD. What happened? The National Research Council was still there, but the man who had been young and active in World War I was pretty old when World War II came along, and he was still in power. I don't say that sarcastically at all. It was a vulnerable crowd. Put in order to get things done, partially for reasons of administrative efficiency and partially for reasons of empire building--let us be honest about it--the new crowd wanted a new organization and just start from scratch.

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The advantages of using the old-line agencies are not to be overlooked. I am not going to preach against them. I am not saying it is no good to use old-line agencies because they are deadheads. They are not deadheads, but you do get a certain stereotyping, a certain solidification, a certain dependence on routine in any old-line organization; whereas when you set up a new house, you can build the walls any way you want. You suffer in some ways. You get inexperienced help. You don't get many like our old master sergeant who knows how to write out the travel orders and pay vouchers that won't bounce.

There is something to be said on both sides of the ledger. There is no pat answer. When an emergency comes, should the Government organization be brand new or should it be old-line agencies. Obviously there are pros and cons on both sides of the ledger. I cited that case of the scientific organization through three wars as an illustration, to show that historically the tendency has been to create new agencies. In the next war we might consider trying the old ones, just for a change. It is worth thinking about.

Your real problem will not come for six or seven months from now. You will have to think about the problem a good deal more intensely then, because they will hand you a white sheet of paper and say, "Draw up a mobilization plan." Then you will come face to face with the problem of, "Shall we or shall we not use old-line agencies?"

That is just touching on the subject. It is something that we could go on and talk about all morning.

MR. SWAKEN: You have put all the angles there on the blackboard on the Executive. As a matter of fact, the Legislative has a number of angles, and is endeavoring to increase them. While the Judiciary, as you recall, at one time had angles, it has eliminated them. I am referring to the practice of Supreme Court Justices assuming duties of circuit court judges. But this contact with the public at large has been dropped, and there has been a decided tendency on the part of both the Executive angles and the Congressional angles to assume functions that properly belong in the Judiciary. Would you care to comment on that?

DR. HOLLEY: I note the fact that Mr. Swaren here is a civil servant. I have to be very careful with Mr. Swaren in answering this question.

I think the reason the Judiciary has tended to cut away from their angles or outside functions is simply due to the character of the people who occupy the positions in that branch. They have lifelong jobs. They are not, generally speaking, empire builders. Whereas in the Legislative you have a bunch of Representatives who want to be Senators or Senators who want to be President. So actually there is a basic personal difference. That is purely my own opinion, but I think there is a basic personal difference there between the political climbers in one group and the scholarly souls in the other.

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You are quite correct in saying that the Legislative has some dangling establishments also, but they don't rival the Executive danglers in number or in importance so far as penetrating the national economy is concerned.

QUESTION: If the Legislative Branch does not particularly like the actions of one of the President's agencies, they can quickly clip it off by cutting off the appropriations. But what system of checks and balances is there on profit-making organizations like TVA and RFC, which are self-supporting and do not depend on appropriations?

DR. HOLLEY: You have the supplementary Budget. Gentlemen, I commend to your outside reading that Supplementary Budget of the United States. There is the big National Budget and the small Supplementary Budget, which deals with semipublic corporations such as RFC, TVA, the Rubber Corporation, Oil and various semipublic corporations set up during the war.

In the case of RFC the only power that Congress has is the charter power. The RFC is chartered for a specific term of years. Congress can fail to renew the charter if it so wishes. In the case of TVA they could actually legislate it out of existence, but that is a pretty drastic act. There are certain practical restraints on that sort of thing. It represents a big investment. They can refuse to approve the appointment of the executive head. There was some stalling in Congress on that just recently. There are many ways in which they could pick at it in a petty way.

But actually that is one of the points I am driving at here—that this system conceived by the original framers of the Constitution, this neatly balanced, semiautomatic system of checks and balances, just doesn't work as smoothly as it was originally intended to work. These agencies that dangle from the Executive have less and less control from the Judiciary.

Mr. Swaren brings up the point that the Judiciary has cut away its outside functions. Dean Roscoe Pound of the Harvard Law School has written a book called "Administrative Law", which deals with that problem at great length, pointing out how many of the functions exerted by the Executive are really Judicial functions. The NLRB was a representative example. The judge, jury, and prosecutor were all the same people. The Judiciary was perhaps lax in not being more aggressive at exercising its functions as weighers of the facts and letting the Executive be an administrator of operations. The Executive has tended to be the aggressive member of this tripartite structure.

As for your question, there is no answer to it. I have said that the Government of the United States is in a constant state of flux. This situation is one of the fringes of cultivation, one of the frontiers of that state of flux; and just what the relationship will be we don't know. That is something that may be hammered out at the next session of Congress or the next after that. That is what makes the business of government so interesting—these relationships between new agencies and old-line agencies and between new agencies and the Judiciary and the Legislative.

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COLONEL MEIS: Dr. Holley, on behalf of this group I want to tell you that we have enjoyed a very stimulating hour.

For your information, gentlemen: This lecture will be supplemented by a lecture entitled "War Powers of the President." I think you will find that Dr. Holley's talk here this morning will provide a most excellent foundation for that other talk. You will probably find that a good many of the areas in which there are questions in your mind will be cleared up in the other lecture.

Dr. Holley, on behalf of the staff I want to thank you very much for your very educational lecture.

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