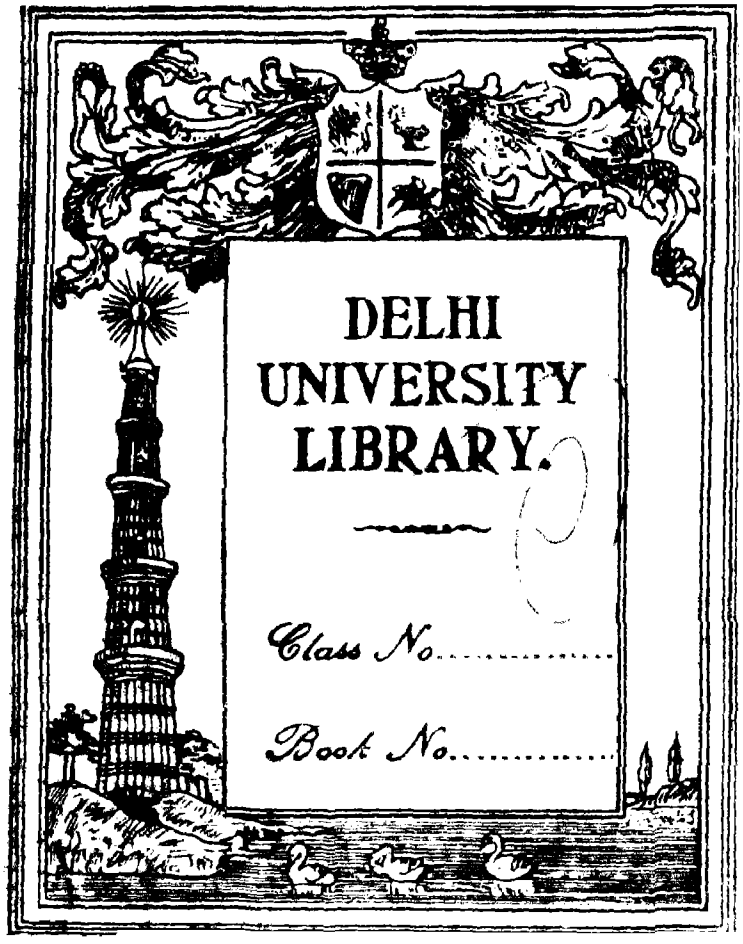

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ENGLISH LOCAL GOVERNMENT

BY THE SAME AUTHOR

THE THEORY AND PRACTICE
OF MODERN GOVERNMENT
MUSSOLINI'S ITALY
MUNICIPAL TRADING


RATES
RATES
RATES
HANNIBAL

ENGLISH LOCAL GOVERNMENT

BY

HERMAN FINER, D.Sc.

FORMERLY READER IN PUBLIC ADMINISTRATION AT THE LONDON SCHOOL OF ECONOMICS

SECOND EDITION

METHUEN & CO. LTD. LONDON
36 Essex Street, Strand, W.C.2

N. M. TRIPATHI LTD.
Book Sellers, Bombay

TO

MY WIFE

First Published . . . . *September 28th, 1933*
Second Edition, Revised . *1945*

PRINTED IN GREAT BRITAIN

INTRODUCTION TO THE SECOND EDITION

IT is a pleasure to offer a revised edition of English Local Government, which has been out of print for several years. Complete re-writing was neither possible nor necessary. The text is now brought up to date in respect of the main facts down to the outbreak of World War II. In some cases it has been appropriate to refer to events and opinion in the war years. It is too early, however, to embody an account of English local government in the rich and terrible years of civil defence, total mobilisation, and rationing. My *Municipal Trading*, published in 1941, carries the discussion of this special branch of local government down to the beginning of the war.

The present revision has followed this system: In most cases it was possible to amend figures which needed to be brought up to date by a simple change in the text. In other cases, also, direct textual additions or variations were possible. Some additions, however, had to be assembled at the end of the volume as Additional Notes, with references to these at the proper places. The chapter on Regional Services required considerable re-shaping.

In official documents and general discussion it is now the very common practice to refer to Municipal Boroughs as Non-county Boroughs, in distinction to County Boroughs. This is an excellent practice, though it was not practicable to replace the old term by the new in every case in the present volume.

It was not possible to change the references to the principal older local government acts into references to the relevant sections of the codifying statutes, the Local Government Act 1933 and the Public Health Act 1936. There is some gain in letting things stand as they are, for, the reader will be able to appreciate the fact that local government has a legislative history. A word may, however, be said here on the Acts of 1933 and 1936. The former was based upon a draft bill prepared by the Local Government and Public Health Consolidation Committee, accompanying the Interim Report of the Committee. (Cmd. 4272). The statute was mainly a consolidation, but some minor and some major amendments were introduced. It was especially desired to overcome the prolixity and confusion of the existing laws of local government composed of many statutes passed at different times. Nearly two hundred earlier acts were repealed wholly or in

part. In place of 900 sections and 33 schedules of earlier acts, the new statute contained 308 sections and 11 schedules. The Public Health Act 1936 similarly codified public health legislation.

. . . . .

There is no doubt at all that English local government has already entered an era of very far-reaching change. There are multitudinous plans for local government reform ; and every proposal for post-war reorganization of specific services, e.g. education, health, social security, planning, housing, transport, the utilities, implies some reconstruction of the area and organization of local government. The financial consequences of such reforms must, again, affect the ability of local authorities to find local revenues to an extent sufficient to guarantee the continued possession of self-government ; or financial burdens may compel them to yield up certain services in whole or in part to Whitehall, or they may suffer more central direction than hitherto.

Whatever the changes in organization and finance, it is essential that the principle of self-government be resolutely asserted to the ultimate reach of its supreme democratic value. In the midst of all the coming changes to larger-scale organization, the principle must be to preserve the maximum possible authority of choice and decision for the local councils. The conduct of local government must be made important enough to induce citizens to inform themselves about it and participate in it actively. The local authorities and their associations must be assured of a substantial part in the drafting of the laws relating to them and in the subsequent administrative action of the central authority. It is essential to provide for ready, convenient and inexpensive access to the local officials, so that citizens may get explanations, lodge complaints, and secure the redress of grievances. It is, finally, imperative to cultivate in the administration a particular spirit of responsibility and kindness without which the Great State and its Local Members must degenerate into a harsh and alien apparatus instead of acting as the friendly servant of simple men and women to whom warmth of heart and some magnanimity are a rewarding inducement to generous civic spirit. " Councillors and officials," we might say, " it is *their* town ! "

HERMAN FINER

MONTREAL, *October 1943.*

* At the last moment before going to press the Government has published a White Paper on " Local Government in England and Wales during the Period of Reconstruction ", Cmd. 6579, January 1945. It regards the rating system as generally satisfactory, and intends to deal with reform of areas by a slow, piecemeal and cumbersome process of local boundary revisions.

PREFACE

THIS is an attempt to describe and explain the structure and operation of English Local Government. It does not pretend to be exhaustive in its inclusion of all the legal detail, for this would have defeated the object of the work, which is only to distinguish the cardinal features and problems of its subject. Those interested in Local Government are at present hard put to it for a book which offers a plain explanation of how and why the machinery and the men work as well as they do to-day. Existing works are legal summaries which record without explaining either evolution or political significance, or they are polemical, when the reformer, however virtuous, is biased and therefore blind to many important phenomena.

Yet people wish to know what part Local Government fulfils in the general scheme of our lives, its functions, how it evolved, the principles that govern its conduct, and the problems that face those anxious to make it even more serviceable than it is at present. The great difficulty in the attempt to satisfy this wish is to render the system comprehensible and significant in bold outlines, and yet not to lose sight of the vast jungle of legal and administrative details of which it is composed. On the one hand it must not look simpler than it really is; on the other, the hopeless obscurity of the jungle must be avoided.

At any rate, it is hoped that this introductory study will be helpful to students of public affairs, to local officials (especially the young men and women who will one day shoulder the entire burden of governing the Commonwealth), and to the public-spirited men and women who devotedly serve the State in the humble but arduous sphere of Local Government. The many students who have studied Public Administration with me, both in the University and in Extension Courses, encourage me to believe that some such introductory study may be of use to a wider public.

Although the subject is English Local Government, it was thought advisable at some points to sketch in the experience of certain other countries. We believe that comparison helps to set our own principles in high relief, and affords food for reflection. Naturally, also, it was quite impossible to regard English Local Government as a

embodying its proposals, and the Government's announcement of special financial measures to cope with distressed areas. We give a short account of these in a Note directly following the concluding observations.

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ENGLISH LOCAL GOVERNMENT

PART I

NATURE AND PROBLEMS

CHAPTER I

THE PLACE OF LOCAL GOVERNMENT IN MODERN ENGLAND [1]

THE government of England is not entirely concentrated in London. Parliament and the Cabinet serve the whole country, and a half-million servants work under the direction of Whitehall as their executive instruments. But the picture is seriously incomplete without the inclusion of about fifteen thousand local authorities.[2] Not omitting from their survey a single square inch of territory; probing into every hole and corner in town and country;

[1] England here means England and Wales. We do not discuss Scottish Local Government which has had its own peculiar evolution, and now presents features different from the English system. Further, by a steady process of devolution since 1885 the central control of Scottish local authorities is not control by the usual Department for England and Wales, but by a group of special Scottish Departments, e.g. the Secretary of State for Scotland, the Department of Health, the Scottish Education Department, the Department of Agriculture. Cf. especially *Memorandum by the Scottish Office on the Local Government System of Scotland*, H.M. Stationery Office, 1925, reprint from *R.C. on L.G.* (which throughout this work means Royal Commission on Local Government, 1923–9), *Minutes (of Evidence)*, Part VII.

[2] Numbers on 1 *December* 1931 and 1940.

	1931	1940
County Councils	62	62
Town Councils:		
Councils of County Boroughs	83	83
Councils of other Municipal Boroughs	258	309
Metropolitan Borough Councils (including the Corporation of the City of London)	29	29
Urban District Councils	778	572
Rural District Councils (acting for 643 Districts)	635	475
Parish Councils (number of parishes entitled to elect a Parish Council) about	7,100	
Parish Meetings (number of rural parishes not entitled to elect a Parish Council) about	5,600	
Total	14,545	

(Continued at foot of next page.)

uninterruptedly serving every citizen (whether he is aware of it or not), tens of thousands of locally-elected councillors determine policy and direct their own one million permanent officials and workmen in its execution. On the services they render they spend over £400 million per year, that is, about five times as much as the *national* government's expenditure in Gladstone's time, and about half the amount annually spent by the national government to-day. These local authorities [1] supervise, direct, and control our lives, awake and asleep, at work and at play; they provide for all citizens a common minimum of health, education, relief of destitution, roads, peace and security, beauty of environment. They sell water, gas, electricity, tramway and bus transport. The scope and detail of their work are not easily describable; both are immense. Local authorities manage an enormous amount of capital, they are intricately organized, they promise social improvement, they are nourished by civic energies. They are indispensable members of the English body politic, as indispensable as the authorities at Westminster. What is their significance? What is the place of local government in the Modern State? What liberties do local authorities enjoy, and under what restraints

*Receiver for Metropolitan Police	1
*Council of Isles of Scilly	1
*Assessment Committees (outside London)	344
Burial Boards	99
Harbour Authorities (not being the Councils of Counties, Boroughs or Districts)	56
Port Sanitary Authorities (not being the Councils of Boroughs or Districts)	28
Joint Boards and Committees:	
Joint Hospital Boards or Committees	223
Joint Water Boards or Committees	48
Joint Gas Boards or Committees	6
Joint Sewerage Boards or Committees*	45
Joint Burial Committees (parish councils)	82
Joint Burial Committees (other than parish councils)	144
Joint Committees of Parish Councils (other than for burial purposes)	17
Other Joint Boards and Committees	242
Visiting Committees of Lunatic Asylums	87
Miscellaneous Local Authorities:	
Commissioners of sewers, land drainage boards, and other drainage and embankment authorities, and river conservative authorities	382
Governing Bodies of county school and scholarship districts in Wales and Monmouth	102
Lighting Inspectors	15
Trustees of London Squares	5
Boards of Conservators under the Salmon and Freshwater Fisheries Acts	46
Local Sea Fisheries Committees	10
Local Authorities for commons, markets, bridges and miscellaneous purposes	21
Total	2,004

The numbers of local authorities marked with an asterisk in the lower list were their numbers on 1 December 1931. The others are the number having financial transactions in the year 1929–30.

[1] For legal definition of a 'local authority' see Jennings, *Principles of Local Government Law*, pp. 23–4.

do they operate? What are their functions, their merits, their shortcomings? What are their triumphs, their failures, their difficulties? How do they serve the commonwealth? What burdens do they place upon us?

The general answer to these questions can be best derived from a broad survey of the position of local government in the modern State, based, of course, upon experience and living theory, not upon abstract doctrine. Nor is it irrelevant to ask first, what is government itself?

The Nature of Government. Government is the system of functions and machinery established by any society for the supreme and ultimate control of all individuals and groups within its territory. It becomes established as the result of the mutual impact of the diverse minds, emotions, wills, and physical compulsions of millions of men and women. Inherent in this impact is all the possibility of violent conflict, collision, destruction, death and mutilation, whether physical or spiritual, because people have different wishes and needs, and the resources of the earth are *relatively* insufficient to satisfy all of them in the degree of their unrestrained intensity. It is gradually recognized that originality and development can only be safeguarded by Order, that is, by adjustments and restraints, compromises and repressions. And a balance develops. It is a balance which always, and properly, changes; and, in many individual judgements, it is unsatisfactorily loaded to one side or the other. It is a balance between free progress and social control, between peace and development. Government implements this balance. We shall see later how the particular functions and machinery of local government serve this end. Now, the tendency towards order is a tendency towards uniformity, and it is likewise, of course, a tendency towards centralization. Therefore, sooner or later, the power to establish uniform rules of conduct becomes concentrated in a central Parliament, Civil Service, and the Law Courts. The impulses always urge towards the imposition of uniform commands over the largest possible area, and though, to-day, this is most normal and effective for separate nation States, we know that it becomes more and more true, in the face of difficulties, but sustained by necessities, for the whole world.

Free creativeness, however, resents all rules; or, if they must be, demands that they shall be adaptable to local, personal and temporal differences. This tendency operates to make government pliable to idiosyncrasies and angularities, and plastic by reference to peculiar and individual circumstances. In other words, it is a tendency towards *local* government, whether by a large or small authority, whether by the family or an individual person.

The modern State, with multitudinous activities and a pervasive concern in each particular branch, especially threatens us with the

danger of centralized government. The reacting impulse is to local freedom. For, inherent in one of the cardinal merits of centralized government—economy—is a very obvious peril. Economy in government demands the smallest possible quantity of expensive servants and apparatus in relation to the number of citizens to be served. This inevitably compels government to express its commands and advice *in writing*, and this, by reference not to all the diversities of each particular situation, but to supposed *average* or *general* qualities learned most usually from other people's reports and wholesale statistics. This process is what we often have at the back of our minds when we speak of ' bureaucracy '.

The central government could, of course, equip itself so as to avoid this criticism. It might organize contact with the immediate and vital realities of different persons, contact with the special needs, let us say, of sparse rural communities and densely populated urban communities, of coalmining, and shipbuilding, and merely residential centres, and so on, through the whole gamut of different sections of which a nation is composed. But then it would be obliged to cover the localities with nearly, if not quite, as many officials of its own as there are local councillors and officials now, and it would be obliged to employ an enormous staff at headquarters, all to carry out the process of local adaptation. The result would be a very large increase of governmental expenditure.

If this result is not desired, and the central government attempts to govern with a relatively small staff, it follows that central government activity is necessarily *impersonal* activity ; it tends to operate slowly and inappropriately. Against its rather abstract view of the nature of the people to be governed there is a perpetual, and a not always quiet, rebellion. Localities—they are not simply areas and sites, but groups of men and women living together as neighbours—feel that they, at any rate, differ from the abstract average of humanity legislated for by the central government, and claim discretion to apply its uniform rules in a way more closely fitting their real needs and their own ideas of themselves.

At this point the reasoned claims for local government take form. Hence thousands of *local* authorities with each a limited liberty to manage its own affairs. It may also be said that local government falls into the same category as such devices as Federalism and Proportional Representation : they are safeguards against the tyranny of the wholesale herd, levelling, standardizing, and conventional, hating and destroying original individuals and groups.

Two recent examples serve to exhibit forcefully the essential value of local government : the action of the Board of Agriculture in relation to local administration regarding Foot-and-Mouth disease, and the decentralization of action regarding Unemployment Benefit for

the better application of the 'means' test. In the former, excessive decentralization was followed by excessive centralization, and this, when found impossible to fit different districts, was much modified.[1] In the latter the application of the Test by central officials was found to be so rigid and locally-blind that the work was vested in the local Public Assistance Committees.

The Perspective. In the perspective of English history the assumption of power by the central government proceeds parallel with the taking of power by local magnates and communities. The central government seeks always to overlay the whole country with its own decrees and officers. Consider, for example, the development of the offices of Sheriff, Lord-Lieutenant, and Justice of the Peace, and of the Law Courts. On these, and the Parishes, the Boroughs and the Counties, obligation after obligation was imposed. Meanwhile, away beyond Westminster, in hamlet and village, in town and country, arise ever freshly and spontaneously local arrangements not yet provided for by the central authority. There are heard persistent claims for 'immemorial local liberties', or in plain words, demands to be left alone; and, if not left entirely alone, the local magnates or the body of local inhabitants demand to be allowed themselves to apply the law of the land as it suits them, or to act through officers chosen or approved from their midst.

Not all the present local centres of government were deliberately created by the central authority for its own purposes.[2] County, Borough and Parish simply began where the need for government began. But, in the course of time, especially from the middle of the sixteenth century, these nuclei were invested with functions and obligations by the central government as new needs made themselves felt. During the nineteenth century the process of deliberate building-up of local government even developed into the busy purposive creation of new local government bodies. These were not infrequently *forced* upon the country by Parliament and the central Civil Service. But, even in this later stage, statesmen always recognized that local government is an indispensable liberalizing and adaptive agency.

The Tension between Local and Central Government. Now, it is impossible to observe English local government without becoming aware of a certain tension between the local authorities and the central government. It is a tension which becomes especially pronounced

[1] Cf. Royal Commission on Local Government, 1923–9, *Minutes*, Part II, Evidence, Ministry of Agriculture.

[2] Cf. Gneist, *Self-Government, Communalverfassung und Verwaltungsgerichte in England* (Berlin, 1871); Gomme, *Lectures on the Principles of Local Government* (1897), Lecture I, especially pp. 1–2, 3–4; Toulmin Smith, *The Parish*, 2nd ed., 1857, p. 10. 'It is forgotten that Parishes and our other Local Institutions do not owe their origin to Parliament; but that, quite the reverse, Parliament itself is a *result* derived out of the pre-existing action of these Institutions.'

during the discussion of such problems as the size and appropriateness of the areas, the finance, the range of functions, and the general quality of local administration. It sometimes appears even as *hostility*. Not a few people regard the local authorities and the central government as pursuing independent purposes, and as requiring to be on their guard against each other. Local councillors and officials (not *all* of them, of course), are not merely properly vigilant and suspicious of encroachment, but challenging. How does this attitude correspond with ultimate facts in modern local government, or with the conditions of good government? The parochial attitude to-day corresponds neither with the basic realities of governmental economy and technique nor with the most enlightened idea of what is desirable for the present and the future. There is, indeed, no real distinction between the purpose and function of local and central government, and therefore there ought to be no final hostility. Each consists of bodies of citizens; the same citizens, indeed, though grouped somewhat differently, and with a different range of governmental discretion. The final purpose is the same: to make the nation *as a whole* a better place to live in than it would be if there were no governmental apparatus at all.

The Grounds of Hostility. Yet hostility is always latent, and sometimes obvious and acute. There are several reasons for this. First, even assuming that the ultimate policies of the people who represent the central government are identical with those of the local authorities, there may yet be differences of method and technique. For example, in the administration of maternity and child welfare schemes, an educational system, and housing policy, the men and women who compose the local and central authorities, are different by nature, education and experience. It is difficult to persuade adults of the significance of facts and opinions which they themselves do not *feel*. Knowledge can be improved, but *interest* is less capable of being implanted. Between the higher Civil Servants of Whitehall and local councillors and officials there yawns a wide black gulf. The former are recruited mainly from two or three Universities, from a highly selected group, and without experience of business, industry, or the rest of the country, whether considered by localities or classes. The latter live out their lives and therefore seek to live them out on the best terms possible, in Durham and Cornwall, Stockton and Dover, Manchester and Merthyr, London and Lincoln. There is necessarily a gulf of *interest* as well as knowledge; and, indeed, the means of its bridging (for example, by the device of Inspectors and Local Inquiries) were not easy to devise. It is vitally important to secure that the affairs of a locality are cared for continuously by people whose capital joy it is to be involved therein. But once this occurs their *interest* diverges from that of the central authority.

Nor is that all: the truth as gleaned from life in a locally restricted area differs from that gathered from the facts of a whole nation. The statistically established truths and uniformities that emerge from a vast accumulation of facts, the vital statistics of all Britain, and even of other countries, have, in the history of English government in the nineteenth and twentieth centuries, not seldom upset the convictions of the local authorities. By their own compelling and unforgettable nature they have paved the way to great reforms. The history of the poor laws, of public health administration, of roads administration, of education, and of the very constitution and areas of local authorities, is ample testimony to this.

Secondly, differences of opinion must necessarily arise wherever scope for diversity of policy is permitted, for differences of local and personal circumstances are obstinate and undeniable. In a population of 40 million, scattered over an area diversified geologically, topographically, economically, and in relation to manners, customs, dialect and local tradition, there are bound to be differences of purpose, character and behaviour. It follows that the several thousand local representative bodies have points of view *different from each other*, as well as different from the central authority: quite properly, within the limits of governmental sanity.

Hypertrophy of Local Patriotism. Yet a third factor conduces to hostility among the local authorities themselves, and between them and the central government. The natural self-respect of local councillors sometimes undergoes a pathological conversion into personal and corporate pride. This may have very grave effects upon the quality of government, as we shall have abundant occasion to observe later. The virtue of English local government, as of all local government, resides in its promotion of energetic local freedom. It has always been recognized that local government is desirable not only for the services it renders as government, but just as much for the opportunities it offers to men and women to enjoy an active participation in the government of the commonwealth, and in the process, to develop their creative talents and sensibilities. To these ends freedom, power and status are necessary, and English local authorities have received these in generous measure. The process gives rein to, and generates, enthusiasm and practical energies in thousands of politically conscious citizens, and these give their services, usually with incredible devotion, to society without pecuniary reward. The end alone, not any financial reward or public recognition, crowns their work. And yet, as Montesquieu said, 'Even virtue has need of limits.' The very virtues which impel men voluntarily to give their time and energies to the service of their locality may, and we must, indeed, admit that they occasionally do, petrify into obstinate resistances to the common progress.

The problem of local patriotism is precisely this: its deficiency renders good government impossible and its excess makes bad government irreparable. When local independence turns sour, it becomes difficult to distinguish from narrow-minded jealousy, and this not only or even principally in relation to the central authority —that is the State as a whole—but to neighbouring local authorities. A healthy local independence would not, among other things, have prevented the due extension of the area of government of the London County Council; or retarded from 1909 to 1929 the transformation of 'poor law' into 'public assistance'; or have obstructed the development of public health (to the death and sickness of how many hundreds of thousands of people in the last thirty years?); or antagonize the Counties in relation to urban autonomy within them; or prevent the problems of training and recruiting a satisfactory local civil service from finding a successful solution. The social benefit of *intensity* may accompany the narrowness of an interest, yet a narrow interest is a destructive one.

The attitude of expectant hostility is antiquated. It was, indeed, partly the outcome of the peculiar history of English local government. England, as we know it to-day in its governmental aspect, is very largely the product of the last century: from 1832 to 1932. Within that time was established practically all that we regard as characteristic of our local government system: a certain (but not a sufficient) rationalization of areas, almost all the functions and expenditure of local authorities, enormous capital and debts, administrative as distinct from merely judicial control (with central inspection, audit and approval of local schemes of administration, in the foreground), and grants-in-aid. Bentham, who spent the whole of his life in devising principles and institutions for a new England, and who died in 1832, would be dumbfounded (and overjoyed) at the transformation that has occurred, could he see and compare. The growing pains were recent; they were excruciating: their memory still affects heart and mind. Until 1832 there was little or no hostility between local authorities and the central authority, for the simple reason that the local authorities had little to do, while central Departments to secure permanent supervision and prescribed standards of administration did not exist—there was no Ministry of Health, no Board of Education, no Home Office or Board of Trade with modern functions, no Ministry of Agriculture, no Ministry of Transport. Then began a series of terrific battles for the establishment of a proper destitution authority, for health, police, education and road services. Two problems were involved which profoundly stirred passions and provoked blows. First, should the community undertake and pay for certain services (relieve the poor, supply education, promote health, and so on), or leave people to their own individual resources for the

provision of the fundamentals of a civilized existence ? [1] Secondly, if the community decided to do anything at all, should policy and administration be left to the free discretion of local authorities, or should central authorities be established with the power to direct and control the local authorities ?

As in all political struggles, those who wanted particular liberties produced a series of arguments in their most universal and extreme form : ' immemorial local rights ', etc., etc. To the central authority were imputed the qualities of a tyrant.[2] More than the echoes of such conflicts extend to our own generation ; and even since 1871 (which marked an abatement of fierceness) every stage in the development of local government has been marked by similar hostilities. It is, of course, proper that the central authority should not tyrannize. It is equally proper that the local authorities should cease to resist reforms in the light of certain radical questions : Are we placing our own personal ambition and prestige above considerations of general welfare ; is our resistance more than is necessary to stimulate and enlighten the policies of Parliament and the Departments by the intensity of our experience and the genuineness of our local needs ?

The Integration of Local and Central Authorities. A new view has replaced that of contingent and imminent antagonism between local and central authorities. It is clear to many councillors and officials, but not to all ; and it is implied in the practical evolution of more than fifty years. Actions speak louder than words, but they need interpretation. The interpretation is that local authorities and central government are part and parcel of one governmental system, and that their relationship is one of a partnership and collaboration in a single organism possessing one common ultimate purpose and an integrated system of institutions for that purpose. This, we are sure, is the lesson of the facts : that the local governing bodies are integrated parts in a governmental structure and a corpus of functions larger and more important than themselves. They have practically no functions or purpose outside this context, and they and their problems are recognizable only within it.

This does not mean that our local authorities have no entirely self-regarding functions, or that their only importance is derived from their collaboration, usually *enforced* collaboration, in an integrated arrangement. They have self-regarding functions, but, as we shall show presently, they are few and relatively unimportant. But neither

[1] Cf. *Theory and Practice of Modern Government*, I, Chap. III.

[2] Toulmin Smith, who between 1845 and 1848 led the *Anti-Centralization Society* against the Health of Towns Bill, ends his attack on centralization with : ' *Centralization* is the foul Dragon that is ever gnawing at the root of Yggdrasil, the great World-tree of Freedom—*Local Self-Government* is the true Urda's spring, whose pure waters can alone keep freshened for ever, the strength and growth of Yggdrasil.' *Local Self-Government and Centralization*, p. 400. See also pp. 232–3.

the development of English local government, nor its main problems, especially that of finance, are comprehensible unless we recognize that local authorities are but cells in one living organism.

This, of course, is a view which will not be found in the early nineteenth century, and it may be and is resisted in some quarters now. Nevertheless, it is expressed, often very emphatically, in all the Inquiries and Reports upon the main functions of local government, those considered to be most important by local councillors and officials and involving by far the greatest part of their expenditure, such as Education, Public Assistance, Public Health, Police and Highways Administration. No one to-day looks upon these services as capable of administration by the local authorities acting as self-centred areas independent of other authorities and without any integrated bounds marked out by a central authority. It is, of course, universally admitted that *within* such maximum lines, local freedom of will and action are urgently important—but only *within* such maximum lines.[1] In this matter, then, there has been a great change in the course of a century, and especially rapid has been the change in the last generation. It is instructive to ask, Why ?

The Development of an Integrated System. The more complete integration of English Local Government has resulted from four main causes : (*a*) the growth of scientific knowledge about the various services of government, (*b*) the development of communications, (*c*) the evolution of collectivism and nationality, (*d*) the increase of wealth ; these acting separately and in combination.

And, of course, these things would have mattered, and have effected, less, if there had not occurred that enormous extension of the range of duties dischargeable by local councils instead of by individuals or big private organizations for themselves.

In the first class, let us indicate the march of events by a few examples. In Poor Relief, local government in 1835 proceeded upon the conviction that destitution was due to some personal moral defect

[1] ' If the Police Service were nationalized the Government would then be in a position to fix not only the rates of pay and conditions throughout the service but would be responsible for their enforcement through their own officers and for the management of the Police in every respect. . . . The adoption of direct central control of the Police . . . would alter the whole basis of the police system, and in particular would prejudice the intimate relations between the Police and the localities where they serve which many experienced witnesses have regarded as one of the most desirable characteristics of the present system and to which they attribute in great measure the happy relations which have existed between the Police and the general public in this country.

' It is, however, obvious from the evidence that the administration of all local Police Authorities is not equally good and that under the present system lack of uniformity has developed to an undesirable degree. . . . We are of opinion that the Police administration would be more economical and efficient if a greater measure of centralization and standardization of conditions of service could be introduced.' *Report of the Committee on the Police Service*, 1920 (The ' Desborough Report '), p. 5, **sects.** 17 and 18.

in the destitute citizen. The cause was personal, and therefore machinery and treatment could well be local, though even here the fear of the contagious effect of bad examples in administration produced the first strong dose of centralization. Later in the nineteenth century and especially at the beginning of the twentieth century economic and sociological analysis showed that destitution is caused as much by wide territorial conditions, some even national (and more, international), as by individual defects of character; by an inefficient educational system, by inadequate public health administration, by the disorganization of the national and international labour market. If the causes are not localized, how is it possible to succeed with localized remedies? The country became, and more and more becomes, a closely integrated community, with causes and effects neither individualized nor localized. The appropriate governmental arrangement sooner or later follows what science recognizes.

Another outstanding example of developing integration is Public Health. The service of public health was originally conditioned in its structure—if one can call something that hardly existed a structure—by the peculiar notions of the cause of disease prevalent during the eighteenth and early nineteenth centuries. Empirically, the causal connection was established between bad smells, putrefying organic matter, and disease. The main public remedy was to flush away that which caused the bad smell, and to arrange for the provision of clean water. Hence the principal institutions of public health related to water supply, drains and sewers, and the abatement of nuisances. This was, territorially, a rather restricted affair. These ideas, and therefore, these institutions, dominated development until later than 1880. Then the discoveries of French and German bacteriologists revealed that the possible agent of public disease was *all* people who harboured germs on themselves, in their clothing, in their homes. Every individual, every locality, was recognized to be a potential national plague, a cause of disease which, if not regulated by the minimum standards prescribed by science, might have nation-wide effects. Moreover, every individual and locality might easily become such a cause, not owing to its own debility or negligence, but owing to that of other individuals or localities. Now it became necessary to keep track of all people who might carry disease, for progress in the cheapness and rapidity of transport made virulent germs easily transferable from one end of the country to another in a few hours.

The point of view became national and *preventive* instead of local, and, already in the Public Health Act of 1875, the grant of default powers to the central authority is an expression of this, as also is the transformation of the law relating to the notification of infectious diseases from voluntary notification in 1877 to compulsory notification in 1887. And then there was increasing central severity in regard to

the qualification of local medical and sanitary officers, whose appointment was made compulsory. Nor was that all. Science soon showed that bacteria could be generally resisted only if the community assumed the cultivation of human vitality by feeding necessitous school children, and by providing fresh air and sunlight through such measures as slum clearance and town and country planning. Later it was seen that local sewerage problems were closely connected with both water supply and drainage arrangements over wide areas.[1] By the nature of the problem and the nature of new knowledge any extreme localism was henceforth impossible. . . .

In the realm of Education the perception of, and the desire for, a *national* minimum of information and culture for industrial and commercial efficiency, and for the general advancement of civilization, combined to urge the country, first, towards State provision of education, and then towards an ever closer integration of the educational services of the many local authorities. The texture of national life, culturally and economically, was too closely woven, and all men and industries were too interdependent, permanently to tolerate any serious local differences in educational method and provision.

In Road Administration a veritable revolution has occurred since 1888. Around that date the national roads were railroads; the common highway was disintegrated among thousands of authorities, including the special Highways Boards. From 1888 the Counties entered as the ultimate large integrating areas. This was not amiss in an age still slow-moving. The development of the internal combustion engine and motor transport caused tremendous changes. First came the rise of the Roads Board in 1909, and then, the Ministry of Transport in 1919, with a policy and powers which effectively remove from the discretion of the localities any final jurisdiction regarding the direction and linking of the roads and the material and construction thereof. The 'classified' roads, that is, those of national and semi-national importance, are now 'local' only in regard to the least significant incidents of their administration. The Counties and County Boroughs are grouped into Roads Divisions controlled by the central authority's Divisional Engineers. Nor is that all; for, since 1931, public *passenger* vehicles on the roads have come under a licensing system, which has regard not merely to the safety of vehicles, but to the *economy of transport* from a planned public standpoint. For this purpose the former licensing local authorities—1,100 in number—have been superseded by Traffic Commissioners in 11 areas. In both these developments the moving force has been the recognition that even the benefit for each locality could not be ultimately attained

[1] Cf. Simon, *English Sanitary Institutions* (1888); Sir George Newman, *Public Opinion and Preventive Medicine*, and *Outline of Preventive Medicine*; Brend, *Health and the State*, for a review of developments in public health.

except by treating it as a part of a greater system. For the nature of the service itself, the final benefits to be obtained therefrom, culturally and economically, were repugnant to, and necessarily injured by, the self-regarding bias of a relatively small neighbourhood.

So also, and very obviously, in regard to the detection and prevention of crime, through the Police. The technique of the modern criminal, founded upon scientific apparatus, skill, and means of rapid escape from the small independent areas of police administration, could only be countered by solidarity among the local authorities, a universal minimum standard of efficiency, and prescribed conditions of frictionless collaboration. A corps of detectives, with special skill, provided by the pooled resources of the nation, was also called for.

The Impact of the Local Authorities on the Central Policy. We cannot spend more time on these things at this stage. Their indication was necessary to explain that in the main class of their functions local authorities are little but the cells in an organic system of government. They partly serve themselves, but also, and for the greater part, subserve the general community according to policies and standards settled by the whole community through its own central organs.

Yet it must not be forgotten that in the establishment of such policies and standards, nothing is more important or more characteristic, than the previous collaboration of the Minister and Parliament with the representative associations of the local authorities. Neither statutes nor rules and orders are drafted by the central authority without the previous consultation and effective influence of the local authorities. Let us merely recall such cases as the Education Act of 1918, the Police Act of 1919, the Reform of the Poor Law and Roads Administration as embodied in the Local Government Act of 1929, reforms in Rating and Valuation of 1925, and 1928–9, and the negotiations leading up to the Nurses Registration Act of 1919. These are but a few examples of many reaching back into the nineteenth century.

The Contraction of Administrative Space through Rapid Movement. We have yet to touch upon the second cause moulding the local authorities into integral parts of a national system of administration; the growth of rapid communications. Government on the spot is necessary in proportion as the central authority is distant from its detailed realities; for, in that case, its fine senses cannot be affected by the immediate circumstances, and its judgements and policies are apt to be clumsy and inappropriate. When there was no other way for the central authority to get to Manchester or Newcastle save by personal travel which took about a week and when a messenger, whether an inspector or the postal authority, could not bring back information except in about a fortnight, the appropriate area of government was compulsorily small. In other words, a locality had

to be left alone in proportion as it was not possible for the central authority to reach and understand it. To-day, Manchester and Newcastle can be reached on the telephone in a few minutes: they can be actually visited by a central official or a Member of Parliament within six hours, and, in case of real emergency (by air) in three. It is to-day possible for the central authority to know the outskirts of England more vividly than in 1835, or even in 1885, it was for the county officers to know the peripheries of their county. Space, the obstacle to sensuous appreciation, has been all but annihilated. All England is one neighbourhood. For, as the intervening distance between centre and extremities is abolished, a large nation shrinks into an integrated, if still diversified, locality. Hence the continual attenuation of the powers of the Parishes and the Rural and Urban Districts, and the progressive increase in the controlling power of the Central Authority.

Local Self-Regarding Functions. Thus, if the self-regarding functions of the local authorities have not shrunk absolutely; if, rather, they have expanded absolutely, they have yet *relatively* become far less important than those which they exercise as units in a national team. The moment we ask ourselves what are the self-regarding functions of a local authority, in essence, we realize how small in extent they are bound to be. They will be functions which concern itself alone, functions whose good effects may, indeed, redound to the benefit of contiguous and remote areas, but whose detrimental effects must the more urgently be restricted. Are there any such functions? Yes, in the realm of by-laws: as, for example, in the matter of chalking on pavements, throwing paper about the streets, restraining itinerant music makers and vocalists, spitting, setting up ugly advertisements, determining the stopping-places of trams, combating the use of obscene language. Again, perhaps (though here a little more doubtfully), in the washing, paving and lighting of streets. Further, in the management of trading enterprises; but here, already, in the case of electricity and water supply, the technical conditions of their production impose collaboration with other authorities and central control, and transport services also overlap boundaries.

All this is nicely accentuated by John Stuart Mill's remarks on a kindred topic in 1861: What should be the duties of local authorities? and should they have full authority within the sphere of those duties, or should they be liable to any, and what, interference on the part of the central government? The reader will observe first, the small sphere of action, which, even in 1861, could be deemed local; secondly, a sense that some things which seem to be local are really of national concern; thirdly, the small total range of local services to which reference could then be made; and fourthly, the small emphasis then placed upon the items of health administration as factors in the

necessary integration of all local authorities and the centre. These passages from Mill raise the most important questions of principle [1]:

'It is obvious, to begin with, that all business purely local, all which concerns only a single locality, should devolve upon the local authorities. The paving, lighting, and cleansing of the streets of a town, and in ordinary circumstances the draining of its houses, are of little consequence to any but its inhabitants. The nation at large is interested in them in no other way than that in which it is interested in the private well-being of all its individual citizens. But among the duties classed as local or performed by local functionaries, there are many which might with equal propriety be termed national, being the share, belonging to the locality, of some branch of the public administration in the efficiency of which the whole nation is alike interested: the gaols, for instance, most of which in this country are under county management; the local police; the local administration of justice, much of which, especially in corporate towns, is performed by officers elected by the locality, and paid from local funds.'

This then, is the salient feature of modern English local government: increasing integration, increasing centralization. It is unavoidable and it is healthy, given the circumstances and the basic quest of our civilization: the highest standard of material comfort and health with the minimum of expenditure.

The Factor of Social Solidarity. Integration has, to come to the third cause, been promoted by the development of the collectivist principle of government. The nineteenth century began with the principle of individualism, or *laissez-faire*. Every person, every locality, was and ought to be the independent master of its own fate. If it were successful, so much the better for it—it owed no duties to others. If it were unsuccessful, it could expect only to suffer. The views of the classical economists, Malthus, Ricardo, Chalmers and Senior, the two Mills, and the special followers of Jeremy Bentham, dominated the creative period of modern local government, and at first, in the case of Poor Law reform in 1834 by austere individualistic tests. But the principle of 'the greatest happiness of the greatest number' ultimately conduced to collectivism, especially where the service was vital to health and mind, as in sanitation and education. Nor was that all. Individualism was overcome by the idea of progress and the development of democracy. The idea of progress was held by all these thinkers, save perhaps Malthus, the idea, that is to say, that the destruction of political privileges and artificial economic and social barriers to mankind's free development would result in the perfect race. This implied a remodelling of government, and imputed to the whole community the right to extirpate local as well as individual and group abuses. Democracy lent force to this view: and it is not accidental that the great reforms in local government followed close upon extensions of the franchise: Parliament is reformed in 1832, the Municipalities in 1835; Parliament is reformed in 1867, health

[1] *Representative Government*.

and education are reformed in 1870; the suffrage is extended in 1886, the County administration and the Districts and Parishes are reorganized in 1888 and 1894. Thenceforward there is continuous development of local government services and structure in a collectivist sense. Vested interests, local no less than individual, are not allowed to frustrate the welfare of the entire community.

The Money. We come to the fourth element in the development of local government. Ideas are, of course, successful only when there are resources, human or material, to realize them. Knowledge is vital; incentive is essential; and they were effective in the progress of government as we have described. The nineteenth century was also blessed with an enormous expansion of wealth, which outstripped, quite rapidly, the rapid expansion of the population. Just as those who are rich can afford to be charitable and acquire good manners, so the increase of wealth made those who had it ready to give for public purposes; and when they were not ready they were compelled. But the money available was to be used by *large-scale organization* on the economical principles developed at the end of the nineteenth century. Hence, again, an element which at once added to the functions of local authorities but restricted their independence.

Political Parties. The great national political parties, which are themselves national communities, were partly produced and partly helped to produce, the characteristics we are discussing. They integrate, with their respective peculiar social and economic programme, the thousands of local authorities. Each imposes, or wishes to impose, a uniformity of conservatism or progressiveness, of liberty or order, of individualism or socialism.

Yet within this integration, and in respect of even the most integrated services, the local authorities still retain a place as free creative moulders of policy and controllers of administration, within the minima and maxima established by the general community. Though the tendency is towards the increase of regulative power by the central authority, that power is in part governed by the resistence and creativeness of the local bodies. Hence, English government today includes several thousands of authorities, locally elected and controlled. They possess a relatively small range of self-regarding and purely independent functions; as to the larger and more important functions, they operate within standards laid down by the central authority. Perfectly local services are very rare; completely nationalized services are few; but there are many services of an intermediate nature. And while there may properly be room for tension between the central and the local elements of such a system, there is no proper occasion for hostility. Such is the attitude which controls the solution of most contemporary local government problems; without con-

tinuous awareness of it there is no sound guide to the proper understanding, and still less, to the proper solution, of those problems. In one hundred years we have progressed from the anarchy of localism, to the integration of localities as units in a national organism.

'Locality.' We are in a position now to measure the meaning of 'locality' in 'local' government. A 'locality' is simply a territorially restricted area. It has, however, no finally rigid and limited connotation. Its significance is relative and variable, in idea and in fact. For instance, one may think of local in terms of the legislative discretion allowed to local authorities: the area may be large, the legislative function scanty. The area may be preserved by law, but the functions may be transferred to other authorities, as happened in County government between 1835 and 1888. Secondly, we may think of the executive freedom of local authorities. They may have a wide range of discretion within limits laid down by Parliament, but may be strictly controlled regarding execution (as in continental local government systems). They seem to be free, for they possess local government from the standpoint of their liberty to undertake many enterprises. But once those enterprises are in being they are subjected to supervision and control by some external authority. Thirdly, locality, in its original sense of territorially restricted area, varies with time and place, with the progress of technical knowledge and the means of communication. In all these three factors the locality is not a rigid and final dispensation with inherent rights to a continued unchangeable existence; it is an elastic institution, properly responding even when against the will of many of its citizens to the necessities of a dynamic civilization.

Local Democracy. English local governing authorities are elected upon a franchise almost but not quite as universal as that of the central Parliament.[1] Yet the percentage of people voting in local

[1] *Parliamentary Electors.* A man or woman must be at least 21 years of age and have resided, or occupied business premises of a yearly value of not less than £10, in a constituency during the qualifying period. A man or woman, 21 years of age, is also entitled to be registered if he or she is the husband or wife of a person having the business premises qualifications. University constituencies.—Subject to certain provisions, a man or woman over 21 possessing a university degree is entitled to be registered for a university constituency.

Local Government Electors. A man or woman must be 21 years of age and have occupied, as owner or tenant, any land or premises in a local government electoral area during the qualifying period. A man or woman, 21 years of age, is also entitled to be registered if he or she is the husband or wife of a person who is entitled to be registered in respect of premises in which they both reside. A lodger occupying unfurnished accommodation is a 'tenant', and a person occupying a dwelling-house by virtue of any office or employment is the 'occupier', provided that the house is not inhabited by the person in whose service he or she is.

The Qualifying Period is three months ending on the first day of June and including that day.

To emphasize the fact that the Local Government Franchise is not as universal as the Parliamentary Franchise, the following figures are appended relating to the

government elections is small.[1] In elections for Parliament the average for 1918–29 is 71 per cent; in local government elections it is, for county boroughs, something less than 50, and for other authorities considerably less. What is the explanation? That people know less about their local council than about Parliament? That political parties are less ready to organize for local elections (though in recent years they organize more vigorously than before)? That numerous elections tend to exhaust popular interest? These suggestions still leave open the question why people know less about their local council, why parties organize less vigorously for local elections, and why popular interest is exhausted in voting for Parliament. Common sense suggests that, after all, Parliament and national politics are infinitely more important than local councils and local politics. Parliament is sovereign: local authorities are only subordinate governing bodies. In national politics the issues are all the ultimate and vital issues of civilized existence. If you have a Parliamentary majority you may destroy or widely extend local government. But the local authorities have no intrinsic power to interfere with the designs of the national majority. They have a sphere of less important powers held hard and fast within a tight mesh of statutory and common law rights, obligations, and prohibitions.

It is not surprising that the vote is low, for people will not spend energies on what seems to them to be *relatively* unimportant. If we admit the fact, we can understand the nature of the remedy. (1) We can expect a greater interest from electors or candidates only as the result of appropriate and especially energetic education regarding the value of local administration for civic development, for health, education, beauty, peace and public utility. (2) We must expect the more ambitious citizens to prefer Parliamentary to local government careers, though we shall be especially grateful to those who prefer, or are obliged by residential or occupational restrictions, to accept the less

General Parliamentary Election in the Administrative County of London and the General Election of County Councillors:

Parliamentary

	October, 1931
Total number of electors	2,952,724
Number of electors in contested parliamentary divisions	2,735,295
Percentage given the opportunity of voting	92·6
Number of persons voting	1,799,045
PERCENTAGE VOTING	65·8

County Council

	1931
Total number of electors	2,106,330
Number in contested county electoral divisions	1,953,890
Percentage given the opportunity of voting	92·8
Number of persons voting	542,584
PERCENTAGE VOTING	27·8

[1] These figures are drawn from Gosnell, *Why Europe Votes*, 1930. There are no official statistics of municipal elections. Why not?

conspicuous and harder drudgery of local administration. (3) In the prevailing state of affairs we cannot expect the nation, as represented by Parliament and the Central Departments, to refrain from acting as judge, arbiter and controller of the actions of local councillors. Councils are apt to be not fully representative of the whole body of citizens. It is finally necessary, but not altogether proper, to govern upon the theory that the many non-voters give consent. So while there is something to be said for letting people damn themselves by negligence, if they are indifferent, there is little to be said for such a policy when local negligence may have nation-wide effects.

We shall later be able better to appreciate the place of democracy in local government as it affects specific problems. One thing may be at once indicated: democracy as we have known it to the present time has, in local government, suffered modification (some will think it vicious, some a benefit) by the law and practice of *co-option* of interested and expert members to local government committees. To this development we return in a later chapter.

Non-hierarchical, Decentralized, and Compendious. Three final points remain for discussion: first, what may be called the *non-hierarchical* character of English local government; secondly, its relevance to the terms *decentralization* and *deconcentration*; and thirdly, what may be called the *compendious* nature of English local authorities.

English local authorities are, within their own legal and territorial orbit, free from control by other local authorities. There are exceptions to this. But it is the main truth, especially in comparison with the very definite and organized hierarchical system of the Continent, where the larger local authorities (the *Provinz* in Prussia and the *Département* in France) have a financial and executive control over the authorities below them. In England, the local authorities are not controlled by bodies intermediate between them and the central authority. To such a method, in fact, they have repeatedly expressed their repugnance. They are controlled *directly* by Parliament and the Central Departments. The exceptions, which promise to grow, are broadly as follows: (*a*) the consent of the County Council is required in certain cases to proposed actions by subordinate authorities [1]; (*b*) the County Council is empowered to act in default of, or to supersede, certain local authorities in certain cases [2]; (*c*) the County Council has concurrent powers with other local authorities in certain

[1] E.g. as regards the formation and alteration of urban districts, rural districts and parishes, and the raising of a loan by a parish council.

[2] E.g. in matters of housing, where the County Council are of the opinion, as regards rural districts, that proceedings for a closing order should be instituted, or a demolition order made, they may, if the rural district council fails to act, take over its powers as regards the particular house or building. Or, as regards allotments, the County Council may supersede the subordinate authorities as to their provision.

cases [1]; (*d*) the County Council, finally, exercises a general supervision in particular cases over the subordinate authorities.[2]

The distinction between hierarchical and non-hierarchical local government systems implies a difference of relationship between the central and the local authorities, and profoundly affects such questions as grants-in-aid, audit and inspection.

Decentralization. Decentralization is often contrasted with Deconcentration, the English system being based, it is generally thought, on the former and continental systems on the latter. By Decentralization is meant a system in which there are many centres of government, local and central, each with a recognized right of independent existence and functions. It is doubtful whether such a system has ever existed in law and practice in this country. Certainly since the Conquest the localities were used as areas to carry out obligations imposed by the central government; though it is also true that over a large, unregulated field, they were free. Since the reform of the Municipal Boroughs in 1834, and the rise of the integrating tendencies we have been describing, the theory is decidedly no description of the facts. Yet it may be a statement of what is generally thought desirable: 'If it is not true it deserves to be.' And, certainly, the prevalence of such an idea serves to make the community a respecter of local liberties. The Continent, on the other hand, is supposed to operate in a Deconcentrated system, where all authority is deemed originally to lie in the central government, with local government existing rather for the convenience of the central government than the benefit of the locality. According to this view, local authorities simply act as agents of the central government, and very frequently certain functions (e.g. *police*) are carried out not by locally-elected councillors but by officials appointed, paid and controlled by the central government. Of course, this is not a complete description of the Continent, though both in Prussia and in France the central authority violently consolidated its powers in the sixteenth and seventeenth centuries and established an absolutist system.[3] But, as in England we have evolved from effective Decentralization towards an integrated system, so, on the Continent, development has proceeded from Concentration-cum-Deconcentration to an approximation to the

[1] E.g. the preservation of ancient monuments concurrently with borough councils; or, again, to enforce, concurrently with borough councils, urban and rural district councils, the provisions of the Rivers Pollution Prevention Act, 1876.

[2] E.g. it is the duty of the County Council to ascertain the demand for allotments in the areas controlled by subordinate authorities, and, where failure to provide them takes place, the County Council may act in place of the local authority. Another example is the provision that every medical officer of a district within the County is required to send a copy of his periodical reports to the County Council, who can, if they are of the opinion that they are inadequate, refer the matter for further consideration to the Minister of Health.

[3] The Fascist system in Italy furnishes the example of an almost pure Deconcentrated arrangement. Cf. Zanobini, *L'Amministrazione Locale*, 1933.

English system. We have not Decentralization, but a small sphere of almost complete freedom, side by side with an organized integration founded mainly on a national will, mitigated by free discretion to adapt and apply it to local circumstances. What name to give it, we do not know.

Compendious Authorities. English local authorities, even down to the almost powerless Parish, are compendious, not in the sense that they each do *everything* for themselves, but that they are not specially confined to one function. They are not *ad hoc* authorities as the term is commonly used. English local authorities to-day are each wholly or jointly responsible for several services. This is the effect of development between 1834 and 1930. Until about 1830 the main authorities of local government, the Counties, the Boroughs and the Parishes, had an assemblage of functions, few as they were compared with our own day. Already, however, there were a few authorities of a specialized nature, *ad hoc*, Commissioners of Sewers, Improvement Commissioners, Watching and Lighting Boards, Boards of Guardians of the Poor established by Private Act of Parliament. Then, in 1831, there were established (though temporarily) Local Boards of Health. In 1834 Boards of Guardians were set up with the special task of dealing with the destitute, and they were not disestablished until 1930. In 1848 began a more regular policy of establishing Local Boards of Health, until in 1872 the Urban and Rural *Sanitary* Districts were created, for health administration only; but, later, they acquired highway, and in some cases education powers. In 1852 came Burial Boards. In 1862 Highway Boards were established to co-ordinate road administration, hitherto in the hands of Turnpike Trusts and Parishes. In 1871 School Boards were established. Every function raised its own governing body. The disadvantages were obvious. The finances of each authority were separate and unco-ordinated. The policy of each had no relation to the rest. Unco-ordinated, the relationships with the central authority were necessarily complex and confused. No authority, *by itself*, was sufficiently considerable to attract local interest. It was of this spilt jig-saw puzzle that Goschen, particularly concerned with the financial and administrative relationship of the central with the local authorities, used a phrase which has been handed down from student to student: 'We have a chaos as regards Authorities, a chaos as regards rates, and a worse chaos than all as regards areas.'[1] It was of this heap of unassorted splinters that John Stuart Mill wrote (in *Representative Government*) a considered criticism which, in view of certain

[1] Goschen, *Reports and Speeches on Local Taxation*, 1872, p. 190. Cf. also *Local Government and Taxation*, by Rathbone, Pell and Montague, pp. 14, 99, 100, and *Local Government and Taxation in the U.K.* Essays published through the Cobden Club, 1882, pp. 46–8.

present tendencies towards and suggestions for the re-establishment of *ad hoc* authorities, is worth extensive quotation.

'Another equally important principle is, that in each local circumscription there should be but one elected body for all local business, not different bodies for different parts of it. Division of labour does not mean cutting up every business into minute fractions; it means the union of such operations as are fit to be performed by the same persons, and the separation of such as can be better performed by different persons. . . . The business of the elective body is not to do the work but to see that it is properly done, and that nothing necessary is left undone. The function can be fulfilled for all departments by the same superintending body; . . . The local, like the national Parliament, has for its proper business to consider the interest of the locality as a whole, composed of parts all of which must be adapted to one another, and attended to in the order and ratio of their importance. There is another very weighty reason for uniting the control of all the business of a locality under one body. The greatest imperfection of popular local institutions, and the chief cause of the failure which so often attends them is the low calibre of the men by whom they are almost always carried on. That these should be of a very miscellaneous character is, indeed, part of the usefulness of the institution; it is that circumstance chiefly which renders it a school of political capacity and general intelligence. . . . Now it is quite hopeless to induce persons of a high class, either socially or intellectually, to take a share of local administration in a corner by piece-meal as members of a Paving Board or a Drainage Commission. The entire local business of their town is not more than a sufficient object to induce men whose tastes incline them and whose knowledge qualifies them for national affairs to become members of a mere local body and devote to it the time and study which are necessary to render their presence anything more than a screen for the jobbing of inferior persons under the shelter of their responsibility.'

From 1888 began the policy of co-ordination of authorities. This development was undertaken to remedy the existing confusion and difficulties, and in part, because it was easier to put new duties on existing authorities than to invent new ones. Further, a theory arose that the best interests of the local authorities themselves and of the country as a whole required compendious authorities. We shall soon observe a certain weakening of this theory, and a certain change in practice. But, in the main, practice and theory are to-day consummated in the *compendious* as contrasted with the *ad hoc* or *functional* authority, and local authorities have been reduced to six classes—Counties, County Boroughs, the Municipal or Non-County Boroughs, Urban Districts, Rural Districts, and Parishes. At the end of our study we outline the government of London as in a special class.

Our next concern is to state, and shortly explain, the problems which meet the student anxious to understand English local government.

CHAPTER II

THE MAIN PROBLEMS OF LOCAL GOVERNMENT

THE problems of local government fall into two categories, (I) those which arise out of the *restricted area* of local authorities, and (II) those which arise out of the fact that local authorities are governing bodies. We proceed to characterize each of these in turn.

I

A Restricted Area. If one studies the maps of the West Riding of Yorkshire and of Devon, the one an urbanized county, the second still largely rural, one begins to obtain an imaginative appreciation of the problems arising from the restricted area. Here are a number of jurisdictions. They are largely independent of each other, and each is, in fact, strongly convinced of its own infallibility and superiority. Yet we have provided maps of two Administrative Counties only [1]; there are, in fact, sixty-two of these in England and Wales. There are very many areas; the areas fall into well-known classes, but within their own class, and, as compared with others in other classes, there is an extraordinary diversity of size.[2] This diversity shows itself in four ways, not necessarily coincident: in area, in population, in financial capacity (judged by rateable value which is a rather imperfect, but indispensable, guide) and in the body of functions. The variety in the body of functions it is difficult to reveal easily, but the other factors are capable of concise and quantitative exhibition.

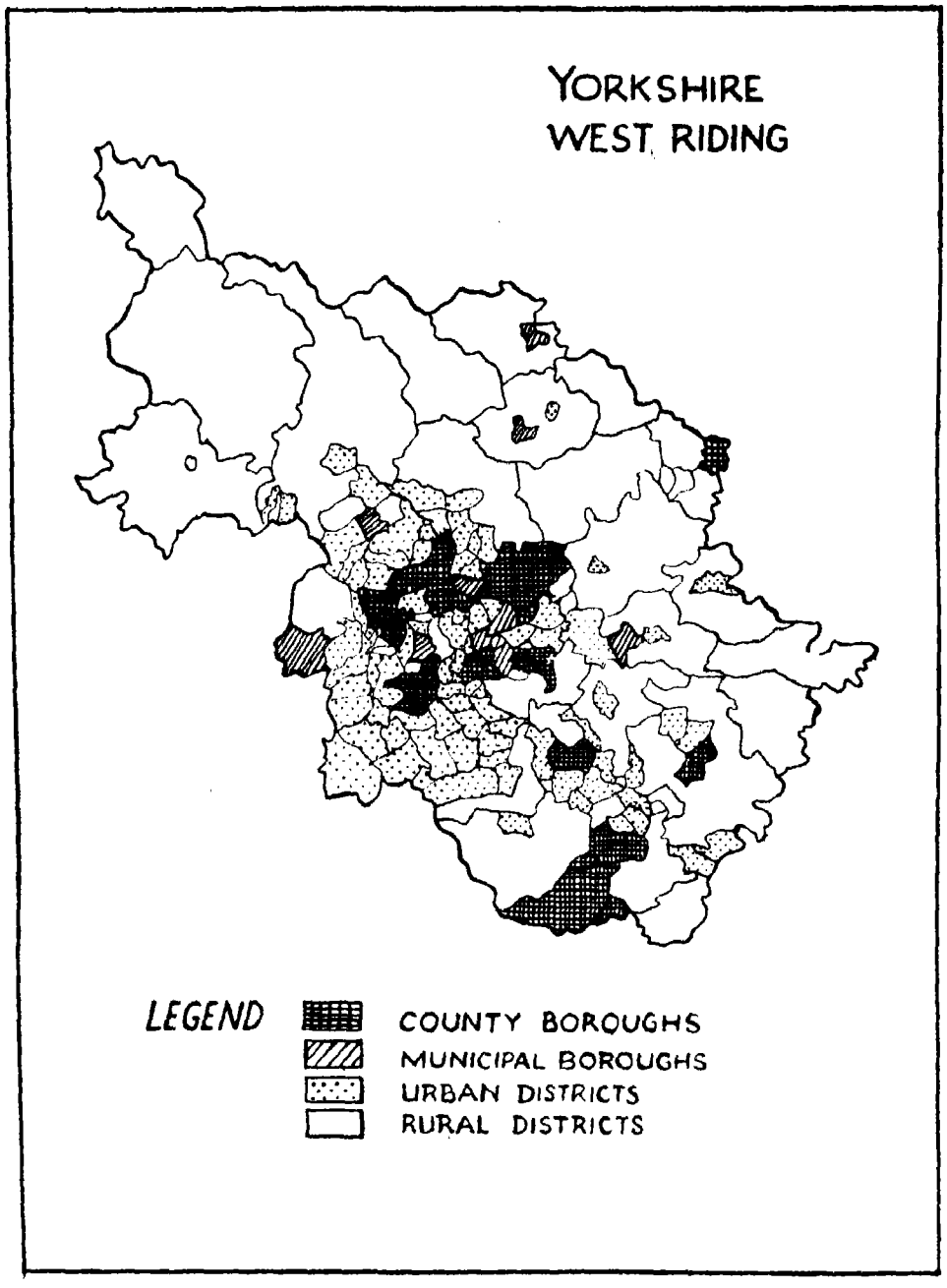
AREAS OF LOCAL GOVERNMENT [3]

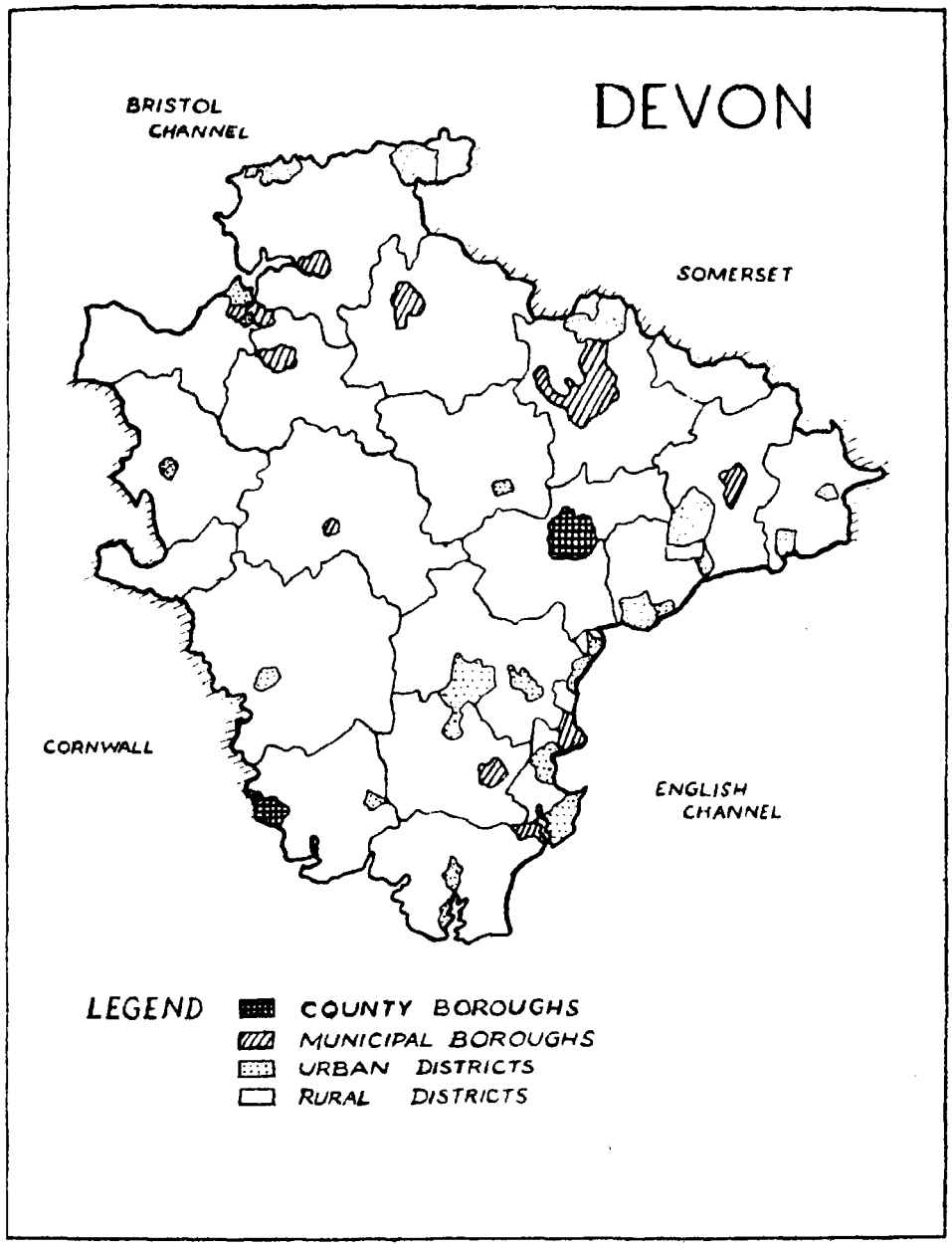
Area in Acres.	Number and Type of Authority
More than 1,000,000	7 County Councils
750,000–1,000,000	9 County Councils
500,000–750,000	16 County Councils
250,000–500,000	21 County Councils
100,000–250,000	5 County Councils
	43 Rural District Councils

[1] Parishes are not shown.

[2] There is also a diversity of *shape*, which is an important factor in administration.

[3] *Preliminary Report to the Census*, 1931. Excludes London.


YORKSHIRE
WEST RIDING
LEGEND
COUNTY BOROUGHS
MUNICIPAL BOROUGHS
URBAN DISTRICTS
RURAL DISTRICTS


DEVON
BRISTOL CHANNEL
SOMERSET
CORNWALL
ENGLISH CHANNEL
LEGEND
COUNTY BOROUGHS
MUNICIPAL BOROUGHS
URBAN DISTRICTS
RURAL DISTRICTS

Area in Acres	Number and Type of Authority
50,000–100,000	3 County Councils
	237 Rural District Councils
	1 County Borough
20,000–50,000	3 Municipal Boroughs
	6 Urban District Councils
	254 Rural District Councils
	8 County Boroughs
10,000–20,000	7 Municipal Boroughs
	31 Urban District Councils
	73 Rural District Councils
	12 County Boroughs
5,000–10,000	39 Municipal Boroughs
	124 Urban District Councils
	22 Rural District Councils
	35 County Boroughs
1,000–5,000	169 Municipal Boroughs
	502 Urban District Councils
	6 Rural District Councils
	27 County Boroughs
Less than 1,000	40 Municipal Boroughs
	115 Urban District Councils
	1 Rural District Council

POPULATION OF LOCAL AUTHORITIES [1]

Population	Number and Type of Authority
Over 1,000,000	5 County Councils
	1 County Borough Council
500,000–1,000,000	6 County Councils
	3 County Borough Councils
250,000–500,000	18 County Councils
	8 County Borough Councils
100,000–250,000	18 County Councils
	30 County Borough Councils
	4 Municipal Borough Councils
	4 Urban District Councils
50,000–100,000	9 County Councils
	38 County Borough Councils
	14 Metropolitan Borough Councils
	11 Urban District Councils
	6 Rural District Councils
20,000–50,000	4 County Councils
	3 County Borough Councils
	81 Metropolitan Borough Councils
	99 Urban District Councils
	90 Rural District Councils
10,000–20,000	1 County Council
	53 Metropolitan Borough Councils
	180 Urban District Councils
	228 Rural District Councils
5,000–10,000	42 Metropolitan Borough Councils
	188 Urban District Councils
	204 Rural District Councils

[1] *Preliminary Report to the Census*, 1931. Includes London.

Population	Number and Type of Authority
1,000–5,000	63 Metropolitan Borough Councils
	280 Urban District Councils
	108 Rural District Councils
Under 1,000	1 Metropolitan Borough Council
	16 Urban District Councils
	2 Rural District Councils

RATEABLE VALUE [1]

Rateable Value	Number and Type of Authority
Over £5,000,000	6 County Councils
	3 County Borough Councils
£1,000,000–5,000,000	31 County Councils
	19 County Borough Councils
	1 Municipal Borough Council
	2 Urban District Councils
£500,000–1,000,000	11 County Councils
	30 County Borough Councils
	9 Municipal Borough Councils
	6 Urban District Councils
£250,000–500,000	8 County Councils
	28 County Borough Councils
	31 Municipal Borough Councils
	19 Urban District Councils
	4 Rural District Councils
£100,000–250,000	5 County Councils
	3 County Borough Councils
	59 Municipal Borough Councils
	95 Urban District Councils
	75 Rural District Councils
£50,000–100,000	60 Municipal Borough Councils
	157 Urban District Councils
	164 Rural District Councils
£25,000–50,000	33 Metropolitan Borough Councils
	187 Urban District Councils
	209 Rural District Councils
£10,000–25,000	45 Metropolitan Borough Councils
	212 Urban District Councils
	139 Rural District Councils
Under £10,000	20 Metropolitan Borough Councils
	100 Urban District Councils
	52 Rural District Councils

Both the number and diversity of the authorities are formidable. They result from a haphazard historical growth: in the course of several centuries, a bit here and a bit there were affixed, a few bricks were removed from some places, an outhouse was added in another, and all proceeded with the minimum of purposive and long-term planning. After the middle of the nineteenth century some new areas were plotted out—like the Urban and Rural Districts, with creations and extensions of Municipal Boroughs and County Boroughs and an

[1] *Rates and Rateable Values 1930–1 and 1931–2*, and *Local Taxation Returns.*

almost negligible readjustment of County areas. Whatever the deliberate planning, it was always distorted by obstinate historical claims, by local and personal resistances, by the statesman's lazy utilization of existing areas rather than the creation of arrangements to satisfy contemporary needs and the technique of the services.

The Problems. 1. Since the areas lie side by side without a Chinese Wall between them, each area is somewhat affected by the efficient administration of those contiguous to it, for its own efforts may be neutralized by a negligent, an ignorant, or a necessitous neighbour. No local area can be completely cut off from membership of the rest. This is particularly observable in regard to the main services of local government. No area is bacteria-proof, none is bacteriologically self-contained; no area is criminal-proof, none is burglariously insulated; the non-co-operation of a neighbouring area may ruin the economy of an electricity, water, tramway or sewerage scheme; its housing or drainage policy may obstruct or ruin a road system managed by its neighbours. But that is only the difficulty which arises where one authority may harm another by being below a certain standard. Another arises where a progressive authority provides benefits which others beyond its boundary enjoy without contribution; for example, in schools provided by large County Boroughs and used by students from neighbouring places, or the general civic amenities available to those who work in the town but sleep in the suburbs.[1]

Two problems arise from this state of affairs: the problem of *joint action* and co-ordination between local authorities, and the problem of *central intervention* and control. Some local authorities demand central intervention to overcome the incapacity of neighbours, while, in other cases, the central authority enters to raise the standard of even the most willing, because their willingness and capacity together do not yet reach the necessary standards.

2. Since local areas, however large, are *ex hypothesi* smaller than the whole country, and in actuality very small (each County, for example, covers, on an average, $\frac{1}{120}$th of the whole population; each Urban District, about $\frac{1}{8,500}$th; each Rural District, about $\frac{1}{8,000}$th [2]), the range of their knowledge is small and the field of facts is too narrow for valid generalization. This opens the way for the services of a central authority, which may be either voluntary or enforced, or may

[1] London, where this movement is very noticeable, is discussed in a later chapter. For information as to this daily movement of vast masses of the population in and around that city, see *Report* of Royal Commission on London Government, Cmd. 1830, of 1923, pp. 52–3.

[2] These fractions represent the total population of England and Wales divided, in turn, by the population of the administrative counties (which number 62), then that of the urban districts (numbering 778) and, finally, of the rural districts (numbering 635).

be supplied by voluntary association among the local authorities, or by Parliament and the Executive Departments serving the national community.

3. Nothing was further from the mind of those who created or reformed the areas of local government, as we know them, than to make them equal in respect of size or character of population and financial capacity. Nor is it possible to achieve this. Neither is it possible to grant powers and impose duties on local areas by reference to the specific adequacy of each area in each of these characteristics in relation to each of the scores of local government functions.

Areas for the various services have, historically, been determined by a rather confused struggle between tradition, the natural economy of the service itself, and the persistent demand for a *small* area, since the smaller the area the greater the opportunity for local democracy. But these factors are unrelated to the economic condition of the areas; economic factors, industry, commerce, and agriculture have their own laws of development, little regardful of the areas of local government; and, moreover, population migrates without regard to what will happen to the area it leaves or the area it fills. From 1780 there was a migration to the North of England [1]; urban areas rapidly grew up. Between 1880 and 1930 the countryside was heavily depopulated, with results we shall later describe. To-day there is a steady drift of industry and people to the South of England.[2] Only tardily, and never adequately, were the areas of local government reshaped in relation to these changes. There may occur, through the development of transport and electricity and water-power, a rural repopulation, and a decentralization of industry and residential centres. This would call for a re-fashioning of areas. Since there is a long lag behind of institutions, now and in the future some areas must be *excessively* wealthy in relation to their needs and some *excessively* poor in relation to their needs. There are permanent and serious differences of financial capacity between rural and urban areas, and within these classes themselves there are serious differences, as the figures given in the Table of Rateable Values show.

Hence arise the problems involved in grants-in-aid from the central or other authorities,[3] and with them the incidental questions of con-

[1] Cf. Redford, *Labour Migration in England, 1800–50*, 1926.

[2] 'The areas associated with mining and heavy manufacturing industries which produced the largest population growths in 1911–21 now take up positions at or near the bottom of the list . . . whereas the South-Eastern region now outstandingly at the top formerly registered an increase below the general average.' *Preliminary Report of the Census*, 1931, p. xiii. The Report also states that the rural counties of the East and South-West—especially the latter—show definite acceleration in growth of population, and that the 'southward trend of population' is definitely marked. Northern counties have lost considerably on balance by migration, and the Southern regions (S.W. and S.E.) have gained.

[3] E.g. the late Equalization Fund in the London area. See *R.C. on London Government*, p. 12.

trol or local freedom raised by financial aid. We are faced with the problem of extending the area of charge for those services whose causes and effects are not equitably assignable to the small area of actual expenditure—for example, in the matter of destitution, or the maintenance of expensive institutions of public health like water supply and sewerage, or education, or highways. There naturally arises the problem (and a grave problem it is) whether to allow the urban areas to acquire full governmental autonomy, leaving the rather awkwardly shaped and poor rural areas to their own resources.

4. A number of problems arise out of *boundary disputes*. The life of a nation is not static. Since the nation *lives*, it grows and decays, and then grows again differently. One area declines, another becomes populous and rich; the growing wants room to grow, and wishes to include areas belonging to other authorities. The inclusion of new areas means the loss by another authority of area, people, money and functions, and involves the prestige and pride of the parties. Aggression is met with resistance, and co-operation in many projects of joint concern is not only jeopardized, but frustrated. The struggle occurs as among legal equals, none of whom is prepared to admit that it ought to be sacrificed to the ambitions of a neighbour. The Central Authority, as we shall amply see later, necessarily becomes involved to state the general conditions of readjustment, to judge between the disputants, and to act as agent for the nation's interest in relation to those of the contending parties.

5. The problem ever freshly arises of the adequacy of existing areas to deal efficiently with new services. Does efficiency lie in joint action of existing areas or entirely new areas? If in the latter, are they to be special authorities grouping existing areas for the single purpose, or Regions or Provinces with compendious functions, within which the old areas would fall as subordinate agencies? And what would be the situation of the superseded authorities within the framework of the new and larger area?

6. However large the extension of the area of local government, whether it is an area for compendious purposes, or an area appropriate only for a particular service (roads or higher education or police), there is always a *boundary problem*. Consultation and joint action between local authorities is never entirely avoidable. What are the conditions of its success?

7. The very number of the local authorities, especially when combined with their perplexing diversity of nature and constitution, provides a difficult problem of supervision and guidance for the central administrative departments. There is a not unnatural temptation for the central government to promote policies to reduce the number of authorities and to secure their approach to uniformity. It would be possible, but it is not necessary, to record the impatience at so

many local variations and diverse delays and tergiversations, by progressive Ministers of Health and Presidents of the Board of Education. They realize that the more authorities, the greater the difficulties of securing joint schemes, there being many parties to satisfy; and the greater the number of units making a scheme, the greater the number of potential cracks in it, and the care required to avoid them.

8. Where a country is divided into a large number of small, independent, and not seldom jealous areas, it is very difficult to provide for entrants into the municipal service the prospects of a lifelong and progressive career, with the possibility of passing from one authority to another by promotion and transfer. Within small and independent areas it is rare to find the best conditions of progress from simple to complex responsibilities. Nor do they possess the financial capacity to provide the best skill. Further, the close proximity of officials and citizens in small areas, and the immediate dependence of the former on the elected representatives, involve the possibility of corrupt pressure. Is the remedy a larger area, or the appointment and control of the official by an authority external to the one in which he does his work?

9. Finally, the existence of many small areas permits, originally, variations of policy. But in some respects variations affront a national sense of propriety. For example, how is it possible, within one and the same nation, to defend the fact that educational opportunity varies with the place in which you happen to be born or in which your parents happen to reside; or that people living in one place are more liable to smallpox than in others? Hence the central authority is pressed to secure a national minimum standard of administration; and, in transmitting the pressure, raises a large number of problems.

These are the main problems arising directly out of the 'local' nature of local government areas. They are treated in the following chapters, not in the order we have dealt with them, but grouped within the topics of which each forms a part.

II

As Governmental Institutions. Local authorities, like any central authority, have a number of problems issuing from the following questions:

10. What is their constitution and the source and extent of their powers?

11. How do they organize the relationship between the public, the elected council and their permanent officials?

12. How do they raise their revenue; upon what principles, and by what mechanism?

13. What is the theoretical and practical nature of their relationship with the central authority ?

The ensuing chapters deal with both these classes of problems in the proper place and in proportion to their significance. First, the Problem of Areas.

PART II

AREAS AND FUNCTIONS

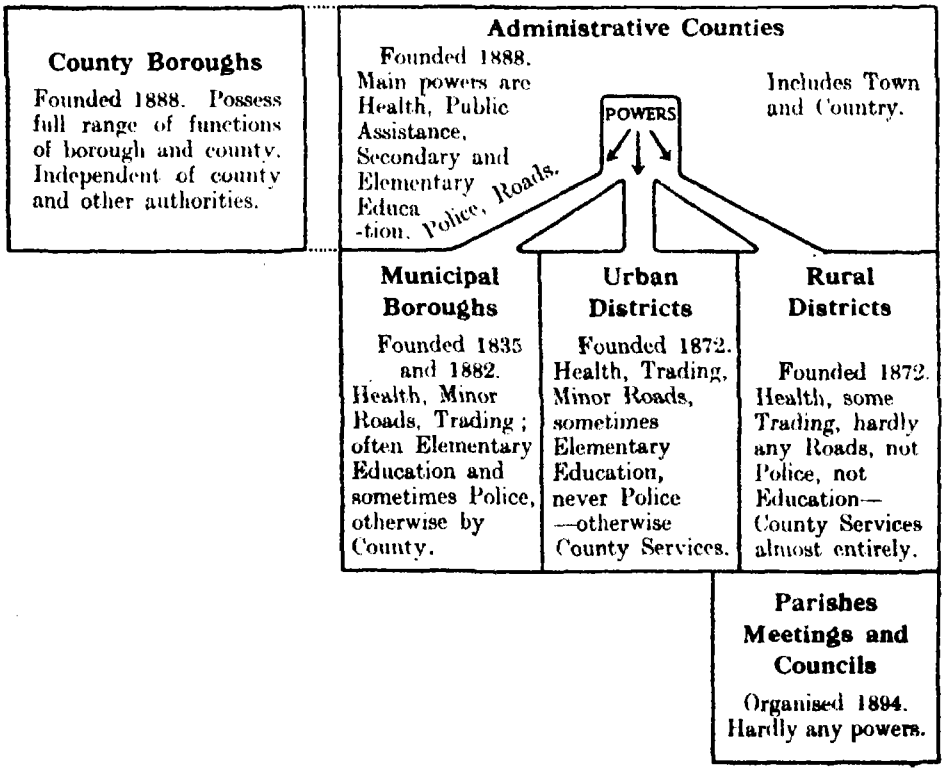
IN Part II, we endeavour to describe the Structure of English Local Government, with special reference to the Areas. Here are a number of areas, some of great antiquity, and some created but two generations ago. They have been given functions to perform. What are the main features of each class of area? What is the relationship between the areas? What difficulties arise out of this relationship? Are the areas suitable for the functions? What are the possible, and what are the desirable, lines of evolution? The subject is complex in the highest degree. It could be made to look simple if one cared to impose an artificial simplicity upon it; but, besides doing violence to the facts, such compulsory simplicity would be a very bad lesson in political science. However, to introduce some order into the discussion, we have divided it into two sections: the areas in their *general* relationship with each other, and, then, certain special functions in relation to the areas. There is no intention to give an all-round description of the government of each of the areas.

Now the maze of English Local Government is so bewildering that, before the description of Areas is entered upon, at the risk of being unduly elementary, we shall, with the aid of a Diagram, first explain in the simplest and most general terms what authorities there are, and how they are related to each other.

The County is normally the largest territorial unit of local government. As reorganized by the Act of 1888 it ceased to have any jurisdiction whatever over the County Boroughs. The County Boroughs are equal in status to the Counties and independent of their jurisdiction. The powers of the County Council stretch all over the County, but are entirely stopped at the County Borough. The powers of the County Council operate over the entire rest of the County, over the Non-County or Municipal Boroughs, the Urban and Rural Districts, and the Parishes, everywhere with certain general exceptions. The County powers stop short in regard to Police and Elementary Education in certain of the larger Municipal Boroughs, in regard to Elementary Education in a few Urban Districts, and in regard to the most important Roads in certain of the larger Municipal Boroughs and Urban

Districts, and in regard to some smaller roads in certain of the Urban Districts.

The County Boroughs have a complete and independent body of powers. The County serves the rest of the area, with some exceptions. Municipal Boroughs have a free body of powers, save for certain powers exercised in their area by the County Council, usually Elementary and always Secondary Education, usually Police, and often the great Roads. Urban Districts have a free body of powers, save for certain powers exercised in their area by the County Council, usually Elementary and always Secondary Education, always Police, and more frequently than not great Roads. Rural Districts have a much smaller body of functions, and never have their own Education Services, nor Police, nor hardly ever any important Roads.



The accompanying Tables show in a very graphic way the distribution of functions of the Authorities, by an analysis of their expenditure and by an analysis of their debt (or capital).

DISTRIBUTION OF EXPENDITURE ON VARIOUS SERVICES OF LOCAL AUTHORITIES IN ENGLAND AND WALES

YEAR ENDING 31 MARCH 1937

I—RATE FUND SERVICES

	County Councils (1)	County Borough Councils (2)	Non-county Borough Councils (3)	Urban District Councils (4)	Rural District Councils (5)	London County Council (City in italics) (6)	Metropolitan Borough Councils (7)	Miscellaneous Local Authorities (8)
TOTAL EXPENDITURE (gross)	£111,368,579	£124,916,149	£55,124,909	£49,369,104	£27,325,365	£36,363,147 *£4,727,853*	£32,610,391	£31,144,296
TOTAL EXPENDITURE (Services maintained by Councils)	£111,368,579	£124,620,552	£39,059,816	£28,508,220	£12,286,044	£36,363,147 *£1,866,798*	£11,442,293	£31,144,296
POPULATION (middle of 1936)	23,283,286	13,413,000	7,595,615	8,372,791	7,314,880	4,131,600 *9,500*	—	—
	£	£	£	£	£	£	£	
1. *Elementary Education*	26,144,367	24,084,515	9,484,191	2,155,697	—	9,706,249	—	Parish Councils 612,449
2. *Higher Education*	12,471,426	8,058,281	297,552	135,471	—	*104,286* 3,396,591	—	
3. *Public Libraries, Museums, etc.*	349,536	1,365,011	513,928	167,528	—	*22,469* 7,249	379,286	Parish Meetings 7,457
4. *Public Health:*								
i. Sewers and sewage disposal	472,408	4,512,061	2,257,472	2,640,617	1,159,379	*31,972* 985,972	319,392	Burial Boards 66,878
ii. Collection and disposal of house and trade refuse	— Nos. under isol. communities	3,132,643	1,481,220	1,360,249	563,093	*54,100*	1,242,592	Catchment Boards 844,534
iii. Hospitals, sanatoria, dispensaries:	48,213	—	661,644	613,296	391,767	—	—	Clearing of Sewers, Land Drainage and Conservancy Authorities 975,474
(*a*) for tuberculosis	2,017,328	1,674,457	—	—	—	*1,231* 445,993	106,850	
(*b*) for venereal disease	169,480	237,430	—	—	—	*3,017* 125,682	—	

	County Councils (1)	County Borough Councils (2)	Non-county Borough Councils (3)	Urban District Councils (4)	Rural District Councils (5)	London County Council (City in italics) (6)	Metropolitan Borough Councils (7)	Miscellaneous Local Authorities (8)
4 *Public Health (contd.)* :	£	£	£	£	£	£	£	
(*c*) for other diseases	45,950	1,275,749	—	—	—	*227* 1,133,828	1,941	Harbours, Docks, Piers, etc. 1,685,999
(*d*) general hospitals	1,078,575	2,975,782	—	—	—	3,536,294	—	
iv. Maternity and child welfare and supervision of midwives	1,051,916	1,438,529	505,334	256,538	25,268	*780* 39,870	434,683	Joint Boards and Committees for :
v. Notification of disease, general disinfecting in	15,228	182,444	116,561	93,784	32,339	5,465	107,789	Elementary Education 55,692
vi. Salaries and expenses of medical officers of health and sanitary inspectors (not allocated to specific services)	543,398	564,555	333,263	320,794	348,774	*8,805* 155,373	216,023	Higher Education 324,853
vii. Baths, wash-houses and bathing-places	—	1,363,910	550,186	221,122	—	—	695,241	Sewerage and Sewerage Disposal 667,659
viii. Parks, pleasure grounds, open spaces	79,501	2,661,755	1,643,874	1,136,002	25,080	*34,308* 462,620	224,431	
ix. Public conveniences	—	410,362	251,877	150,655	21,621	*25,516*	248,672	Hospitals :
x. Prevention of adulteration of food and drugs	62,303	66,783	6,519	2,976	—	*1,157*	25,310 Mortuaries	Tuberculosis 238,557
xi. Public slaughterhouses	— Milk & Dairies	138,151	26,516	16,237	—	—	13,609	Other 912,305
xii. Port sanitary authorities	129,551	49,897	8,896	4,474	—	*33,287* Amb. Ser.	—	
xiii. Rivers pollution prevention	39,879	21,891	—	—	—	182,114	—	Mental Hospitals 1,370,674
xiv. Welfare of the blind	585,317	817,227	—	—	—	149,667	—	
xv. Vaccination	61,080	47,270	—	—	—	*203* 730	17,539	Mental Deficiency 576,315
xvi. Other health services	65,524	527,683	154,200	145,634	67,081	*17,658* 13,094	41,202	

5. *Relief of Poor, including maintenance of rate-aided patients in mental hospitals*	20,516,663	19,457,655	—	—	—	6,961,911	—	Highways, Bridges, and Tunnels 484,481
6. *Mental Hospitals*	817,381	594,696	18,629	—	—	*3,881*; 617,072	—	
7. *Mental Deficiency*	1,402,427	1,128,909	—	—	—	*27*; 543,688	—	Town Planning 95,753
8. *Housing*:								
i. Assisted scheme under Housing Act, 1919	106,843	13,277,325	5,651,078	6,918,832	4,103,399	*172,543*; 3,582,692	1,153,807	Vagrancy 291,903
ii. Other state-aided housing schemes	—	13,277,325	H. Acc. ex. 5,651,078	6,918,832	4,103,399	3,582,692	1,153,807	Water Supply 2,578,706
iii. Other housing schemes	—	1,105,300	504,864	658,765	R.U. Acts 18,893	*33,397*; 353,663	124,949	
iv. Housing Acts, 1926, 1931	—	—	—	—	626,673	—	—	Gas Supply 527,840
9. *Small Dwellings acquisition*	123,982	307,156	—	—	—	15,177	62,841	Electricity Supply 824,120
i. Under Small Dwellings Acquisition Acts	—	—	567,940	424,818	68,799	—	—	
ii. Under Housing Acts, 1923 and 1925	—	—	136,358	165,125	120,227	91,442	—	Cemeteries 82,028
10. *Town Planning, Agriculture and Fisheries*	1,877,426	85,469	46,879	64,643	55,772	*1,874*; 6,032	—	Miscellaneous 710,143
11. *Allotments, small holdings, diseases of animals, etc.*	125,547	211,432	78,621	—	5,749	49; 2,219	—	
12. *Highways and Bridges*	25,342,057	—	4,827,108	4,641,757	—	*95,214*	—	Visiting Committees, Mental Hospitals 6,567,202
i. Maintenance, widening, and improvements	36,410	9,335,029	Gen. Adm. 192,681	Charges 102,151	2,371,418	*149,970*; 1,425,662	2,083,835	
ii. Scavenging, watering, etc.	309,776	1,882,070	830,372	621,275	2,326	Other Agr. Items *101,970*; 1,406	896,362	Scilly Isles 6,421
13. *Sea defences, flood prevention and land drainage, etc.*	655,057	611,023	111,721	104,356	—	9,068	—	
14. *Private street works and other private or rechargeable works*	29,864	1,012,815	878,676	459,823	62,208	—	264,390	Communities and Markets, etc. 934,441
	Gen. street 92,861							
	Gen. Adm.	Charges						
15. *Public Lighting*	1,360,168	2,273,763	1,114,759	1,067,105	87,495	*28,909*	607,058	
16. *Fire Brigade*	—	1,009,455	464,983	346,627	60,065	995,730	—	
17. *Police and Police Pensions*	7,952,027	7,303,178	1,175,987	—	—	*527,966*	—	
18. *Probation of Offenders*	61,362	55,255	7,370	—	—	*663*; 132	—	

	County Councils (1)	County Borough Councils (2)	Non-county Borough Councils (3)	Urban District Councils (4)	Rural District Councils (5)	London County Council (City in Italics) (6)	Metropolitan Borough Councils (7)
	£	£	£	£	£	£	£
19. *Approved Schools*	72,691 R.H.15,129	61,841 R.H.30,552	67	—	—	*13* 39,013 R.H.25,574	—
20. *Weights and Measures*	188,331 I.S. 6,711	166,280 I.S. 20,696	23,327	—	—	*6,564* 27,443 I.S. 17,157	—
21. *Administration of Justice*	741,569	517,366	94,188	—	—	*94,001* 114,224	—
22. *Registration of births, deaths, and marriages*	E.A. 1,162 168,667	E.A. 6,456 146,533	—	—	—	E.A. 4,965 *8,786*	47,403
23. *Registration of Electors*	356,031	181,601	37,287	3,846	—	*1,786*	64,297
24. *Municipal (or Council) Elections*	68,722	50,880	33,647	32,938	7,868	20,737	2,305
25. *Valuation Expenses*	141,766	176,910	84,643	68,184	70,932	*8,391*	53,664
26. *Loans (out of borrowed moneys) to other Local Authorities*	413,512	263,966	46,795	—	—	—	—
27. *Services undertaken by Council as agents of Government Depts.*	361,081	268,877	11,642	10,539	—	170,068	—
28. *Miscellaneous Services* (d)	750,985	1,904,410	532,416	457,503	79,469	*24,013* 130,558	202,194
29. *Administrative Expenses (not allocated to specific services)*	1,684,889	3,650,966	2,307,099	2,012,984	1,001,755	857,472	1,261,280
30. *Legal & Parliamentary Expenses*	33,840	67,078	32,046	37,847	22,672	*228,968* 11,334	20,055
31. *Cost of Rates Collection*	—	569,619	343,484	435,944	445,410	*13,328*	203,529
32. *Transfers to Special Funds (not allocated to specific services)*	30,972	181,370	94,762	39,073	440,312	*50,360*	288,612
33. *Transfers to Trading Services to meet deficiences*	90,940	961,255	467,154	561,950	—	—	31,313
34. *Totals in respect of Services maintained by Councils*	—	124,620,552	39,059,816	28,508,220	12,286,044	*1,866,798*	11,442,293
35. *Contributions by Council as Rating Authorities under precept to other Local Authorities*	—	295,597	16,065,093	20,860,884	15,039,391	*2,861,055*	21,168,098

II—TRADING SERVICES (INCLUDING GENERAL CORPORATION ESTATES), 1936–7

Service	County Councils	County Boroughs	Non-county Boroughs	Urban Districts	Rural Districts	L.C.C.	Metropolitan Boroughs (incl. City of London)
	£	£	£	£	£	£	£
Electricity	—	31,607,896	10,444,920	2,903,025	192,595	—	5,914,436
Gas	—	12,472,143	3,064,955	2,122,198	46,436	—	—
Water	85,833	9,435,774	2,347,872	2,120,629	1,428,938	—	—
Tramways }	Light Railway	21,721,364	1,270,871	239,118	2,124	—	—
Buses }	4,121						
Ferries	34,499	400,430	55,413	22,042	—	—	—
Markets	—	1,417,529	412,735	155,181	6,795	*451,621*	13,430
Cemeteries	—	713,786	359,929	326,269	8,860	*18,629*	205,419
Docks, Piers, Canals	—	794,143	250,776	56,727	194	—	—
Airports	597	146,314	13,954	—	—	—	—
General Corporation Estates	—	1,207,791	302,643	—	—	—	—
Miscellaneous	—	1,669,292	629,808	249,666	—	—	—
Totals: Trading Services	125,050	82,586,462	19,153,876	8,194,855	1,685,943	Nil	6,133,185

NET OUTSTANDING LOAN DEBTS OF PRINCIPAL RATE FUND SERVICES, 1936–7

Local Government Financial Statistics, 1936–7 (Millions of Pounds)

	County Boroughs	County Councils	L.C.C.	Non-county Boroughs	Metropolitan Boroughs	Urban Districts	Rural Districts	Other Local Authorities (Gross)
	£	£	£	£	£	£	£	£
TOTAL LOANS OUTSTANDING	365·24	85·90	80·35	148·57	25·23	156·66	77·88	9·4
1. Elementary Education	19·09	16·07	4·92	8·70	—	1·38	—	—
2. Higher Education	8·37	11·30	3·02	—	—	—	—	—
3. Public Libraries	1·11	·08	—	·43	·18	·10	—	—
4. Public Health	48·28	8·45	6·88	21·10	2·95	22·88	7·95	4·82
5. Poor Relief	2·43	2·95	—	—	—	—	—	—
6. Mental Hospitals and Deficiency	4·33	2·37	2·32	—	—	—	—	1·08
7. Housir.g	205.91	19·94	44·60	100·48	18·18	117·78	69·19	—
8. Highways	52·85	10·93	12·36	9·70	1·84	5·35	·36	3·25
9. Sea Defences, Land Drainage, etc.	4·58	—	—	·94	—	·68	—	—
10. Fire Brigade	1·30	—	·72	·58	—	·41	·03	—
11. Police	1·00	1·32	—	—	—	—	—	—

CHAPTER III

THE ADMINISTRATIVE COUNTY

THE Administrative County is territorially the largest area of English local government; and it owes its origin to the local government Act of 1888.[1] Before that year, County government was closely identified with the historic or 'ancient' Shire or County, of which there were (and still are, for parliamentary and some judicial purposes) 52. The Act of 1888 accomplished, broadly, two purposes: it introduced an elective council as the governing authority in the County, and it extracted from the jurisdiction of the County, and placed into a class of independent local authorities, all Municipal Boroughs with a population of 50,000 and upwards. Further, it divided up some of the ancient Counties into more manageable administrative counties—thus Cambridge, Hampshire, Northampton, Suffolk and Sussex were each divided into two,[2] and the three Ridings of Yorkshire,[3] and the three parts of Lincolnshire [4] were made separate Administrative Counties. There are, therefore, 62 Administrative Counties as the major territorial areas of English local government—including London.

The Administrative County comprises an area of mixed urban and rural character. The authority and officers and internal organization of the governing bodies, the County Councils, vary to some degree, first, according to the status of the local governing bodies within it, and, secondly, according to permissive arrangements regarding certain services established between the County and the smaller areas. For example, the powers of the County Council regarding elementary education stop short of Municipal Boroughs with a population of 10,000 and over, and of Urban Districts with a population of 20,000 and over. Powers regarding police (exercised by the Standing Joint Committee of the County Council and the Justices) stop short of Municipal Boroughs with a population of 10,000 and over [5]; the power of the County relating to important roads stops short of Boroughs

[1] I.e. Local Government Act, 1888 (51 & 52 Vict. c. 41).

[2] Cambridgeshire and the Isle of Ely; Hampshire and the Isle of Wight; Northamptonshire and the Soke of Peterborough; East and West Suffolk and Sussex.

[3] E. Riding, N. Riding, and W. Riding.

[4] The Holland, Kesteven, and Lindsey Divisions.

[5] *Local Government and Local Taxation*, Wright and Hobhouse (5th ed.), p. 97: 'It has been the policy of the Police Acts to encourage a partial consolidation of

and Urban and Rural Districts, as prescribed by the Local Government Act of 1929, discussed later. Otherwise, *and always with the complete exception of the County Boroughs*, the authority and officers of the County Councils reach across the whole County, and operate within the area of all the local authorities included in its boundary. Further, powers may, by arrangement between the County and other Councils, be distributed, as, for example, certain public health powers originally exercisable by the Districts, to the County.

Powers of the County. Since 1888 the County has very rapidly advanced to the foreground in local administration. We cannot give a complete description of its powers since they are so many; and, of course, they vary in scope and detail according as each County is apathetic or progressive, but the functions are very well exhibited in an analysis of the yearly expenditure printed on page 35. The figures and items should be examined very carefully in order that the relative financial importance of the items may be appreciated, and the functions of the County compared with those of the other local bodies. If this is done one sees that the most important function of the County, considered in terms of expenditure, is Education, Elementary and Secondary, of which, excepting the County Boroughs, the County Council has almost a monopoly within its area. But some Counties spend most heavily on Public Assistance.[1] Next, come Highways, in which it now has the preponderant authority. Fourthly, comes Police, in which its authority is preponderant, and ever increasing. These items constitute about 90 per cent of the total services. Apart from them one will observe how small a *direct* administration there is of Public Health, and one will notice that whatever is spent, goes to services which require large-scale territorial organization and institutions to reap their due economy. Some items, of course, like salaries of Medical Officers, Inspectorships, Valuation, and part of Administrative expenses, are, as to some proportion, simply regulatory of the work of other authorities, and not direct administration. It will also be noticed that the County, because it governs a large rural area, bears the brunt of expenditure in Small Holdings and Diseases of Animals.

These things, then, are what the County Council does, spends and is responsible for. It must, however, be remembered that some of these functions, for example, Education, Police, and Highways, are often, and the whole field of public health is always, divided administratively and financially between the County Council and the local authorities within its boundaries. The County does not carry on

county and borough police. Since 1877 no new borough with less than 20,000 inhabitants has been allowed to establish a separate police force. And the L.G. Act, 1888, went a step further by extinguishing the police force of every borough with a population, according to the census of 1881, of less than 10,000.'

[1] Not shown in the Table because the figures relate to the year before the transfer of Public Assistance to Counties and County Boroughs.

trading services, since hitherto, for technical reasons, smaller areas have been more appropriate, though henceforward, it is not improbable that larger, or at any rate different, areas will be required. Nor is the County much concerned at present with housing. The Counties now spend over £111,400,000,[1] that is about one-fourth of the entire expenditure of all local authorities. The relative rapidity of the progress of County administration may be gauged from a similar comparison at different stages of the last two generations: thus:

1871 . . £2·5 millions; or 7 per cent of the total.
1905 . . £15·3 millions; or 14 per cent of the total.

Problems of Area. Now the County as thus provisionally characterized has two classes of problems: its intra-County adjustments, and its extra-County adjustments. We proceed to a discussion of these, and take this opportunity of leading up thereto by a brief review of the history of County administration.

The Rise of the County. The central fact, in relation to the fitness of the area for modern functions, is this, that *the majority of the shires are to-day practically the same as they were in the days of William the Conqueror.*[2] They arose in response to the needs of England more than one thousand years ago. The areas were roughly marked out and determined in Anglo-Saxon times by the military purposes and administrative weakness of a unifying monarchy, and the force and speed of royal lieutenants whose swiftest means of locomotion was ye horse. The original military, taxation, judicial and highway officers, the Sheriffs, were, in the fourteenth century, superseded as general administrative officers by numerous Justices of the Peace.[3]

'For the better keeping and maintenance of the peace, the king will, that in every county good men and lawful, which be [no maintainers of evil, or barretors in the country, shall be assigned to keep the peace.' [4]

The Sheriffs had been central officers, though to secure congenial relationships between the Crown and the County, and the obedience

[1] *Local Taxation Returns*—gross expenditure for year ending 31 March, 1937, and the figure in the text includes over £20,000,000 for Public Assistance. Cf. p. 382 below.

[2] Cf. Webb, *The Parish and the County*, 1905; Cam, *The Hundred and the Hundred Rolls*, 1930; Maitland, *Constitutional History*; Gomme, *Principles of Local Government*, 1897, and *Literature of Local Institutions*, 1886; Stubbs, *The Constitutional History of England in its Origin and Development*, Oxford, 1880; cf. also *Census*, 1851, Vol. i, pp. lvi–lxxxii.

[3] Beard, *The Office of Justice of the Peace in England* (1904), p. 48: 'According to the writ prepared . . . they (i.e. the J.P.s) were to guard the peace within the liberties and without in conformity with the statutes of Winchester, Northampton and Westminster, and to punish offenders as provided; they were to summon and bind to keep the peace those who threatened the lives and property of others; they were to inquire by wise and lawful men of the county into highway robberies, mayhem, murders and other felonies, trespassing, forestalling, regrating, maintenance, confederacies, extortions, disturbance of the peace, weights and measures, laborers, artificers, servants and others offending against the labor laws. . . .'

[4] Beard, op. cit., p. 35 (Edw. III, s. 2, c. 16; Rot. Parl., ii, 11a).

of local magnates, they were residents of their county and personally acceptable. They collaborated with the County Court for the transaction of criminal, civil and administrative business. Central control was exercised through the King's Council and the Exchequer, and through the 'justices in eyre', on circuit. This proved too loose a link between the King and the Counties, and Justices of the Peace were established by the Crown (Richard I) in 1195.[1] All the old powers passed into their hands, the justice and police of the County, together with numerous and accumulating duties placed upon them by the mercantile, regulatory and humanitarian activities of the State.

For five hundred years, from the middle of the fourteenth century to 1888, this peculiar form of English local government prevailed: County business, and the control of officers and functions, in Town and Parish, were carried on by a number of central nominees—the Justices. These nominees did not act through administrative councils as we know them to-day, with a large and regular paid staff, and an appropriate form of office organization. They administered through the judicial method and form of detecting negligence, misinterpretation, or violation of the law, 'presenting' the charged parties before the court of Justices and Jury in Special, Petty or Quarter Sessions, and then passing a sentence of fine or amendment upon officer or authority.[2] The Poor Law itself involved a considerable range of duties, for the Poor Law was a congeries of Statutes relating to all poor people.[3] It was, in large part, the regulation of the labour market and vagrancy; but closely connected was the relief of actual destitution, the fixing of prices, the fixing of wages. The Justices had highway obligations; the maintenance of the peace itself; and, then, there was the suppression of a vast range of 'common nuisances', involving a rudimentary form of what we should to-day call public health activities. In the main, execution lay with the Parishes and Parish officers, but a close supervision was exercised by the Justices. The increase of business was met by the appointment of regular officers, paid by fees, and later by salaries; and administrative business came here and there to be transacted by committees of the Justices. The working relationship between the central authority and the Justices was easy, and for a very good reason. The Justices were members of that same social class—the gentry—which controlled Parliament in the Commons or the Lords and at Court. Many were members of Parliament. They could arrange it with their parliamentary friends that they should be left alone as governors of the County—save for Statutory duties and control by the Law Courts, of which they formed, in fact, the first instance.

[1] Cf. Beard, op. cit., pp. 17–18.

[2] Cf. for a description of this process, Webb, *The King's Highway*, and *The Parish and the County*.

[3] Cf. Webb, *The English Poor Law*, Part I.

Between 1835 and 1888 this system might have broken down if the assumption of new activities by the State had meant an increase of activities by the County authorities. For the administrative organization was inappropriate, and the system of central appointment to the Commission of the Peace contradicted the democratic tendencies of the time. And it must be remembered that by Statute from 1439 until 1875, no one was eligible for justiceship unless he possessed in his sole right a property of considerable value, modified in 1875 to the *leasing* of property of the same worth.[1]

Fresh burdens were necessarily imposed upon government by the beginning of the transformation from a predominantly agricultural, village-community civilization, to a closely congregated steam-factory and urban civilization. At the beginning of the nineteenth century these burdens were, according to contemporary political economy and the philosophy of government, best administrable by authorities other than the Counties. We see, on the one hand, new duties vested in other authorities, and, in some cases, the County actually divested of duties. For example, the County ceased to be the controller of Poor Law upon the establishment of the Boards of Guardians and the Poor Law Commissioners in 1835; highway powers passed to Highway Boards in 1862; public health legislation in 1831, 1848, and onwards, did not include the County; in 1871 elementary education was to be administered by special School Boards. But four significant County duties were established: in 1839 and 1856 County police forces were established on the clear recognition that the prevention and detection of crime was impossible in smaller and unco-ordinated areas[2]; in 1875 powers were given under the Food and Drugs Acts; in 1876 powers were given to prevent the pollution of rivers; in

[1] *Report*, Royal Commission on the Selection of Justices of the Peace, 1910, p. 2: '. . . 18 Henry VI . . . enacted that no Justice should be put on the Commission if he had not lands to the value of £20 per annum. This qualification was raised by the Statute 5 Geo. II, c. 11 to one of £100 per annum and by 18 Geo. II, c. 20 it was provided that every Justice of the Peace must have in possession either in law or equity, for his own use and benefit, a freehold, copyhold, or customary estate, for upon one or more life or lives, or for a certain term originally created for 21 years or more in lands, tenements or hereditaments, in England or Wales, of the clear yearly value of £100 above all encumbrances, etc. . . .

'The Act of 1875, 38 & 39 Vict. c. 54, modified this qualification by admitting as eligible for appointment persons owning leaseholds and living in the county in a house rated at more than £100 a year.

'Finally, in 1906, by the Statute of Edward VII, c. 16, the property qualification was abolished altogether. It is to be observed that this property qualification applied only to English and Welsh county justices.'

[2] Parliamentary Papers: First Report of the Commissioners *re* Appointing Constabulary Force in the Counties, 1839, p. 170: '. . . To the specification of the several causes of local weakness, and disturbances arising from such sources, we must superadd, as an all-pervading local cause of mischief, the deficiency of the experience afforded by narrow districts, consequent on the casual attention which is obtainable to the public service, from whence arise imperfection, diversity, and contrariety of views, as to the sources of evil to be guarded against, and inaction, or excessive and conflicting action in pursuance of those views.'

1878 under the administration of the Weights and Measures Acts. The fundamental significance of this grant of powers lay in this, that to be efficient, the nature of the services required uniformity of policy and practice and a large area: the largest-known area must be responsible.

Democratic Reform and Increase of Functions. Yet the way was not clear for an expansion of the rôle of the County in English local government until one matter had been settled. It was the principal problem of reformers: to abolish the method of governing the County through Justices of the Peace centrally appointed, and invariably chosen from the upper classes, and replace it by a locally elected Council.[1] This change was accomplished by the Act of 1888; the serious constitutional obstacle was removed from the developmental path of the County. Indeed, the County henceforth not only received an independent set of important functions, but in some cases came to be placed *intermediately* between the central government and the smaller local authorities as a control over the latter, and it was even intended to relieve Parliamentary congestion (of which there had been much complaint at least since 1848, and which had been made so obvious by the obstructionist tactics of the Irish members) by devolving central powers to the County.

Since 1888 many statutes have given the County a predominant position in relation to Roads, Education, the provision of Institutions (sanatoria, isolation hospitals), Public Health, Public Assistance, the Reorganization of Districts within the County, unifying Valuation for Rating. The characteristics of the progress of the County are these: (1) its power has expanded not merely in scope, but in the total amount of authority compared with that of other local authorities; (2) its power expanded as it was perceived that economies and efficient service were obtainable by a larger area; (3) to its own powers of direct administration, it added the power to regulate and supervise the smaller authorities, and if they should prove incapable, mainly in the realm of public health, to enter their field.

Recent Evolution. Let us examine recent evolution more closely. The direct administrative power of the County Councils increased thus: over main highways and bridges,[2] isolation hospitals,[3] lunacy,[4]

[1] Rodlich and Hirst, *Local Government in England*, 1903, Vol. II, p. 40, and Chap. III. Cf. Rathbone, Bell and Montague, *Local Government and Taxation*, 1885, p. 31: 'On the other hand, a county government which is to fill its proper place in the national organization, must necessarily be elective. That the county should be governed by nominees of the crown and members of one class has long been felt to be anomalous. This anomaly will be felt more and more keenly as democratic ideas become more and more diffused. The continuance of this anomaly makes it impossible to enlarge the junctions of the present county government. That government has been able to endure so long chiefly because it did so little. If we want a county government which is to do a great deal it must be directly representative.'

[2] Highways and Bridges Act, 1891, and Development and Road Improvement Funds Act, 1909. [3] Isolation Hospitals Act, 1893.

[4] Lunacy Acts, 1890 and 1891, and Mental Deficiency Act, 1913.

river pollution,[1] sale of food and drugs,[2] weights and measures,[3] regulation of advertising,[4] provision, etc., of aerodromes,[5] welfare of the blind,[6] diseases of animals,[7] elementary and secondary education,[8] electricity production and supply,[9] land drainage,[10] maternity and child welfare,[11] public libraries,[12] smallholdings,[13] town-planning,[14] tuberculosis,[15] and sundry public health powers.

The Local Government Act of 1929 made over increased responsibilities regarding the Roads, and transferred from the Boards of Guardians, the whole Service of Poor Relief. The latter was given in a form which enabled the County to organize its means of relief according to the causes and classes of destitution, to allocate the duties among its normal committees, and also to decentralize to territorial committees within the County.

The Supervisory Powers of the County. There has been a remarkable increase in the supervisory and appellate authority of the County Council. It includes control over the areas of urban districts and rural districts, particularly as regards the formation and alteration of these areas; over allotments, highways, rural housing, and many others.[16]

The smaller authorities, however, have not taken kindly to the County as a controlling authority intermediate between them and the central government. The notion that they should act as intermediate bodies was first adumbrated by the Right Hon. Lord Robert Montague, M.P. In an Appendix to the Report of the Royal Sanitary Commission of 1869–71 he says[17]:

'Let us seek it (i.e. unity of sanitary management) in a larger, a more influential, a more independent authority, at a higher level, between the central government and the smaller authorities to which I have alluded. From the first, we have heard evidence in favour of "a buffer", or "cushion" between the central and local governments and . . . influential and learned witnesses

[1] Local Government Act, 1888, Sect. 14, appointing County Councils authorities for the enforcement of the Rivers Pollution Prevention Act, 1876.
[2] Sale of Food and Drugs Acts, 1875 and 1879.
[3] Weights and Measures Acts, 1878 to 1893.
[4] Advertisements Regulation Act, 1907.
[5] Air Navigation Act, 1920.
[6] Blind Persons Act, 1920.
[7] Diseases of Animals Acts, 1894 and 1903.
[8] Education Act, 1921 (consolidating Education Acts, 1870 to 1919).
[9] Electric Lighting Act, 1909, and Electricity (Supply) Acts, 1919 and 1922.
[10] Land Drainage Act, 1918.
[11] Notification of Births Acts, 1907 and 1915, and Maternity and Child Welfare Act, 1918.
[12] Public Libraries Acts, 1892 to 1919.
[13] Small Holdings Acts, 1908 to 1919.
[14] Town and Country Planning Act, 1932.
[15] Public Health (Prevention and Treatment of Disease) Act, 1913.
[16] *R.C. on L.G.: Minutes of Evidence*, Part 1, pp. 167 ff., where a long list of the supervisory and general controlling powers of County Councils over subordinate authorities is appended.
[17] Paper submitted by Lord Robert Montague to *Royal Sanitary Commission* (2nd Report, R.C., 1871, Vol. II, p. 340).

have spoken in favour of instituting such bodies. For a central government which depends upon popularity for its existence, is unable to force Boards of Guardians to observe the law. Moreover, it is not politic that the central government should incur the odium of a collision with a local government. To avoid this, a large, powerful and independent body, on whom the central government does not depend, as they do on a town council, must be interposed between the central government and every local authority. This body may then incur the odium without injury to the state; while on the other hand, it may be guided in its action by the central government. This body will moreover be possessed of more local knowledge than the central Parliament, and less local prejudice than the town councils. Local knowledge is very necessary for legislation; because localities differ so much, that national legislation and uniform systems cannot but be baneful; while on the other hand, the selfish interests and influences of localities must always in the long run be injurious to the nation. Let us then look to such a body. Let it be our sanitary unit, of which local authorities will be fractions.'

It was the intention of the Government in 1888 to move towards this end, and Section 10 of the Local Government Act, 1888, empowered the Local Government Board (and the power now rests in the Ministry of Health) to 'make from time to time a Provisional Order for transferring to county councils . . .' (here follow the powers, duties, etc.).[1] The Non-County Boroughs (the Municipal Boroughs) rebelled, demanding exemption from such controlling power and preferring *direct* relations with the central authority. A Committee on the Devolution of Powers to County Councils reported in 1898 that—

'The hostility of the Non-County Boroughs and of the majority of the Urban Councils to the transfer of any further powers to the County Councils and their preference for the control of the Central Authority, were declared by the witnesses examined on behalf of the above Authorities to be stronger even than they were in 1889. . . .

'We fully recognize the satisfactory manner in which County Councils discharge the duties entrusted to them under the Acts of 1888 and 1894; but, having regard to the fact that the relations between the several Authorities are not such as to render devolution possible at the present moment, we have not considered it necessary to take evidence as to whether County Councils could discharge satisfactorily the additional and for the most part widely different, duties which the County Councils Association would propose to devolve on them.'[2]

It is not necessary to accentuate the fact that the County Councils were prepared to accept powers of control and approval over the smaller authorities.[3]

[1] Local Government Act, 1888, Section 10 (51 & 52 Vict. c. 41).

'(1) It shall be lawful for the Local Government Board to make from time to time a Provisional Order for transferring to county councils

'(*a*) any such powers, duties, and liabilities of Her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government department, as are conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character; . . .'

[2] *R.C. on L.G.: Minutes of Evidence*, 1923, Sect. 12, p. 170.

[3] Ibid., 1923, p. 170: 'In 1903 the Local Government (Transfer of Powers) Act was passed amending Sect. 10 of the L.G. Act, 1888, so as to enable the Local Govern-

The episode is significant because it throws into relief certain factors in English local government: (*a*) the strong sense of independence of the urban authorities, and their mutual jealousy, latent but always liable to burst into flame; (*b*) the smaller local authorities' preference for control by the central authority to control by larger local authorities; and (*c*) the willingness of the Counties to assume more powers even if it meant reducing the powers and status of the smaller authorities.

The general situation was not materially altered between 1900 and recent years. Then changes in the rating system were produced by the Rating and Valuation Act of 1925, and the Second Report of the Royal Commission on Local Government (1929) prepared the considerable changes effected in the field of public health and the reorganization of Districts, matters closely connected, by the Local Government Act of 1929. The subject is worth closer attention.

The main executive authorities in public health administration within the County were the Non-County Boroughs and the Urban and Rural Districts. For various reasons, serious deficiencies of area, knowledge, public spirit and finance (to be explained later) existed, with grave effects upon public health. Clearly, such a case called for the application of any of three remedies: a unifying authority established by the local authorities themselves—this did not come into existence; a local controlling authority, appointed by the central government —this was distrusted; a controlling power exercised by the central government itself—this was established by power of *mandamus*, and by *action in default*, as given by the Public Health Act, 1875, Section 299. But a power to act in default can only be effective if two conditions are fulfilled: that default is promptly detected and reported, and that it is at once followed by local reform or central intervention. The first condition was met by Section 19 (2) of the Local Government Act of 1888,[1] and Section 16 of the Local Government Act of 1894.[2]

This limited the action of a County Council to representation following a default reported by the District authorities. Such a report was unlikely to be made. Which local authority is prepared voluntarily to put on a white sheet and cry *mea culpa*, our drains and sewers

ment Board (on the application of the Council of a County or County Borough) to make a Provisional Order for transferring powers, duties, etc., of Government Departments to the Council of a particular County or County Borough, as well as to such Councils generally. No application has been made under this Act.'

[1] Local Government Act, 1888 (51 & 52 Vict., c. 41), Sect. 19 (2): '. . . If it appears to the county council from any such report that the Public Health Act, 1875, has not been properly put in force within the district to which the report relates, or that any other matter affecting the public health of the district requires to be remedied, the council may cause a representation to be made to the Local Government Board on the matter.'

[2] Local Government Act, 1894, Sect. 16.

are bad? Nor was that all. Many of the District authorities had only part-time Medical Officers, often engaged in private practice; their concern for the public health could not possibly be as continuous and intense as *preventive* medicine requires. Further, default powers were very little used because 'it is very unpleasant to make a charge against a public body of being in default, and it very rarely succeeds when it is made'.[1] And, certainly, the idea that the County had any 'general power of supervision' was resisted by the Municipal Corporations, and, tactfully, not pressed by the County Councils.[2]

Further, action in default and application for *mandamus*, were too clumsy: local pride was too easily wounded, and both the local and the central authorities preferred collaboration on the basis of local *self*-government to legal conflict. Hence, since the weapons were too heavy they were hardly ever used at all, and never, of course, in the *incipient* stages of default, before irremediable harm was done.

The Second Report of the Royal Commission examines this situation and makes certain recommendations. The representative of the Ministry of Health, Sir W. A. Robinson, suggested that [3]:

'(i) The power of a County Council to make a representation to the Minister should not depend, as now, upon the perusal of a report from a District Medical Officer of Health, but should be expressed in general terms.

'(ii) The Minister should in future be required by statute to consider the representation and empowered to hold a Local Inquiry.

'(iii) If it were established after Local Inquiry that the Council of the County District were not administering the health service in question up to a standard which the Ministry considered reasonable, and if no action satisfactory to the Minister were taken by the Council within a reasonable time, there should be statutory power for one or other of the following courses:

'(*a*) The Council of the County District might by agreement with the County Council, and with the approval of the Minister, relinquish to the County Council their responsibility for the service in question.

'(*b*) The County Council might be empowered to do the necessary work, the Council of the County District being required to pay the cost as a debt to the County Council.

'(*c*) The responsibility for the administration of the service might be transferred to the County Council by Order of the Minister.

'(iv) This procedure should apply in respect only of duties laid upon Councils of County Districts and not of powers vested in them.'

This proposal is an instructive example of decentralization to secure the advantage of familiarity with local and personal circumstances, and to adapt general rules to particular situations. Naturally, the Counties, through their Association, welcomed the proposals as 'the least reorganization of the existing system calculated to bring it into uniformity with modern conditions'.[4] They went even further,

[1] *R.C. on L.G.: Minutes*, Q. 33,853.
[2] Ibid., Qs. 6,643 ff.
[3] Sir W. A. Robinson, for the Ministry of Health. *Second Report of the R.C. on L.G.*, 1928, p. 29.
[4] *R.C. on L.G.: Second Report*, p. 30.

and proposed the transfer to the County of many services now performed by the Districts, with authority to re-delegate their powers. Such a distinction between County powers delegated to the Districts, and powers in the free possession of the Districts, would have provided the Counties with a supervizing authority of a double kind:

'I should like to say about supervision that it does not mean in any way what one would call fussy interference with the duties of the District Councils; it is only in regard to local services, and in extreme cases, to call the attention of the Minister of Health to the difficulties which have arisen. That is so far as supervision with regard to the present services, or in regard to what are properly called local services is concerned. With regard to services delegated by the County Councils, some different considerations come in. There are possibilities there of supervision of a different kind.' [1]

This was put a little stronger on another occasion [2]:

'Q. 32,600.—"Are you not in effect coming back to the suggestion made in another quarter, that the County Council are to be the supervisory Health Authority?—Yes; I think that must be so. If you have a well-organized health service for the whole County, the various matters are so interwoven that I do not think you can divorce the County Council from the Local Authority, or the Local Authority from the County Council, in a matter of that kind."'

The Association of Municipal Corporations agreed that there should be vested in the County Councils a power of calling attention to default, but they feared [3] and objected to 'a roving power of supervision', or a 'too drastic form of compulsion'. They said: 'One wants to keep away, as between the larger authority and the smaller authority, from the idea of compulsion'.[4] And the power to act in default must be a power related to *specific duties* imposed on the Boroughs, and not invade the general field of their discretion. Yet it was recognized that smaller and incompetent authorities had no unlimited right to imperil the welfare of the community.

[1] *R.C. on L.G.: Second Report*, p. 30 (Sect. II—*Evidence on behalf of the Local Authorities*—given by Mr. Holland).

[2] *R.C. on L.G.: Minutes of Evidence*, p. 2022. (Mr. Holland.)

[3] Ibid., p. 2096. (Mr. Henry Darlow for the Association of Municipal Corporations.)

Qs. 33,848–9. 'The feeling of the Local Authority is that the County Council are continually endeavouring to usurp their functions? Is not that the underlying principle?—Yes, though I should not put it quite so baldly as you have put it.

'(Sir Seymour Williams): I put it quite baldly so as to get at the root of it.'

[4] Ibid., p. 2074.

Q. 33,432. '. . . I will put it in this way. The County Councils Association have suggested supervision and, as I read their evidence, have done so in order that there might be more co-operation between the larger Authority, the County Council, and the smaller Authorities, the County District Councils. You object to supervision. Have you any suggestion to make whereby there may be more co-operation between the two types of Authorities?—We object to it if it takes too drastic a form of compulsion instead of being on the lines which you indicated yourself in giving evidence. [See County Councils Association (Taylor), Qs. 9,954–67 (III, 619), 9,973–83 (III, 619–20).] One wants to keep away, as between the larger Authority and the smaller Authority, from the idea of compulsion.'

The Urban District Councils agreed substantially with the views expressed by the Municipal Boroughs, but no one can mistake the tone of fierce resistance to anything like a regular 'supervising and controlling Authority' to be lodged in the County Councils. There would be an end of 'local self-government in the true sense of the term . . . and little hope of further developing corporate responsibility and self-respect in the smaller towns'.[1] The success of local administration would be jeopardized, because supervision would destroy the existing 'considerable freedom of action'.[2] Vicissitudes in County elections would work unfairly on the respective fortunes of the Districts; and, since the electorate was abnormally apathetic in County Council elections, the government of the County would fall into the hands of the permanent officials—the bogey 'bureaucracy'!

The Rural Districts agreed with the proposal to increase the power of the County to intervene in cases of definite default. Their diplomatic utterance yielded less than they demanded. Firstly, 'the true function of the County Council in local government is that of a supervising and co-ordinating authority with few administrative duties, and those confined to such business as is better administered centrally than locally'. Secondly, 'the essence of local government lies in the personal acquaintance of members of the Local Authority with the area to be administered. Nowhere is this more effectively secured than in the Rural District, and it is in every way desirable to strengthen the sense of local patriotism which is eventually merged in the wider feeling of national patriotism'. It is not surprising that the Rural Districts claimed that it would be advantageous if they were permitted to administer a number of functions now exercised or exercisable by the County Councils.

So much has been essential to show the tendencies of the central government, the propensity of the County towards more power, and the qualified assent—assent coupled with resistance—of the authorities within the County to being supervised.

The upshot of the discussion was the general conclusion and recommendation that the Minister's proposals were substantially appropriate. But (and the Minister himself had qualified the proposals similarly) recourse to default procedure should have a *subordinate* place in the practical working of the system of local government. And it was hoped that heavy intervention would be avoided by voluntary and congenial co-operation between the Councils of the Counties and the Districts. This follows the arrangement suggested by the Minister.

Next, it was recommended that since the appointment of Medical Officers of Health was gravely unsatisfactory, it should be the duty

[1] *R.C. on L.G.: Minutes of Evidence* (Vol. XI), p. 2143, Memorandum par. 44.
[2] Ibid., par. 62.

of every County Council, in consultation with the District Councils, to frame for the whole County a scheme for the appointment of whole-time Medical Officers of Health, and that future vacancies should be filled on terms precluding the Medical Officer from engaging in private practice. Naturally, the Medical Officer may be a whole-time Officer appointed solely from the District Council's area; and also, as now frequently, he may be shared among several local authorities; and he may even be identical with the County Medical Officer.

The Act of 1929 put into operation these principles of County supervision.*

Reorganization of the Districts. In relation to the reorganization of areas within the County, the detailed statement of the causes of the arrangements in the Act of 1929, and the operation thereof, must be left until we deal more specifically with the District. Here we merely state the arrangements in the Act. The County Council is obliged to make a scheme, after conferences with representatives of Districts wholly or partly within the County, to alter and define the boundaries of Parishes, to unite Districts and Parishes, to transfer parts of Districts or Parishes to others, to convert Rural Districts or parts thereof into Urban Districts, to convert Urban Districts into Rural Districts or parts thereof, to form a new District or Parish. There are arrangements for adjustments with County and Non-County Boroughs. The Minister has the last word.

This obligation of the County is more comprehensive and mandatory than previous powers. In the first place it has powers affecting Boroughs. Secondly, a comprehensive review replaces the previous power of acting piecemeal: 'the Council of every County shall . . . review the circumstances of *all* such districts . . .' Thirdly, a time-limit of three years for the accomplishment of its duty is imposed. Nor is that all:

> 'A County Council may subsequently whenever they think desirable, and shall if so required by the Minister review generally the circumstances of the districts within the county, so, however, that the interval between the original review and the first review under this section, or between any two reviews under this section, shall in no case be less than 10 years.' [1]

In other words, with the limitation that there can be no disturbance of the *status quo* except at minimum intervals of ten years, there is a County power to review, and at the order of the Minister, an obligation. These provisions closely follow the Recommendations of the Royal Commission, which, however, said, 'While naming 10 years as the minimum period, we are of opinion that frequent changes are detrimental to local administration, and are therefore undesirable.' This proviso was, perhaps, unnecessary, for if the truth of it were evident in any particular case, that would be an effective enough obstacle

[1] Local Government Act, 1929 (19 Geo. V, c. 17), Sect. 47 (1).

* See Additional Notes, p. 522, at Chap. III, p. 52.

to any change. However, Sect. 48 of the Local Government Act, 1929, amending Sect. 57 of the Act of 1888, gives the County Council power to make alterations in the boundaries or status of any district at any time.

The Importance of the County. We have now given an account of the theory and law of the supervising powers of the County. Altogether, the powers of 1888 and subsequent years and the recently added powers, are quite considerable. If the County Councils had been free to choose their own path they would have extended their powers even further. They proposed to the Royal Commission an increase in their powers, in all those services which, according to the County Councils, (*a*) require an extended area of administration, and (*b*) require the provision and maintenance of institutions, this to be followed partly by compulsory and partly by discretionary delegation to the smaller authorities. This would have involved in both cases, an increase of supervisory power. Of course, the proposals were resisted by the smaller authorities on grounds we have already discussed, and on the additional ground that County Councils already had more functions than they were capable of properly administering. The Ministry of Health also resisted the extension of County Council powers on the ostensible ground that the division of functions cannot follow general principles of this kind, but must rather follow an inquiry into the specific adequacy of the respective areas, their population and rateable value, and the skill of their administration for each of the functions considered separately. It is, in fact, obvious that the principle enunciated by the County Councils could only be followed if all County Councils rose above a minimum level of efficiency, and if all (or nearly all) County Councils were of an adequate size financially, territorially, and in regard to population. No one who considers the history of County administration since 1888, or its present organization, can say that these conditions were or are fulfilled.

II

Beyond the County ? Thus, up to 1835 the Counties were vital and dynamic parts of English local government, their rulers a local oligarchy of the upper and upper-middle class of ' gentlemen ', socially homogeneous with Parliament, the Judges, and the Privy Council, the central authority, if it can be called such. Then, from 1835 to about 1875 the County suffered a decline. In 1888 it was revived by an injection of democracy, and it has since thrived by the growth of certain services the technique of which favoured a large area.

To-day the question is whether technical tendencies, and the urge towards wholesale economic planning and co-ordination which led to the continual increase of the County's direct and supervisory functions between 1888 and 1929, are not pressing, and ought not to press,

beyond the County to a larger area. We have already said that the County's area problem is twofold : (*a*) adjustment within the County, and (*b*) adjustment to areas beyond the County. We now proceed further to discuss the first question, and reserve the main treatment of the second question until that is concluded. But, in order to give a description which shall include all the interrelated elements, and a sense of the reciprocal and related *movement* of the various parts of the problem, this must be said here : that in the matter of certain aspects of Education, Water Supply, River Pollution, Land and Drainage, Electricity Production and Supply, Transport, Police, the County as an *area*, and, in some cases, as an authority, not only shows signs of supersession, but is already superseded. Itself ambitious of being a supervisor, and of enforcing co-ordinated action, it is more and more the object of supervision and enforced co-ordination : the Central Authority intervenes, Joint Authorities are established by the collaboration (voluntary or enforced) of Counties, or new areas, like the Roads Divisions, are imposed by statute over an area including several Counties, as the technique of the service demands.

We return to problems of internal adaptation of areas within the County. The first problem is the relationship between the large urban areas, the County Boroughs, the Municipal Boroughs and the County. It is by no means an easy problem.

CHAPTER IV

THE COUNTY BOROUGHS AND THE MUNICIPAL BOROUGHS

COUNTY Boroughs, as areas of local government, were created by the Act of 1888.[1] Municipal Boroughs with a population of at least 50,000 inhabitants, and a few exceptional cases below,[2] were given the status of County Boroughs, that is, they were completely exempted from the jurisdiction of the County, and became, save for their obligations to the central authority, whether parliamentary, administrative, or judicial, autonomous authorities. In 1888, there were 61 such County Boroughs; by 1921, just prior to the establishment of the Royal Commission on Local Government, there were 82. There are now 83. To enjoy the benefits of large-scale organization they had extended their areas considerably, in order to include their suburbs, independent authorities in the different categories, but possessing hardly any distinctive cultural, topographical or economic features.

They are admirably equipped with the elements of good government. The area in relation to population is small, and government and social life function within a nucleate mass. This offers the condition of a relatively intense civic life and focussed interest, and this, again, offers the condition of conspicuous public prestige which is an inducement and permanent stimulus to civic effort. It is easily possible to know and be known. Vigorous local newspapers—sometimes with a national reputation—publish local news, the proceedings of the Council, the goings and comings of local celebrities. Further, a nucleus of population has comparatively uniform problems, is quickly and easily surveyable, and the overhead charges per head of population are smaller than in the case of a more sparsely inhabited area.[3] Actually, to-day, the average rateable value of County Boroughs, rich and poor, is above that of Counties: the figures are about £7 2*s*.

[1] Local Government Act, 1888 (51 & 52 Vict. c. 41), Sects. 31–9.

[2] There are four such County Boroughs. Canterbury even now has only about 24,000 people, Chester only 40,000, Worcester about 49,000 and Burton-on-Trent about 49,000.

[3] Yet see the interesting comments on administrative expenditure in *Report of Royal Commission on London Government.*

per head and £6 8*s*. respectively.[1] With few exceptions, the County Boroughs are the most progressive elements in English local government, and justify a real pride—all comparatively, of course.

Powers of County Boroughs. The powers of County Boroughs are, roughly speaking, the sum of all the functions, compulsory and permissive, of County Councils, and all other local government authorities. The powers are, therefore, very comprehensive. They include, besides the large-scale services associated with the County, the provision of the direct and detailed services necessary in a densely populated urban area, and the amenities and trading services desirable, and capable of being administered economically, in a small area for a large number of people. The County Boroughs have, in the aggregate, a population of 13,307,572,[2] and their combined area is 760,007 acres[3]; in other words, they have an average density of population of 17·5 persons per acre.

Their total expenditure is about £116,000,000,[4] or about 30 per cent of the total spent by all local authorities; and their expenditure per head is £7 12*s*. as compared with the Counties' £3 2*s*., the Municipal Boroughs' £6, the Urban Districts' £5 10*s*., the Rural Districts' £4 8*s*.[5] The analysis of the principal items in their annual expenditure, printed on page 35, gives a graphic description of their functions.

They have loans—or to speak, as one should properly speak, in the language of private enterprise—*capital* to the value of eight times as much as the Counties (excluding London), four times as much as the Municipal Boroughs, and twice as much as all the Urban and Rural Districts put together.[6]

It would seem *prima facie* that, as urban development occurred, there should be provision for the easy transformation of status from Rural District to Urban District and then on to Municipal Borough, and then to County Borough, without psychological friction or monetary expense. But such a rational expectation omits from consideration the effects upon the rest of local government, as well as the problems raised in the aftermath of such transformations.

The Formation of County Boroughs. There is, in fact, the possibility of transformation into a County Borough; and also of the extension of the boundaries of a County Borough. Both of these processes necessarily involve the acquisition of autonomy in relation to the County. The principles and methods result from certain fundamental resistances on the part of the County, resistances which are not entirely without importance for the whole community. On the one hand, they cramp civic development; and, on the other, they

[1] April, 1929 (Local Taxation Returns, 1929–30), with additional estimate for Public Assistance. [2] Preliminary Report of the Census, 1931, p. 5. [3] Ibid.
[4] Year ending 31 March 1930 (Annual Local Taxation Returns, 1929–30).
[5] Expenditures per head are compared without the addition of expenditure on Public Assistance for Counties and County Boroughs since 1930. [6] Cf. Table on p. 39.

involve certain governmental truths which even the most benevolent friends of the Boroughs cannot and ought not overlook.

The extension of Municipal Boroughs and the formation and the extension of County Boroughs are now governed by the Local Government (County Boroughs and Adjustments) Act of 1926.[1] (1) No Municipal Borough can be constituted a County Borough by Provisional Order. (2) No Private Bill can be promoted for such a purpose unless the population of the Borough is 75,000 and upwards. (3) Where County Boroughs seek *extensions* of their area, all authorities likely to be affected by it must get due notice, and may object to the proposals of the County Borough. If such objection is not made, or after being made is withdrawn, the Minister may make a Provisional Order when otherwise satisfied with the necessity for extension. But, if the objection is sustained, a Provisional Order cannot be made, but the application becomes the introduction of a Private Bill, and the opposing interests may continue their struggle before Parliamentary Private Bill Committees. (4) Financial adjustments between County Borough and County are a little more favourable to the County than they were before 1926.[2]

It may be at once observed that the *onus of proof* is upon the growing authority, and if it cannot prove its case it may be seriously obstructed, and, at the worst, entirely frustrated. All goes back to the arrangements made in Section 54 of the Local Government Act of 1888. This we shall analyse, with a careful consideration of the respective attitudes taken by Counties and Boroughs before the Royal Commission on Local Government which prepared the way for the Act of 1926. Now, if we were bent on proving a thesis we might proceed directly to this; but since our main purpose is rather the revelation of the character of English local government we shall first, at this convenient spot, sketch the rise of the Borough.

Evolution of the Borough.[3] County Boroughs fall into the more general category of Municipal Corporations; they are, indeed, Municipal Corporations distinguished, first, by the possession of the powers of a County in addition to those of a Municipal Borough, and, second, by their independence of the County in which they are geographically situated. Their history, up to the Local Government Act of 1888, is the history of the Municipal Corporation; since 1888, though retaining the impress of their long historic past, their position diverges from that of the rest of the family of those Municipal Corporations, the Non-County Boroughs.

[1] Local Government (County Boroughs and Adjustments) Act, 1926 (16 & 17 Geo. V, c. 38).

[2] Ibid. The subject is discussed in some detail in *R.C. on L.G.: First Report* (1925), pp. 465 ff., out of which sprang the Act of 1926.

[3] Cf. Webb, *The Manor and the Borough*; Maitland, *Township and Borough* and *Constitutional History*; Stubbs, *Constitutional History*; Ballard and Tait, *Select Charters*; *Report of Royal Commission on Municipal Corporations*, 1834.

Municipal Corporations (whether to-day County Boroughs or Non-County Boroughs) are descendants of the relatively denser groupings of people, the towns and boroughs of the past, except that Municipal Corporation is the name which came to be given to that particular group of towns or boroughs which received a Charter of Incorporation from the Crown, granting or confirming certain privileges of government. Before the Reform of the Municipalities in 1835, there were also boroughs other than the Incorporated Boroughs, as ancient and some as worthy of the internal organization and domestic governmental rights of the Incorporated Boroughs, and freedom from government by the Justices of the Peace of the County. But the Crown, which from Henry VIII's time, granted Charters of Incorporation, was selective in its grant, and proceeded, not with the purpose of securing good local government, but of making the boroughs the defenders of the strength of the Crown and the classes supporting that strength. For example, Charters were granted in the Tudor period to secure parliamentary support; while at the Restoration Charters were given to constitute Borough oligarchies who would repress anti-royalist forces. By 1835, the year of the great reform, only some among all the 'natural' Boroughs, as we might call them, were Municipal Corporations—only 200 odd were alleged to be such, while the Commissioners who inquired into the state of the Municipalities acknowledged that 178 were. These alone were regulated by the Municipal Corporations Act of 1835. In 1882, the Municipal Corporations Act (which codified the Act of 1835 and the 40 amending statutes made since that date) added 38 more boroughs, making in all 216. Then, in 1888, when County Government was reorganized and additions made to the powers of the County, and more anticipated, 61 of these Municipal Boroughs were excluded from the jurisdiction of the County Councils, because they had hitherto enjoyed practical independence on account of their size and acquired status. They were given the designation of County Borough, the status of independence of the County, and Borough-plus-County powers.

It is both relevant and convenient at this point to offer a brief vista of the development of the Boroughs. Let us at once say that here more than anywhere in English local government one discovers the historic source of 'civic consciousness', the sense of an independent, self-evolving, local community, living and working before ever 'the State' assumed shape. Here, more than anywhere (with the possible, though doubtful, exception of the County), reside the distant, historic forces producing pride in self-government and 'immemorial liberties', and generative of resistance to interference, whether by other local governing bodies, or the central authorities of Westminster and Whitehall.

The Borough is not like the Urban or Rural District, a compara-

tively recent creation of statute made by a Parliament deliberately establishing local government functions and plotting out an area for the purpose. The Borough, whatever its constitution and present situation, has roots so deep in English history that they have hardly been brought to light. With the County and the Parish, it constitutes what Laurence Gomme has called an ' historic ' formation, distinguishing it from the authorities deliberately created by statute. ' We shall have to think away distinctions which seem to us as clear as the sunshine : we must think ourselves back into a twilight,' said Maitland, of township and borough. The most marked and significant fact about ' the Borough ' is the diversity of origin, development, constitution, area, population, and wealth. ' There hardly can be a history of the English borough, for each borough has its own history.' [1] There is no uniformity in any particular, save the mere fact of the grant of Charters of Incorporation : even general groupings such as the Webbs make in their *Manor and Borough* are several, and the items in each class show marked differentiæ.

The Boroughs are uniform only in having an ancient and continuous past. As units of government, they spontaneously arose out of the local needs of an aggregation of people, for the organized satisfaction of those needs. They were not the creation of a central authority, though they came to be regulated and given legal form by it. A nucleus of people in a surrounding sparsity developed a sentiment of community, proud, restricted, and independent. Origin and constitution were closely intertwined, and, indeed, the immediate outcome of their economic and social character. The term ' borough ' itself is derived from the Saxon ' burgh ', a place fortified by mound and ditch, and not merely by a hedge ; the term town derives from ' tun ', the fenced homestead of a cultivator.[2] The whole conception is one of men congregating *closely*—closely, that is, when compared with the sparsity of the rest of the land. Naturally, strategic centres, seaports, fishing villages, markets, industrial groupings, and ecclesiastical foci, produced boroughs. The means of livelihood and the stratification of society produced by one's station in agriculture, craft, buying and selling, determined rights to participate in government. As the Webbs say, the Boroughs were ' associations of producers ', with a common regulation of economic pursuits. They possessed common property, particularly in land ; they governed tillage and pasture ; they regulated manufacture, qualities, buying and selling, fisheries and harbours, sanitary nuisances, and they had the policing of morals and peace. Since the things produced varied from place to place, and since the ' associations ' began and developed at different times among different people, each constitution was special to its place.

[1] Maitland, *Constitutional History*, 1926, p. 52.
[2] Stubbs, *Constitutional History*, Vol. I, p. 105.

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[1] Maitland, *Constitutional History*, 1926, p. 52.
[2] Stubbs, *Constitutional History*, Vol. I, p. 105.

From Anglo-Saxon times there can be traced a double process of development: externally, of increasing independence of the jurisdictions of other local authorities, the Hundred and the Shire; internally, of evolving completeness and complexity. At the end of the thirteenth century Boroughs stand out from the general class of towns by reason of having acquired certain privileges. They are immune from the Hundred Court, sometimes from the County Court; they have courts of their own, of course with restricted jurisdiction, and some elect their judicial officers; they have their own administrative officers—bailiffs, reeves, coroners, and in some cases, a mayor, with ample administrative powers. By the *firma burgi*, they have bought from their lords and the Crown the right to collect the royal financial levies within the borough on self-determined principles. The regulation of trading and industrial life is taken over by the guilds (the powers being confirmed or conferred by charter), and though there is no complete legal identification of guilds and municipality, yet the guilds legally occupy a large place in its government, and, in fact, often in practice controlled the selection of the governors and the decrees of the government. The governing body became organized as mayor, aldermen, and burgesses: the aldermen, the senior members of the guilds, and the burgesses, the privileged citizens.

The final step in legal evolution was the recognition of the legal personality of the Borough, the ascription to it of the attributes of a person, incorporation. Until that occurred, by Royal Charters, from the fifteenth century onward, the Borough possessed powers and property in an obscure way legally; when it became a corporation it was organized as proprietor and government. It now possessed the right of perpetual succession, the power to sue and to be sued as a body and by the corporate name, the power to hold lands, the right to use a common seal, and the power of making bye-laws, a power with formidable potentialities used even to amend the working constitution of the Borough itself. Thenceforward Municipal Corporations proceed towards their governmental maturity.

If we leave out minor differentiating features, we find that in the maturity of the Municipal Boroughs they possess these characteristics: (1) a body of governing powers largely conferred by Charter, partly acquired by custom; (2) a form of domestic government broadly defined by Charter, and modified (frequently very much) by practice; (3) the right of parliamentary representation; (4) their own officers of the Peace, not appointed by the Crown, but by their own governing organization, and some Boroughs are partly and some entirely exempt from the jurisdiction of the County Justices—of their own constitution and status they have the independent power and obligation to keep the peace.

(1) In an age when administrative control by the central authority

did not exist, when judicial control was weak and fitful, and when there was comparatively little State activity, the governing privileges of the Municipality were most important. There was the management of the corporate property, the exercise of civil and criminal justice, the management of markets, fairs, bridges, and in some respect, roads (and the fixing of tolls therefor), the regulation and suppression of nuisances. Without let or hindrance they could be used for the welfare of *all* the inhabitants, or merely of a *few*; they could be used to place economic and social burdens on some classes for the benefit of others.

(2) The history of the Borough as traced by the Webbs shows from 1689 in most, but not all cases, a steady deterioration in Borough government. The advantages benefited a few people only: there was despoliation of the corporate property, arbitrary rating and exaction of tolls, the corruption of Justice. The essential tasks of cleansing, lighting, paving, and policing the town were neglected. A fearful distrust grew up in the citizens, and it was shown by the establishment of special bodies of Commissioners (by Local Act) for these purposes, usually called Improvement, or Lighting, or Paving, Commissioners. They were legally distinct from the Corporation, though sometimes there were personal connections between the one and the other. The result was that the corporation ceased to represent an active agency of government serving contemporary needs, while there was much confusion and jealousy from divided authority. In so far as the corporation retained functions, its members showed little but a venal interest in them, there was widespread dishonesty, and there were no skilled officers. Perhaps most serious of all was the fact that the function and the officers of administration were not separate from those of justice. Both were controlled by men who were not selected for their skill, and in the most momentous matters illiteracy, ignorance, venality and absenteeism prevailed.

(3) Political convulsions in the central government had, from early times, determined the evolution of municipal institutions. For example, when the Crown feared the nobles, as did the early Tudors, officers of the Borough were made Justices of the Peace, Boroughs were given representation in Parliament and their liberties were enlarged, while their governing bodies were a wide constituency of Freemen. After the Restoration an attack was made on the Charters, most were annulled, and in their place oligarchies were given the right to govern. The Report of the Royal Commission on Municipal Corporations of 1835 says:

'The greater number of the governing charters of corporations was granted between the reign of Henry VIII and the Revolution; the general characteristic of these documents is, that they were calculated to take away any power from the community, and to render the governing class independent of the main body

of the burgesses. Almost all councils named in these charters are established on the principles of self-election. The criminal jurisdiction of the boroughs received still further enlargement; and numerous instances occur in which a recorder was created, which office had been before that time confined to some of the larger boroughs. There is little reason to doubt that the form given to the governing classes, as well as the limitation of the burgess-ship during this period was adopted for the purpose of influencing the choice of nomination of members of Parliament. . . . During the reigns of Charles II and James II, many corporate towns were induced to surrender their charters and to accept new ones containing clauses giving power to the Crown to remove or nominate their principal officers. After the proclamation of James II, dated 17th October 1688, the greater number of these towns returned to their former charters. The Charters which have been granted since the Revolution are framed nearly on the model of those of the preceding era: they show a disregard of any settled or consistent plan for the improvement of municipal policy corresponding with the progress of society. The charters of George III do not differ in this respect from those granted in the worst period of the history of these boroughs.'[1]

Local bye-laws or standing orders perfected the restriction of the right of participation in government, for these, and not the charters, distributed authority in the local constitutions. The Test and Corporation Acts kept out conscientious Dissenters and Catholics: even when the disabilities were repealed there were yet sufficient practical obstacles put in their way. At the end of the eighteenth century three-quarters of all the Municipal Boroughs were governed by a Close Body, selecting the Mayor and filling vacancies in its own membership by co-option. Though the constituency of Freemen was wide in some Boroughs, being recruited by apprenticeship, the Freemen were excluded from the government of the corporation, and elections were a mockery. It was the government of these Close Corporations that most urgently compelled the Reform of 1835. The rest of the corporations were governed by the body of Freemen either electing the council and officials, or acting directly in full meeting. But these more liberal forms of constitution proved little better, and were even sometimes worse, than the Close Corporations.

Certain results were inevitable. The main body of the people were excluded from the government of their community, affairs were conducted in secret, the complexities of the law defied understanding or challenge. Such abuses were the forcible causes of the rise of the Benthamic principle of Publicity in the processes of government. The corporations were distrusted, for their government was regarded by the governors as designed not for the benefit of the governed, *the consumers*, but for the exclusive benefit of the small knot of those who governed. These, indeed, identified themselves with the incorporated body and applied its property to their own use. The Report of 1835 says:

[1] *Report*, Royal Commission on Municipal Corporations, B.P.P., 1835, Vol. XXIII, p. 17.

'The corporations look upon themselves and are considered by the inhabitants as separate and exclusive bodies: they have powers and privileges within the towns and cities from which they are named, but in most cases all identity of interest between the corporation and the inhabitants has disappeared. . . .'[1]

The whole arrangement was, of course, especially repugnant to the Whigs and Radicals and the Utilitarian philosophy, then in its heyday. But Conservatives also supported reform, for the abuses, especially in the matter of Police, threatened the peace and order of the country.

(4) The right of the corporation to send representatives to Parliament was a serious source of dissatisfaction, since both the powers of government and property belonging to the corporation were perverted by partisan use to secure the return of members pleasing to the rulers of the municipality. In 1832, indeed, an Act of Parliament was passed to prevent such perversion.

The Municipal Corporations Act, 1835. These defects were analysed and revealed by the Royal Commission, and the result was the Municipal Corporations Act of 1835.

Let us briefly indicate the contents of this statute. Firstly, though the Commissioners had inquired into the condition of 246 Boroughs, the Act applied to only 178. Thus, besides a large number of Boroughs which were not incorporated, about seventy were left for some future reform. Secondly, the notion of incorporation was now extended to include not merely the people who were for the time being the governing oligarchy, but to Mayor, Aldermen *and Burgesses*, that is to say the electors. Thirdly, the governing authority was to be a council elected by the burgesses to hold office for three years. Fourthly, the Borough Council would have powers over the property of the Borough, its police, its street lighting, its markets and harbours, and authority to enact bye-laws. Fifthly, the initial step of central *administrative* control was introduced by the clause requiring Treasury sanction for the alienation of corporate property. Sixthly, owing to the contemporary belief in the virtue of representative government and control by the Electorate, though the Boroughs were enjoined formally to audit their accounts, yet the power of audit was placed, not as in the case of the Boards of Guardians, in auditors responsible to the central authority, but in one auditor appointed by the Mayor and two elected by the enfranchised body. Seventhly, there was established a process whereby urban communities could acquire the constitution of a municipal corporation. Finally, owing to the very strong opposition of the Conservative Party in the House of Commons, and of the House of Lords led by Lord Lyndhurst, the simple composition of the governing council by general triennial election had to be modified in order to admit the principle that a

[1] Ibid., p. 32.

class of Aldermen should be established, chosen by the councils for a six-year term. This concession was an unavoidable concession to the Conservative demand for the continuance of vested interests in the government of the Boroughs, and the plan of permitting councillors to be chosen only from a list of 'eligible' persons. The councils themselves were not to be elected altogether every third year; to secure a continuity of government one-third would retire each year, when such a number would be elected.

Effects of the Municipal Corporations Act. Let us now sum up some of the governmental effects of this change. 1. A uniform name, legal status, and administrative framework were provided for a multitude of diverse urban bodies. 2. The units of government thus provided were exceedingly unequal in area and population. Thus [1]:

Population.	
Under 5,000	74
5,000–10,000	52
10,000–20,000	26
20,000–50,000	18
50,000–100,000	5
100,000 and upwards	3

The largest was Liverpool with 185,000, the smallest Bradford with 1,500 inhabitants. If, therefore, one particular area were actually more appropriate than the other for purposes of administration, the fact of variety immediately implies that some must be too large and others too small. Indeed, as regards Police, the Commission of Enquiry into the Constabulary Force of 1839 again and again remarked upon the inadequacy of the small localities to administer the police service. Furthermore, even if it were assumed that the areas were proper for the tasks of the Act of 1835, this would be no guarantee of suitability for new functions developed later, in the nineteenth and twentieth centuries—for example, Public Health, Highways, Electricity, Transport. 3. The Boroughs varied enormously in traditions, rateable value, and the skill of their officials. This variation persisted all through the nineteenth century, so that the name and the status were never certain and automatic guides to their suitability for the assumption of any new tasks for which Parliament sought suitable local authorities. 4. There was before the Reform, and there persisted after it, a strong feeling of local cohesion, inevitably making for demands for local independence. Later in the century, new obligations and powers were established by Parliament, local rates necessarily increased and grants-in-aid were introduced, and this was bound to cause a demand for freedom from both the County and the central authority. There was bound, moreover, to be a demand for the in-

[1] Somers Vine, *The English Municipalities*, Part IV, pp. 21–34.

clusion of suburbs in the single jurisdiction of the Borough. 5. The special authorities, the Lighting, Paving, Watch and Improvement Commissioners, though useful, broke up the civic unity of the town, and they continued to do so for many years, since their disappearance through absorption by the Borough Council was slow. For example, the Municipal Corporations Act of 1835 left the question of absorption of these bodies untouched (though it undermined them fatally, nevertheless, for, whenever a new Town Council set up its new police force, for example, the Watch Commissioners were forced to agree to amalgamation). However, in 1884, there still remained 44 districts under Improvement Commissioners, and 33 even as late as 1893, outside the Municipal Boroughs; but these were merged in 1894 in the Urban District Councils.[1] 6. A significant differentiation was the continuance of a distinction between the judicial attributes of the Boroughs. Some Boroughs have a separate Quarter Sessions, presided over by a Recorder, a barrister of not less than five years' standing, and others a Commission of the Peace, presided over by Borough justices very much in the manner of the County justices.[2]

The Boroughs since 1835. The Act of 1835 regulated 178 Boroughs and left many unregulated. Development between 1835 and 1882 occurred along four lines. (*a*) The Special Commissioners were gradually extinguished; in 1872 and 1875 town councils were everywhere made the urban health authorities. (*b*) Some Boroughs developed by their inclusions of surrounding districts. (*c*) New Municipal Boroughs were established by the grant of Charters in accordance with the procedure laid down in the Act of 1835: by 1876, 62 new Boroughs had been incorporated. (*d*) The Act was amended by successive statutes.

The unregulated Boroughs seem to have been forgotten until 1875, when Sir Charles Dilke raised the matter. A Commission of Enquiry was set up. The result was the Municipal Corporations Act of 1882 codifying that of 1835 and the succeeding amending statutes, and applying the system to 25 more Boroughs.

So far there had been no serious attempt to relate the Boroughs to the government of the County. The County was not yet remodelled in the sense of the Local Government Act of 1888—that was yet to come. There was as yet no urgent demand for a wider area for Police, Education, or Roads; and the revolutionary significance of the bacterial spread of disease had as yet not dawned upon medical practitioners or statesmen. Municipal Boroughs now exhibited these variations (Census of 1891):

[1] Webbs, *Statutory Authorities*, Chap. 4, pp. 345–9 ('The Passing of the Improvement Commissioners').

[2] See Odgers, *Local Government*, pp. 97–100, where a clear description of the differentiation is given, and Jenks, *English Local Government*, pp. 207–13.

Under 5,000	70
5,000–10,000	42
10,000–20,000	44
20,000–50,000	59
50,000–100,000	1

The County and Borough Relationship. In 1888, the County was reorganized with added powers and a popular basis. The notion was abroad that the County should be a governing body intermediate between the central authority and the smaller local bodies. There was much talk of decentralization of Whitehall's powers to the Counties. Naturally, the towns were alarmed. They sought their autonomy—or rather its continuance: for municipal autonomy had a long history. It had been in some ways consecrated by the Act of 1835—but only for Liverpool, Birmingham, Manchester, Leeds, Sheffield, Bristol, Bradford, Nottingham, Kingston-upon-Hull, Newcastle-on-Tyne. The other places protested. The framers of the Act of 1888 appeared to have had in mind the County as a unifying area of government; and, in order to constitute the Counties into authorities capable of providing 'for all the local services required', a 'combined rural and urban process' was sought. But it was impossible not to allow independence to the large cities named by reason of their vast commercial interest, their general importance and their already existing autonomy. These few places had none of them less than 145,000 inhabitants according to the census of 1881.

What is the Proper Size of a Borough? Certain old Boroughs, however, were already by their charters 'counties of cities': thus Canterbury, Chester, Exeter, Gloucester, Lincoln and Worcester, and they demanded the continuation of their rank. Of course, many other Boroughs then demanded the same thing: some had their own Police Forces, their Commission of the Peace and Quarter Sessions; why should they henceforth be subject to the County? Why should a figure of 145,000 be regarded as sacred? What was the real distinction between this, and say, 100,000 for governmental purposes? Under pressure, the qualifying figure sank to 100,000, and finally to 50,000. As Lord Long said, 'We came to the 50,000 line for a reason which very often obtains in the House of Commons—because we could not help ourselves.'[1] Pressure was put upon the Government to reduce the limit to 25,000, but was resisted because County government would, for reasons which we will have ample opportunity to study later, have been seriously weakened. The Boroughs were so insistent on their autonomy because some had for long been practically autonomous, and they feared that since the County Councils were being reformed in order to improve *rural* local government, new financial burdens would fall on the towns. There are some signs of

[1] *R.C. on L.G.: Minutes*, Part III, pp. 564–5.

Parliamentary misgiving that under the Act a Municipal Borough with just over 50,000 could become a County Borough, while other large urban communities, without a charter of incorporation, but with a population about double the size were *ipso facto* disqualified.

The Resultant Authorities: their Characteristics. Thus, when the Act of 1888 took effect, there were two main classes of Boroughs, the County Boroughs and the Non-County Boroughs. Outside them, as urban authorities, were all the other urban nuclei of population without charters of incorporation, since 1872 the Urban Sanitary Districts. There were now 216 Municipal Boroughs and 61 County Boroughs. The 61 County Boroughs also showed enormous variations in population (Census, 1891):

20,000–50,000	10
50,000–100,000	31
100,000–250,000	18
250,000–500,000	3
Over 500,000	2

The main distinction between County Boroughs and Municipal Boroughs is this. The County Boroughs possess, roughly speaking, the combined powers of a County and a town, and are completely immune from the administrative activities of the County Council. On the other hand, the Municipal Borough is usually part of the County for Police, Elementary and Secondary Education, and Main Roads, and is subject to the authority of the County in certain other respects, to be discussed later. But some Municipal Boroughs of a certain size according to certain censuses have their own Elementary (but not Secondary) Education, and others have their own Police Forces.

The Boroughs and the Districts. It is useful at this point to indicate the difference between an urban area which is a Municipal Borough and an urban area in the class of Urban Districts. (1) Whereas Boroughs are governed by a corporation of Mayor, Aldermen and citizens, the District Councils (for this applies also to Rural District Councils) are governed by a body corporate consisting of Chairman and Councillors only.[1] (2) Boroughs have the power by their very constitution to make bye-laws for 'the good rule and government' of the town, but the bye-law-making power of the Districts issues only from specific statutory obligations or powers. (3) A body of rules has been established for the constitution of a Municipal Borough from the lower form of organization, the Urban District. These are, briefly, that the place shall have a minimum of 10,000 inhabitants, historic continuity and civic cohesion, and a good

[1] Local Government Act, 1894 (56 & 57 Vict. c. 73), sects. 20, 21, 24, 60. See Wright and Hobhouse, *Local Government and Local Taxation*, pp. 20, 24.

record of administration, particularly in the matter of public health.[1] (4) A Borough may, if it had a population of 10,000 in the year 1881, have its own Police Force, but an Urban District under no circumstances has its own Police Force ; a Borough may exercise elementary education powers if it had a population of over 10,000 in 1901 ; but an Urban District, for the exercise of the same powers, must have had over 20,000 in 1901. Of course, a Rural District can have neither educational nor police powers. Finally, (5) a Municipal Borough has powers under the Act of 1888 to proceed to become a County Borough : Districts have not this power.[2] The acquisition of a charter of incorporation is the necessary step towards evolution into a County Borough and consequent immunity from County jurisdiction.

Naturally, apart from certain powers whose exercise is dependent upon status or population at a given time, Urban Districts may, and in a good many cases do, exercise as many functions as a Municipal Borough ; and in some cases they exercise *more* functions than some Municipal Boroughs. Naturally, also, some Districts spend as much as some Municipal Boroughs ; some spend more. And, of course, there is an enormous variation in the population and rateable value of members of each of these classes of local authorities. Both classes are urban communities ; both need roughly the same kind of services ; the differences between them are partly differences of status, but even more of the actual amount and variety of work to be done in the government of urban communities.

Here, then, were urban *blocs* in the area of the County with the right to become autonomous. Let us explore the nature of that right, and the problems and conflict to which it gave rise.

The Formation and Extension of County Boroughs. When a Municipal Borough desired to be constituted a County Borough, and thus enjoy complete self-administration on the same standing as the County Council, it could either promote a Private Bill or else apply to the Minister of Health for a Provisional Order.[3] The latter method was the one usually adopted, its chief advantages being its rapidity, simplicity and relative inexpensiveness. These alternative procedures applied also where existing County Boroughs wished to extend their areas ; this is described later.

To become a County Borough, the Municipal Borough was required to show in its application to the Minister that its population was at least 50,000, and that it was to the advantage of the public that it should be so constituted. The population condition necessitated a

[1] For the details concerning the procedure and practice in application for the grant of Municipal Charters of Incorporation, see the evidence of Sir Almeric W. Fitzroy, *R.C. on L.G. : Minutes*, Part II, pp. 213–33.

[2] The powers and duties of a Municipal Borough are given in detail, *R.C. on L.G. : Minutes*, Part I, pp. 141–2.

[3] Local Government Act, 1888, Sect. 54.

constant and *permanent* population ; the Minister wished to be satisfied that the town did not fall into the same category as seaside resorts, where the population is in flux. But, in most cases, the condition was not difficult to satisfy. As regards the other condition, the Ministry decides whether the circumstances justify the application, and this he does after an investigation. As this procedure is the same as in the case where a County Borough wishes to enlarge its area, we explain it later. The considerations which the Minister has before him in arriving at this decision are also roughly the same in both cases.

In general, and more particularly in recent years, the Minister tended to place as many obstacles in front of Municipal Boroughs in their effort to secure the higher status, as possible. In particular, he was much concerned whether the complete separation of the Municipal Borough from the County would affect the good government of the latter.[1]

Many County Boroughs, once constituted, naturally grow in population, and in time find it desirable to include adjoining Rural Districts or Urban Districts. The procedure involving a Provisional Order, being the one invariably employed, can now be explained.

The County Borough presented its ' memorial ' to the Minister of Health, giving, in full detail, its reasons for desiring the additional area, as well as the exact details of its economic and other relationships with the area in question. Copies thereof had to be lodged with affected local authorities so that they might lay their objections before the Minister.

The Minister then had three alternative decisions. He could, in the first place, make a Provisional Order without further inquiry. This was rarely done : only where no objections at all were raised against the scheme. Then, secondly, he could send an inspector to make an investigation in the locality concerned, and, when the latter reported, could decide whether to proceed with the Provisional Order or not. Usually, this investigation is a preliminary to a statutory Local Inquiry,[2] if the Minister is satisfied that the circumstances justify the expenses of such an inquiry. Were this so, he sent an Engineering Inspector to the area to preside over a Local Inquiry, held in public. This official usually made a thorough inspection of

[1] For example, the Minister did not favour the constitution of any more County Boroughs in the Greater London area, because he did not wish to reduce the possibility of a general solution of the local government problems of that area. (*R.C. on L.G. : First Report*, pp. 156–7.)

This view has clearly been put into practice. There were many Municipal Boroughs which in 1921 had populations well over the 50,000 mark. This was particularly noticeable in the Greater London area, where, for example, Acton, Hornsey, Wimbledon and Ealing have populations well over 50,000, while some, indeed (e.g. Leyton and Walthamstow) have considerably more than 100,000 each. There were examples of the same thing in Lancashire and Durham

[2] Local Government Act, 1888, Sect. 54.

the area before holding the inquiry. At the latter, which in some cases lasted three or four weeks, counsel and expert witnesses were commonly employed by all parties. The inquiry was conducted similarly to proceedings in a court of law. After the inquiry, the Inspector made his report to the Minister. It usually comprised a statement and analysis of the evidence, and, furthermore, the Inspector's personal opinion whether the Provisional Order should be granted or not.[1] The Order was, however, granted at the absolute discretion of the Minister, who was fully entitled, though, in practice, he seldom found it necessary, to reject the Inspector's recommendations.[2]

This general procedure was also adopted, if the Minister held it to be necessary, where a Municipal Borough applied to become a County Borough.

The Minister, in making his decision as regards extensions, was confronted with several important considerations[3]:

(*a*) Can the enlarged area be capably and economically administered?

(*b*) Will the extension affect 'the good and economical government'[4] of the areas concerned?

(*c*) Did the inhabitants of the area to be incorporated in the County Borough agree to the change?[5]

(*d*) Is the area an 'outgrowth' of the County Borough?

(*e*) Would the County Borough, if the extension were not granted, be losing a rateable value which, in all equity, belonged to it?

(*f*) Are the rating adjustments between the incorporated areas likely to be reasonable?

(*g*) Is the town well administered?[6]

(*h*) Have the areas to be incorporated a 'community of interests'?[7]

(*i*) Should the town, because it is almost wholly developed, have its area extended to allow for expansion?

Naturally, the creation of new County Boroughs and extensions in the areas of existing ones entailed considerable transfers of population and rateable value from the administration of certain authorities

[1] *First Report*, p. 154.

[2] The fact that the Inspector has the opportunity of learning everything with regard to local government defects at the Local Inquiry is an additional benefit that accrues, since he always informs the Minister of these defects; the latter, of course, seeks the necessary remedy. Ibid., p. 168.

[3] Ibid., pp. 157–62.

[4] Ibid., p. 158.

[5] E.g. the Joint Parliamentary Committee to examine Provisional Orders rejected the Birkenhead Order in 1920 on the grounds that no substantial support from the ratepayers in the area to be incorporated had been forthcoming. Ibid.

[6] It had been the practice of the Minister to make it clear in the Provisional Order that it is granted conditional upon the Town Council keeping its administration up to the required standard. Ibid., p. 161.

[7] That is, have they common economic interests in the way of local industries, etc., and do they share such public services as tramways, sewerage, water, etc.? Is the town the amusement and shopping centre for the area also?

to that of the County Borough. The County Councils were the greatest sufferers from these changes; hence opposition to any schemes of these types invariably came and comes from them.

From 1888 until 1925, when the First Report of the Royal Commission on Local Government was published, 33 proposals for the constitution of new County Boroughs were made, 29 under the Provisional Order procedure, and 4 by Private Bills. The Minister made 23 Provisional Orders, having rejected 3 applications without a Local Inquiry, and 3 after a Local Inquiry; 20 of these Provisional Orders were confirmed by Parliament [1] and 3 rejected. Three of the Private Bills were passed, while one was rejected. Three of the latter were hotly contested during the Parliamentary stages (as were 14 Provisional Orders) by the County Councils.[2]

Similarly with the proposals for extension. One hundred and four were finally made under the Provisional Order procedure and 61 by Private Bills. The Minister made 72 Orders, granting the areas or part of the areas to the County Boroughs applying; Parliament confirmed 64 of these orders, with some modifications regarding 7 of them. Thirty Private Bills were contested in Parliament, the opposition coming from the County Councils; 46 only were passed, out of which 17 had been modified.

As was pointed out earlier in this chapter, there were 61 County Boroughs constituted by the Act of 1888; the number has increased to 83, 24 new ones having been constituted and 2 having been merged with other County Boroughs.[3] The effect of these changes was to transfer about 100,000 acres, a population of about 1,300,000, and a rateable value of £6½ millions from the jurisdiction of the County Councils to that of the new County Borough Councils. From 1889 to 1925 some 109 extensions of County Borough boundaries were made, thus transferring from the Counties to the County Boroughs about 250,000 acres, a population of 1,700,000, and nearly £8 millions of rateable value. The total losses to the Counties caused by these changes thus amounted to 350,000 acres, about 3,000,000 population, and £14½ millions of rateable value. The County Councils stated that 15·74 per cent. of the present population and 13·82 per cent. of the present rateable value of the administrative Counties (outside London) were transferred to the County Boroughs in these ways. Lancashire and the West Riding of Yorkshire, two of the Counties most affected by these changes, lost no less than 667,000 and 360,000 persons. The 27 Counties most affected (excluding London) lost 22·88 per cent. of

[1] Provisional Orders have to be examined by a Joint Committee of the House of Lords and House of Commons, and confirmed by them. Then they are incorporated in a special Bill called the Provisional Orders Confirmation Bill, which usually passes through Parliament without a contest.

[2] *First Report*, p. 164.

[3] I.e. Stoke-on-Trent absorbed Hanley, and Plymouth absorbed Devonport.

their present population and 20·8 per cent. of their present rateable value.[1]

This situation of impending change, the expense and the trouble of change, gave rise to the establishment of the Royal Commission on Local Government in 1923. Its deliberations and proposals led to the Act of 1926 which amended the conditions of the extension and formation of County Boroughs, and the extension of Municipal Boroughs. The arguments of the various parties before the Royal Commission are important as bearing on the nature of the result, and as a remarkable illumination of the character of English local government and its dynamic forces.

The difference of outlook of the Counties and the more developed urban places was as night and day. The intensity of their antagonism was formidable. The Minutes of Evidence showed a general spirit of contention, jealousy and recrimination, with unindividualized charges of incompetence. Authorities seemed to regard the problem entirely from the angle of their own preservation, and hardly was a nationally good solution ever mentioned save as an act of irrelevant homage. Essentially, the Counties sought guarantees against the separative effects of urban development, and even the increase of their powers. The towns wanted the guarantee of an inexpensive path to autonomy. Let us consider in slightly more detail the arguments of each side.

The Argument of the Counties. The Counties (*a*) argued that the present procedure was too favourable to the towns, and (*b*) denied the need for such procedure at all, on the ground that the County could quite well govern all within its area by the simple device of collaboration and decentralization; and (*c*) denied that the Act of 1888 intended what had actually happened. The Boroughs argued (*a*) that the existing procedure was practically faultless; (*b*) that evolution since 1888 had been desirable from a national standpoint and was in actual progress in good government and civilization; and (*c*) that if the Act had not intended what had happened (but they held that it had) then it should have intended it.

The Counties proceeded to analyse the effects of extensions of urban autonomy, in their view, of course, an evil development. (1) Creations and extensions of County Boroughs mean the withdrawal of the richer areas from the financial basis of the County. As a rule the urban areas are the richer areas. If they become autonomous the County Council is left with the administration of a relatively poor area: poor in relation to the urban areas, poor in relation to the minimum of duties imposed upon them by the Central Authority.

This has certain implications. Having a low rateable capacity,

[1] *First Report*, pp. 136–7.

either the County must fall short of the services it thinks proper, or it must look to the Central Authority for additional grants-in-aid. But both these consequences are undesirable. The undesirability of inferior administration is obvious. The undesirability of central grants-in-aid was, we believe, only once, and then but incidentally, referred to. In our opinion it involves certain considerations of serious import in the context of local government principle. The history of the English grant-in-aid system has shown—especially in the realm of education—that a grant-in-aid cannot but be followed by central control, and control becomes stricter and more comprehensive as the proportion which the grant bears to local expenditure increases. This point deserves emphasis; it is of exceedingly great importance. Yet, whether one approaches the argument of the Counties from this angle, or from the one actually accentuated by them, one returns always to the fundamental urge of the Counties: ought the towns to be permitted to tear themselves away from us, and cause our impoverishment?

(2) The argument naturally followed that there should be, to attain the proper area of local government, a balance between the rural and urban districts:

'I think the whole conception of a County involves the idea that within the area, which is generally a large one, there shall be a variety of population—that in the poorer districts comparatively thickly populated, and that in the thinly populated districts—and the costs of the services for the whole County are spread over the whole, and in fact the richer do assist the poorer people. We think the view is a sound one.' [1]

In other words, it was one in which a single authority included both town and country within a single jurisdiction, provided services all over the area, and made the *whole* of the area liable to pay into the common funds for the support of the services. It implied, somehow, the superiority of the County Council as the governor of large and mixed areas, and the propriety of supporting the poor rural areas at the expense of the rich urban areas.

(3) Then, how support the view that the unified government of the County Council was, not by personal hazard, but inherently, superior to government distributed between Boroughs and County? The ultimate argument lay in the proposition that for economy, and efficient planning, the largest area of government 'within reason' was needed. This is another version of the ideas discussed in the first chapter of this work describing the evolution of local government. One can best locate institutions, whether they are buildings, or teachers, or electric plants or roadways, when the area envisaged and planned is of maximum size; for, then, at least, one can sort out the varieties of users and consumers, and then provide arrangements and services

[1] *R.C. on L.G.: Minutes* (Part III, p. 475), evidence by Dent, Q. 7,162.

at the points of maximum use relatively to the capital expense and current outlay. And the Counties could always argue, when they had arrived at this point (and if their argument had been accepted), that the economy of such concerted action would be so great that, though the Towns paid more than their proper share when compared with what the rural areas paid, they nevertheless would get the service cheaper than they could severally provide it for themselves. For both County and Town economy lay in association.

Yet the Counties laid themselves open to criticism on three grounds, which the Towns duly exploited. (*a*) If the Counties were, with the Town extracted, too poor for economical administration, *it was their duty to explore the possibility of amalgamating with other Counties.*[1] (*b*) Though there was much to be said for concentrated administration over a *single* area, it did not follow that the County was technically the best area for all services, or even for any. (*c*) Efficient government could not be judged simply by the cheapness of the service actually rendered; one must also consider the *appropriateness* of the service to each particular area and people. The Towns denied that the County Councils had been able (with occasional exceptions), whether by special systems of Joint Councils and collaboration, or merely through ordinary representation of the Boroughs on the County Council, to satisfy the Boroughs' sense of the urgency of certain services and the Boroughs' own spontaneous response to the demands of their own future.

(4) The Counties embarked upon the rather perilous argument that there was more 'local *self*-government', more democracy, under the County system than in the County Borough system, because all services within the County were divided up among a County Council and several Non-County Boroughs, and Urban and Rural Districts. Certainly, there are more opportunities for local citizens to participate in government. The argument, however, exhibited a great weakness as soon as one began to inquire into the actual proportion of citizens who voted, especially in the apathetic County electorate.[2]

[1] *R.C. on L.G.: First Report*, pp. 229–30: 'The general view of the Town Councils . . . was that under the Act of 1888, County Councils had the same power as Town Councils to make proposals for the alteration of their boundaries, and that they ought to make use of this power by putting forward proposals for the union of the residue of one Administrative County with part or the whole of another.' See also *Minutes of Evidence*, Part III, p. 491, Q. 7,330.

[2] '. . . Greater interest was taken in local affairs if they were so managed (i.e. by County Boro' Councils); that local government elections in County Boro's were more vigorously contested; and that greater publicity was given in the press to the proceedings of a County Boro' Council than to those of a County Council. Further, the members of a County Boro' Council were able to keep in closer touch with their constituents and to exercise more personal supervision over the work of the Council's officers, than the members of a County Council.' *First Report*, p. 230. See also *Minutes of Evidence*, especially the evidence of Mr. Harbottle, Part IV, p. 1319, Sect. 76, and of Mr. Brooks, p. 914.

(5) Stronger was the argument that the extension of autonomous urban areas was not merely financially destructive of County government, but caused the very real difficulties of administering a ragged, scattered area, sometimes with the core eaten out of it. It is not difficult, even for the layman, to imagine the difficulties that would arise in an involved ribbon-like area, some parts very sparsely inhabited, some parts moderately dense, some parts densely populated, to be provided properly with schools, elementary and secondary, libraries, police stations and policemen, and main roads.[1]

(6) A number of considerations of minor, but cumulative, weight were advanced. (*a*) The Counties were perturbed by *pending* changes, the expectation of changes. Their office organization was diverted from normal tasks. Plans of development of services were necessarily deferred! Why establish County services when the Boroughs would soon become their own masters in those matters? (*b*) Parliamentary congestion could only be relieved if the Counties were made into wide, all-embracing, important administrative and supervising authorities.

(7) It is not improper for the student of human nature in local government to add that the temper informing the Counties in the advocacy of their case was the desire to govern others; there is no mistaking a decidedly strong element of personal ambition and prestige. Further, this determined the County's peculiar historic perspective and opinion regarding the general structure of English local government to-day. This is the history of the County from the County Council point of view:

'From time immemorial local government in this country has been preserved in unbroken continuity on the same basic system, namely the County as the main unit, the Hundred (or District) and the Borough as the intermediate units, and the Township (or Parish). From time to time new methods of procedure have been established and new powers and duties have been conferred in order to meet changed social and economic conditions, but the system has remained unaltered, subject only to one exception. That exception is the County Borough unit, which was established by the Local Government Act of 1888 to provide autonomy for what were, apparently, then regarded as special areas. The time, intent, and meaning of the Act of 1888, which was one of a series of Acts following upon the

[1] 'The views of County Councils on this aspect of the operation of the existing law and procedure were stated in Mr. Dent's memorandum of evidence as follows:

'"For many services, such as roads, tuberculosis, higher (including agricultural) education, rivers pollution, mental deficiency, etc., it is generally acknowledged that the larger the area (within reason) the better the administration. Any change, therefore, if change there must be, should be in the direction of strengthening rather than weakening the County unit.

'"Under the County system every part of the County is assured of obtaining the services it needs by means of its own local administration, supplemented by the wider services of the County Council, which are equally available throughout the administrative areas."' *R.C. on L.G.: First Report*, 1925, pp. 215–16.

See also the evidence of Mr. Dent, Part III, p. 457, Q. 6,823, Qs. 6,843–6; p. 459, Qs. 6,896–7; p. 476, Qs. 7,200–1; and that of Mr. Taylor, Part IV, p. 846, Qs. 13,657–61.

Reform Act of 1832, and designed to bring the practice and procedure of local government into harmony with the growth of representative government, was to place the administration of county government upon a representative basis of transferring the duties of Justices in Quarter Sessions to a popularly elected body (with such additions to their powers as were necessary to cope with modern requirements) whilst at the same time preserving the continuity of the County as an integral unit containing both urban and rural areas. It is true by that Act the statutory County Borough was, as has been stated, created in deference to the desire for autonomy expressed by certain areas, but this provision was subsidiary to the main purpose of the Act as above enunciated. It was contemplated by Parliament in 1888 that cases might arise in which the creation of a County Borough or the alteration of the boundaries of an existing Borough might be desirable. Section 54 was therefore included in the Act. Of recent years, however, the Local Government Board (now the Ministry of Health) and Parliament have, under municipal pressure, used that section to sanction an extension of the County Borough System (which is, as has been stated, an exception created by the Act) so far reaching as to cut at the roots of the County system.' [1]

The Argument of the Boroughs. (1) The Boroughs' vindication of their freedom from County administration issued directly from their views upon their financial contributions to County administration. They argued, and in many cases proved, especially in regard to Main Roads [2] (which played a dominating part in the controversies), that they were paying more to the County Council for such services than they were receiving. They could provide such services for themselves usually at a cheaper rate; and, if not cheaper, at least they could provide for the same or a little more, more nearly what it pleased them to have. They could not see any reason why they should suffer from the unsuitability of the services to their own local circumstances [3] or to contribute money to other areas. They wished to be the masters of their own civic destinies, and without financial obligations to areas with whom they had little in common, and in whom they had very little interest.

(2) As to extensions of their areas, they showed that owing to industrial and commercial developments and transport arrangements, suburbs and satellite areas grew up on their boundaries, the tide of people flowing to the centre to work and to the outskirts to sleep and play, with minor cross-currents. Hence, in terms of livelihood, cultural interests, civic amenities, for the planning of the town, of the factory and residential areas, for schools, and water supply and sewers, the area was a unit. When streets and roads stretched from one local authority to the other uninterruptedly, the unity was most obvious. If it were less obvious when unbuilt land stood between the areas, the unity was no less true or significant. It was *nationally*

[1] *R.C. on L.G.: Minutes*, Part III, pp. 441–68, Memorandum of Evidence submitted on behalf of the County Councils Association, where the case of the County Council as against the County Borough Council is put very warmly.

[2] Ibid., Part IV, p. 988.

[3] Ibid., *First Report*, Sects. 570–8, 588–92.

important that the economic significance of urban concentration should be recognized and promoted by facilities for Borough extensions, and freedom from the County Councils.

(3) But could not the County Councils provide for the necessary collaboration between these connected areas, and provide the services in the Boroughs? The Boroughs argued that they could not; first, because it was difficult to secure collaboration among semi-autonomous authorities, jealous of their own limited independence; and, even when one did, it was not possible to manage a joint scheme with the same dispatch and vigour as a single authority responsible for plans, money and execution.[1] As regards the services rendered by the County Councils, it was pointed out that, however liberal the representation of the larger Boroughs upon the County Council, they were always grossly outnumbered by representatives of Rural and small Urban districts, because of the actual number of such Districts and the necessity of representing each. This caused County Councils to be, by their personal composition, unsympathetic to urban development. Though perhaps able to *comprehend* what this meant when it was explained, they were not able to *feel* with all the keenness of a resident personally interested in the result.[2] Nor would it be unnatural for them to be biased in their interest from the standpoint of rates. Urban representatives were therefore discouraged by failure of their projects from attending meetings and urban interest in electing them fell off. Hence, for example, backwardness in the provision of secondary and technical education, police and roads.[3] (They wanted to govern themselves!)

(4) To the Towns it was clear that local government could best be exercised where a single area, represented by a single council, co-ordinated all services and the finance of those services. This is, of course, a sound principle. The main criticism by the County Councils of this principle is, that it does not follow that the particular area, with its particular number of population—a minimum possible being 50,000 is, *necessarily*, the area for all, or, indeed, any of the services. Nor, of course, could it be argued that the County area and population were more appropriate. It might be that both must come under some other joint, or, at least, more comprehensive, arrangement of area and authority.

(5) Moreover, the very compactness, the closeness of the neigh-

[1] See evidence by Brooks for Association of Municipal Corporations; *R.C. on L.G.: Minutes*, Part IV, Memorandum 8 (p. 880), Qs. 14,201–14, 14,224–8, 14,234–49.

[2] See evidence by Collins, ibid., Memorandum 5 (p. 751), and Winter (Qs. 20,554–90, Part VI, p. 1229).

[3] See Evidence by Collins, ibid. (Qs. 15,036–50, Part IV, p. 923), by Nicholson, ibid., Memorandum 33 (Part V, p. 1143), and by Fovargue, ibid., Memorandum 13 (Part V, p. 1168). On *specific* subjects: (*a*) Main Roads—Winter, Memorandum 28 (Part VI, p. 1231). (*b*) Education—Collins, Qs. 12,316–17 (Part IV, p. 756) and Qs. 14,977–86 (Part IV, p. 920). (*c*) Police—Collins, Qs. 16,008–19 (Part IV, p. 977).

bourhood, produced a different spirit in Borough government. People could come to Council and Committee meetings often, and the concentration of important services in a single Council stimulated interest in it, with beneficial results on the proportion of people voting.

(6) Finally, came the unconscious considerations of prestige: ourselves, our town, our Council! Hence, also, the history of County government within the English local government system, as with the eyes of the Municipal and County Boroughs.

'Municipal corporations are the oldest existing form of Local Authority in this country, and they differ from all other forms of Local Government Authorities in that they are common law corporations created by Royal Charter, whilst all other local authorities are statutory corporations. Municipal corporations have been in existence since the days of the Norman kings. Their constitution, powers and duties were regulated and enlarged by the Municipal Corporations Act, 1835, whereby the boundaries of the Boroughs as they then existed were also defined and their constitution is substantially the same as under that Act. Whilst the inhabitants of the city or town are incorporated by the Charter, they act by a council of whom three-fourths are councillors directly elected by the local government electors, the remaining one-fourth being Aldermen elected by the Councillors and over whom a Lord Mayor or Mayor, who may, but need not, be an Alderman or Councillor, presides. The provisions of the Municipal Corporations Act, 1835, and of a large number of amending Acts were consolidated with the Amendment by the Municipal Corporations Act, 1882. . . . It was one of the *essential* [*sic*] conditions subject to which County Councils were constituted by the Act of 1888, that the larger Municipal Boroughs, i.e. those having a population of not less than 50,000 as well as those Boroughs which are counties of themselves (whether having a population of 50,000 or less) should be entirely excluded from the Administrative County, and therefore from the jurisdiction of the County Council. . . . One of the conditions of the Act of 1888 being as above stated, that Boroughs with a population exceeding 50,000 should be excluded from the Administrative Counties, it was recognized that as circumstances altered there must be machinery for the alteration of the status of the Boroughs, and accordingly provision was made by section 54 of the Act, not only for alteration of boundaries, but also for the constitution of new County Boroughs in cases where the population limit is reached. In these cases also the procedure is by a Provisional Order confirmed by Parliament, but the alternative procedure of applying direct to Parliament is also available for this purpose and has, indeed, been adopted in some cases. Section 54 of the Act of 1888 contemplates that the change for which provision is made therein, whether the extension of a Borough or the alteration of status by constituting a new County Borough, shall be made when it is shown, that such a change is 'desirable'. This Association fully recognizes that the expression 'desirable' as used in the section has reference not merely to the Borough by whom the application is made; all relevant circumstances must be taken into consideration, but if when that is done, it is shown that the change is desirable in the interests of efficient, equitable and economical local government, the change should be made.'[1]

Conclusions on the Battle between Counties and Boroughs.

1. What, essentially, did this battle of ideas and wits prove, especially as a basis for a policy?

[1] Extracts from Memorandum *re* extensions and creations of County Boroughs, *R.C. on L.G.: Minutes*, Part III, p. 439.

It was impossible to mistake the rivalry which reigned between Counties and County Boroughs, a rivalry which had been a serious obstacle to joint schemes, and which, it was alleged, had produced 'a poisoned atmosphere'.[1] Nor were the smaller local authorities prepared to surrender powers and prestige, even if resistance meant damage to Counties or County Boroughs or Municipal Boroughs. It was urgent to meet such antagonisms by an arrangement which, though not intrinsically the best, would at least reduce them. Nor could one hope for the best solution, nationally regarded, for the Commission itself was composed of men hitherto connected with the very local authorities in dispute. It was, indeed, beyond human nature itself to ask from them, and certainly from the interested parties who appeared before the Commission, to slough off their County or Borough skins, and urge an impersonal non-local policy. The result could be no better than the minimum compromise necessary to meet the half-hearted charges made against each other.

2. Enough was said to show that County administration, unprompted by the central authority, and unspurred by the Boroughs, was, at least in regard to the Boroughs, unimaginative. To tell the truth, it was generally rather unprogressive. At any rate it was inappropriate to modern needs.

3. Hence, no one could deny the propriety of a prompt extension of the range and autonomy of the urban areas. It must be admitted, however, that occasionally, there was an over-eagerness for this resulting from local and corporate conceit, rather than a considered policy of local advantage, an over-eagerness which ought properly to be restrained by some external obstacle.

4. Nor could one mistake the real difficulties of the Counties under such a system of irregular change. It was to be expected that they would resist such changes likely to be demanded by Boroughs near the 50,000 level.

5. Even with a compromise effected to the satisfaction of Counties and Boroughs, there must always be a large and urgent need for collaboration between the County Councils and all the other Councils within that area. The model of such collaboration was described before the Commissioners by the representatives of Lancashire,[2] and the West Riding of Yorkshire[3]: by consultation, and devolution of policy-making to Committees of local inhabitants and the County Councillors for those places.

6. Some reorganization of the financial adjustments consequent

[1] Ibid., evidence of Jackson, Qs. 11,124–30 (Part III, p. 684).
[2] See evidence of Mr. S. Taylor for Lancashire, Part III, pp. 601–39.
[3] See evidence of Mr. Vibart Dixon and Sir J. Hinchcliffe for W. Riding of Yorkshire, Part III, pp. 579–601, and Part III, pp. 568–79.

upon the extensions and constitution of County Boroughs, as provided in the Acts of 1888 and 1913 [1] was essential.[2]

7. There was, and is, no exact quantitative measure of the exact timeliness of an extension or creation of a County Borough, or exactly how many people ought to settle this matter, whether in favour of the Counties or the Town. The Act of 1888 had taken the figure of 50,000; but, as we have seen, the figure of 50,000 was the result of a battle in the lobbies of Parliament.

However, without a uniform figure there could be no local collocation of services at all: the technique of each service would demand its own special area; and this none of the authorities contemplated, for reasons fully discussed in a later chapter. The Counties suggested 150,000 [3]; the Towns put up arguments for the retention of 50,000. The Counties initially attempted to establish the principle that there should be no creation of a County Borough until it could *independently* provide all the services it needed—an impossibility; later they modified the standard to the provision of its services with the cooperation, in some cases, of other authorities.[4]

There is, in truth, no figure which will do, scientifically, equally well for all services and all authorities. Then what should be done?

8. The Commission, itself composed of men of strong views, had no decisive guiding principles. It could only say:

'The difficulties are due to the growth of the population of the country and to changes in the distribution of that population which follow upon the movements of industry, or upon other circumstances, over which Local Authorities have little or no control; though some proposals may arise from other causes than those stated, such as the desire on the part of a Local Authority to increase the size and population of the area under their jurisdiction, and so increase its importance.

'Local government must be conducted by Authorities who have jurisdiction within defined areas, and each of the important settlements of local government areas which Parliament has made has necessarily been made in the light of the conditions of population and industry which existed at the time.

'It has, however, been recognized by Parliament, even at the moment when each of these settlements was made, that the conditions would alter, and that provision was required for enabling the boundaries and the status of Local Authorities to be varied when the conditions altered to such an extent that changes in the system of local government had become desirable.

'The problem before the Commission is the method by which the organization of local government is to be from time to time adapted to changing conditions of population and industry. For many years past there has been a gradual growth of urban at the expense of rural population, and the consequence has been

[1] Local Government Act, 1888, Sects. 32, 33 (2); Local Government (Adjustments) Act, 1913 (3 & 4 Geo. V, c. 19), Sect. 1 (1).

[2] *First Report on R.C. on L.G.*, pp. 256–69, and pp. 465–6.

[3] Ibid., p. 361; see also evidence by Dent, Memorandum 67 (Part III, p. 549).

[4] For the summary of the character of the test which the County Councils suggest should be applied to proposals for the constitution of County Boroughs, see *R.C. on L.G.: First Report*, pp. 362–7.

a great increase in the population of towns and the occupation by them of areas formerly rural. It is possible that in the future this movement will become slower, or even in some cases be reversed, but the problem will remain in its essence the same.

'In the adaptation of local government to altered conditions, boundaries may have to be changed, and existing organizations broken up or superseded. There will be loss as well as gain, and in every case, one must be balanced against the other, the governing consideration being to secure the welfare of the populations affected, and the best and most efficient method of providing for their local government. While continuity, tradition, well organized administration, and so on, must not be lightly disturbed, they must be judged by their results in health, education and other local government services.' [1]

This statement was too general to dictate with precision the path of reform. Then what was to be done?

9. Fundamentally, things were left alone, excepting that the strength of the Counties, as exerted in the House of Commons, but particularly in the House of Lords (owing to the social and political affiliation between county leaders and the peerage), prevailed. Their opposition through members of Parliament, and in Private Bill Committees, could greatly trouble and delay the Towns in the pursuit of County Borough status, if not ultimately frustrate their ambition.

Therefore, the former power of the Ministry of Health to favour the Towns by its reports on Provisional Order Confirmation Bills was reduced. As we have indicated on page 57, Local Inquiries were abolished with the abolition of Provisional Order procedure for the Constitution of County Boroughs. In the matter of *extensions* under Provisional Order procedure, Local Inquiries were still to be held, but their constitution and proceedings were amended to avoid complaints regarding their fairness and comprehensiveness by authorities contesting the proposal. Finally, from the standpoint of the Towns, civic and national progress was set back by the rule that no proposal for the constitution of a County Borough should be entertainable where a Municipal Borough had less than 75,000 inhabitants. This arrangement put off for some time the possible proposals of eleven Municipal Boroughs with a population of more than 50,000, and of nineteen Urban Districts with a population of more than 40,000 which might have become Boroughs[2]; to 1943 there were still no new County Boroughs.

That is the situation of the Counties, the County Boroughs, and the larger Municipal Boroughs to-day. There is no doubt that the Counties have, to their advantage, stabilized a position in a battle, not so much with the Towns, as with civilization—a battle they were

[1] *R.C. on L.G., Final Report*, pp. 450–1.

[2] i.e. position as in 1921. See *R.C. on L.G.: First Report*, p. 373: '. . . there are 11 Non-County Boroughs which had a population of not less than 50,000 in 1921; 42 Non-County Boroughs which in that year had a population of not less than 30,000 but less than 50,000· and 19 Urban Districts which had in that year a population of not less than 40,000.'

losing. The question is whether it is to the advantage of England? We shall answer that question in a wider context when we have examined the history and situation of the Urban and Rural Districts, and recent developments in certain important services.

CHAPTER V

DISTRICTS; MUNICIPAL BOROUGHS; THE PARISH; THE CRITERIA OF AN AREA FOR PURPOSES OF LOCAL GOVERNMENT

WITHIN each Administrative County, and apart from the County Boroughs, there are three types of local government authority, the Urban District, the Rural Districts, and the Municipal Boroughs, not infrequently called Non-County Boroughs to distinguish them from County Boroughs. The Districts are often referred to as 'County Districts', and, sometimes, the Non-County Boroughs are included in this term.

The ensuing discussion regards the Local Government Act of 1929 as a point to which the history of these areas moved, and assumes, for the purpose of analysis and exposition, its non-existence until the end of the discussion. Indeed, the reforms of 1929 are now (1933) only in the process of actual consummation.

There are roughly 780 Urban Districts, 640 Rural Districts, and 260 Municipal Boroughs.[1] The number of these areas varies from County to County, and we give some examples:

VARIATIONS IN THE NUMBER OF DISTRICTS IN DIFFERENT COUNTIES
(Preliminary Report of the Census, 1931)

County	Municipal Boroughs	Urban Districts	Rural Districts	County Boroughs
Lancashire	19	82	19	17
Devon	10	23	18	2
Bedford	3	5	6	—
Berkshire	6	1	11	1
Kent	18	23	23	1
Middlesex	4	26	2	—
Soke of Peterborough	1	—	2	—
Rutland	—	1	3	—
Surrey	6	25	8	1
Warwick	5	4	14	2
Yorkshire (West Riding)	10	108	28	10
Merionethshire	—	6	5	—

Hence the organization of government within each County is variously complicated: each has its own difficulties of partition of power and their solution in terms of collaboration or hostility.

[1] Figures reflecting changes since 1933 are given on p. 101 below.

The Urban Districts. Urban Districts are principally public health and roads authorities. Some, among those with a population of 20,000 in 1901, are authorities for Elementary Education [1]—Part III Authorities, as the phrase goes. Then they have a list of miscellaneous powers and duties, and a large body of trading services. The diversity and relative importance of their services can best be seen from the distribution of their expenditure as in the Tables at commencement of Chapter II.

However, as these figures are aggregates, they do not justly characterize the Urban Districts as a factor in English Local Government, because they omit the diversity among the authorities themselves. This diversity is *extreme* (see the figures of population, area, and rateable value on page 23 ff.), and, therefore, we put side by side items of expenditure in a very large, a middle-sized, and a very small Municipal Borough, and in Urban Districts.

MUNICIPAL BOROUGHS, 1930–1

		Rateable Value. Total. £	Net 1*d.* Rate. £
Population:	Ealing (M.B.), 104,000 . .	1,052,159	4,200
	Macclesfield (M.B.), 34,460 .	149,062	590
	Clitheroe (M.B.), 12,150. .	57,444	228

Expenditure on Certain Items, 1930–1

Service	Ealing £	Macclesfield £	Clitheroe £
Education: Elementary . . .	76,650	19,027	7,011
Higher	35,700	4,720	2,648
Libraries, Museums, etc. . . .	6,825	1,033	456
Housing and Town-planning . . .	9,450	3,097	484
Baths, Wash-houses, etc. . . .	4,200	1,770	—
Public Health	13,650	8,997	3,990
Public Lighting	13,125	2,360	1,767
Highways, Bridges and Streets Improvements	112,875	31,565	12,367
House Refuse Disposal	26,250	4,571	1,678
Sewerage Disposal	34,650	6,785	1,767

SOME REPRESENTATIVE URBAN DISTRICTS [2]

Willesden U.D. (Middlesex, pop. 172,500)
Farnworth U.D. (Lancs., pop. 29,500)
Exmouth U.D. (Devon, pop. 14,400).

[1] According to the *R.C. on L.G.* there were 44 Urban District Councils which were Part III Education Authorities. This number does not change except in special circumstances, since the qualifying population figures are based on the 1901 Census. See *R.C. on L.G.: Minutes of Evidence*, Selby-Bigge, Memorandum II, pp. 403–4.

[2] Extracted from *Annual Statement of Rates Levied in Various Towns*, 1930–1, issued by the Borough Treasurer of Preston.

Certain Items of Net Expenditure, 1930–1 (*i.e. excluding cost of collection*)

Item	Willesden £	Farnworth £	Exmouth £
Elementary Education	170,500	20,451	12,948
Public Health	62,000	7,083	4,420
Libraries, Museums, etc.	13,020	1,429	312
House Refuse	31,620	2,970	2,802
Sewage Disposal	39,680	3,769	3,548
Housing and Town-planning	10,540	6,510	996
Police	61,380	5,141	4,242
Public Lighting	19,220	3,427	1,992
Baths and Washhouses	2,480	686	—
Totals	410,440	51,467	31,260

Urban Districts vary from highly nucleated urban centres, without any rural character at all, like Willesden, through many degrees of urban-cum-rural area, with one or two small urban nuclei surrounding and interweaving them, down to villages or rambling areas sparsely populated, like Kirklington-cum-Upland. They vary, in short, from highly organized towns to poor and unpopulous areas.[1] Necessarily, and in fact, the quality of civic life varies from one to the other. Just as various is the fitness of the area for local government services, and the participation of the Districts in the government of the whole County of which, for county services, they form a part. The inhabitants of Urban Districts are governed by two authorities: the County Council and the Urban District Council. For the former, a certain number of representatives are elected in the District, and may be looked upon as representatives of the District, although they are in law *County* Councillors.

I

DISTRIBUTION OF FUNCTIONS IN GENERAL

What is the distribution of functions? An exact description, fitting the *facts* of all, or even a representative number, is impossible.

[1] Assessable Value per Head of Estimated Population in Urban Districts

Lowest assessable value—Quarry Bank (Stafford) . . £1 13*s*.
Highest ,, ,, —Kingsbury (Middlesex) . . £16 15*s*.

No. of Districts	Assessable Value
2	£1 to £1 19*s*.
57	£2 to £2 19*s*.
143	£3 to £3 19*s*.
181	£4 to £4 19*s*.
122	£5 to £5 19*s*.
109	£6 to £6 19*s*.
67	£7 to £7 19*s*.
35	£8 to £8 19*s*.
22	£9 to £9 19*s*.
34	£10 to £14 19*s*.
1	Above £15

From the Ministry of Health's 'Statement of Amount of Local Rates per Pound of Assessable Value,' 1927.

Therefore, we limit ourselves, first to indicate the statutory distribution of certain functions, outstanding by reason of their social or monetary importance, and, secondly, so to describe some actual examples as to reveal the nature of the normal problems.

The powers fall into four main categories:

I. Powers exercisable by all Urban Districts by virtue of their status, and regardless of their population, some being (*a*) *obligatory*,[1] and others (*b*) *permissive*.[2] For example, the provision of working-class houses is obligatory, while the provision of baths and washhouses is permissive.

II. Powers exercisable only by Urban Districts with populations of specified sizes, some being (*a*) *obligatory*,[3] and others (*b*) *permissive*.[4] Thus, an Urban District with more than 10,000 population must establish an Allotments Committee, while those with over 20,000 must prepare a town-planning scheme and make provision for elementary education. The latter may also make further provisions for elementary education.

[1] Every obligatory function of the Rural District is, *ipso facto*, obligatory for the Urban District, e.g. in *Public Health*, it must inspect area for nuisances, secure proper sanitary condition of all premises, provide an adequate sewerage, notify and prevent infectious diseases, prevent the sale of tuberculous milk, and so on; in *Housing*, a proper provision of working-class houses, prevention of overcrowding, etc.; it must provide a proper water-supply, maintain and repair the minor local roads, and carry out the fire-prevention provisions of the Cinematograph Act, 1922. The Urban District, in addition, must undertake the registration of war charities and provide public offices. *R.C. on L.G.: First Report*, p. 46.

[2] All permissive Rural District functions are permitted to the Urban District. For example, in *Public Health*, there can be proper removal of house refuse, provision of mortuaries and cemeteries, hospitals for infectious diseases, inspection of foodstuffs, etc.; other powers, such as the preparation and administration of town-planning schemes, construction of new local roads, provision of electric power and light, and certain housing powers, such as the formulation and execution of schemes for reconstructing unhealthy buildings. The Urban District may also exercise a large number of additional Public Health powers, such as the cleansing of streets, making bye-laws about new streets and buildings and building plans, provision of slaughter-houses, lighting and watering streets, provide baths and washhouses and sanitary conveniences, assist in higher education, provide market-places, fire-engines, public telephones, execute the Burial Acts, and so forth. Ibid., pp. 46–7.

[3] These are:

Over 10,000 population, provision of allotments.
20,000, administration of the Shops Act, appointment of a Local Pension Committee.
Over 20,000, preparation of a town-planning scheme, and provision of elementary education (unless the Council has relinquished this power to the County Council).
Over 50,000, appointment of a Distress Committee.

Ibid., pp. 49–50.

[4] These are:

Over 10,000, regulation of advertisements and administration of the entertainment taxes by agreement with Central Departments.
20,000, further provision for elementary education (e.g. social and physical training, provision of meals, etc.).
Over 20,000, administration of Shops Acts as to evening closing.
Over 50,000, provision of financial assistance to the Joint Electricity Authority of the area.

Ibid.

III. Powers exercisable in Urban Districts *alternatively* by (*a*) either the Urban District Council or (*b*) by the County Council.[1] These include the provision of public libraries, provision for maternity and child welfare, provision and maintenance of open spaces, the appointment of gas examiners, and so forth.

IV. Powers exercisable *concurrently* by the Urban District Council for their own District, and the County Council for the Administrative County (that is, *including* the District).[2] They can, for example, promote and oppose Private Bills in Parliament and prevent the pollution of rivers if necessary.

There is a variation of power, then, according to the size of the Urban District within each County ; and a further variation within the same size of authority, as between different Counties.

Problems of District Government. What problems arise out of the powers of the Districts as related to the areas, and out of the relationship of the District to the County ? The outstanding problems are these : (*a*) Is the District appropriate as a self-governing agency of the services it carries out ? (*b*) Is the service provided at all where it is merely permissive ; (*c*) How is the decision regarding the administration of services which may be *alternatively* rendered by Urban District or County Council made ; (*d*) Are the *concurrent* powers exercised at all by either party ; and if not, why not ; and if so, is the process of collaboration efficient ? and (*e*) What is the nature of the relationship between the Urban District and contiguous areas ?

It is beyond the object of this book to treat each power separately in the light of each of these problems. We need only certain general judgements, and they are best obtainable regarding the functions that have caused most difficulty to the local authorities, that is, public health, highways, police, and elementary education. Now it is essential that we should know why and how the Urban Districts came into being, for that knowledge is already more than half the answer to the problems stated above. It must necessarily embrace also the origin of the Rural Districts, the counterpart of the Urban Districts, and we can also make some slight acquaintance with the general situation of the Municipal Boroughs in relation to both types of District.

History of the County Districts. The Urban and Rural Districts came into being for a specific and limited purpose, to act as sanitary authorities, and their original name, Urban and Rural *Sanitary* Districts, given them in 1872, was an apt characterization of their functions. But the Districts of 1872 had roots in the past. Their

[1] Ibid., p. 48. The Urban District Council or the County Council may alternatively exercise all those powers coming under the same head in the case of the Rural District Council, as well as certain additional ones.

[2] Ibid., p. 49. These remarks apply also in the case of concurrent powers.

origin, though temporary and casual, is to be traced to the cholera epidemic of 1831, when Local Boards of Health were established in certain areas.[1] These vanished with the panic. The next stage was between 1848, when the Health of Towns Act was passed, and 1872, when the recommendations of the Royal Sanitary Commission (1869–71) were put into effect.

By the Act of 1848 local Boards of Health could be established (and would then have certain sanitary powers) on the application of local inhabitants, but where the death-rate exceeded 23 per 1,000 the central authority could compel the establishment of a local Board.[2] An attempt was made in 1858 to make the Sanitary Authority coincident with the Poor Law Union, a policy which had considerable merits, but this failed.[3] The areas were therefore fortuitously established, sometimes coinciding with towns, small towns, urban-cum-rural areas, sometimes coinciding with the Poor Law Union, sometimes being but a part of these units. Then in 1862 a large number of parishes, some mere hamlets, adopted the Local Government Act of 1858, with no other object than to get themselves the status of urban areas, and so, under the Highways Act of 1862, exemption from being formed into a Highway District. The object was to escape the possible improvement of their highway administration by more public-spirited neighbours, for this would entail higher rates. So serious was this movement that a special Act was passed in 1863 to stop any further action of the kind.[4] But already great harm was done to contemporary sanitary administration, and even more to the England we live in to-day.

The Local Government Act of 1863 prohibited the formation of *Urban* health areas (for the purposes of the Act of 1858) except by places with a population of more than 3,000, a figure which Parliament and the administrative authorities considered to be the minimum for efficient sanitary administration. Already, then, the distinction between urban and rural areas had come into existence—urban naturally including most Municipal Boroughs, and areas under the Acts of 1858, 1862, and 1863, while the rural areas were the remnants. It is of the first importance to accentuate the fact that the rural districts were, and remained, *remnants*. The rural authorities for sanitary purposes were at this time the Boards of Guardians (covering a number of Parishes) for Nuisances Removal and Diseases Prevention Act purposes,[5] while the Parishes were the sewer authorities.

[1] Simon, *English Sanitary Institutions*, 1890, pp. 166 et seq.

[2] Ibid., p. 206.

[3] Cf. Fair, Qs. 4,447–51. 'The administration of the Health Acts is in a most unsatisfactory state, owing to the confusing of the divisions and the confusion of the Authority. The poor law union or registration district would be the best district to deal with all except the towns.' *Royal Sanitary Commission: Analysis of Evidence*, Vol. II, p. 186.

[4] Ibid. p. 185.

[5] Diseases Prevention Act, 1855, Nuisances Removal Act, 1855, and the Nuisances Removal and Diseases Prevention Amendment Act, 1860.

Before the Commission of 1869–71 evidence was tendered showing the difficulties of establishing suitable districts for health administration. There was, first, the factor which has never ceased to operate as an obstacle to the proper arrangement of areas—fear of an increase of rates by some portion of citizens who prefer an autonomy which entitles them to the right *not to spend*. 'In many cases where it (amalgamation) is very much wanted, and where it has been very much urged by the most long-sighted of the population, it has been resisted by the majority. In all cases where they are afraid of its increasing their rates they resist it.' [1] Secondly, there was the compelling influence of existing areas; themselves determined by conditions irrelevant to the technique of the newly contemplated service, and irrelevant even to the true economy of their original functions, they now relieved statesmen from the task of inventing the specifically proper area.

'Unions, I presume, were generally formed upon considerations of rateable value and population. In neither case, of course, was there any consideration of natural conditions of local improvement such as drainage, or watershed, or water supply. If one were now arranging England for purposes of local improvement, considerations of watershed and water supply are among the first which one would take into account, but they have not governed any of the existing divisions of England.' [2]

When the Commission made its final recommendations it accepted existing territorial divisions, forced thereto by the resistance of existing authorities, and its own unwillingness to complicate government by *adding* new ones.[3] In other words, the areas it was about to get established were not quite appropriate to the functions it had in mind. That was one of the problems it bequeathed to the England of our own day. Nor was that all. Even the purpose it wanted to achieve, and therefore the area *quite* appropriate to that, engendered fresh problems, because the area was very small: for it was founded upon a view of public health administration governed by the sanitary science of the time, and, relatively to the present the smaller population, and, its more rural distribution. Let us look at the specification of public health services as conceived by the Commission of 1871.[4]

'Considering the ordinary supply of what is necessary for civilized social life as our subject, we may say that it chiefly comprises:—

The supply of wholesome and sufficient water for drinking and washing;

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[1] Royal Sanitary Commission, Vol. II, p. 185. [2] Ibid., p. 100.

[3] *Second Report*, ibid., 1871, p. 22: 'If the subject of our inquiry were a new country without territorial divisions or Authority, it would be necessary to settle the administrative areas before creating Authorities to have jurisdiction within them. But in an old country possessing Authorities already too many and complex, the first consideration must be given to those which exist and to the question whether any of them appear to be such as can be entrusted with the execution of an amended law.'

[4] *R.C. on L.G.: Minutes of Evidence*, Part IX, p. 1717.

The prevention of the pollution of water;
The provision of sewerage, and utilization of sewage;
The regulation of streets, highways, and new buildings;
The healthiness of dwellings;
The removal of nuisances and refuse, and consumption of smoke;
The inspection of food;
The suppression of causes of disease, and regulations in case of epidemic;
The provision for the burial of the dead without injury to the living;
The regulation of markets, etc., public lighting of towns, etc.;
The registration of death and sickness.'

Of this list, only those relating to water-supply, sewerage and the suppression of causes of disease, might have prompted the widening of the area of public health administration. But knowledge of the bacterial causation of disease, and all its implications in terms of prevention, detection, notification, and treatment, had not yet been established, let alone popularized. Hence forces were lacking which might, as later experience demonstrates, have peremptorily compelled arrangements over wider areas. Sufficient unto the time was the good of the small areas.

From 1872 to the Present. The Public Health Acts of 1872 and 1875 gave to the new central authority, the Local Government Board (replaced in 1919 by the Ministry of Health), the power to make an Order for the constitution of an Urban Sanitary District. Thenceforward the constitution, and therefore the area, of Urban Districts, depended upon the central authority, and its practice is observable in the Annual Reports of the Board from 1873 onwards. Its policy was, normally, to make 5,000 the minimum population.

At the same time the Public Health Acts of 1872 and 1875 made each Poor Law Union *minus* the Urban Districts into a Rural Sanitary District, the authorities being the Boards of Guardians, that is, the specially elected destitution authority. It is clear that there could be no exact measurement of the appropriateness of such an area for the tasks imposed upon it.

The next stages were the Local Government Acts of 1888 and 1894.[1] They established the following system: Urban Districts could be formed out of a Rural District or any part of it by the County Council, if it were found to be desirable. To arrive properly at the decision, the County Council first judged whether a *prima facie* case had been made out, and if so, it then conducted a very carefully prescribed process of notification of all contiguous or constituent areas (so that they might oppose if they thought fit) and the central government. Then followed a Local Enquiry and an Order. The Order had to be submitted to the central authority, and could within six weeks be challenged by contiguous districts, or any part of the affected

[1] *R.C. on L.G.: First Report*, Part I, pp. 15, 17–18. *Minutes of Evidence*, Part IX, pp. 1712 and 1714.

district. The matter was then determined by the central authority. If there were *no* challenge to the original Order the central authority was obliged to confirm. In any case, on confirming the Order it could make any modification necessary for carrying into effect the objects of the Order.

Somewhat similarly with the formation of Rural Districts out of a parish or a number of parishes. So also with the alteration of boundaries of both Urban and Rural Districts.

Furthermore, the whole of each Rural District was to fall within one Administrative County,[1] and this was accomplished either by dividing existing Rural Districts into two or more according to the number of Counties over which they spread, or by altering the County boundaries to include the whole of the existing area, or by amalgamating a remnant of a former Rural District with another in its own County.

Results of the Process. So much has been essential to indicate how the Districts came into being. What conclusions emerge? Firstly, no deliberate general relationship between the service to be administered and the area of administration was established. What was at hand was made to serve. In the case of the Urban Authorities some slight but inadequate attempt was made to define an appropriate area in terms of population. But the Rural Authorities were simply remnants, and as time went on and urban areas were formed or extended, and as Municipal and County Boroughs included the ever-growing suburbs, the Rural Districts were eroded into the queerest of impossible shapes and sizes.

Secondly, the Districts were delimited and the Boroughs vested with the functions of Urban Sanitary Districts by reference to the sanitary science of 1870 and earlier, but already changes were occurring in that field which must very soon beat upon the petty frontiers. Thirdly, the initiative in forming and altering areas was left to the County Council and the small areas themselves in terms of law which left much doubt as to which was responsible for the initiative; in fact, either it came from the smaller area or not at all. In other words, the County Council had received no commission to make itself generally responsible for the continuous adaptation of areas to new services and the lessons of science: hence development was bound to be piecemeal and determined by local and, too often, petty personal animosities. More: the policy of different County Councils could not but be different. The only possible unifying authority was the Local Government Board, and later the Ministry of Health. But the central authority was not, and is not, anxious to interfere in deliberate local decisions.

[1] *R.C. on L.G.: Second Report*, p. 14. Cf. also Pindar, Memorandum 49, *Minutes of Evidence*, Part X, p. 1877.

The results were serious. Between 1889 and 1927, 270 Urban Districts were formed. Of these, the populations in 1925 were thus distributed:

URBAN DISTRICTS FORMED SINCE 1889 [1]

Population (Mid. 1925)

Under 1,000	—
1,000–2,000	15
2,000–3,000	24
3,000–4,000	31
4,000–5,000	20
5,000–10,000	64
10,000–15,000	33
15,000–20,000	18
20,000–30,000	10
30,000–40,000	9
40,000–50,000	1
50,000–100,000	2

Rateable Value (1926)

Under £10,000	32
£10,000–£25,000	67
£25,000–£50,000	56
£50,000–£100,000	52
£100,000–£200,000	26
Over £200,000	6

The same facts in relation to Rural Districts are these:

RURAL DISTRICTS FORMED SINCE 1889 [2]

Population (Mid. 1925)

Under 1,000	6
1,000–2,000	16
2,000–3,000	23
3,000–4,000	20
4,000–5,000	7
5,000–10,000	26
10,000–15,000	9
15,000–20,000	4
20,000–30,000	1

Rateable Value (April 1926)

Under £10,000	24
£10,000–£20,000	36
£20,000–£30,000	21
£30,000–£40,000	9
£40,000–£50,000	9
£50,000–£60,000	6
£60,000–£70,000	5
£70,000–£80,000	1
£80,000–£90,000	—
£90,000–£100,000	1

[1] *R.C. on L.G.: Minutes of Evidence*, Part IX, p. 1807. [2] Ibid., p. 1709.

From this survey these truths stand out: that the formation of the Districts was haphazard and fortuitous even in relation to local government needs contemporary with their formation. The new functions, imposed by advancing knowledge of public health, and much more by the community's expectation of a good standard of attainment, rendered most of the areas inadequate. Nor was that all. The Districts were originally formed for public health purposes only: *but soon all were made Road authorities and some became Elementary Education authorities.* Besides the problem of the technical appropriateness of the area, there was always the question whether a larger area would not make for economy by permitting the spread of the services of more skilled officers and apparatus, at a less than proportional cost per head to the consumers; in other words, whether waste would not be avoided.

Until the establishment of the Royal Commission on Local Government in 1923, the questions we put on a previous page could only be answered by reference to special cases, or the occasional strictures of public health, educational and road transport experts—including normally and naturally the central Departments.[1] The Royal Commission authoritatively provided the answers, more especially in its Minutes of Evidence, Parts IX to XIII, and its Second and Final Reports. But we do not intend to traverse their detailed testimony. The most instructive thing is to lead up to its conclusions from the first simple principles, embodying actual but only critical evidence, and then to state what was recommended by the Commissioners, and finally, what reforms Parliament decided upon.

THE AREA OF GOVERNMENT PROPER WITHIN THE COUNTY

What is the proper area of government within each County? An area of 500; 1,000; 10,000; or 100,000 people? Why should any one be preferred to another? Why stop at 100,000? Why not decentralize to areas containing only 5 people? The answer can only depend upon several variables. The first is financial capacity. The plain and simple truth is that if you have the money it does not matter how small or how large an area is, relatively to its technique; you can carry out any service you like. There have been millionaire estates almost self-sufficient in the supply of local government services, and only *one* ratepayer. If you have not the money you cannot do even the things which are *imposed* upon you by the statutes and the central authority's administrative policy as expressed in Rules and Orders and the suggestions and pressure of its Inspectors. Thus some

[1] Cf. Newsholme, *The Ministry of Health* (1925), in particular, Chaps. III, IV, X, XX; and cf. also the *Annual Reports* of the Local Government Board, the Ministry of Health, and the Board of Education.

Districts and Boroughs, with a population no larger, and sometimes smaller, than that of other areas, were by their rateable value able to carry on efficiently such services as public health, education, and roads; they formed areas of government efficient enough to make one reluctant to withdraw any local discretion from them. On the other hand, ample evidence was given to prove that, normally, areas below a size of 10,000 or 15,000 and a rateable value of about £5 per head, were unfit to bear Borough, Urban or Rural District functions.[1] This ruled out 383 Urban and 243 Rural Districts, 22 County Boroughs, and 128 Municipal Boroughs as areas which could in the future carry the full complement of District powers.[2]

Considerations of Economy. Yet there are other considerations besides the amount of money available per head. For some, if not a majority, of the inhabitants of a District, and the national community at large represented by the central authority, urged on by administrative experts and politicians, introduce the element of Economy. They argue that it is wasteful, and therefore morally improper, that an area which possesses the means shall spend it, if nevertheless, expense could be saved and the service more economically provided, (*a*) by transferring its functions to a larger area, for example, from District to County, or (*b*) by increasing the size of the area, as, for example, by adding parts of one Rural or Urban District to another, or parts of surrounding authorities to Municipal Boroughs. Examples of the first are to be seen in the matter of Isolation Hospitals, joint employment of the County Medical Officer, Elementary Education, and (in the case of Boroughs) Police, and in the non-claimance of Main Roads. Examples of the second are to be seen in the attempts to secure more economical Water-Supply, Sewerage, and Roads, and were very common between 1888 and our own day.

It is obvious, at once, that the fitness of Urban and Rural Districts

[1] 'In the course of his evidence, Mr. Jarratt agreed that there are some Non-County Boroughs with so small a rateable area that they cannot perform all their duties efficiently. Mr. Darlow, also speaking on behalf of the Association of Municipal Corporations, agreed that a rearrangement is desirable, but emphasized the view that a solution of all the difficulties of local government was not to be found in such a reorganization.' *R.C. on L.G.: Second Report*, p. 13.

'. . . Bearing in mind the multifarious duties now discharged by Local Authorities, and the practice of Parliament to add to those duties from time to time, the financial resources of a District Council have assumed a much greater relative importance than they formerly held, and the Association, while not desiring the imposition of any rigid rule, have arrived at the conclusion that it is not expedient to create any new Urban District with a population of less than 10,000 or a rateable value of less than £50,000. The retention of these populous centres as a part of the Rural District would probably have the further effect of stimulating the Council to greater activity. At the present time there are no less than 500 Urban Districts with a population of less than 10,000 and nearly that number with a rateable value of less than £50,000.' *R.C. on L.G.: Minutes of Evidence*, Part X (Mr. Pindar), p. 1878.

[2] Figures calculated from the Ministry of Health's Annual Statement of *Local Rates per Pound of Assessable Value*, for 1926.

and Municipal Boroughs ought not, and should not, therefore, be treated except by reference to the specific financial capacity of each. For though the areas bear the same name and have the same status, their individual character is exceedingly diverse, and the surrounding Districts and the County in which they are situated are also exceedingly diverse.

Assuming, then, that economy is desirable, and that though not the only consideration, it must be harmonized with the few ruling considerations, what are the other considerations ?

Natural Technique of the Services. There are considerations of natural technique ; the nature of the service is such that it can only be provided in a given area at a price flagrantly exorbitant, or cannot be provided at all at any price. Certain examples are outstanding : supplies of water are governed by geological features like water-sheds, catchment areas and climatic situation. If a local government area bears no rational relationship to such physical areas, and recognizes no partnership with other areas, it may bring its water from a hundred miles away at exorbitant charges, or go without. So also in regard to sewerage and drainage sources. Or it may provide a technical institute for one student. Further, such services as the maintenance of weights and measures, the notification of infectious diseases, cannot yield their essential purpose, namely, *uniformity* and *co-ordination* of action, without either a single *extensive* area, or some well-articulated federal arrangement within the most appropriate area. Moreover, in such services as those just mentioned, *impartiality* of judgment as between one citizen and the other is essential : but there were suggestions in evidence before the Royal Commission, that not only was it likely that local officials would be liable to corrupt pressure if they operated in a small neighbourhood, but that, in fact, such cases had occurred. It was suggested that only officials appointed by external, that is, distant, authorities could resist such pressure.

The Break-up of Compendious Authorities ? Now these considerations, Economy and Technique, would lead towards a variety of areas according to financial capacity, or according to the technique of the service, with a most confusing and disintegrating result. There would be, quite possibly, a break-up of the present compendious local authorities to which we have become accustomed, and towards which there was deliberate progress since about 1870. There would, instead, be a variety of *ad hoc* authorities. They would vary in area, population, and rateable value, in relation to the technique of each service. Nor could we omit to consider the civic quality of the authority, that is, that amalgam of public spirit, local patriotism and administrative skill of local officials and councillors which determines the efficiency of a self-governing community.[1] This factor was very

[1] See *infra*, Chapter VIII.

powerfully urged before the Royal Commission by the representatives of the Boroughs and the Districts and by the Ministry of Health, especially as a defence against the claims of the County Council to a jurisdiction over them in virtue of its possession of a wide area of government.[1]

Principles were therefore submitted to prevent the disintegration of the local areas, and even to keep them small. It was argued that local government would cease unless a locality had a range of services entirely within its own discretion,[2] financed principally out of its own resources, sufficient to inspire the interest and attract the services of local citizens.[3] This could not be achieved if services were transferred to larger authorities—the County Council, for example—who would then delegate them to the smaller authorities to be exercised under supervision and regulation. For, in such cases the local council would be nothing more than a local committee of the County Council. Ultimate principles, which are the real stuff of political activity and ambition, would not be settled in the Districts, but at the County Hall, and this would cause local citizens to lose interest, and would delay affairs because the County Council being distant from the extremities of the County, could have only a few meetings per year.

The Rationale of Local Self-Government. This leads back to the ultimate question, why make allowances for the interests of local citizens at all? This is no other than the question we asked in the first chapter: What is the utility of decentralized government? The answer was that opportunity to participate in government was good in itself, and also an education in the government of the national community. The small area permitted an intimate knowledge of immediate and personal circumstances, and provided a pervading and omnipresent sense of the continuous existence and functioning of government: it gave citizens not only the opportunity of frequent personal recourse to local officials, but also, thereby, maintained a desirable confidence in local government. Nor can the observer fail to discern an instinctive horror at the idea of breaking up existing authorities, with at least a generation or two of fairly continuous

[1] In giving the principles which should be applicable to the extension of Boroughs and County Boroughs, Mr. Postlethwaite, on behalf of the Urban District Councils Association, states that 'the effect of the extension of a County Borough on the administration of the County should be carefully considered not merely as regards financial matters but by reference to the dislocation of common services . . . and the reduced efficiency which might result. . . .' (*Minutes of Evidence*, Part VI, p. 1323). The same point is made by different people on a number of occasions. Cf. *Ministry of Health, Memoranda of Evidence*, 239 and 240, Part IX, p. 1767.

[2] *R.C. on L.G.: Minutes* (Part IX, p. 1767), evidence on behalf of Ministry of Health.

[3] '. . . any proposal for change should be directed to encouraging the confidence of the inhabitants of any area in their representatives, and the extent of their active and effective interest, both in election of representatives and the provision of local government services in their area.' *R.C. on L.G.: Second Report*, p. 9.

existence. It must be admitted, however, that this horror was felt in various degrees by the various parties. The representatives of all the classes of local authorities were prepared to admit that the principle of 'local' government was not absolute, but that all areas ought to be remoulded by reference to all the considerations already indicated.[1] But who, in particular, was to be sacrificed for the public good? The County Council representatives were not excessively pained by the idea of large alterations of the Districts. But the representatives of the Boroughs and Districts were offended, and even horrified. The larger Boroughs and Districts recovered their equanimity when the remoulding of the smaller Districts was in question. Finally, a representative of certain small Boroughs was adamant that no matter how incapable the area, it was nobody else's business; and it should have an absolutely sovereign control over its own constitution and functions.[2]

If, then, a compromise must be made with *existing* authorities, and areas of compendious government maintained, what was the least unreasonable 'locality'? Nothing could be more interesting than the discussion before the Commission in which the idea of 'locality' was tracked down to its final position—interesting in this connection, and interesting generally in our exploration of the spirit and institutions of local government. It repays careful study[3]:

Mr. J. Ernest Jarratt (Association of Municipal Corporations) is giving evidence.

'We feel that as far as possible local government should be localized. The functions should be discharged by the local people as far as possible; and that was put in evidence on behalf of the Minister of Health, that it should be the paramount consideration in apportioning the functions, to have regard, amongst other things, to that feeling of local government.

'*The Chairman of the Commission.* You say the functions of local government should be discharged by local people?—As far as is consistent with economy and efficiency.

'How would you define "local people"?—We say that it must depend entirely on the locality. If, for instance, you have an area which is to-day, or can be, a Non-County Borough of 20,000 or 30,000 people, you have got then a cohesive unit with a sufficient population to provide staff and financial resources for the Local Authority, and therefore you have an appropriate unit in which

[1] 'In the adaptation of local government to altered conditions, boundaries may have to be changed, and existing organizations broken up or superseded. There will be loss as well as gain, and in every case, one must be balanced against the other, the governing consideration being to secure the welfare of the populations affected, and the best and most efficient method of providing for their local government. While continuity, tradition, well organized administration, and so on, must not be lightly disturbed, they must be judged by their results in health, education, and other local government services.' *R.C. on L.G.: First Report*, Sect. 1189.

[2] See the Memorandum submitted by Mr. Percy Smallman on behalf of certain Non-County Boroughs (9 in number), Part VII, *Minutes of Evidence*, pp. 1411–18:

Q. 23,994—'You think that, however much West Hartlepool desired to absorb you, and however good the reasons, they should not be allowed to do so unless you were willing to be absorbed yourselves?—Absolutely' (p. 1413).

[3] *R.C. on L.G.: Minutes* (Part XI, p. 2069).

to give the Local Authority the class of functions now in question. In that case you have a local unit. If you have not got a unit of that sort, your distribution of functions would have to be governed by some other considerations.

'But that is so vague?—It must necessarily be vague. I was trying to illustrate.

'Take this instance. Supposing I have a well in my garden which serves my house, the people who are interested in that well are the people who live in that house, and they are the local people so far as that well is concerned, and nobody else. Would you agree to that?—I would not agree to give you local government functions in respect of that well.

'I was asking you to try to get it clear what "local people" means exactly.—Then take a village. Would you call the lighting of that village a matter concerning the local people?—No; I was simply discussing the local District as against the County.

'I want to get at what is your definition of "local people." You say that local matters should be administered by local people?—By the local authority.

'I want to get a definition of what you mean by the "local people" to administer the local functions?—I say the local authority, whoever they are.—

'Then they should administer every function within their area?—The local District Council should administer every function within their area.

'Then you would eliminate the County Council altogether?—No; I was going on to say, except certain functions which they are quite unqualified to discharge, by reason of the limitation of their financial resources.

'There are certain things which concern only a small area and certain things which concern a much larger area?—Yes.

'Would you say that things which concern the small area only should be administered by the District Council, and the things which concern the larger area by the larger authority, that is to say, the County Council? Would you take that as a definition of "local people"?—I am afraid it is a definition which has weaknesses in it, because no conceivable service cannot have some relative importance to somebody. The whole thing is relative.

'Then you think the things which go beyond the interest of the local people and have a considerable interest should be administered by the larger authority?—Yes.

'Main roads, for instance?—No; I have already explained, in regard to main roads, that the main roads serve a very large area, and the financial effect of the service may need to be distributed over an extended area; but the actual control and maintenance and construction of main roads do not require an extensive area for their performance.

'Then you would exclude main roads from that general proposition, when you said that where people in an extended area use a particular service, they equally should maintain that service?—We say that the maintenance of main roads should be given to the Local Authority.

'You do not include main roads in the category of services which are used by a large number of people over a large area equally?—I do not say it is not used.

'Then I think you are rather departing from your original principle, that the Local Authority should administer the services which concern the local people only? If main roads do not, what service would you say does require an extended area of administration?—Secondary education, institutional treatment for tuberculosis, and services of that kind.

'County Councils should be confined to the administration of those services?—No; I was giving those as illustrations.

'You say that the administration of main roads should be taken from the County Councils and placed under the various Local Authorities? Is that so?—We say in a number of cases which will follow when we come to detailed items

that such and such services should be administered by County Councils except in non-County Boroughs of a certain size; and quite a number of them follow in a later part of my memorandum.

'You consider that there are a large number of services which, although they affect a large area, should be administered by the Local Authorities of certain County Districts and not by County Councils?—Yes.

'Then it seems to me that those proposals rather cut across your original principle that the local people should administer local services? You said that the local people should administer local services, that is to say, services which affect the people in the particular District and not people outside?—Yes.

'Then when I asked you if main roads was one of the services which you thought should be administered by the authority of the larger area as it affects the whole County, you said No, it should be assigned to the Local Authority?—Because the construction of a main road and the maintenance of a main road can be done by the Local Authority, we say, as efficiently as by the County Council.

'Then what you say, in substance, is that there is no particular rule to guide one in the assignment of functions which can be based on the nature of the service?—We have tried, and we have failed, to do what the County Councils Association do, namely, to lay down general principles. We say you cannot do it by laying down general principles; you must be guided by the considerations which affect the particular function with which you are dealing.

'Then what it comes to is that there is no question of dealing with local services by the local people, but that each particular service should be taken on its merits?—Yes.'

No Completely Self-Contained Areas. However, one other factor entered into the situation: the plain fact that no such comprehensive local authorities could possibly be entirely self-contained in all the effects of their own arrangements. The Districts were, in relation to such services as drainage, sewerage, and water-supply, roads and education (some urban areas only) interdependent parts of the County, or any larger area, as well as of the country as a whole. If, having regard to all the considerations so far advanced, and also to certain occasional *unalterable geographical features* (large, rambling, rural areas, for example), the reorganized areas should still be inadequate, there was still the problem of arranging that they should be stimulated and aided either by a subsidy from a richer authority, the County or the Central Government, or by the transfer of their duties.

Conclusions. The conclusions, then, were these. (*a*) The Boroughs and the Districts must remain as locally elected and compendious local authorities, but they must be reorganized to make them, not necessarily uniform, but larger and more capable in area, population and financial capacity. (*b*) There must be a re-distribution of certain specific services, each on its own merits, and the re-distribution between County and Boroughs and Districts should also follow the merits of the specific areas. (*c*) The County should, in certain urgent circumstances, become the area of financial provision. (*d*) The Counties should exercise a power to direct the attentions of the central authority to inefficiency in local administration, conse-

quent remedial action to be taken at the instance of the central authority.

Having discussed the principles and the issues, that is to say the things with which reformers must always reckon, though there is from time to time a variation in the relative force and application, let us state the conclusions and recommendations of the Royal Commission, the arrangements made by the Local Government Act of 1929, and the consequential Statutory Rules and Orders and Memoranda issued by the Ministry of Health.

A too widespread inefficiency of areas was admitted, so that individual reforms would not suffice. Therefore, to secure efficient units of administration, three things were necessary : to provide for further general reviews from time to time as they become necessary 'in order to see how far ineffective units can be eliminated by reorganization' ; to amend the existing laws regarding the alterations of particular County Districts and Parishes, so as definitely to give the initiative to the County Council ; and between general reviews, to give the District and Parish authorities the power to appeal to the Ministry of Health to force the County Council to hold a Local Inquiry or permit the alteration.[1] In so far as principles were accepted by the Commission we can only refer to those suggested by the Minister of Health through the Permanent Secretary, Sir Arthur Robinson, and not rejected by the Commission. They were [2] :

'That any proposal for changing should be directed to encouraging the confidence of the inhabitants of any area in their representatives, and the extent of their active and effective interest, both in the election of representatives and the provision of local government services in their area ;

'That due regard should be paid to the history and prestige of the form of local government at present applied to the areas affected, and to the sentiment with which it is looked upon by the inhabitants of those areas ; and

'That, so far as the reasonable observance of the preceding principles allow, the areas of Local Authorities should be so delimited as to provide a form of local government under which all Local Authorities are not only willing to discharge, but capable of discharging, the functions assigned to them in such a manner as to secure the fullest possible return for the time and money spent on their work.'

The Commission's own conclusions were that

. . . the governing consideration should be to secure the welfare of the populations affected and the best and most efficient method of providing for their local government. The same principle should be applied in the reorganization of County Districts ; and it should also be borne in mind that efficient administration depends not only on area but also on their being assigned to each unit functions of such variety and importance as will ensure local interest, and secure as members of Local Authorities persons best fitted to render service.' [3]

[1] Cf. *Annual Report*, Ministry of Health, 1931–2, Cmd. 4113, 1932, pp. 145, 291–7.
[2] *R.C. on L.G. : Second Report*, pp. 9–10.
[3] Ibid., p. 16.

The Local Government Act, 1929, Section 46, laid down the process of re-arrangement. It provides for the alteration or definition of the boundaries of parishes, rural and urban districts, the re-arrangement of parts of Parishes, Districts and also Municipal Boroughs, and the formation of new parishes and districts. All the authorities concerned have to be consulted as regards every detail of the proposed changes of area. The County Councils must submit reports of their proposals to Minister of Health. Under Section 49, changes in which County Boroughs were concerned had (*a*) to have the express approval of their Councils, and (*b*) to be jointly submitted by the County Councils and the County Borough Councils to the Minister. The Minister could by order confirm the proposals or any of them, with or without modifications, or reject them, and his decision was final. But if any local authority concerned in a scheme lodges an objection and refuses to withdraw, the Minister has to hold a Local Inquiry, and then make his decision. Where County Councils make no proposals, the Minister is given power to make and enforce them himself, at his discretion. Section 47 makes provision for similar reviews of local government areas, but only after ten years have elapsed ; the review can be made at the option of the County Council or at the discretion of the Minister. The Act, in general, amplifies and strengthens the powers of local authorities, particularly the County, to propose changes in areas laid down in Sections 54 and 57 of the Act of 1888.

The first review of districts was not completed until 1939. 206 urban districts and 236 rural districts were abolished ; 49 urban districts and 67 rural districts were created : a nett diminution of 157 urban districts and 169 rural districts. Together with the creation of municipal boroughs from urban districts in the period to December 1, 1940, the result is

	Municipal Boroughs	Urban Districts	Rural Districts
December 1931	258	778	635
December 1940	309	572	475

From indications in the Press, it is evident that the process of making schemes was not an entirely peaceful one. Some small, and especially rural, authorities were exceedingly resistant. A diminution of about one-fourth in the number of authorities and the consequent increase in financial strength and population is an appreciable gain of good government. Yet in the national interest it is by no means enough.[1]

Why should the Rich contribute to the Poor ? Since geographical considerations, traditions, sentiment, would almost certainly result in some areas still remaining below the level of ideal efficiency, and since, in any case, industry and population are fluctuating factors, and unavoidably affect the governmental capacity of the areas, some auxiliary arrangement is required to give aid to weak authorities. The representatives of the Districts (to be exact,

[1] Compare Ministry of Health *Annual Report* 1936–37, p. 120, and 1938–39, p. 120 ; and see especially Additional Notes, p. 522, at Chap. V, p. 101.

of the Municipal Corporations),[1] looked to a grant from the central government, rather than to suggested help from the County Councils, no doubt following that instinct we have commented upon already, of trusting a distant control rather than a neighbouring and rival local body. Hence, the most vital public health services, water-supply, sewerage and sewage disposal, being fundamental not only to the health of the people in the areas under reorganization, but also to all contiguous areas, were to be aided by the County by grants-in-aid paid out of County funds to necessitous districts. It was not easy to arrive at this solution, for two problems were involved, each of first-class interest in practice, and not less, in the theory of government.

In the first place, Rural Districts had by the Public Health Act of 1875 (Sect. 229) been *obliged* to charge the cost of certain services specially to the individual Parishes of which they were constituted.[2] Many Parishes either found it unnecessary to have such works (having wells and rudimentary means of sewage disposal), or were unwilling to raise and spend money either for themselves or their neighbours. Hence the charge could not always be a joint charge of all Parishes in a Rural District, but a charge only on those Parishes which provided such services. This arrangement, designed to make easier the partnership of parishes in a wider area, seems instead to have promoted a continuous disintegrative tendency. The more populous and richer Parishes wished to become independent Districts.[3] They pleaded that their interests were different from the interests of the other Parishes, and that there was no good reason why, being independent and self-supporting in these matters, they should continue to be dependent and support others within the Rural District area. The Commission's answer to this problem was to modify the arrangement regarding special parochial charges so that the charges should fall on the Rural Districts as a whole *or* upon a part of it if the District Council so decides, *or*, if the Minister of Health makes an order to that effect, in which cases the services would be supported (if the Council so determined) out of the *general* rates. It will be observed that the arrangement was made permissive: the reason being that the Commission thought that the 'total abolition of the parochial incidence of charge might in some instances result in accentuating

[1] Cf. Jarratt, *Minutes of Evidence*, Part XI, p. 2078.

[2] Cf. Sect. 229 of the Public Health Act, 1875, and Lumley's *Public Health* (5th Ed., 1896), Vol. I, p. 308.

[3] 'There has thus been a constant tendency for the component parts of a Rural District to break away, and this tendency is accentuated by the policy of retaining the incidence of parochial charge for many of the services rendered by the Local Authority. It is only natural that when the charges for water-supply, sewerage, sewage disposal, scavenging, street lighting, and other works are borne entirely by the parish the ratepayers will begin to move for severance from the Rural District as soon as ever they think there is a prospect of attaining an independent status.' *R.C. on L.G.: Minutes of Evidence*, Part X, Memorandum 41, p. 1869.

the difficulties of securing a necessary service',[1] for the District Councillors from the richer areas would obstruct schemes involving charges upon them for the benefit of the poorer Parishes.[2]

Yet, why *should* all individual Parishes be made compulsorily to contribute to the general well-being of other areas? How can we ultimately justify the principle pronounced by the representatives of the County Councils 'that the rates should not be payments for direct and personal benefits, but should be spread over the widest area in which there is a common interest in the provisions of the services in question'?[3] Is the ultimate answer only that the poverty of the poor may cause the destruction by infectious disease of the rich? Does not the term 'common interest' beg the question by assuming there *is* such a common interest? Who can discover evidence of a spontaneous common enthusiasm regarding a uniform scope and standard of services in English local government? If ever there is enthusiasm it is produced only at the cost of much sweat and blood. What is it, then, that serves to unify and harmonize the interests of local authorities? It is not simply utility, but the recognition, we think, that all of us, individuals, and groups in local neighbourhoods, are members of a national *community*.

The same theme was raised in the second problem: whether the County should contribute grants-in-aid to poor Rural Districts, Urban Districts, or Municipal Boroughs, out of its general revenue. This revenue is, of course, obtained as much from those Districts or Municipal Boroughs, which already provide efficient works and would continue to do so, as from the poorer areas. The well-off Municipal Boroughs and Urban Districts naturally combated the proposal that other areas should be helped by their contributions. The Urban Districts attempted to find a distinction between expenditure on main roads and education which were County-wide services, and water-supply and sewage schemes, 'which directly benefit an individual . . . or directly affect a particular group of houses of a locality . . .'[4] The Urban District Councils Association even carried its position to

[1] *R.C. on L.G.: Second Report*, p. 26.

[2] The Local Government Act, 1929, Section 56, Subsection (1), provided that certain expenses incurred by a Rural District Council, particularly regarding the efficient equipment of sewers in a contributory place (i.e. parish or group of parishes) and the provision of a water supply to a contributory place, are declared to be special expenses chargeable upon the contributory place. This applies also to scavenging if the Minister of Health determines this by order. Furthermore, Subsections (2) and (3) of the same Section repeal that part of Section 229 of the Public Health Act, 1875, empowering the Rural District Council to apportion between two or more contributory places, as it thought just, special expenses incurred in providing proper sewerage and water-supply, etc., for the common benefit of the contributory places, and provides instead that the District Council may now apportion these expenses between the parishes benefiting from the works in such proportions as it thinks just. The appeal to the Minister against the apportionment is abolished, and under the new Act, the decision of the District Council is final.

[3] Ibid., p. 22.

[4] *R.C. on L.G.: Minutes of Evidence*, Memorandum 96 (Part XI, p. 2156).

the extent of urging that 'it is inexpedient even in the event of a County Council being of the opinion that danger to the health of the inhabitants is likely to arise, that they should be invested with power to contribute out of general County rates . . .'[1] Pursuing the discussion of this attitude, the Royal Commission arrived at the ultimate opinion why such a partnership should be established for a 'common' object. It is so revealing that it must be reproduced in full.[2]

Evidence is being given by Sir W. A. Robinson, for the Ministry of Health:

'*Mr. Pritchard.* I wish you would help me by giving me the satisfactory answer to the contention put forward by them that it is not fair to rate a District, be it Borough or Urban or Rural District, which has been put to the expense of providing its own water-supply and sewerage, for the purpose of providing water-supply and sewerage to other Districts. What is the answer to that? They say it is not fair. After all, we have to put forward proposals that are fair?—In one way there is no answer to it; in another way there is an answer to it. What I mean is this. You can say to these people: "Well, you are part of a District," or "You are part of a County; and you ought to be ready, in the interests of that District or that County as a whole, to pay more than you have paid already." That is one answer. But if you say to me: "I have already provided myself with water, and it is not fair I should pay for somebody else"—if you take a strictly cash view of it, it is not, I quite agree, so easy. It is not a cash answer, it is a moral answer.

'Let me put this example to you. Assume that the Borough of Harrogate have spent a very large sum of money in providing a water-supply, which in fact they have, and assume—(I am not quite sure that it is the fact)—but assume that they have to levy a heavy deficiency rate in respect of their water undertaking; I believe that is the case, though I am not sure about it. Might they not have some cause for complaint if they were called upon to contribute to the cost of providing a water supply to another part of the West Riding, perhaps twenty or thirty miles distant?—Yes, if they take the view that all that matters to them is Harrogate.

'Are there any safeguards which you can suggest? For instance, have you considered this: that the power of the County Council to contribute should not be exercised except with the consent of the Minister of Health?—I have not considered the point, but I should like to keep the Minister of Health out of it, if I could. The Minister of Health has quite enough to do already.[3]

'*Mr. Taylor.* This difficulty is exactly the same with an individual in a District. Many individuals in Rural Districts have put in their own water-supply, and they have to contribute to the rates of the locality as well for their supply, do they not? It is exactly the same thing with an Authority who have already provided their water. You cannot get away from that difficulty?—Certainly in one way the individual has got a complaint and a grievance; in another way he has not. I think the answer to Mr. Pritchard's question is both Yes and No; that is the real truth of it.

'*Sir George Macdonogh.* But surely that runs through all problems of local government. For instance, one man sends his boy to Eton and pays for him and at the same time he has to contribute to the education of the rest of the community in Council schools?—You have to call upon him to take a wider interest.

'Otherwise you would have no local government at all?—That is so.'

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[1] *R.C. on L.G.: Minutes of Evidence*, Memorandum 97. [2] Ibid., Part XII.
[3] Observe!

Now the Ministry of Health had proposed that the County Councils should be empowered to secure the proper discharge of ' public health functions ' generally, the County Council to be free to contribute to any service which they believed could be most suitably stimulated by financial help.[1] But the Royal Commission could not go to this length, for, as we have already seen,[2] there was a very powerful resistance to anything in the nature of unlimited County Council supervision of the other authorities. It was, therefore, recommended merely that County Councils should be empowered to contribute only to the cost of water-supply and sewerage of County Districts where the County Councils thought proper, and where the cost would be unreasonable for the District to bear alone. Yet, *any* District Council (the Commission includes Municipal Boroughs in this designation) could represent that the consequent burden on them would be unreasonable, whereupon the Minister would lay down the policy he deemed equitable.[3]

The Commission then turned to the question of the County Council as an agency ' whereby it may be possible to stimulate or, in the alternative, to supersede any authority not discharging their functions with a reasonable measure of completeness '.[4] But the relationship between the County and the District in this matter we have already discussed in Chapter III.*

II

VARIOUS DISTRICT SERVICES

Now that we have sketched the general situation of District and Non-County Borough, and the reforms recommended and adopted in 1929, we proceed to enlarge a little upon some of the services—those that raise lesser territorial problems in this chapter, those that raise wider issues in the next.

The pivot of modern public health administration is the local Medical Officer of Health. So important are his functions that since 1872 the central authority has compelled the local health authorities —all the local governing bodies excepting the Parish—to appoint a Medical Officer.[5] It has laid down qualifications for valid appoint-

[1] *R.C. on L.G. : Second Report*, pp. 28–9, and *Minutes*, Part XII, Memorandum 485, p. 2239.

[2] Cf. Chapter III.

[3] The Royal Commission's recommendations have largely been provided for in the Local Government Act, 1929. Section 57, Subsection (1) enables the County Council to contribute towards the expenditure incurred, whether before or after the passing of the Act, by District Councils for sewerage, sewage disposal or water-supply. The sums which they can contribute are such as appear reasonable to them, having regard to the resources of the District and the circumstances of the case. Full discretion in these matters has been granted to the County Councils.

[4] *R.C. on L.G. : Second Report*, p. 28.

[5] Compulsory in the Counties only since 1909.

* See Additional Notes, p. 522 following, at Chap. III, p. 52.

ments; in recent years has safeguarded his tenure of office; and has constantly endeavoured to secure that Medical Officers shall give their whole time to public service, and not share their energies with private practice. The central authority's efforts in regard to the qualifications, the tenure and the pay of local Medical Officers have been severe, and it has frequently complained of the slackness and inefficiency of local authorities. We have already given figures showing that in 1927 less than one in three of the lesser health authorities (Municipal Boroughs, Urban and Rural Districts together) employed Medical Officers giving the whole of their time to public duties. In 1873 the proportion was one in four. Thus English local authorities had not made much progress in fifty years considering the teaching of modern medical science that unrelaxing vigilance is vital to the successful prevention of disease.

Having regard to the endeavours to make the County Councils the stimulating authorities in public health administration, it was decided to make the County Council responsible for framing a complete County scheme for the appointment of whole-time Medical Officers. Then, as vacancies occurred in a District, the District Council would, after consultation with the County Council and the Council of any other District, appoint a Medical Officer solely or jointly with the County Council or other local authorities, on terms precluding private practice. The Minister could waive this condition. The Ministry of Health had proposed to vest rather more power in the County. Without making a general scheme it could have intervened in each vacancy, and compulsorily have made arrangements (after consultation with every District Council affected) for the appointment. This would certainly have achieved both objects: a planned and articulated system, and therewith a whole-time service. But the Districts were afraid for their independence; for the County Councils obviously contemplated appointing the County Medical Officer or his assistant as the District Medical Officer, a technically sound and economical arrangement, but one which gave a coercive power to the Counties. The Districts demanded a collaborative system, dependent on their acceptance of a scheme. Even then a right of appeal to the Minister was demanded, and granted.[1]

Other Services. The Counties attempted to acquire almost all the services vested in the Districts with the proviso that they should (*a*) delegate to the smaller authorities according to statutory command and (*b*) should devolve further powers as they thought fit. Their claims and principles clashed violently with those put forward by the representatives of the Districts. The result was a careful inquiry into, and a compromise of conflicting principles regarding

[1] These provisions were laid down in the Local Government Act, 1929, Sect. 58.

each specified service, on the lines we have ourselves previously discussed. The general theory was [1]

'to have regard to the nature of the particular function which has to be allocated and to the suitability of Authorities of a given type, or of certain Authorities within that type, to administer such a function. Furthermore, it is important that the allocation of the function should be such as to foster good will and co-operation between the various authorities within the Administrative County. . . . We are of opinion that the chief factor to be considered in defining the distribution of functions should be population, area, financial capacity, and efficiency, in which connexion the staffing of the local authority is an important element.'

(*a*) *The School Medical Service* is administered by all elementary education authorities; that is by County Councils, County Borough Councils, Municipal Boroughs with populations of over 10,000 in 1901, and Urban Districts with populations of over 20,000 in 1901. Assuming no change in the population limit for the administration of elementary education, the Commission approved the retention of the school medical service, a quite special form of public health work, by the existing authorities. This in their opinion determined certain other matters.

(*b*) *Maternity and Child Welfare* schemes, concerned with the health of expectant mothers, nursing mothers, and of children under five, could by the Act of 1918 be administered by County Councils or District Councils. Practically all County authorities had schemes, more or less adequate, and 276 District Councils had schemes. A large number of these were not school authorities, and some school medical authorities had no maternity and child welfare schemes. The County Councils wished all such powers to be transferred to them with provision for the delegation of management and treatment to the Districts. The Municipal Corporations asked for the allocation of powers to Boroughs who were education authorities, employing a full-time M.O.H., and otherwise capable. The Urban Districts made similar claims, though not making specific stipulations regarding an M.O.H., and not agreeing on the exclusion of Districts who are not education authorities. The Rural Districts claimed the power to do the work through their M.O.H. The Commission recommended that school medical authorities at present not responsible for the work should be empowered to represent that maternity and child welfare authorities who are not education authorities should relinquish their welfare work to local education authorities. The Minister would make an Order upon satisfaction that transfer would be beneficial to both services and the other health services in the area.[2] *

[1] *R.C. on L.G.: Second Report*, p. 49.

[2] The Local Government Act, 1929, Sect. 60, provided that if a local Education Authority makes representations to the Minister to the effect that a district council, which, though not the local education authority, was carrying out Maternity and

* See Additional Notes, p. 523, at Chap. V, p. 107.

(*c*) *Notification of Births* was administered by the County Councils or by the Districts as determined by the former or by the central authority. Apart from the statistical purpose of the service, its purpose was to draw the attention of the maternity and child welfare authorities to the occurrence of a birth. . . .[1] But some areas were responsible for notification while having no maternity and child welfare service. It was desired to co-ordinate these services[2] (the Minister desired that the authority responsible for notification and maternity and child welfare work should be one and the same). The Commission recommended no redistribution of functions, but only that the authority responsible for notification should immediately send a duplicate of every notification to the maternity and child welfare authority.[3]

(*d*) *Supervision of Midwives.* Under the Act of 1902 County Councils were the authorities, but they might delegate their powers and duties to the Districts. In 1918, the power of delegation was withdrawn, but delegations before the passage of the Act were unaffected, except upon appeal of the Council to the central authority. This Act gave power to the Counties to assist the training of midwives and to make grants for the purpose. It clearly serves good ends, that this service, the school medical service and the maternity and child welfare service should be united in the same authority for each area. If not, then at some point in the life of a child from the pre-natal stage to the leaving of school, there will be a gap in the service provided—he or she will pass for a time into the hands of different authorities, and the *continuity of supervision and record* is destroyed. Counties, Municipalities and Urban Districts laid claim to the functions, the Municipalities either by compulsory delegation from the Counties or in their own right, the Districts for all maternity and child welfare authorities. But, of course, among the Urban Districts who would have been thus qualified, there were some with populations very small,[4] the number of births was proportionately small, and therefore the supervision of midwives would have been

Child Welfare services under the Act of 1918, was not carrying these duties out efficiently the Minister could transfer these services to the Education Authority. It is the desire of the Minister, in accordance with the recommendation of the Royal Commission, to ensure that the School Medical Service and the Maternity and Child Welfare work should be carried on by the same authorities.

[1] Cf. *Evidence of the Ministry of Health*, Part XII, Memorandum 709, pp. 2282–3.

[2] Cf. Ibid., Memorandum 710.

[3] The Local Government Act, Sect. 61, enables the Minister to co-ordinate these services wherever possible.

[4] 'The 10 smallest . . . had, in 1921, populations ranging from 9,700 to 12,400; and the number of births in these areas in 1926 varied as between 131 and 241. In the Minister's view, Local Authorities of areas in which the total amount of work available for midwives is so small cannot reasonably be charged with the responsibility for providing a separate establishment and staff for the purpose of supervising such work as falls to midwives in their areas.' *R.C. on L.G.: Second Report*, p. 55.

uneconomical. The Commission recommended that authorities responsible for maternity and child welfare work, with a whole-time M.O.H., should be enabled to represent to the Minister of Health the desirability of their becoming local authorities under the Midwives Acts, each application to be dealt with on the administrative merits of the authority making it. Thus, the Counties were left in the field, and certain of the Urban Authorities on conditions. Moreover, the County Councils might suggest the revocation of the powers delegated before 1918 and they were to be given power to ask the central authority to re-transfer to them the responsibility of new local authorities 'on administrative grounds'.[1]

(*e*) There was a division of responsibility in regard to the infectious disease of the eyes known as Ophthalmia Neonatorum. *Registration* was a duty of each of the 1,600 Municipal Boroughs, Urban and Rural Districts; *treatment* was in the hands of the maternity and child welfare authorities, that is, the County Councils, and only 276 Boroughs and Districts. Hence confusion, and a gap between notification and treatment, where *promptness* of treatment is essential. Moreover, midwives who are compelled to summon assistance at the slightest sign of the disease, have to notify their own supervision authority that this assistance has been sought. But the supervising authority may not be the notification authority. Hence it was recommended that both ascertainment and treatment should be assigned to one authority, that treatment was best administrable by the authority responsible for maternity and child welfare work.[2]

(*f*) The provision of Isolation Hospitals for infectious diseases would seem *prima facie* to be one of those services which require an extended area, so that their location and size might be made appropriate to the distribution of the population, and, therefore, the probable relative need for them. Further, the service is one which in its nature should be obligatory. The Public Health Act of 1875, based on the areas and the principles we have already indicated, did not make provision obligatory, and it took the individual Urban and Rural Districts as the primary areas of provision. It provided also that two or more Districts might make a joint arrangement, that one authority might contract for the use of an isolation hospital provided by a neighbouring authority. On failure of a District, the County Council could constitute a Hospital District including one or more Districts, or might apply to the central government for authority to provide an isolation hospital for the whole or part of the County,

[1] The Local Government Act, 1929, Sect. 62, made provision for the recommendation.

[2] No express provision has been made for this particular recommendation, although Section 63, regarding the provision of hospitals for infectious diseases, may conceivably embrace it.

or the central government could enforce the inclusion of a District in a Joint Hospital Board.

The result of this combination of permission and small areas was no provision at all, or inadequate provision,[1] or excessive difficulty on the part of progressive authority, or the central government, in getting arrangements established. The Municipal Boroughs and Districts objected to the County becoming primarily responsible for isolation hospitals, and, further, urged a distinction between various types of diseases. Smallpox, for example, was of comparatively rare occurrence, and provision by a number of small authorities was bound to be uneconomical. The Commission recommended the total transfer of responsibility in this case to the County Councils; as regards other isolation hospitals the County Councils should make schemes for the whole County in consultation with other local authorities, including County Borough Councils. It would be the *duty* of the County Council to see that adequate provision exists. Where provision in an area is inadequate, or requires re-arrangement in the interests of efficient or economical administration, they should be empowered to frame proposals to deal with the situation, in consultation with the local authorities concerned. Districts might appeal against the schemes to the central authority.[2] *

(*g*) In the problem of the proper area to administer the Weights and Measures there is a further exhibition of the various elements involved in the problem of the adequate local government area. The effect of the various enactments until 1929 [3] was to make Borough Councils (both Non-County or County) responsible where the population was over 10,000 in 1881 and possessed a separate Court of Quarter Sessions, *or* where the Council provided legal local standards

[1] 'The Minister brought to our notice a number of cases in which, as a result of the present state of the law, efforts to secure the provision of proper and sufficient isolation hospital accommodation in certain areas had either been wholly fruitless, or had not produced results proportionate to the time and trouble expended in attaining them.' *R.C. on L.G. : Second Report*, p. 58. For examples of these cases see *Minutes of Evidence*, Part IX, Memoranda 130–72, pp. 1752–5.

[2] Act, 1929, Sect. 62. This section incorporates the recommendation of the Royal Commission. County Councils were compelled to draw up a survey of their hospital accommodation for infectious diseases, and, after consultation with the district councils, submit a scheme to the Minister for his approval for adequate hospital accommodation. The Minister can put into force a scheme of his own if the County Council did not carry out its obligations under the Act. He can also use his discretion where district councils provide such hospitals. Tuberculosis and venereal disease are expressly excluded from the provisions of this section.

[3] 'The Local Authorities administering the Weights and Measures Acts are the Borough and County Councils. (See 1878 Act, Sects. 5052, 5054, 5055, and Fourth Schedule; 1889 Act, Sects. 16, 17, and 35 (Proviso); 1893 Act. See also the Local Government Act, 1888, Sects. 3 (xiii) and 39 (i) (*c*).) Great diversity of conditions is found in different districts. In some cases—e.g. Yorkshire—the area to be covered is so great that the County has been sub-divided. On the other hand, there are many small Boroughs which cannot afford a whole-time Inspector, or cannot keep him occupied, and find it difficult to get a qualified man to act for them on a "part-time" basis.' *R.C on L.G. : Minutes of Evidence*, Part II, J. E. Sears, Sects. 2, 3.

* See Additional Notes, p. 523 following, at Chap. V, p. 110.

and appointed inspectors before 1879, or where, after 1879, the Council resolved that they should be the local authority and provide such standards and appoint inspectors. In every place where these conditions did not apply the County Council is the local authority. The practical result of this was that the Acts were in fact administered by many Borough Councils and outside these by the County Councils.

In this service three things are fundamental. The first is uniformity of standard over as wide an area as possible, since purchasers of articles may (and, of course, do) come from outside into the centres of distribution, or since purveyors may sell their goods outside the area of inspection, properly regardless of the existence of local government boundaries. Secondly, the area must be such that inspectors and tradesmen who are local Councillors are not in such a local master-servant relationship that the inspector's judicial impartiality is threatened.[1] Thirdly, the area must be large enough to support the expense of the best technical apparatus and staffs. Hitherto, the examinations set by the Board of Trade, which is the central supervising body, had suffered a constant deterioration in standard, for the simple reason that the salaries were payable locally, without any grant-in-aid from the central authority, and as these were not attractive, the Board of Trade could not possibly exact the standard of qualifications which it considered adequate for the function.

An area with a minimum population of 75,000 was suggested by the Board of Trade as better fulfilling the second and third conditions. The question of nation-wide co-ordination naturally raised the questions of the Board's superintending powers and its own inspectorate. For the moment this last does not concern us, as it did not concern the Commission.[2] The County Councils naturally urged that the County Council should become the responsible authority throughout the County. The Municipal Corporations suggested that an authority of 20,000 and above could fulfil the conditions of technical efficiency, especially as inspectorial work in regard to Weights and Measures could suitably be combined with that regarding the Shops Acts. Naturally, again, the Urban Districts considered that the more substantial Urban Districts (in terms of population and financial capacity) should be entrusted with the powers.

The Commissioners were disposed to the view that Counties and County Boroughs were the proper authorities. They then said: 'In view, however, of the fact that the duties are in some respects analogous to police duties', regard should be had to the distribution of police powers. They therefore recommended that the work should be given to County Councils, County Borough Councils, and to Non-

[1] Ibid., Sect. 14.

[2] Cf. the Commission's conclusion and recommendation on this point, *R.C. on L.G.: Final Report*, pp. 9–10.

County Boroughs with a population of 20,000 who maintain a separate police force and are already administering the Acts; that such Non-County Boroughs should surrender their function to the County Council wherever they are unable to discharge the function efficiently; that the County Councils should be empowered to delegate their functions to any District Council at their discretion.

(*h*) A similarly irrational arrangement of powers between Boroughs and Counties existed in relation to the administration of the *Food and Drugs Acts*, and the appointment of Public Analysts. The same three fundamentals of efficient administration, uniformity, skill, and independence, required a re-arrangement of functions. The Ministry of Health revealed the small extent to which samples were examined in the smallest Boroughs with Public Analysts. The Commissioners themselves, in my opinion, were particularly certain that in this special matter 'the full powers and duties (comprising the appointment of an analyst as well as the taking of samples) should be assigned to authorities having jurisdiction over *considerable* [my italics] areas'.[1] But again, a compromise had to be made in order to avoid depriving existing authorities of their powers and generally slighting the smaller authorities. Therefore, they recommended that the powers, generally, should be assigned to County Councils and County Borough Councils; but that all County Districts might retain the right to procure samples and take proceedings; and that a County Council should be empowered, if they think fit, to contribute towards the cost incurred by any District Council.[2]

The Royal Commission proceeded to investigate and make recommendations regarding several other functions of local administration where responsibility was distributed, but we have said enough to indicate the problems and the alternative solutions suggested and accepted in regard to the matters within the immediate purview of the Commission.

We have now to turn to the consideration of some other services where the problem of the arrangements both internal and external to the County is involved. Before we do that we must give the Parish at least some attention.

The Parish. The parish is the smallest unit in local government. It has had a long and fascinating history[3]; it was, indeed, the most important area for local government for 500 years, particularly from

[1] *R.C. on L.G.: Third Report*, p. 12.

[2] The Local Government Act, 1929, Sect. 57, permits a District Council, by agreement, to relinquish in favour of the County Council any of its public health functions. The County Council, where the District Council fails to carry out its public health functions, can also act in default. But the Act does not provide for a proper liaison with regard to the Food and Drugs Acts and the appointment of Public Analysts between the County Council and the Municipal Boroughs.

[3] For an exhaustive history of the Parish up to the nineteenth century, see Webb, *The Parish and the County*.

the Tudors until the commencement of the nineteenth century. Then legislation began to whittle away its powers and duties. The reform of the poor law and the establishment of Municipal Corporations in 1834–35 began the attrition of the parish: the material and economic development of the rest of the century passed it by. So far did this movement go, indeed, that it was necessary in 1894 for an Act to resuscitate some minor administrative duties in order to save the parish from entire neglect. The sentimental regard for 'village democracy', and the agricultural labourer, also played its part. The Local Government Act of 1894 (the 'Parish Councils Act') attempted to renew the administrative vigour of the rural parish. But excepting for strictly ecclesiastical purposes, and also for certain registration purposes, the *urban* parish has no governmental significance.

The Act of 1894 established the Parish Meeting and the Parish Council.[1] Every rural parish (i.e. one which is included in a Rural District) must have a Parish Council if it has a population exceeding 300, or if, having between 100 and 300 people, it manifests a desire to have one; if it has less than 100 people, it can also have a Parish Council if the County Council gives its permission. Where a rural parish does not possess a Parish Council, it must have a Parish Meeting.

The total number of rural parishes in England and Wales is about 12,850, as against the 1,520 urban parishes, exclusive of London. There are 6,220 Parish Councils, covering some 7,200 parishes, and about 5,650 Parish Meetings, of which only about 350 undertake direct financial duties.[2] With the consent of the County Council, several parishes may group themselves into one Parish Council if their Parish Meetings make a decision to this effect. In the year ending March 31, 1937, Parish Councils spent an average of £90 each; 618 Meetings spent an average of £15 each.

The Parish Meeting consists of the local government electors in the parish, who meet once or twice a year to make decisions and elect their Chairman; he and their representatives on the local Rural District Council, become the recognized officers of the parish. The Act of 1894, amended in certain aspects by succeeding Acts,[3] gave the Parish Meeting and the Parish Councils certain functions, some permissive and others obligatory. On the one hand, the Parish Meetings have means of calling attention to default on the part of superior authorities—where the authority (e.g. the Rural District Council) is not performing its statutory duties in relation to the parish or where it would be convenient for the superior authority to have additional powers; on the other, they have power to preserve local

[1] Sects. 1 and 38.
[2] *R.C. on L.G.: Minutes* (Part I, p. 136).
[3] E.g. the Rating and Valuation Act, 1925, Sect. 1, in connection with the appointment of the "overseer," now superseded by definite rating authorities.

amenities and special privileges which are apt to be overlooked in the administrative work of the superior authorities.[1]

Thus, the Parish Meeting must administer parochial charities which are not ecclesiastical and must appoint two members of the rating authority (of the Rural District, etc.).[2] It must also make provision for the election of the Parish Council, where there is one, every three years. Outside these compulsory duties, the Parish Meeting has nothing of any great importance to do. It may, for example, provide allotments, and veto any stopping or diversion of public rights of way. More important is its power to make complaints to the County Council that the Rural District Council is in default with regard to housing schemes (such as working-class houses, reconstruction schemes, enforcement of Closing or Demolition Orders, and so forth),[3] or to the provision of water-supply and sewerage, or, again, to any of the Public Health Acts which the District Council is required to enforce. Where, furthermore, there is also a Parish Council in the parish, the Parish Meeting may give or refuse its consent with regard to levying a rate for more than 4*d*. in the pound.

The Parish Council is elected every three years at the annual Parish Meeting. It is a little higher in the scale of local government authorities than the Parish Meeting, and, as such, has more powers to exercise. Its obligatory functions refer only to parochial charities and the election of its representatives to the rating authorities. Its permissive functions consist of all those of the Parish Meeting, and, in addition, others such as the provision of land and buildings for public offices and meetings, the purchase of land for recreation purposes, the maintenance of public footpaths and rights of way, the acceptance of gifts of property, the provision of fire-engines, and the execution of those Adoptive Acts adopted by the Parish Meeting. A further important power is its ability to apply for the powers of Urban Authorities under the Public Health Acts to be conferred on the local Rural District Council in respect of the parish or part of the parish.

Parish Councils were permitted by the Local Government Act of 1894 (Sect. 11) to raise a rate to defray by precept on the Overseers, their legitimate and legal expenses, with the consent of the Parish Meeting. The Parish Meeting could also make precepts to a statutory maximum amount. Following an amendment of the 1894 Act by the Act of 1929, the maximum rate that can be levied by the Parish Council without the consent of the Parish Meeting is 4*d*. in the pound, and with it, 8*d*. ; the Parish Meeting in a parish where there is no Parish

[1] *R.C. on L.G. : Final Report*, p. 65.

[2] Rating and Valuation Act, 1925, Sect. 1, which replaces the " overseer " appointed under the Local Government Act of 1894.

[3] Housing Act, 1925.

Council can make a precept amounting to a maximum of 8*d.* in the pound.

We have indicated the way in which the parochial representatives in the Parish Council are chosen. In practice, there is usually in the Parish Council or Parish Meeting a parishioner who is also a member of the Rural District Council, and it is in this way that the former bodies are directly linked up with the latter. But this is purely accidental, since the representative of the parish on the Rural District Council need not necessarily be a member of the Parish Council, or, where it does not exist, an elected representative of the Parish Meeting.[1] This liaison between the two sets of bodies is really vital, since they are doing administrative work which may easily overlap and thus cause unnecessary expense. In many parts of the country, Rural District Councils have established Parochial Committees to make sure that this link does exist.[2]

The rural parish still plays a part in its local government, even though this part may be relatively unimportant. Important witnesses who had made a special inquiry into the working of Parish Councils and Parish Meetings declared to the Royal Commission on Local Government that 'the Parish Meeting in a parish where there was no Parish Council was valuable as a means of safeguarding the interests of the village when they were in any way threatened, but that as an organ of administration and for initiating schemes for the improvement of conditions in the village it had little practical value'.[3] They submitted, on the other hand, that the Parish Council was definitely useful in local government and that it could be made more effective than it actually is. However, the Rural District Councils are very jealous of their powers and duties, which, being continually menaced by the County Councils above them, they are very reluctant to delegate to the parish authorities.

No one can really expect a resuscitation of the rural parishes, given the present conditions of the industrial system. It was modern civilization that caused them to decline; it is large-scale production which prevents the expansion of their duties and powers. If ever there is a migration back to the land, i.e. if England takes to farming seriously, the rural parishes may grow in administrative importance. Or, again, the improvement in the national supply of electricity, enabling industries to spring up in outlying rural districts, may help towards this end. But these expectations are in the realm of pure conjecture.

[1] *R.C. on L.G.: Final Report*, p. 75.

[2] The *R.C. on L.G.* recommended (ibid., pp. 74–5) that some definite liaison between the two bodies should be statutorily established, e.g. that the Chairman of the Parish Council or Parish Meeting should be an *ex-officio* member of the Rural District Council.

[3] *Final Report*, p. 65. Evidence of the National Council of Social Service.

CHAPTER VI

SOME SERVICES OF REGIONAL IMPORTANCE

WATER SUPPLY. Supposing there were no local authorities, and that we were faced with the problem of supplying the population with water, how should we plan the country for the purpose? We should survey all the needs for water in terms of its uses and in terms of the distribution of population. We should calculate for the present, and, since the capital costs of work are very high, we should calculate for twenty and even fifty years ahead, the demand for domestic, industrial, sewage, and hydro-electric purposes, and then assure the populous parts of the country of an adequate supply. We should, further, assure isolated rural areas of adequate supplies, though the cost of pipe-lines and pumping is high. We should try to avoid serious inequalities of charge. Then there would be the problem of placing impounding works or pumping machinery at the most economical points for distribution; and the location would be governed principally by the geologically determined catchment areas, though other sources would be taken into account. One would be driven to the conclusion, as was the Water Power Resources Committee of 1921,[1] that such catchment areas are the natural areas for the administration of the water supply.

No such rational plan now operates: the inadequate conceptions of public health administration of the period 1848 to 1875 govern the situation. (1) Urban and Rural Districts are empowered (but not obliged) by the Act of 1875 to supply their Districts with water. (2) By the Act of 1878 Rural Districts *must* see that every occupied house within their Districts has a supply of water within a reasonable distance.[2] These areas are, of course (see statistics previously supplied of areas), very small compared with catchment areas, which, according to the Water Power Resources Committee's mapping out

[1] *Final Report* of the Water Power Resources Committee, 1921, Sect. 29 and Sect. 33 (*d*), where it is considered necessary 'to group the watersheds of the country into suitable areas, and, where desirable, to arrange for the setting up of Watershed Boards in substitution for the large number of various local authorities now concerned with different interests.'

[2] The Acts referred to here are (1) the Public Health Act, 1875 (38 & 39 Vict. c. 55), Sects. 51–67, and (2) the Public Health (Water) Act, 1879 (41 & 42 Vict. c. 25), Sects. 3–9.

of the country, would each average *four Administrative Counties*.[1] To mitigate the mal-economy and administrative friction, Joint Water Boards have been formed, but they are few, and, compared with fundamental needs, quite inadequate.

Water is supplied by private water companies,[2] or by local authorities who make their own schemes on the basis of their own finances, which are often so inadequate that the County has been called in by the Act of 1929 [3] to assist them. Each authority is concerned almost exclusively with its own needs, and the ease with which it can supply itself. 'There may well be cases', asserts the County Councils Association, 'in which adjoining authorities contemplate the establishment of separate schemes where a joint scheme would be more economical and efficient, or in which one authority may proceed with its preparations oblivious or neglectful of the fact that a suitable extension would provide inexpensively for a less prosperous neighbour unable to afford a separate scheme.'[4] Authorities are not under compulsion to consult their neighbours, and, in fact, their relations have been spiteful and litigious. The Water Power Resources Committee said: 'Usually, the interests of land drainage and navigation, of water supply and sewage disposal, of fisheries and schemes which involve the diversion, abstraction or obstruction of water are regarded as antagonistic. . . .'[5]

Sources of supply have been seized beyond a district's needs and locked away from others: high gravitational locations are appropriated by authorities who don't need them to the disadvantage of others lower down in the valley who do; parallel and competing pipe lines have been built in the same direction; competing pumping stations have been erected next to each other. The rates vary inordinately.[6] It is of the highest necessity that there should be either executive co-ordination, or permanent consultation, with the public health authority—but there is hardly any. Where water is brought by gravitation, the cost of reservoirs, being very great, can only be economically met by a big body of consumers, but local authorities rarely combine for this purpose. There are no arrangements to prevent waste, or to *add* to resources. Yet in every aspect, domestic, industrial, sanitary, and power, the demand for water increases. It has doubled in the last thirty years, and the situation of industrial areas like Lancashire and Yorkshire is threatening, while many areas have cause for chronic complaint, since their financial resources are

[1] See Plate I, facing p. 164, in the *Report* of the Water Power Resources Committee.
[2] Cf. *Year-book of the British Water Works Association*, 1932.
[3] See Twelfth *Annual Report* of Ministry of Health, 1931, p. 13.
[4] County Councils Association. *R.C. on L.G.: Minutes of Evidence*, Part X, p. 2009.
[5] *Report* of Water Power Resources Committee, Sect. 31.
[6] Cf. *Year-book of the British Water Works Association*, 1932.

small.[1] There is, queerly enough, no central grant-in-aid for water-supply.[2] There are physical difficulties in supplying scattered populations. Furthermore, before the Local Government Act of 1929, the law obliged the Rural District Councils to charge the cost of works which specially benefited an individual parish, on that parish, and otherwise to divide out the common cost according to an estimate of relative benefit enjoyed by the different parishes. In order to avoid burdening poor parishes, works were not established at all.

Yet there is no national planning arrangement, in spite of the Report of over ten years ago; and the Ministry of Health itself is obliged to proceed very gingerly even in its mere recommendations that improvements are necessary. The Local Government Act of 1929 enlarged the public health areas, and spreads the water charge, in some places, over the County, but this is a minute palliative. The Ministry of Health is obliged to attempt some co-operation over much larger areas. In 1923 it established within the Department the *Advisory* Committee on Water.[3] Year after year, the Ministry's Annual Report referred to the change. 'The regional stage, however remains unoccupied. To fill this gap it seems necessary to obtain regional representative Committees working in conjunction with the Department and the Advisory Committee on Water.'[4] It points out that, 'Too frequently, in the past, competition and rivalry have dictated policy, and have resulted in unsatisfactory methods and wasteful expenditure.'

By 1939 9 Advisory Committees had been formed; for South-West Lancashire (23 authorities); the Sherwood area (25); the Isle of Wight (6); the West Riding (150); North, Central and South-East Lancashire (47); Cheshire and North-East Derby (44); West Midlands comprising Staffordshire, Warwickshire and Worcester (60); the County of East Sussex (33) and the County of Kent (excluding the area of the Metropolitan Water Board). These schemes in all covered some 400 authorities with 15,000,000 consumers, that is, about half of the municipal undertakings are included. But it is clear from the observations of the Central Advisory Water Committee[5] that in spite of the fact that Ministry of Health inspectors act as a liaison between the regional bodies and itself, the regional committees are still weak, dilatory, for they rely altogether only on "the goodwill of the more public spirited authorities." In the absence of unanimous agreement their work fails. The Central Advisory Committee has recommended that the regional committees should be financed by legally enforceable quotas based on rateable value; that their Chairman should be appointed by the Minister; that they should be obliged to consult

[1] See Statement B of the County Councils Association, Part X, *Minutes of Evidence*, pp. 2048–52.

[2] Of recent years grants-in-aid of public relief works to mitigate unemployment have been especially favoured for water schemes for rural areas.

[3] The appointment of this committee and the names of its members are first made public in the fourth *Annual Report* of Ministry of Health (1923), p. 33.

[4] *Fifth Annual Report*, Ministry of Health, 1924, p. 38.

[5] *Report* 1938, pp. 19 et seq.

all interested bodies of consumers before making their plans; to furnish annual reports to the Central Advisory Committee. More importantly, the Committee recommended that the boundaries of regions should correspond with the boundaries of the watershed areas within which the populations included are situate. Then, more important still, the Committee proposed that the Minister of Health should be given power to require proposals for regional committees within a period he stipulated, or if these were not forthcoming, means to prepare a plan at the cost of the area that was in default. Further, the Minister should have power to appoint regional committees for planning or to alter areas, after consultation with the appropriate interests where planning was otherwise impossible; and the power would be backed up by a power to act in default.

This not very fortunate situation is but slightly alleviated by the supply of water in bulk authorized by the Supply of Water in Bulk Act of 1934 and the operation of Joint Water Boards. Under the Statute mentioned, any Local Authority (or private water company) can sell to any others in bulk whether the Authorities are neighbours or not. Only some 70 Local Authorities receive such supply, though the method is susceptible of much more widespread application. Joint powers authorized by the Public Health Act of 1875 or established by private deal number some 40, and while including in total some 3,000,000 consumers they are in most cases below 100,000 population and thus very far indeed from meeting the watershed size proposed by the Water Resources Committee of 1921. The joint powers are so few because their establishment by several neighbours is frustrated by the desire of each individual authority to do the best it can financially for itself by independent action and by bitter and often fruitless contention about the respective amounts of capital to be provided by each authority. (The argument is also put forward that joint powers are undemocratic; but experience shows that this argument can be considerably discounted). Furthermore, large authorities frequently prefer not to enter a joint power with smaller neighbours but to hold out to supply the latter from their own water undertaking and this is done in a great many cases.

The Central Advisory Committee proposes in the Report referred to [1] that the Ministry of Health be permitted to form or alter joint boards and bring about the amalgamation and acquisition of undertakings. But the Association of Municipal Corporations has objected to this as well as to the recommendation previously referred to, that the Minister should be empowered to establish or alter regional water committees.

It should also be remembered that water is not, like electricity or gas, capable of manufacture but only of discovery, collection and distribution. It is a geological problem in the first place. Accordingly, beside the regional arrangements referred to as already in operation there is a national survey, the Inland Water Survey Committee

[1] Page 25.

established in January 1935 by the Ministry of Health. The Committee is composed of experts and people of experience. With its general advice the Ministry of Health conducts a regular survey of supplies and encourages the maintenance of the necessary records by water undertakings. There is also at the Ministry the Central Advisory Committee on Water, representing the Associations of Local Authorities, Local Undertakings, Private and Municipal, and Water Engineers. It reviews and generally advises the Ministry on general policy.

The picture, then, is still of predominant local interests, disintegrating the true natural economy of water administration with some worthy but so far only superficial regional and national co-ordination.[1] The appropriate policy for the future would seem to be that proposed a quarter of a century ago by the Water Power Resources Committee, together with strong national co-ordination of the water regions thus proposed. The Water Power Resources Committee's proposals were, ' We are of opinion that the inland water resources of Great Britain are to be regarded as of such importance to the nation that their development should be effectively regulated in order that they may be used to the maximum extent and best advantage. A haphazard, uncontrolled utilization of water powers may eventually result in considerable waste. . . . . To group the watersheds of the country into suitable areas and where desirable to arrange for the setting up of watersheds in substitution for the large number of various local authorities now concerned with different interests.

We propose that the watershed powers mentioned above should be entrusted with the duty of enforcing the Rivers Pollution Prevention Acts and any further legislation which may be introduced with the object of safeguarding water supplies from pollution, and further, that they should exercise supervision over the interests of fisheries, navigation and land drainage and generally over the water resources within the area of their jurisdiction.' [2]

Drainage, Rivers Pollution and Sewerage. Closely connected with the water supply and its natural areas are Land Drainage, Rivers Pollution, and Sewerage, and the Water Resources Committee of 1921 recommended areas and authorities big enough and comprehensive enough to deal with these in co-ordination. Drainage is fundamental to sound agricultural development, to the prevention of flooding, and to water supply and sewerage. By neglect in taking off stagnant and superfluous water there is an immense amount of damage to agriculture, as in Great Britain. The productional value of over four and a quarter million acres of land in England and Wales, or about one-seventh of the total area now used for agricultural purposes, is dependent for its fertility on arterial drainage. The process of drainage depends

[1] Cf. Finer, *Municipal Trading*, Chap. 12.
[2] *Report*, Sections 192, 32(d), 34.

mainly on the slope of the land, and this is determined by geological formation. In the end one must get to the nearest river, and then see that that river carries off the water to places of consumption or to the sea.

Drainage is one of the oldest of governmental functions. The result of centuries of haphazard growth was, by 1929, three hundred and sixty-one authorities, falling into four classes:

Commissions of Sewers	49	
Drainage Authorities under Special Acts	198	361
Elective Drainage Boards	114	

In addition to these authorities, County and County Borough Councils have certain powers under the Land Drainage Act, 1926, and the County Councils of Middlesex, Lancashire, Yorkshire (West Riding), and Surrey have acquired drainage powers under Private Acts.[1]

Generally, it can be said of these areas that they were, with one or two exceptions, inadequate in area to modern requirements—small, unco-ordinated, and without due relationship to river, valley or watershed. The system was neither logical nor practical. Yet, an obstacle to amalgamation of the boards dealing with internal drainage existed [2]: 'There would be considerable local opposition . . . as each district would fear that, after the amalgamation, the drainage rate levied upon it would be in excess of that needed for its own requirements.' [3] As regards the control of banks and main channels there was no objection to unified control. Unified river control was clearly indicated. The Drainage Board for the Great Ouse, created in 1920 (replacing five River Authorities and nine Banks Authorities), pointed the way for a thorough inquiry. The Royal Commission of 1927 found that 1,470,000 acres were outside any drainage area at all. Those living in the lowlands were compelled to spend large sums to protect the banks and to make outfall facilities because waters from the uplands reached them more rapidly and in a greater volume than formerly owing to the drainage of water for the benefit of those living in the uplands. The growth of population had necessitated artificial systems of sewerage and this in turn necessitated the drawing upon foreign water supplies and the efflux of many millions of gallons into the outfall river 'with results in time of flood which may be better imagined than described'.[4]

The Royal Commission on Land Drainage summed up their inquiry in the following terms:

'Nothing has been more striking in the course of our Enquiry than the revelation of the complete mutual independence of the various Drainage Authorities over the country. They appear to carry out their work without any regard

[1] *Report, R.C. on Land Drainage in England and Wales* (1927), p. 7.
[2] *Report* of the Water Power Resources Committee, Sect. 250.
[3] Ibid., Sect. 251.
[4] *Report, R.C. on Land Drainage*, p. 18.

to the operations of any other Authority above or below them on the same stream, with the result that not only is the work of one Authority often rendered abortive by the neglect of other Authorities, but much money is spent in an uneconomic and wasteful manner which, if it were expended under a well-regulated scheme involving the co-operation of all the Authorities in a particular catchment area, would have a most beneficial influence on that area. It is this wasteful expenditure due largely to lack of co-operation that makes drainage rates so unpopular and so difficult in some instances to collect. *There can be no cure for the virtual antagonism of at least non-co-operation existing between neighbouring Drainage Authorities short of a much larger unit of area than the present area of benefit, and some supreme co-ordinating authority.* This lack of co-operation between Drainage Authorities is largely the result of the piece-meal character of drainage legislation and the haphazard manner in which Drainage Authorities have been set up. . . . We do not wish by any means to pass a general censure on existing Drainage Authorities, many of which have been rendering valuable public service for many years past, but it would be idle to deny that some are inefficient or even moribund, due in many cases to circumstances (such as the limited area of rating and the absence of co-operation) over which they have no control. Some, indeed, have actually ceased to function.' [1]

They recommended the abolition of the old authorities, and the establishment of new controlling authorities in each catchment area, that is:

'the whole of the land which directs the drainage towards one river ending in the sea, although in some cases a tributary stream, especially when it discharges into the main river near the estuary, may be of sufficient magnitude and importance to justify its independence, for drainage purposes, of the main river and to constitute a separate Catchment Area.' [2]

'At the same time there must be co-ordination of effort and we think that the Catchment Area Authority should be the paramount Drainage Authority within the Catchment Area. The Internal Drainage Bodies should have unrestricted liberty of action within their respective drainage systems, except under the following conditions:

'(*a*) where the action of an Internal Drainage Body is calculated to affect the interest or effective working of any other such Body within the Catchment Area;

'(*b*) where such action is calculated to interfere with the main outfall or any works thereon; or

'(*c*) where the Internal Authority is the recipient of any grant-in-aid from the Catchment Area Authority as contemplated in paragraph 75.

'In any of these cases the Catchment Area Authority should be clothed with supervisory powers to veto such action in the case of (*a*) and (*b*), and in the case of (*c*) to satisfy itself that the work in respect of which the grant is made is being properly executed. . . . We recommend, therefore, that the Catchment Area Authority should be a Body consisting of representatives of the County Council or the several County Councils within the Catchment Area, whether such Counties touch the main channel of the river or not, together with representatives of the County Boroughs within the Catchment Area, and other persons elected by the Internal Drainage Authorities, or (where none exist) persons directly interested in the drainage of the Lowlands. We should have liked to recommend direct representation of non-county Boroughs and Urban District Councils within the Catchment Area, but we regard the difficulties as insurmountable.' [3]

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[1] *Report, R.C. on Land Drainage*, pp. 19–20. [2] Ibid., p. 24. [3] Ibid., pp. 26–7.

Far reaching and valuable changes were produced by the Land Drainage Act of 1930. Catchment Boards were to be established in suitable areas as described in the Act or as determined later by the Minister of Agriculture. By 1939, 49 Catchment Boards were in operation administering land drainage exclusively, constructing and maintaining works in relation to the main river and its banks assigned to each Board and securing an outfall for the main river and bearing responsibility to the Minister for the submission of schemes for its own action and for the constitution of drainage districts and the abolition of Commissioners of Sewers. Each Board is composed of a maximum of 31 members; one member being appointed by the Minister, at least two-thirds of the rest by the county and county borough councils in the area and the remainder by the Minister to represent the Drainage Boards which act within each catchment region and portions thereof not yet possessing a Drainage Board. There are over 400 such Boards governing drainage districts. County and county borough councils still exercise supplementary drainage activities.

The Catchment Boards raise their revenue by precepting the Drainage Boards and the county and county borough councils. The Boards vary in size from one-third or one-half of a county to several counties; for example, the area of the Great Ouse Catchment Board comprises portions of Northumberland, Oxfordshire, Bedfordshire, Buckinghanshire, Norfolk and others; and they vary from considerably below 100,000 acres to nearly 3,000,000 acres in the case of the Severn. The principle that the area of administration should be a region based on what may be called the natural economy of the service is definitely adopted here, though it should be emphasized that it does not always therefore mean an area larger than the county.

River Pollution. Rivers may be polluted by sewage and industrial waste (trade effluents); the result is their ruin as a source of potable water and as the habitat of fish,[1] and to make them a source of water-borne disease. Hence, various statutes, but especially the Rivers Pollution Prevention Act of 1876, empowered County Councils and all Sanitary Authorities with powers to provide penalties for and take proceedings against the pollution of rivers. But these Acts were not obligatory; they applied to small authorities; they permitted, but did not command, joint action. Therefore, many authorities took no heed of the law at all, they polluted rivers and took no action against polluters, or, worse, took action against other polluters (perhaps other local authorities) while their own efforts at fouling were worse. The duties were too small to warrant the employment of an expert by *each* authority. The Water Resources Committee of 1921 [2] reinforced the opinion of an inquiry of 1898–1909 [3] that the law had

not resulted in an improvement and purification of our rivers. 'Outside the areas of Yorkshire and Lancashire, which are under the supervision of Joint Committees or Rivers Boards, no appreciable action has been taken by the County Councils to enforce the law against pollution.' This view was endorsed by the County Councils Association in 1928 before the Royal Commission on Local Government.[1] They suggested Rivers Boards (as did the previous bodies of inquiry) constituted of representatives of County and County Borough Councils concerned, their suggestion being prompted by consideration of the usefulness of the West Riding Rivers Board, the Mersey and Irwell Joint Committee, the Ribble Joint Committee, the Thames Conservancy Board, and Lea Conservancy Board.

In 1928 there was established at the Ministry of Health a Joint Advisory Committee on River Pollution. Reviewing the state of the law and the state of the rivers it was obliged to report:

'Nevertheless it is admitted on all hands that many of our rivers are seriously polluted and that the law designed to prevent avoidable contamination is to a large extent not put into operation. This state of things may be due in part to the jurisdiction of each authority being mainly limited to its own area; in part to the fact that many of the bodies charged with the administration of the law have a number of other more pressing duties to discharge. Partly also because many of them are potential or it may be, even actual offenders. The evidence we have received certainly goes to show that for the prevention of pollution a body specially charged with the administration of the Acts and acting throughout the whole or the greater part of a river basin is far more effective than a body operating in a limited area and occupied with a large variety of other work. This is amply shown by the operations of the West Riding of Yorkshire Rivers Board and the Joint Committees of the Mersey and Irwell and of the Ribble. These bodies, by continual supervision of the rivers under their control, have succeeded not only in checking the growth of pollution in those rivers but in improving their purity.'[2]

It suggested that it was possible for the Ministry of Health to set up a River Board by Provisional Order under the Local Government Act of 1880 on the application of any County or County Borough, giving the powers of the Act of 1876 to the Board, and yet not divesting the smaller authorities of them. But most important

[1] '. . . there would appear, to say the least, to be some risk of what is the task of all eventually becoming the task of none, especially as there appears to be little, if any, statutory obligation upon the Authorities to take preventive action. Further, there is the obvious danger of overlapping of effort, and this is particularly the case under the Rivers Pollution Prevention Acts. Even assuming, however, the elimination of the foregoing disadvantages of the present position, it is to be noted that jurisdiction is for the most part local, and there is no body (unless it be a Fishery Board or an Authority such as a Rivers or Conservancy Board) having control over the whole of a river and its tributaries, while the Council are informed that there is no individual Local Authority with sufficient work in connexion with rivers pollution to justify the employment of first-class experts. *R.C. on L.G.: Minutes of Evidence*, Part X, p. 2053.

[2] *First Report* of the *Joint Advisory Committee on River Pollution* (1929), pp. 4–5.

of all is the recognition of the need for a Region to cover one or more rivers. Here again also a co-ordination of interests is essential:

'The rival claims of the river from the point of view of amenity, water supplies and fishing on the one hand, and of ratepayers and traders on the other have to be viewed with a proper sense of proportion, and we do not for a moment suggest that it is possible to expect that all our rivers can at once be converted into pellucid streams.' [1]

Sewage and Sewage Disposal. The authorities for sewers are the local drainage Boards, under Section 67 of the Land Drainage Act, 1861, who invariably coincide with the ordinary local authorities. They have to maintain and keep in repair all sewers within their areas.

If the Tables of population, acreage and rateable value are consulted one can sense immediately the difficulties which must result therefrom. Difficulties arise where (*a*) an authority's sewage disposal is so bad as to jeopardize the health of a neighbouring place, and (*b*) the lack of economy where disposal works are near each other, or where an area is of wide extent, and is flanked by others with works on its outskirts. This is overcome partly by joint arrangements, but not many are obtained owing to jealousy and disagreements about cost. Thus:

'Since there are only 27 Joint Water Boards and 29 Joint Sewerage Boards in existence it is clear that the above-mentioned powers have been used very sparingly. The Association feel that they do not go far enough. Agreement between neighbouring Authorities is not always easy to bring about, and it is suggested that powers should be conferred on County Councils to effect a combination of County Districts for the purposes of water supply and sewerage where such combination is shown to be desirable in the public interest.' [2]

The Minister has the power of acting in default, but, in practice, decades pass with threats alone. Policy, if not execution, needs co-ordination.[3] We notice how, as soon as there is a default in the power to make joint schemes, centralization is proposed.

Town Planning. If we were laying out for the first time the various quarters of a town, we should attempt to secure a harmony between the many interests involved in the close aggregation of thousands of people: health, industry, beauty and communications. We should want wide streets, buildings not too high, parkland within and on the outskirts of the town; we should place the factory area to avoid the contamination of the air of the residential area by coal smoke and effluvia; we should require due attention to beauty of line in building, to symmetry; we should need provision for rapid transit along the streets, criss-cross within the town, and towards its borders. Left alone, the interests and inclinations of millions of

[1] Ibid., p. 6.

[2] *R.C. on L.G.: Minutes of Evidence*, Part X, p. 1895.

[3] Cf. the strictures on the waste due to lack of co-operation in the sewerage service in the *Report* of the *Committee on Local Expenditure*, Cmd. 4200, 1932, pp. 83–4.

independent owners and builders caused congestion, ugliness, disfigurement, 'ribbon' development.

Now, English statesmen did not awake to the necessities until 1909, for the permissive statutes of the nineteenth century [1] were merely a talking in their sleep. Various statutes were then passed, and consolidated in the Town Planning Act of 1925. Borough, Urban and Rural District Councils were given power to prepare schemes and to carry them out, in accordance with a carefully prescribed procedure designed to protect the many interests involved in the town as it had emerged from a haphazard evolution. Furthermore, Boroughs and Urban Districts with a population of over 20,000 are now *obliged* to prepare and submit schemes [2] to the Ministry of Health by 1934 (or before 1938, at the Minister's discretion).

It was early discovered that the units of administration were sometimes too small, and almost always part of an urban integument, perhaps stretching many miles from the centre of any one town. The whole region could not be competently dealt with as a number of independent nuclei, but only as one extensive urban area containing nuclei. The First Annual Report of the Ministry of Health (1919–20) concisely puts the case for *regional* surveys:

'Over large parts of the country the town itself has become too small a unit for regulating development. The administrative boundaries of Local Authorities frequently do not coincide with the boundaries of a geographical, industrial or economic unit, which may include the areas of a number of districts, urban and rural. In order to provide for the proper development of such a unit, a regional survey and regional planning are required. . . .' [3]

The law made provision for Joint Committees, and many had, indeed, been established. [4] But they were advisory only, not Joint Boards with mandatory powers. Consequently, they had difficulties in the apportionment of cost of schemes; so, for example, in the distribution of the cost of a desirable road, which happens not to serve one particular District in the region. [5] As Mr. Pindar said before the Royal Commission:

'They (the regional authority) may plan a road in Area A, and the District Council of Area B may say "We do not want that road, and we will not put it in our scheme." Where are your regional authority left then? They are in a difficulty at once. They have no powers and the whole region suffers—it is not just the District—because of the impossibility of convincing one area.' [6]

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[1] E.g. the Town Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), 'An Act for consolidating in One Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting and improving Towns.'

[2] Local Government Act, 1929, Sect. 44.

[3] *Report*, Part II, p. 46.

[4] 31 March 1927—43 Advisory (621 Authorities) Committees, and 5 to *prepare* (but not execute) schemes.

[5] Cf. *Annual Report*, Ministry of Health, 1925–6, pp. 63 and 69.

[6] *R.C. on L.G.: Minutes*, Part X, Q. 30,500.

Working singly, Town Planning authorities soon find themselves frustrated: they plan roads of a certain width—at their boundary the rural areas have only narrow roads; they plan sewerage for their housing—they have difficulties with neighbours; they need more land for displaced congested areas—they are involved in controversies with neighbours. The great difficulty of these joint arrangements, and the need for some Region with *executive* authority of its own, are discernible in the following considerations submitted by the Ministry of Health: (*a*) 'The working of a scheme is so intimately connected with the general bye-law and sanitary administration of a district that any serious severance of these duties is likely to create overlapping and confusion'; (*b*) 'The unqualified application of this rule may, however, be unfair in practice if the scheme *includes particular works of magnitude in one district which are clearly of more benefit to the other*'; (*c*) 'And it is for the Authority promoting the scheme to make proposals for meeting a situation of this kind.' To meet these difficulties the Ministry was obliged to suggest a rather complicated federal arrangement. It is instructed to observe the close relationship between Housing and Town Planning: the central authority heavily subsidizes Housing, and requires to be satisfied that the site of a housing scheme *in relation to the district as a whole* is suitable for working-class dwellings.

The Act of 1932, significantly called the Town *and Country* Planning Act, makes regional planning easier by (*a*) enabling District Councils to relinquish their planning functions to the County Council; (*b*) providing greater elasticity in the division of expenses among the authorities constituting a Joint Committee; (*c*) giving the Minister powers, on his *own initiative*, to make Orders constituting Joint Committees. Yet the main burden of progress still lies with small local authorities—for the Minister is not rash to intervene. Progress must still continue to be slow in such a system, for rural areas are likely in the future, as hitherto, to ask, why should they be obliged to live according to an artificial plan forced on them by their urban neighbours? [1]

The progress made was small, even though that was counted progress which consisted merely of the existent local authorities

[1] Cf. the able expression of this view by Sydney Larkin in *Public Administration*, January 1932, p. 65: 'Exactly what sort of area constitutes a town-planning area is not clear but what a scheme usually resolves itself into is for the thickly populated county borough people to engage themselves busily in saying where roads, buildings and open spaces should be in the surrounding rural area, in sublime indifference as to who should pay the cost not only of maintaining the roads and open spaces but of compensating the landowners for the damage done to their land by the forcible imposition of an artificial plan on the countryside instead of permitting a more natural development which, while perhaps not so geometrical, might be more comfortable. The town planning of the town is clearly the town's affair, but some regard must be paid to the existence of the countryside and certainly no town-planning burden should be placed on a rural authority without its full consent.'

establishing plans but without reference to the national needs or the plans of their neighbours. By April 1, 1939, little more than 1.1 million of the total acreage of Great Britain (which is 56.8 million acres) was covered by approved schemes. Resolutions passed since 1932 had increased the area for which the preparation of schemes was authorized from 7.5 to a further 26.5 million acres.

It is clear that the areas of planning are far too small for the purpose, in relation to financial costs, in relation to the needs of the whole nation and to the needs of any region thereof. If planning envisaged the whole national interest each local authority would fall within a nation-wide pattern for which some fundamental principles had been settled ; at least, for example, the agricultural in relationship with the industrial use of land (the gravest issue involving the economy of the nation, not easily to be skated over), the location and size of towns based on consideration of industrial technology, the possibilities and value of wide industrial decentralization, the health, convenience, housing and transport of people. Furthermore, the local authorities find themselves in regions, that is, large areas with a recognized uniformity of character as Tyneside, Merseyside, the Potteries, the Black Country, South Wales, the Manchester area, London—these have scores (in the case of London over 100) planning areas. Within such regions each of the planning authorities cannot ignore that any plan it may make for itself other than the most minute, must necessarily affect its neighbours, whether on its own outskirts or on the periphery ; and since any ample adjustment is either impossible or will be resisted, it acts on the minimum level, to the detriment of civic efficiency, good will and culture over the whole region.

The Scott Committee on Land Utilization in Rural Areas [1] discussed issues of this kind and recommended a Minister of National Planning to carry out a five year plan of town and country planning schemes, rural housing, co-ordinated programmes of electricity, gas and water supply—even that electricity charges should be standardized throughout the country to encourage a contented countryside. The Uthwatt Committee,[2] though occupied with the much narrower problem of the relationship between town and country planning and compensation to owners of land, recommended that the local authorities should have greater planning powers exercisable under the strict surveillance of a central planning authority. It was especially emphatic on the need for a balance of the requirements of agriculture, transport, public services, defence, housing, industrial location and town siting.

Obviously, planning of the type indicated raises the gravest issues of national existence ; and these ought not to be settled in the exclusive discretion of each local town planning authority and would not, in

[1] Cmd. 6378, 1942.

[2] Committee on Compensation and Betterment, *Final Report*, Cmd. 6386, 1942.

fact, be within its capacities. The same holds good of regions comprising many local authorities; but the latter would have the substantial advantage over the former of considerable financial resources, space in which to arrange, and if necessary command, an improved balance amongst the existing local urban and rural areas, allowing territorially for the necessary de-congestion of population and, of chief importance, to act as the local administrator, partly planning and partly executing, the superior national plan. It is to some such arrangement that the Royal Commission on the Distribution of the Industrial Population looked as part of its answer to the problem presented it by the existing geographical concentration of industry and the social, economic and strategical disadvantages arising therefrom.[1]

Thus, "the problem of planning would be greatly simplified; the Regional Council would become the principal planning authority for the region, certainly for major regional requirements, leaving probably to Joint Committees, where existing, or to existing local authorities the detailed administration of schemes. Planning would receive a great stimulus and on more comprehensive and better organized lines than is at present possible with the multiplicity of small planning authorities; and housing would be better related to industry. Large financial resources would be available and decentralization in proper cases could be encouraged, e.g. to satellite towns."[2]

Police Forces. In England and Wales, outside London, there were in 1918 186 separate police forces: 58 in the Counties, and 128 in Boroughs. The former were obligatorily established by the Act of 1856, the latter by the Municipal Corporations Acts of 1835 and 1882. The strength of the separate forces varied tremendously: 25 men or under, 3 Counties, 21 Boroughs; 25 to 50 men, 4 Counties, 21 Boroughs.

It was shown before the Desborough Committee that from the standpoint of economy and efficiency such independence was a disadvantage. In the first place, a small force may involve a disproportionate cost in terms of buildings and administration. In the second place, a system of small forces does not offer adequate facilities for recruiting, training and wide experience, nor opportunities for promotion and transfer, nor the possibility of concentrating forces where circumstances more particularly require them. The officer and his masters, the citizens, are in a small area, too closely associated for good administration. But, more than all this, is the incapacity of small, independent, or rather *isolated* forces, to deal with highly mobile criminals, who appear to have no respect for administrative areas or the immemorial rights of local self-government, and disobligingly refuse to loiter within the boundary until the police arrive

[1] Cf. *Report*, Cmd. 6153, 1940, pp. 178–184.

[2] Loc. cit., p. 181.

to arrest them, or discover and secure their records from other places in England. Detection depends in part on common records and upon rapid mobility. Some efforts to maintain a common 'clearing-house' had been made before the war. In regard to co-operation for purposes of disorder, the Police Act of 1890 permitted agreements among the local authorities to lend each other men.[1] The system was a failure for four reasons. Three are reproduced in the Police Report[2]: (I) A police authority must either maintain a great number of standing agreements, or run the risk of finding that the force or forces with which their agreements have been made are themselves in need of assistance or unable to spare men when help is required. (II) There is liable to be delay in obtaining the consent of the police authority for sending the men when they are required. (III) Many police authorities are reluctant to enter into such agreements except for strictly limited occasions, no doubt for fear that they may be called upon to send help when it would be inconvenient to do so. The other (IV) is revealed in the Minutes of Evidence[3]: police authorities could not agree on the price of such mutual aid! The Desborough Report[4] recommended that the Home Office should prescribe standard terms and conditions, and this was done by the Act of 1919 and the Rules and Orders made in 1920. As to areas, the amalgamation of small Borough forces was resisted by the small authorities. Local knowledge, it was said, was essential to sound administration; and local control made it possible to have regard to the specific needs of the area, and not depend or wait upon the arrangements made by a more distant authority.

The Committee recommended that the small Borough forces should be merged in the County forces. The Committee itself was inclined to fix the limit for a separate police force to Boroughs of about one hundred thousand and upwards, but for what they termed 'reasons of administrative convenience',[5] they recommended only the abolition of separate forces in Non-County Boroughs. Further, no new forces should be established in a County Borough (the status of which might be attained by a Non-County Borough) unless the Home Office were satisfied that, for exceptional reasons, the establishment of a separate force would afford definite administrative advantages. They recommended the extension of arrangements, such as those between certain County Boroughs and County Councils, whereby the Boroughs were policed by the County forces. Finally, they recommended the grouping of some of the smaller forces of the Counties.

Even these recommendations could not meet the situation, for

[1] Sect. 25.
[2] *Report of Desborough Committee on the Police Service*, 1919, p. 4.
[3] Ibid.; *Minutes*, Qs. 9648–50.
[4] *Report of the Committee on Police Service*, 1919, p. 4.
[5] *Report on Police Service*, p. 6.

the Committee was obliged to recommend very far-reaching standardization of rules relating to recruitment, discipline, training and pay. Only thus was it possible to produce that co-ordination of competence and activities necessary to produce a force adequate not merely to each area but to the country considered as one unit.

From the inception of the police system a policy of merging small forces had been pursued. In 1882,[1] in order to reduce the number of separate forces in small Boroughs, it was provided that no new Borough would be allowed a separate police force unless the population exceeded twenty thousand. The Home Office made it a condition of incorporation that the Borough should consolidate its force with that of the County. Of 57 new Boroughs incorporated since 1888 only 7 were allowed new police forces. In 1888 the Local Government Act provided that the police forces of all Boroughs with a population of less than 10,000 in 1881 should be merged with the County force.[2]

Recommendations like those made by the Desborough Committee had been made by the Departmental Committee on Local Taxation of 1914,[3] but were not put into practice. Between 1919 and 1932 very little progress was made in the merging of Borough and County forces, and a great disparity and a large number of small forces still remain. Of 80 County Boroughs, 72 had separate police forces, while 49 Boroughs had their own police forces, and there were only three County Joint Committees for police purposes.

Considerations of economy and police efficiency caused the establishment of the Select Committee on the Amalgamation of Police Forces in 1932.[4] The Report of this Committee is a most admirable analysis of the problem of police areas. It emphasizes the complication and weakness of the mere multiplication of separate units and the interposition of boundaries between them, and asserts that co-operation has not relieved these deficiencies. It points out the effect of improved communications and transport. It shows the necessity of departmental specialization in police work attainable only (without disproportionate expense) by a large force and the wide experience open to a force which works in a large and varied area. Moreover, with small forces (according to calculations not unduly biassed in favour of large areas) economical use of man-power was hardly possible. Training is possible only where there is an area of sufficient size to provide classes of a reasonable size. In a small area it is difficult to prevent personal bias and influence from entering into disciplinary questions. The coming of the telephone has made manœuvres

[1] Municipal Corporations Act, 1882, Sect. 215.

[2] Since 1919, 9 Borough forces have been voluntarily merged with the County under the provisions of the Police Acts of 1840 and 1856. Cf. *Report of Committee on Police Forces (Amalgamation)*, 1932, p. 4.

[3] Cmd. 7315.

[4] Reported in July 1932.

with a centrally directed force, according to the urgencies of a daily situation, easier than in the past.

The representatives of the Boroughs, of course, produced arguments to rebut those which favoured merger. The gravamen of their argument was that co-ordination by the Home Office is sufficient, and that, in fact, the County police forces had shown, on the most favourable estimate, no superiority of administration to that of the Boroughs. Nor could they avoid asserting the acquired rights of the County Boroughs to their freedom from association with the County.

'A County Borough forms no part of any administrative county, and it is not represented on the County Council, nor, of course, on the standing joint committee. If, therefore, the Borough is policed by the County, the service would be under the administration of a foreign body, more so even than would be the case if a national police force were established for the whole country.' [1]

Further, the Non-County Boroughs complained that already, with only a small representation on the County Council, they contributed more in rates to the County Council than it cost the County Council to provide them with services. Control by a body which is near at hand, and which is accessible to complaints, inspired more public confidence, they argued, than a remote and unknown council. One revelation was forced by the resistance of the Boroughs, and that was the very small extent to which the Counties possess trained detectives: 18 out of 58 County forces possess no trained detectives at all, while others were inadequately provided.

The Home Office proposed the merging of the police forces of all Boroughs with a population of under 75,000, and the Inspectors of Constabulary were in agreement with this. Whatever the view held by the Committee on the merits of this proposal, they actually recommended only the merging of forces with a population of less than 30,000 in 1931. Their tenderness for Boroughs with above that population they explained as follows [2]:

'In the first place 19 of the police authorities concerned are County Boroughs. Your committee are not aware of any precedent for depriving a County Borough, however small, of any powers which it already possesses. Some of the Boroughs concerned have enjoyed the dignity of being Counties or Cities since the Middle Ages and their long experience in police administration entitles them to favourable consideration.[3] Moreover, the trend of recent legislation has been to prescribe County and County Borough Councils as a class without reference to either population or area, as the authorities for the administration of the more important local services. Police administration differs in many respects from the other services administered by local authorities, but your Committee do not consider that this is a sufficient reason for singling it out for special treatment.'

[1] Cf. *Report of Committee on Police Forces (Amalgamation)*, 1932, p. 12. The reader's attention is drawn to the proposition that a County police force would be more foreign to the Borough than a national force. [2] Ibid., p. 14.

[3] The student may well ask whether such an argument was seriously entertained. Proper police administration began only in the middle or so of the nineteenth century.

Education. Until the Elementary Education Act, 1870, there was no local administration of education : education was in the hands of private enterprise and ecclesiastical societies.[1] But the State had been assisting education by grants, and was involved in its inspection and regulation since 1833, and attempt after attempt was made to secure public provision of education through the organs of local government. In 1870, the provision of Elementary Education was vested in School Boards. By 1902, when the area of administration was changed, England and Wales were governed by 2560 School Boards,[2] and 788 School Attendance Committees where there were no School Boards to enforce attendance.[3] It should be remembered that at that date, the Urban Districts had not been universally established. Thus, with a few exceptions the areas were very small—and looking backwards from our present point of development one should say they were ludicrously inadequate. Indeed, official inquiries in the nineteenth century had hardly contemplated such a disintegration of the country and such small areas. The Newcastle Commission of 1861 had recommended a County Board of Education, and a Borough Board in every corporate town of more than 40,000.[4] In 1868 the School Inquiry Commission proposed ' provincial ' or County authorities, and that towns of more than 100,000 should be allowed administrative independence.[5] The Technical Instruction Committee of 1884 recommended[6] that Secondary and Technical education should be administered by County Boards and Municipal Corporations—so also the Cross Commission of 1888.[7] The Bryce Commission on Secondary Education of 1895[8] was the last inquiry before the reform of 1902. It recommended the County and County Borough as the unit for secondary and technical education, not as the scientifically desirable area, but as the best having regard to the existence of areas with other powers of government, rating powers, and public spirit. It is material to state their views in full[9] :

' Recent legislation seemed to indicate that the proper rural area is the county, and the proper urban area the county borough. Some considerations pointed to a union of several of the smaller contiguous counties into one administrative area, and others pointed even more strongly to the inclusion of the smaller county boroughs in the administrative area of the county which contains them. But the hostility likely to be evinced to such proposals dissuaded us from

[1] See Birchenough, *History of Elementary Education*, esp. Part I and *Report* of the Hadow Committee on *The Education of the Adolescent*, Parts I and II.

[2] One for London, 199 in County and Municipal Boroughs, and 2,360 for one or more Parishes (it should be noted that there are 3,470 Parishes altogether).

[3] 177 in County and Municipal Boroughs, 92 in Urban Districts, and 579 Poor Law Unions.

[4] Royal Commission on Elementary Education, 1858–61. [5] 1865–8.

[6] Royal Commission on Technical Education, 1881–4.

[7] Royal Commission on the Elementary Education Acts, 1886–8.

[8] Royal Commission on Secondary Education, 1895.

[9] Ibid., *Report*, 1895, p. 267.

them. . . . Although we are aware that a desire exists among some of the boroughs, with a population under 50,000 (and not county boroughs under the Act of 1888) to be treated as distinct areas for the purposes of Secondary Education, we hold that such communities are not sufficiently large to need a separate authority and will gain more by being united for educational purposes with the county in which they are situated.'

It was, in 1870, due to the lack of democratic County government, and the feeling that local management was important but hardly possible in large areas (railway and tramway, 'bus and telephonic communications were as yet not well developed), that the arrangements we indicated at the outset of this section were accepted. In 1889 and 1891 the Technical Instruction Acts gave limited powers to the County Councils, Borough Councils and Urban Districts. In 1902, nearly 350 authorities were spending up to 1*d.* rate, and the Counties and County Boroughs a small grant under the Local Taxation (Customs and Excise) Act, 1890.

By 1902, educational development, scientifically considered, tended to the adoption of the Counties and County Boroughs as the areas for all education. But the authorities already in existence in the smaller Boroughs and Urban Districts were not prepared to relinquish their powers. They urged, as usual, that a small area was indispensable to keen local interest and knowledge and personal concern. A compromise, as usual, was the result. The School Boards and Attendance Committees were abolished.[1] For Elementary Education the authorities were the County Councils, the County Boroughs, the Non-County Boroughs with a population of over 10,000 in 1901, and Urban Districts with a population of over 20,000 in 1901. The Boroughs and Urban Districts might relinquish their powers and duties under the Act. Thus, the right to exercise the powers depended upon the population in 1901 : and *areas of the same category and in the same area with an increase*, even an enormous increase as in Urban areas near London, could not acquire such powers. They might, however, acquire such powers, if (1) being an Urban District of 10,000 in 1901 it subsequently became a Borough, or (2) by the extension of the area of Boroughs and Urban Districts so that the prescribed population figure in 1901 was attained, or (3) by the amalgamation of areas.

Higher education (which includes the secondary, technical and University stages) was put into the hands of the Counties and County Boroughs and 58 urban district councils. In 1931 the Education (Local Authorities) Act put a limit to the further creation of Part III Education Authorities by enacting that no urban district, whether a borough or not, which was not then an education authority could become one simply by extensions of boundaries or the creation of new boroughs or urban districts, except if made so by Act of Parliament or if two districts were united, one of which until then had been an

[1] Education Act, 1902.

education authority. By 1939 the number of Part III Authorities had become reduced to 146 non-county boroughs and 24 urban districts.

At a stroke the number of authorities was reduced from about 3,500 to 350, consisting of 62 County Councils, 69 County Borough Councils, 138 Borough Councils and 58 Urban District Councils.

Dismemberment of Educational Administration. What does experience show to be the main features of this partial dismemberment of the educational service ? The Education Act of 1902 provided for the relinquishment by Boroughs and Districts of their powers to the County, but few transfers of power actually took place. Where areas had relinquished their powers they had benefited themselves and the County, for there was a larger scope for the selection of teachers, and the cost per head was smaller in the larger authorities.[1] Some Counties could, and frequently did, delegate both Secondary and Elementary education powers to Town Councils, using them as their own local sub-committees which received considerable freedom of action. Counties often use the County Borough Secondary Schools by arrangement and then a certain tension arises; the County authorities grumble about coming under Borough rule, while the Borough complains that it has to find the money.

There were provisions in various Acts enabling combination between the various local authorities, and the Education Act of 1918 (Sect. 6), re-enacted by the Act of 1921 (Sect. 6), enabled Councils to combine for any duty or power. These provisions were not frequently used. In some Counties the duality of the organizations was complete. In proportion as the duality prevailed serious difficulties arose. Co-ordination of effort and policy and arrangements between those responsible for secondary and those responsible for elementary education were secured only with difficulty, if at all. The Report[2] of the Consultative Committee on the Education of the Adolescent said :

'It was fast becoming impossible to continue the arrangement under which the education of a number of urban areas was administered by two local authorities. The smaller the area the greater were the difficulties. Another Director

[1] *R.C. on L.G. : Minutes* (Part II, p. 403), Memorandum of Evidence by Board of Education points out that in 1902–3 there were 328 Authorities for elementary education and that in 1923 there were 318 (i.e. several authorities had relinquished their powers and duties under the Act of 1902, Sect. 20). The following tables demonstrate the position clearly :

1902–3		1923
62	County Councils (including London)	62
1	Isles of Scilly Council	1
69	County Borough Councils	82
138	Borough Councils	129
58	Urban District Councils	44
Total 328		318

Cf. evidence by Selby-Bigge, ibid., Qs. 6,149–99. See also 'Cost per Head,' Report by Board of Education, 1932.

[2] *Report*, p. 162.

of Education informed us that there were thirteen authorities for elementary education forming enclaves within the area of his County with the result that the education of the County had to be fitted into thirteen systems.'

'It was indeed a task that almost passed the wit of man.'

Secondly, the elementary authorities had the power (Sect. 20, Act 1921) to provide, by Central Schools or otherwise, advanced instruction for the older or more intelligent children. But this is a direct incursion into the field of the secondary education authority, which educates pupils from about the age of eleven. The problems arise of the relative quality of such post-primary education given by the respective authorities, overlapping provision, and in some cases a short-circuiting of education from a secondary course to a central school course.

Thirdly, there is the anomaly of small County Boroughs with complete autonomy in education, compared with Urban Districts of extremely large population. For example, a County Borough like Canterbury with a population of 25,000 is autonomous for all forms of education, but Urban Districts like Willesden, Rhondda, and Tottenham with populations over 100,000 have powers for elementary education only. Yet it seems to be a common conviction that there is a great advantage in a comparatively small area for educational purposes. The authority's officials can easily get to schools for the purposes of inspection; teachers and parents can get at the local councillors easily. Indeed, in the best administered Counties considerable delegation occurs with the encouragement of local interest. There seems to have been no demand by Non-County areas without their own secondary education to obtain it; and yet it has been urged that it is a great advantage to have one authority for all educational purposes. The patchwork in educational arrangements is shown in the examples of Kent, where the county is responsible for elementary and secondary education with the area including one county borough also responsible for elementary and secondary education and 16 separate Part III areas concerned with elementary education; Middlesex, where there are 13 Part III Authorities; Lancashire, where education is divided among 17 county boroughs and 27 Part III Authorities, and the West Riding where 10 county boroughs and 11 Part III areas share education with the county council.

The Consultative Committee on the Education of the Adolescent, however, asks [1]:

'Will it be possible in the future for the country to acquiesce permanently in the division of part of the secondary grade of education between two separate authorities in the same area, with the result that an authority for elementary education only may start a Modern School or Senior Class when neighbouring "Secondary" Schools under the administration of the authority for higher education are not fully used?'

[1] *Report*, pp. 163–4.

And the question emerges, whether one may still continue to leave the co-ordination of the education services to the voluntary arrangements of authorities whose energy falls short of achievement.

The Consultative Committee suggests four possible answers,[1] the immediate practical one being co-operation between the authorities, if fuller advantage were taken of the various provisions already in the statutes designed to facilitate co-operation. Its ultimate hope lies, however, in new 'provincial' authorities.

'The third is legislation creating new provincial authorities in which the authorities for elementary education only and the authorities for elementary and higher education will both be merged. . . . Such an Authority, we conceive, will, in the majority of cases, have to be broader than the geographical county, all the more as county boundaries, over which children must often pass to reach the place of education best suited to their needs, already raise difficult problems; and we look forward accordingly to the institution of a few large Authorities each of which would represent some groupings of contiguous Authorities united by common characteristics and common needs. [2]

Indeed, a regional area for co-ordination of all educational effort in the area, together with room for experiment and local management is the ideal solution both as regards educational quality and economy. The Board of Education Report in July 1943 recommended the assignment of all responsibility for education to the county and county borough councils with a power on the part of the counties to delegate authority to places under 60,000 population, and an obligation to do so, at that figure and above.[2]

Highways. Until 1862 highways were administered by two sets of authorities; the great through roads by the Turnpike Trusts and the rest by the individual parishes. The Highway Act of 1862 authorized the grouping of parishes into Highway Districts, while, partly owing to the competition of the railways, and partly by law, the Turnpike Trusts came to an end. Meanwhile, the growing amount of traffic made it necessary for at least the through roads to come under the control and be supported from the funds of a large authority. It was, however, not until 1878 that the roads were made a District liability, whereas they had hitherto been a parochial liability. Then,

[1] These are:

(1) To abolish Authorities for elementary education only and transfer all their powers and duties in respect of education to existing Authorities for higher education.

(2) To transfer to Authorities for higher education all the powers and duties of all the authorities for elementary education only in areas not reaching a definite minimum population, and *vice versa*.

(5) To create new provincial Authorities in which the Authorities for elementary education only and the Authorities for both elementary and higher education will both be merged.

(4) Co-operation between the Authorities mentioned in (3), with the object of securing by mutual agreement a planned provision of higher schools.

Ibid., p. 164.

[2] Cf. *Educational Reconstruction*, Cmd. 6458.

also, the category of main roads was defined to be aided by grants from county funds to the extent of one-half the cost of maintenance. From 1882 the central authority made grants to the highway authorities.

The Local Government Act of 1888 imposed upon County Councils the entire responsibility for maintaining all main roads in the County, but (*a*) an Urban authority might elect to retain the maintenance of the main roads in its area at the expense of the County Council, and (*b*) the County Council might require or enter into a contract with any Urban or Rural District for the maintenance of the main roads, the County Council, of course, paying the bill. The rest of the roads came under the control of the Boroughs and Districts. Regarded from the angle of later generations whose civilization depends to a great extent upon motor transport moving over the whole country, and passing through the small authorities, this arrangement had two defects. The first was that the County itself, unchecked by any external authority, decided which roads were main roads. This gave rise to a tremendous variety in the administration of roads from County to County. Secondly, there was no authority which could link up the policy of the Districts (in regard to main and non-main roads) and the Counties (in regard to the portion of main roads under its management) in order to secure a national road system based upon uniform planning of the direction and quality of the roads.

The differences in practice in the determination of main roads was extraordinary, some, like Huntingdonshire, Bedfordshire and Hertfordshire, having mained practically all the roads, and others, like Surrey, practically none. Some roads which were mained were nothing but tracks of grass and rubbish. Where the roads which should have been mained were not mained, roads of first-class importance were maintained and managed by authorities financially incapable of keeping them in a proper state, and it involved also a great variety in the poundage of rates from one area to the other. The results of the system were serious. The continuous physical road was a series of main roads and District roads and, in a short distance judged by the standards of rapid transport, we find wide roads, narrow roads, mere lanes, well-metalled roads and roads made of rubbish, with directions and cross-roads made to suit the needs of small localities without regard to through traffic. Local authorities fell very much in arrear in the work of adapting roads to modern traffic conditions, not least the Counties. There was a constant battle between the Counties, the Boroughs and the Districts for the control of the roads in order that their own local purposes might best be served, for immunity from expense, and for compensation when roads were transferred from the District to the County or fell

within Borough extension schemes. Instead of the authorities acting together upon a realization that there was a community of interest in a co-ordinated road system, with an even spreading of the charge, they acted as competing authorities; and the roads, one of the world's great civilizing factors, became always a source of contention. The smaller authorities usually resisted with all their power the transfer of roads to the County Councils, although experience showed that where transfer had occurred there was subsequently less ill-feeling among the various authorities. The resistance, at least, was maintained until recent years, when necessity and public opinion became so pressing for road improvement that the rural authorities at any rate were faced by an intolerable burden. Furthermore, government grants could not but be injudiciously spent when they were given to local authorities who were really too poor to undertake the works of construction and maintenance necessary from the standpoint of the general community. Controversies continually revolved around the question which authority among several contiguous to each other was more responsible for the traffic in the area, and whether any improvement of the roads redounded meanwhile, to the advantage of a particular town.

The Royal Commission on Imperial and Local Taxation of 1901 recommended that some authoritative and impartial body should revise the distribution of the main roads grants and decide what roads should be main roads. A Road Board, absolutely essential owing to the growth in long-distance traffic, was established in 1909, its principal purpose being to make advances to the various Highway Authorities for the general improvement of roads. The Departmental Committee on Local Taxation of 1914 recommended that the power of defining main roads should be entrusted to the Road Board and that this authority should classify the roads from time to time, and make grants in accordance with their relative importance.

In 1920 control over highways administration was transferred from the Road Board to the Ministry of Transport. The Ministry proceeded to classify the roads, and over the old, unsystematic classification of main and other roads it laid its own classification of Class I, Class II, and other, roads:

> 'Under the classification scheme, we have ignored the main road *per se*, and we have taken as the principle of our classification the relative importance of the roads to the country, whether they be main roads, County high roads, Non-County Borough roads, or district roads. In applying that principle we took into consideration the importance of the road, and the district that each road served; that is why, of course, we ignored the main roads . . . which were of no importance, or of very small importance, for traffic purposes other than just local needs.'

In fact, nearly 3,000 out of 18,000 miles of main road could not

be included in Class I. Grants of various sizes are given according to these categories and the urgency with which it wished road schemes to be pressed forward. It realized at once that it was impossible to regard the Districts and the Counties as the natural units for road administration, but that it must have in mind larger areas altogether, and, that though the work and the immediate plans would be made by the authorities still responsible, it would yet be necessary to make those individual plans fall within more comprehensive schemes of which it approved. Hence England was divided into six Road Divisions, and in each the Ministry appointed a Divisional Road Engineer with Engineering Inspectors and a small clerical staff. One of the chief duties of the Divisional Road Engineers is the examination and approval of estimates for works of maintenance and improvement to be carried out on Class I and II roads in their Divisions. The grants are based upon their recommendations. The engineers preside at conferences of local authorities to obtain concerted action and remove difficulties of a local, technical, or economic kind.

In spite of the work of the Ministry of Transport, the fundamental difficulty still remained of the small areas in control of what were virtually national and County roads (and some of the classified roads included roads for which Districts were responsible), and no fundamental change could come about without this problem being settled. Not even the increase in the size of the Districts as contemplated by the Royal Commission on Local Government would be an adequate remedy for the real difficulty if the roads were still distributed among the old authorities in the same way. Nor did Sir Henry Maybury[1] look with much favour upon the idea of large areas of administration managed by an *ad hoc* board of delegates (as well as Government representatives).

Reliance on joint schemes was, as in other services, rather severely criticized before the Royal Commission on Local Government[2]:

'(*Sir Arthur Myers*): . . . I think it would work to the advantage of everybody, but I do not like to suggest anything which would detract from the importance, as I believe the very valuable importance, to the nation, of the existing County government.

'Would that in any way minimize the value of the County government?—Yes, because you would have your Board, which would be an *ad hoc* body of elected representatives probably at least once removed from the ratepayers. You would get, in other words, what we have in London in the Metropolitan Water Board. You know how that is constituted; it consists of certain representatives appointed from an elected body, and it might be said that such a body was not quite democratic?

'Would not that mode of election rather raise the status of local government?—I do not think so.

'(*Colonel Williams*): It is impervious to effective criticism?—Yes.

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[1] Then Director-General of Roads, Ministry of Transport.

[2] Maybury, *R.C. on L.G.: Minutes*, Part V, pp. 1102–5, Qs. 17,915–996.

'(*Sir Ryland Adkins*): Is there not this difficulty about it? If the Government itself directly administered the classified roads, although of course such a scheme would be right against local government, at any rate the Government would be represented by a Minister at the head of a Department of that kind? —Clearly.

'And there would be opportunities of making the Minister's life unhappy when it was considered that the thing was being badly done?—Yes.

'On the other hand, under the present system by which County Borough Councils or County Councils have control of roads, there is an opportunity at least every three years to disturb the people who are mismanaging, if they are?—That is so.

'(*Chairman*): The point is this: is it possible to have an assessment extending beyond an Administrative County between the various Authorities who use the roads?—It is possible.

'I mean, to extend the Blackpool and Brighton and Leeds system?—Yes, it is possible. It would mean a good deal of organization, and I can imagine a good deal of unpleasantness and vexation occasioned by such a Board.

'(*Sir Ryland Adkins*): There has to be spiritual harmony before the organization is created?—I think so. I think it would have to be agreed on both sides first. If it were put upon these County Boroughs against their will, I should not care to have the administration of such a scheme.

'And they would be reluctant, all human nature being identical in this particular, to pay more unless they were either converted in their souls or compelled by the Legislature; is not that what it comes to?—That is so.

'(*Sir Lewis Beard*): And anybody who tried to compel them would have a bad time?—That is so.

'(*Sir Ryland Adkins*): And anybody who tried to convert them would grow old in the process.

'(*Chairman*): There are some of the County Boroughs who do make these contributions as an act of grace?—Purely voluntarily.

'An act of conscience?—It is in connexion with special schemes; it is not general.'

The Act of 1929 attempted to settle the matter in a radically different way from the Act of 1888: by enlarging the areas of administration, and producing closer contact between local authorities and the Ministry of Transport.

All highway powers hitherto exercised by Rural District Councils passed into the direct administration of the County Councils. Secondly, all main roads and classified roads administered by the Urban Districts and the Municipal Boroughs and the Counties, were transferred to the County Councils. All these are called 'County Roads'. But there is arranged the possibility of devolution from the County to the Urban Districts, for these may claim the delegation to them of the maintenance and repair of the County Roads in their areas, but the Minister of Transport may postpone such delegation where grants are given from the Road Fund or where roads ought, having regard to the best means of promoting economy and efficiency in highway administration, remain vested in the County Council. The road charge will be entirely a County charge, and the District Councils will act merely as the agents of the County Councils. County Councils

may agree with Urban Districts to take over classified roads for which they are responsible, when the District will pay the expenses to the County.

Any District Council, rural as well as urban, may apply for delegation of all (*a*) the unclassified, or all or any of the (*b*) unclassified roads, and (*c*) County bridges. In regard to unclassified roads the County Council must grant the application unless they are satisfied that this would be adverse to economy and efficiency in the County and the District. The Ministry of Transport is the final court of appeal in a dispute. As regards classified roads or County bridges, the County Council has unfettered discretion whether or not to grant the application. Expenditure is subject to County Council approval where delegation is granted. Of course, in County Boroughs, there is one authority over all roads.

All these things tend then to reform the present system of areas and powers, systematizing and unifying, and as a secondary effect, they spread the area of charge, and therefore reduce the number of necessitous districts which, when independent, require aid from the central authority. An alternative to larger road areas, or a supplement to this or to the original local authorities, is the total assumption of administration by the Central Authority. This alternative is likely to be adopted sooner or later where the smaller bodies are unable to satisfy the need for a regional scheme through the setting up of a joint authority or otherwise by reason of simple ignorance or an excessively narrow view of their responsibilities or by reason of financial incapacity. Largely to meet this last contingency, the Trunk Roads Act of 1936 constituted the Minister of Transport the Highway Authority for 26 " trunk roads " outside London and the county boroughs. The upkeep of the 4,500 miles of road thus involved is at the expense of the Ministry of Transport, which is especially concerned with uniformity of layout, width, surface. The Ministry may and does delegate to the county councils the maintenance, repair and improvement of these roads and, of course, the councils act subject to the directions of the Ministry.

Co-ordination of Transport. More recent developments in Road Transport are taking these reforms further. No institution exists in England for co-ordinating all forms of public transport, and for attempting to secure the due economy of this form of enterprise. Until 1930 the local authorities had the duty of licensing passenger vehicles, but the authorities and their powers were determined by horse-driven traffic of half a century ago. This resulted in two things. First, the power to license was vested in the County Boroughs, in the small authorities, the Municipal Boroughs, Urban Districts, and even some Rural Districts. Secondly, there was no conscious policy of public control for the sake of economical operation, licences were not with-

held on grounds of economy since the State had no rightful claim to interfere with individual enterprise.

Against these two features counter-tendencies have manifested themselves: first, motor-transport services now cover large areas, so that the licensing authority is very often only a minute part of the area which suffers the defects or enjoys the benefits of its wisdom; and secondly, the nation has come to realize that it, as a whole, has an interest in reducing the uneconomical effects of irrational competition. Moreover, the small areas of licensing, and there were 1,100 of them, had the power to co-operate, but had not done so. What was to be the licensing authority in each area?

In the first place, although for years it had been open to existing licensing authorities to enter into close joint arrangements with each other, *very few joint licensing advisory committees had been formed.* Secondly, it was always possible for an individual authority to abstain from taking part in the scheme and thus to render ineffective much of the work of the Committee. A case of this description was cited by a witness representing the Association of County Councils in Scotland (Walker, Q. 9453). It appeared that a practically uniform system of licensing would have been in force throughout the County of Lanark but for the fact that the burghs of Airdrie and Coatbridge had not been willing to come into the scheme.

Such considerations led to the appointment in 1922 of the Departmental Committee on the Licensing and Regulation of Public Service Vehicles,[1] and later, because the problem had become vaster than could be coped with by the machinery suggested in its Report, of the Royal Commission on Transport in 1928. It is interesting to all students of government to observe that the Departmental Committee of 1922 still attempted to solve its problem by relying upon the larger local authorities—that is Counties, County Boroughs, and Urban Districts of over 20,000, and this would have reduced the number of licensing authorities from 1100 to 300. This suggestion, indeed, was included in the Draft Road Traffic Bill of 1927. A few years, however, caused a change of mind; so did the strife among the local authorities who were unwilling to relinquish any of their previous powers. The Royal Commission pointed out the evils of the existing and the suggested system.[2]

'Every local authority naturally looked to securing efficient transport facilities within its own boundaries and the district immediately surrounding, and has comparatively little interest in long-distance through services or even in services to and from towns some distance off. From this point of view, services merely add to the congestion of the streets and to some extent compete with local services.'

[1] *Report on the Licensing and Regulation of Public Service Vehicles, First Interim Report*, 1925.

[2] Cf. *Report*, Cmd. 3416, 1929, pp. 27 ff.

Co-ordination of transport was impossible; so also was proper inspection of public vehicles, for the local authorities were mainly too small to afford the necessary skilled staff of examiners. Then, the small areas were themselves owners and operators of transport services, and the suspicion naturally arose that they favoured their own vehicles at the expense of possible competitors. In spite of this, rural districts, urban districts, boroughs and counties severally asserted, and even with satisfaction, their capacity to handle the administration in the future, and put forward the usual plea that voluntary joint schemes would suffice.

The Commission took the bull by the horns:

'The responsibility should, in their opinion, be placed without equivocation upon a directly elected body and not upon a body consisting of nominated members having only a secondary responsibility and being divorced from the checks which election must occasion. They were thus eventually driven to a review of the local authorities now existing throughout the country for the purpose of determining which of them should be entitled to continue or to assume the duty of exercising licensing powers.

'We have carefully considered the representations made on behalf of the various local authorities. As a general principle we fully recognize the desirability of local authorities having, as far as practicable, control within their areas of all matters affecting the public interest of the community, and we are reluctant to make any recommendation which may appear to run counter to this principle. In regard, however, to the question of the licensing of public service vehicles we have been irresistibly driven to the conclusion that in the present day conditions of road passenger transport services, effective control, regulation and co-ordination cannot be secured by the retention of even the larger authorities as the licensing bodies. On the other hand, we are satisfied that local authorities should retain powers enabling them to exercise a very considerable control over the public service vehicles passing through their districts.'

Consequently, it made recommendations of a rather revolutionary character, and these, almost verbatim, were included in the Road Traffic Act of 1930. It created 11 Traffic areas including the London Traffic Area. The Commission's primary concern was to define areas upon traffic considerations not to be unduly influenced by the existing boundaries of local authorities. These areas (each covering about five counties) are the areas of supreme control of licensing and regulation of Public Service Vehicles. For each of these Areas a special Authority is constituted: the Traffic Commissioners. This is a body of three persons. The Chairman is appointable by the Minister of Transport at his full discretion. He is a salaried whole-time officer appointed for seven years, and eligible for reappointment from time to time on the expiration of his term of office. It is clear from the spirit of the Report of the Commission that they intend that he shall be an officer skilled in the law and economics of transport. The two other Commissioners are appointable by the Minister for three years, but he is obliged to take candidates from panels, the one

nominated by councils of the counties, and the other by the councils of the county boroughs and urban districts, whose area is situated in the traffic area. These panels are nominated annually. These two Commissioners are not viewed (according to the Report) as whole-time officers, but may receive remuneration and expenses as the Minister thinks fit. The officers and servants of the Commissioners are appointable by the Minister of Transport. The Minister may remove any Commissioner for inability or misbehaviour. The Commissioners must hold public sittings for the grant and backing of road service licences, and may for any purpose, as they think fit, hold public sittings. They must report annually to the Minister on their proceedings, giving such particulars as he may direct. The work of the Commissioners falls broadly into two parts: the licensing of a vehicle, that is the declaration that the vehicle is fit for its purpose and the grant of a road service licence. For the first purpose they have Certifying Officers and Public Service Vehicle Examiners. A large power is given to these. The second function is even more far reaching, for it extends to a judgment of the suitability of routes, the extent to which they are already adequately served, the necessity or desirability of the proposed service, the needs of the areas and the co-ordination of all forms of transport, and so forth.

Any road service licence made by one set of Commissioners is not necessarily valid in another area; it must receive the endorsement of the Commissioners for that area, and they have full discretion on this matter as though they were granting an original licence.

Against the action of the Commissioners there is an appeal to the Minister, whose decision is binding on the Commissioners.

The Commissioners have many other powers, but we have decided to say enough only to show how far the organization of local government is being changed; for within this scheme the old local authorities have been deposed, and now have only the power to make regulations regarding the routes, stands and stopping-places of vehicles, and even these do not become valid until the Minister after consultation with the Area Commissioners confirms them.

In all this the Ministry plays a large part; it appoints the Commissioners and the subordinate officers, removes Commissioners with a financial interest in any transport enterprise within his area, removes for inability or misbehaviour, appoints deputies in case of illness or absence, specifies the nature of reports, revokes certificates of fitness, declares all vehicles of a particular type as fit without closer examination and by simple inspection by the Certifying Officer, and makes regulations regarding the conditions which Commissioners may attach to a road service licence, demands financial and statistical returns from people operating public service vehicles, and hears and determines appeals.

Passenger Transport. Now, many local authorities conduct tramway, trolley and petrol bus undertakings.[1] Some run only tramways, which are being steadily replaced by buses; some run buses only; and some all forms of street transport. There is a great deal of through-running, neighbouring local authorities using each others' tracks for payment and in some cases a single local authority's tramways or buses run by agreement over an area well into that of its neighbours. But such joint arrangements have been very difficult to conclude and in many cases where to an outside observer the need is obvious, regional agreements have not been attained in spite of years of effort. Such is the case, for example, in the South-East Lancashire and East Cheshire area centreing on Manchester: the negotiations for a single joint transport board including 11 authorities have been abortive. In the Tyneside area with its 17 local authorities the Royal Commission on Tyneside Local Government (1937) was convinced of the prima facie case for a joint passenger transport board. The economy and convenience of such arrangements need no labouring. It is perfectly clear also that the transport facilities and administration are intimately bound up with the location of residential areas, the housing estates of local authorities often subsidized (and distant from the city or industrial centre), the general planning of the region with an eye to industrial needs and the area of electricity generation. This also has to fit in with the schemes of private enterprise in the road passenger traffic by short and long distance motor coaches (local authorities carry only about one-fourth of all passengers) and the railway system. Though there are some joint transport boards, and these show the value of such arrangements, only 9 have actually been established.

Poor Relief and the Boards of Guardians. A fundamental reorganization in Poor Law administration was prepared by the Local Government Act of 1929. This reorganization sweeps away the last important *ad hoc* authority, principles and institutions which reach back to the sixteenth century, though the Act deals more immediately with the consequences of the Poor Law Amendment Act of 1834. These consequences were not fully realized until the Royal Commission on the Poor Laws of 1905[1] made one of the most thorough and enlightened sociological investigations of recent times, and prescribed remedies for the defects. The remedies then prescribed governed the reform of 1929. A description of events since 1905 is best directed to an elucidation of (*a*) 'the principles of 1834', (*b*) the attitude thereto of the Majority and the Minority Commissioners, (*c*) events since 1914, and (*d*) the contents of the present law. The reform of 1834 rested upon the Report of 1834, and may be divided into (1) machinery of administration and (2) principles of

[1] Cf. Finer, *Municipal Trading*, 1941, Chap. 15.
[2] Cd. 4625, 1909.

relief. Poor Relief was administered in 15,000 separate parishes; the Act substituted Poor Law Unions, and this caused a diminution of the number of authorities to about 640 Unions. This reform was dictated by a fact already evident for a whole century—that the parish was too small an area to afford enough money or skill, to provide an appropriate workhouse, or other means of relief. Secondly, a central authority, the Poor Law Commission, was created, with minute regulatory powers over the Boards of Guardians, and with a body of inspectors to see that the Guardians were effective. Thirdly, the Boards were constituted by election, and though the elections were not based, at first, upon the principle of 'one man one vote', yet a democratic beginning was made, destined to lead in the end to a curious crisis in Poor Law administration. Then, as now, the obligation to maintain the destitute was upon the family, and only upon their default were the public funds chargeable.

What then? The principles of relief were based upon the economic theories of Adam Smith and Malthus, and upon the political psychology of Bentham. Offer men an easy time, it was argued, and they will take it: offer them a hard choice, and they will choose the lesser evil. To reduce the number of paupers, reduce the advantages offered by poor relief. Relief must be made 'less eligible' than the livelihood of the independent labourer. Further, the operation of this principle must be made foolproof, automatic, so that no Board, however stupid, could go wrong. This was to be obtained by affording indoor relief, *in the workhouse, only*. It was believed that the Workhouse Test, and a 'deterrent' treatment in the Workhouse, would automatically reduce destitution, and cast out the moral defect in the able-bodied which caused their demoralization.

In the course of the century the Poor Law authorities were obliged to retreat from the 'Principles of 1834', and create entirely new modes of dealing with the destitute. Moreover, new local governing bodies were being called into existence whose general purposes could, under the proper circumstances, make them an agency to deal with the destitute. The Commissioners of 1834 had, through a biassed investigation, identified the able-bodied unemployed with the whole body of the destitute: at least they had not prescribed, in any detail, for the treatment of all other classes of destitute, which, children, widows, aged, infirm, mentally unbalanced, constituted three-fourths of the problem. (Later we show how the fact that ill-health created destitution forced itself into the mind of the Commissioners.) The Poor Law Board soon began to realize this and, little by little, special arrangements began to be made for the various classes of destitute on principles which could not possibly be deemed either 'less eligible' or 'deterrent'. Children were taught in workhouses years before any general public provision was made for the education of the independent poor; and

they were helped to emigrate. A medical service with infirmaries and dispensaries was established. Special arrangements, assisted by the central authority, were made for pauper lunatics. Even for the ablebodied unemployed it was found that 'deterrency' was not enough: what permanent good was there in letting a self-respecting worker suffer the 'stigma of pauperism', when his destitution was caused by the bad organization of the labour market, lack of skill, or fluctuations in opportunity of work caused by social arrangements entirely outside his power? Gradually outdoor relief, formerly strictly forbidden, was introduced irregularly and without rational discrimination; and after the middle of the century alternative means, such as relief work by municipal authorities, were suggested as being much better than pauper task work, since the psychological effects were not so dangerous.

By the nineties a new social conscience had discarded *laissez faire*, and State Regulation had been applied to workmen's compensation, education, public health, and many other things. Society, having become conscious of its essential unity, became conscious increasingly of its obligations, and it was only a matter of time until new institutions should be created to deal alternatively with the classes included in 'the destitute'. A few years later Parliament was already debating the removal of the aged from the workhouse by an old-age pensions system. In the twentieth century there were added to these powers the duty of Town Councils to set up Distress Committees to aid the unemployed (1905), and shortly afterwards education authorities obtained power to feed necessitous school children (1907) and to provide a school medical service (1906).

The development of local and central government functions in these directions provided a way of reducing destitution while it was *potential*, and before it became actual, or as the Minority of the Royal Commission said, before it became '*physical* destitution'. They treated those who might possibly become destitute owing to the social accidents of disease, infirmity, accidents, old age, unemployment. The whole apparatus should be *preventive* of the evil: the existing Poor Law apparatus could not function until destitution had already set in. Further, side by side were two administrative systems: one dealing with all citizens while they were not destitute; the other a special *ad hoc* Destitution Authority. Between the two there were no connexions; and necessarily, there was much overlapping, for the Boards of Guardians had to maintain a set of institutions and officers—homes, schools, hospitals, teachers, physicians—almost as extensive as the municipal authorities, yet independent of them.

A Royal Commission was established in 1905, for the Poor Law apparatus had effected no large and permanent decrease in destitution. The Guardians were shown to be neither capable of managing such

a complex of services nor of providing financially in their comparatively small areas for the greatest efficiency. The Majority and the Minority agreed (1) that all the services which could deal with the 'outdoor relief' problem should be properly systematized; for example, there should be an old-age pension scheme, school clinics, a state medical service and Labour Exchanges. By 1914 these things were in good, though not perfect, working order. (2) Further agreement was reached that the area of administration should be the County and County Boroughs with suitable decentralization. This would increase the area of charge, and thus partly deal with the problem of areas too necessitous to provide properly for their poor, who necessarily were most numerous where the area was poorest; make possible technical economies in administration feasible only with large-scale organization; and by making the larger areas of government even more important than they already were, increase the quantity of good candidates for councillorship.

Then emerged a great and perhaps enduring disagreement. The Minority believed that their analysis of local government and social history justified the view that the Poor Law authority as such should cease to exist, should be 'broken up', each class of the clients with which it had till now dealt being transferred direct to the appropriate committee of the County or the County Borough—the Distress Committee, the Education Committee, the Public Health Committee, the Pension Committee, and so on. There would thus be continuous supervision from birth onwards through school-time and into the office or the factory, in the *ordinary course of the local governing authority's work*; no distinctions being made between a pauper and any other citizen. The Majority could not agree that the question of a citizen's moral responsibility should be investigated last, but argued that consideration of this must come first. The County or the County Borough must have a Public Assistance Committee which would control the destitution policy carried out by funds provided by the Council. In the smaller districts there would be decentralized committees, assisted by Voluntary Aid Committees; and these would see the applicants, inquire into their circumstances, sort out the deserving from the undeserving, and give the former milder conditions of relief than the latter. The Majority wished first to detect any 'defects in citizen character' (Bosanquet's phrase in *Sociological Review*, April 1919); the Minority were content to deal first with ascertainable social causes of destitution, and pointed out that the greatest of many defects in the Majority scheme is that destitution occurs *before* relief is afforded, whereas their scheme gives all scope to preventive measures.

The years between 1909 and 1914 were occupied in social and constitutional reforms. The main destitution problem was left untouched.

From 1914 to 1929. The war relieved the Boards of Guardians of nearly all problems save those of the pauper sick and infirm, the feeble-minded, aged, and children. An equivalently heavy burden was added by the aftermath. British industry suffered a catastrophic change, and the burden of pauperism caused by unemployment was immense. In the North, above the line from the Severn to the Wash, though other places, especially the Metropolis, were not free from troubles, difficulties became acute beyond toleration. The Unemployment Insurance Scheme and relief works could not cope with the difficulties. In 1922 there were 1,857,000 people in receipt of poor relief in England and Wales; at the end of 1925, 1,324,000, and directly after the coal dispute of 1926, 2,250,000. The problem was chronic: where there was most necessity, and least means for provision, there was most pauperism. Yet no wholesale scheme of reorganization was undertaken, nor was any exceptional help given by the central authority to the Poor Law unions thus distressed. These necessarily were driven into making loans. This compelled the Conservative Government in 1926 to pass the Board of Guardians (Default) Act, which gave the Minister power to suspend the elected Board of Guardians and appoint commissioners to take their place and carry on the work of relief. This was the unavoidable result of a special destitution authority faced with extraordinary numbers of able-bodied unemployed on outdoor relief—for if the democratic principle resulted in the victory of the poor, they would necessarily be more generous in their principles of relief than a Minister or his Commissioners not responsible to the local electorate. Governments since the war were faced with two problems: how to relieve the necessitous districts, and how to settle the general Poor Law problem. Various schemes had been examined before the Committee on Schemes of Grants to Necessitous Areas [1]—without success; for the dilemma always remained, a heavily-aided area must be severely controlled, and to control severely is to suppress local government; nor was the Government anxious to subsidize local extravagance. As for general Poor Law reorganization, that had just been considered by the Committee of the Ministry of Reconstruction, under the Chairmanship of Sir Donald Maclean.[2] This largely followed the recommendation of the Minority Report of 1909, but on to this was grafted the Public Assistance Committee recommendation of the Majority Report, called in the Maclean Report, the 'Home Assistance Committee', which was to act as the inquiry and investigating committee in all applications for relief, and to supervise and administer all relief given in the home. This last proposal, would, of course, obstruct the abolition of the 'destitution' authority. Its greatest value was again to insist on the overlapping of the work of municipal authorities and

[1] 1925. [2] Maclean Report, Cmd. 8917, 1926.

the Guardians (see p. 4 of the Report). In 1923 the Government circulated proposals for Poor Law Reform, and then, these having been amended after consultation with all the local bodies concerned, a further set of Provisional Proposals was circulated in January 1926. Again there was a consultation, and from this issued the draft of the Local Government Bill 'Part I, Poor Law', which passed almost without amendment.

Destitution under the Local Government Act, 1929. On 1 April 1930 the Boards of Guardians ceased to exist. The administration of the functions we usually class as the Relief and Prevention of Destitution is vested in the County Council and the County Borough Council. This at once broadens the area of charge considerably because instead of a Poor Law area being on the average 1/640th of the whole country, as before, it will now be about 1/140th, there being just over 140 County Councils and County Borough Councils together. The area of charge is, on the average, four times the former size. Further, Councils may combine to carry out their functions, and power is even given to the Minister compulsorily to cause such a combination where he thinks expense would thereby be diminished or combination would be otherwise of public or local advantage. This is another of the many instances in the last quarter of a century where the central department has received a power of intervention.

The Councils [1] were compelled to prepare administrative schemes to deal with the transferred functions, to be submitted for approval to the Ministry of Health, who could approve 'with or without modifications'. (Observe, once more, the addition of power to the central Administrative Authority!)

The crux of the Act is in the contents of these 'administrative schemes'. The Act empowers the Councils [2]—that is, permits them—to give any poor relief assistance, through their general powers to deal with public health, mental deficiency, maternity and child welfare, blind persons, tuberculosis, education. That is to say, the Councils may split up the general body of destitute citizens into citizens needing the attention of the public health department, of the education department, or any of the others mentioned above, and by the Act. And even then no one may be allowed to fall between the crannies of this arrangement. Assistance includes not only that under the Poor Relief Acts but *all* services which can be provided by virtue of the Acts mentioned.

Thus, councils may or may not break up the Poor Law in the sense of the Minority recommendations of 1909 as they wish; *and whether this is done will obviously depend on the will and instruction of the councillors.* This reform will stand or fall by the administrative

[1] Part I, Sect. 4. [2] Sects. 5 and 6.

schemes made in compliance with the permissive powers of the Act. The organization under it, as so far developed, is summarized in the Annual Report of the Ministry of Health, 1931–2, and any County or County Borough Public Assistance Committee will furnish a handbook showing the extent of delegation to the Local Committee.

A subsidiary effect is that areas much larger than before are the basis of administration, with the result that charges are spread over a very much larger body of ratepayers. One of the gravest defects of Poor Law administration during the nineteenth and twentieth centuries (and in the seventeenth and eighteenth centuries also) was that the parish, and later the Poor Law Union, were areas far too small to bear the incidence of their own poverty. This fact, coupled with the concentration of industry, and therefore of possible unemployment, in certain specific areas, caused them to become truly necessitous, they having at once the greatest need for relief from destitution, and the smallest financial ability to help themselves.

Secondly, as the Poor Law is broken up into its component preventive administrative services, each part comes under a different and more rational system of grant-in-aid from the central authority, and a more specialized inspectorial system. Of the inspectorial system we speak at length in a future chapter, and in regard to the Poor Law, we show that Inspection was faulty, because while the system of relief had become more and more complex and specialized the inspectors were still 'general' inspectors, to whom deterrency, not prevention, was the first principle, and they were not qualified to understand the educational and medical work of the Guardians. The present reform is a great and beneficial change, for by distinguishing and separating the various classes of the destitute, each class will come under its appropriate and expert inspectorate.

Two things, however, must be borne in mind regarding the new Public Assistance areas. First, they do depart disadvantageously from a principle of area-making applied in 1834, namely the intermingling of urban and rural territory. County and county borough are severed, that is, rural areas are severed from the bigger cities; and the non-county boroughs and urban districts in the vicinity of the county boroughs, certainly faced with common problems, are in separate hands. Different groupings altogether might give much better administration and financial results. Yet secondly, this problem tends to be less important than it was when the Poor Law began to be broken up in 1929 for since then two events of great importance have occurred. In 1934 by the Unemployment Assistance Act the Central Authority through the Unemployment Assistance Board undertook to assist able-bodied unemployed between the ages of 16 and 65 before they had gone into employment or whose unemployment insurance payments had ceased. This measure relieved the Local Assistance Authorities

of some £3,500,000 out of a total burden of £33,000,000 for public assistance. In 1942 the Beveridge Report recommended a very comprehensive scheme of social security, the cash allowances under which for the various contingencies would much reduce the need for Public Assistance Authorities acting in the traditional form, though a margin of cases would still remain. More important than this already important fact, however, would be the need to set up locally what the Report calls Security Offices for the administration of the insurance provisions and the assumption that a comprehensive state medical provision would be made. There is no doubt that a reconstruction of areas with a need to depart from the traditional ones would be required fully to implement both the security provisions and state medical provision.

As regards the provision of medical services through state administration centrally and locally, plans already in mind regard the existing local authorities as at best subordinate and instrumental units within an appropriately delimited region. The British Medical Association, thinking in terms of lines of communication to and from convenient centres and areas, with a population large enough to justify self-contained health services both comprehensive and well balanced, believes that such areas should as a rule be not less than half a million.[1] Again, the Interim Report on Medical Planning Research [2] concludes that new areas to be known as regions ought to be set up to coincide with the national regions adopted for civil administration (in wartime) with certain adaptations. It would result in the establishment of 12 regions, viz. Tyneland, the Ridings, the Shires, Anglia or Fenland, London, Wessex, Westland, Wales, the Midlands, Lancastria, Scotland, the Weald or Eastland ; but the Report in question foresees the need for the division into two of some of these regions and the linking together of some others. The tendency, however, whatever the detail, is perfectly obvious—Great Britain would be divided for health administration purposes into something like 20 regions, of which four would be Scottish.

Electricity Areas. Until the turn of the nineteenth century the boroughs and districts were alone empowered to supply electricity. The idea of a larger area of administration could not be entertained since the quality of electric cable as well as generating machinery limited the radius of supply. Since then, however, new laws were passed adding the regulation of electric power to that of lighting : the Acts of 1919, 1920, 1922 and 1926. As a result of remarkable advances in power technology the problem arose—(in an especially acute form during World War I when economy of coal fuel became urgent)—of

[1] Cf. British Medical Association, Medical Planning Commission, Draft Interim Report, 1942, paragraph 56.

[2] Cf. *The Lancet*, November 21, 1942, paragraphs 103–110.

finding larger, more appropriate areas. This problem was faced especially by the Electricity Supply Act of 1919 which established a body known as the Electricity Commissioners under the aegis of the Ministry of Transport to foster the establishment of joint electricity authorities whether of municipal undertakings or private companies or both. The undertakings resisted, and to the present only three joint electricity authorities have come into existence.

A new approach was undertaken. The electricity problem was divided into two—generation, and distribution or sales. They could be separately treated with success, especially as the argument for a larger area for generation was much easier to demonstrate than the need for a larger area of distribution, though the latter is also clearly demonstrable. In 1926, therefore, the Electricity Supply Act caused the establishment of a public corporation, the Central Electricity Board, to create a comprehensive national network of electricial transmission (known as a "grid") connecting carefully selected original generating stations and to secure the elimination of uneconomic plants, to "select" and authorize other stations as the appointed producers, to co-ordinate production and the inter-changeability of supply.

As a basis for the C.E.B. operations, the Electricity Commissioners planned 10 regions, taking into consideration a variety of components of a steady, high and diverse demand. Such a basis of electricity areas is as essential as the watershed for water supply. For electricity cannot be stored: it is manufacted as each consumer switches on. Therefore it is urgent to build a plant capable of meeting all the demands of all switches at one and the same time, if necessary. But if the plant is to be the size which can take care of the maximum demand, if the amount of capital requisite to this is invested, then the economy of supply requires that the area shall contain consumers of such number and diversity as to keep the plant employed as near the maximum capacity as continuously as possible, taking into account the various seasons and their needs. The areas have been framed upon this consideration, all the industries, the type of commerce, their magnitude, domestic and farm use, lighting, heating and small power apparatus, having been taken into account.

In place of over 500 generating stations there are 132; at the completion of the system there will be some 145. The "grid" connecting these can be tapped at 280 points for main distribution purposes. Local authorities, like companies which run the selected stations, sell to the C.E.B. at a formulated cost price and they, as well as the local public and private distributors, buy from the C.E.B. at a formulated purchase price. The benefit is tremendous. Instead of 45 per cent of the total plant being held in reserve only 15 per cent is required; average fuel consumption has been reduced by about 11 per

cent at the end of 1935 over £11,500,000 had been saved in new capital for plant and this is expected soon to reach a saving of £30,000,000.

If the reform of power generation areas has been a success the same cannot be said of the twin problem of distribution areas. In 1938 there were still 364 local authorities and 234 companies undertaking supply. They differed enormously in size, that is in area, population and consumption. The financial resources of some were far too small to employ modern methods of administration and skilled officials. The variety of current and voltages seriously obstructed mass production and the conveniences of interchangeability of apparatus. Distribution costs per unit sold varied with the size of the undertakings in terms of sales most markedly,[1] but (and this is a very important matter), capable administration and sales policy are factors which may give a smaller undertaking better distribution costs than a large area ; and efficiency is in some cases itself a direct consequence of an area small enough for the vivid appreciation of sales problems and the pressure of the consumers on the local officials.

It has not yet been possible to secure any significant change in this situation ; but in August 1937 the Electricity Commission published an Outline of Proposals. 25 Electricity Districts containing 68 Groupings were suggested in which either Local Authorities or companies or both would be amalgamated to form new distribution areas. The first responses were concerned more with municipal unwillingness to give way to joint agreements with companies or to sell out to these altogether. The smaller undertakings insisted on their own continuance if found efficient. This problem will no doubt be tackled early in the post-war reconstruction period.

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The foregoing survey of the major services of English local government shows that the old areas and authorities are in the throes of drastic change. A few further observations are necessary in order that the field may be cleared for consideration in the next chapter of possible lines of reform.

(1) The tendency is towards larger areas of local government than the existing districts and in some cases than county and county boroughs. The juxtaposition of densely populated areas in great " conurbations "—such as Greater London, Greater Manchester, Merseyside, the West Riding, the South Riding, Tyneside, Greater Birmingham—produced in several parts of the country large urban regions considerably unified by their industry, their transport, their habits of living, their diversions, and accent. Yet, though the need for a larger area of administration is clear, this does not imply *direct* administration, for conditions may be satisfied by a power in some cases only of

[1] Cf. the table, Finer, *Municipal Trading*, pp. 270–1.

planning and regulation and financial assistance. Moreover, there is no arithmetical exactitude about the margins of the area which will give perfect administration—there is latitude about the exact frontiers in relation to efficiency.

(2) Not only is there no universal precision about the frontiers which will satisfy administrative efficiency, but the areas required to satisfy each service's most profitable technological exploitation differ very widely—for example, electricity areas and catchment areas are to each other as chalk and cheese.

(3) There is to-day a widespread feeling that the principle of the Act of 1888, which permitted the creation of independent county boroughs, while useful in a period when rapidly developing urbanism needed a constitutional encouragement, is now inappropriate.

(4) The problem of the size of local areas is not a problem of territorial extension alone ; it involves the size and grouping of the population. Furthermore, the efficiency of an area of government also depends upon its relationship with its neighbours as well as the part played by the central authority in (*a*) the amount of self-governing power given to it and (*b*) the share of financing and regulation, inspection and co-operation taken by the central authority itself.

(5) The central authority finds it necessary for its own purposes to concentrate some of its own centralized functions to local areas or regions : thus there are Education, Health, Inspectorate, Roads, Unemployment Assistance Board, Post Office, Home Office and Factory Inspectorate regions, each comprising several counties.[1]

[1] Cf. Dhona : *Decentralisation in Government Departments*, published by the Institute of Public Administration.

CHAPTER VII

THE FUTURE OF AREAS OF LOCAL GOVERNMENT

IN order to arrive at some conclusions regarding the probable future of areas of local government two things are necessary. First, we must sum up the results of development hitherto. Secondly, we must bring into the account the various arrangements for joint schemes among the existing authorities, and the mapping out, as recommendations, or as parts of the existing law, of new areas either within the County or composed of several Counties.

Ever Larger Areas. The first impression which one obtains from English local government history is the progress from small to large areas. The second is the lack of a clean-cut pattern of the distribution of functions: arrangements for joint schemes and for delegation from the larger authorities produce an effect of complexity and obscurity. The Police Service proceeds from the Parish to the County, with certain powers in the hands of some Municipal Boroughs. Highways administration progresses from the Parish to Highways Boards, then to the Counties and County Boroughs, and then to the Road Division and Road Traffic Areas. Education begins in School Board Districts and, within thirty years, is vested in the County and the County Borough. Poor Relief begins with the Parish, is then put into the hands of a Union of Parishes, and most recently into the hands of Counties and County Boroughs. Electricity Supply is first vested in the small urban authorities; later, may be administered by the County; and, finally, special Electricity Areas are established. Then there are services lodged from the beginning with the Counties and County Boroughs.

This development has not occurred simply, and without friction, but in the teeth of fierce resentment and resistance by the smaller authorities. The struggle described in an earlier chapter, leading to the reorganization of the Districts and the redistribution of functions between them and the County Councils, is but one example of what one may observe at intervals of about ten years throughout the nineteenth century. The result of evolution is the vesting of a number of functions requiring large-scale organization in the Counties and County Boroughs, the abolition of special bodies like the Guardians,

TABLE OF JOINT BOARDS AND COMMITTEES, ETC.

Type of Arrangement	Purpose	Body	Statutory Authority	Method of Constitution
Local Authorities have power: 1. To enter into arrangements for specific purposes which involve the constitution of joint bodies with independent financial powers (usually entitled Joint Boards)	Water Supply, Sewerage, Hospitals and any other purpose of P.H. Act, 1875	Joint Board	P.H. Act, 1875, s. 279	Provisional Order made by M. of H.
	Lunacy	Visiting Committee	Lunacy Act, 1890	C.C.s and C.B.C.s may unite with approval of M. of H.
	Isolation Hospitals and Hospitals for Infectious Diseases	Joint Committee	L.G. Act, 1894, s. 57	D.C.s may appoint
	Do.	Joint Committee	Isolation Hospitals Acts, 1893, s. 10, and 1901, s. 8	Formed by C.C., subject to appeal to M. of H.
	Enforcement of Rivers Pollution Prevention Act, 1876	Joint Committee	L.G. Act, 1888, s. 14; and Rivers Pollution Prevention (Border Councils) Act, 1898	Provisional Order M. of H.
	Port Sanitary Authority	Joint Board	P.H. Act, 1875, s. 287, and P.H. (Ships, etc.) Act, 1885, s. 3	Order of M. of H.: if objected to by a Riparian Authority, Provisional Order
	Cure of Mental Defectives	Joint Committee or Joint Board	Mental Deficiency Act, 1913, s. 29	Order of M. of H. if all L.A.s concerned agree; otherwise Provisional Order
	Electricity	Joint Committee or Joint Board	Electricity Lighting Act, 1909, s. 8	Special Order of Electricity Commissioners subject to confirmation by M. of T. and concurrence of M. of H.

	Police, Clerk of Peace, etc.	Standing Joint Committee of Quarter Sessions and C.C.	L.G. Act, 1888, s. 30 (1)	Constituted by the statute
	Vagrancy	Joint Committee	Poor Law Act, 1930, Sec. 3	Order of M. of H., with or without consent of constituent C.C.s or C.B.s
2. To enter into arrangements either generally or for specific purposes which involve the constitution of joint bodies without independent financial powers (usually entitled Joint Committees)	To exercise the powers of the Burial Acts	Joint Burial Committees	L.G. Act, 1894, s. 53 (2), and L.G. (Joint Committees) Act, 1897. L.G. Act, 1894, s. 57	Appointed by the constituent authorities who may be T.C.s, U.D.C.s, P.C.s, or P.M.s (where no P.C.)
	Administration of Hospitals for Infectious Diseases	Joint Committee	—	—
	To form Joint Committees of County Councils	Joint Committee	L.G. Act, 1894, ss. 36 (11), 60 (3) and 63 (2)	Appointed by C.C.s to make orders affecting Parishes, District and Poor Law Unions situated in two or more counties
	To appoint Medical Officers of Health for United Districts	L.A.s of Constituent Districts	P.H. Act, 1875, s. 286	Order of M. of H.; if proposal objected to, Provisional Order
	Treatment of Tuberculosis	Joint Committee	P.H. (Tuberculosis) Act, 1921, s. 5	Order of M. of H. with consent of C.C.s and C.B.C.s concerned
	Public Libraries	Joint Committee	Public Libraries (Amendment) Act, 1893, s. 4 (2)	Library Authorities of U.D.s may appoint
	Education	Joint Committee or Joint Board of Managers' Federation	Education Act, 1921, s. 6 (1)	L.E.A.s may appoint
			Education Act, 1921, s. 6 (2)	Scheme made by B. of E.

TABLE OF JOINT BOARDS AND COMMITTEES, ETC. (*continued*).

Type of Arrangement	Purpose	Body	Statutory Authority	Method of Constitution
	Diseases of Animals	Joint Committee	Diseases of Animals Act, 1894, s. 39 (5)	L.A.s may appoint and may assign a district to the committee
	Sea Fisheries	Joint Committee	Sea Fisheries Regulation Act, 1888, s. 1 (2)	C.C.s and T.C.s of Boroughs (with population of 20,000 or over according to the census of 1881) may appoint
	Light Railways	Joint Committee	Light Railways Act, 1896, s. 17	Councils of any County, Borough or District may appoint
	Tramways	Joint Committee	Tramways Act, 1870	Provisional Order of M. of T.
3. To enter into agreements with each other for specific purposes which do not necessarily involve the constitution of a Joint Board or Joint Committee	Appointment of a single Chief Constable for two or more Counties	Agreement between the respective Justices	County Police Act, 1839, s. 4 (now superseded by the County Police Act, 1857)	Appointment, by agreement, of the same Chief Constable for two or more adjoining Counties or parts of Counties
	Loan of Police	Agreement between Police Authorities	Police Act, 1890, s. 25	Police Authorities empowered to enter into agreement for the loan of constables, in emergency, by one Authority to the other
	Establishment or maintenance of Homes for Inebriates	Agreement	Inebriates Act, 1898	Agreement between C.C.s and T.C.s

	Establishment or maintenance of Reformatories and Industrial Schools	Agreement	Children Act, 1908, s. 74 (8) (*b*), and s. 74 (15)	Agreement between any two L.A.s (or for industrial schools L.E.A.s) with the approval of the Secretary of State
	Inspection of Weights and Measures	Combination of L.A.s for weights and measures purposes	Weights and Measures Act, 1878, s. 52	Arrangements made are of various kinds. Usually Inspector of a County also is appointed to act for one or more Boroughs within the County
	Working of Ferries	Agreement	Ferries (Acquisition by L.A.s) Act, 1919, s. 1	Agreement gives power, concurrently with B.C., U.D.C., and R.D.C. to acquire and work, and charge tolls
	Electricity Supply	Joint Electricity Authority	General Acts, i.e. Electricity (Supply) Acts, 1882 to 1922, esp. Electricity (Supply) Act, 1919, ss. 5 and 6	Agreements for mutual assistance, with the approval of the Commissioners, between any two or more authorized undertakers whether L.A.s or companies
4. To enter into arrangements with each other for work of a deliberative, as distinct from an executive character by the formation of advisory bodies	Electricity Town Planning: for preparing or adoption of scheme	Advisory Body Joint Committee	Electricity (Supply) Acts Housing, Town Planning, etc., Act, 1919, s. 42 Town Planning Act, 1925	— L A.s may appoint

the vesting of functions which can be exercised efficiently by smaller authorities in the hands of the Boroughs and the Districts, and the almost complete deprivation of the Parishes of any part in local government.

The Fundamental Question of Will. Now, there might never have been any necessity, or at least no pressing necessity, for these, or any more drastic changes, if the various local authorities had voluntarily used their powers of co-operation. Given good sense and good will on the part of the Parochial and District authorities, they themselves, without Parliamentary intervention, or the reconstitution of areas, could have made the joint arrangements necessary to carry out the services whose technique and economy require a larger area. This problem of co-operation has, as a matter of fact, been the critical point in all English local government evolution. Almost always, functions have at first been permissive, and progress has been surrendered to the public spirit of the local authorities. In too many cases that confidence has not been justified by results—consult the history of public health, education, police, and the roads!

Joint Schemes. Perceiving the difficulty of securing perfect and entirely self-contained areas; not wishing the trouble to invent them, even theoretically; and allowing inadequate areas to exist because sentiment attached to them—the central authority made ample provision for joint schemes between the existing authorities. The schemes permit the authorities to retain their own identity and yet provide better services at an economical rate by some joint arrangement. The possibilities of such joint schemes are numerous and we provide a conspectus of them in a tabular form. They fall roughly into four classes. Moreover, they arrange for joint schemes between different classes of authorities as well as between members of the same class, whether they have the appropriate powers or not. All of them are quite voluntary; the exceptions are altogether negligible.

The history of these schemes, where permissive, cannot be called optimistic. Few have been made, and these only in the most vital cases after protracted and difficult negotiations where failure to make a scheme was likely to result in immediate disaster. Where the disastrous effect of negligence is not so immediately obvious, but merely leads to discomfort, or administrative deficiency, or a rise in the rates, which cannot be mathematically demonstrated to be directly due to negligence, joint schemes have not been made. For example, in police arrangements, in the matter of drainage, water-supply large-scale arrangements, sewerage, the provision of libraries, education, rivers pollution, town planning. All these matters have been investigated in recent years by Royal Commissions, or Departmental Committees, and they tell a story (as may be gleaned from the last

chapter), with ample evidence and no bias, of negligence, jealousy, lack of vision, mutual recrimination and law-suits, wasted opportunities and wasted money.

Why, with occasional praiseworthy exceptions, is there such unyielding local resistance to voluntary joint schemes? There are several answers, discernible from the testimony and the behaviour of local authorities. In the first place, they are afraid that entrance into a joint scheme will be a confession of the need of a larger area, and will risk annexation of their own; and, at the least will compel the surrender of one or more functions to another authority. Secondly, they have feared that if they enter into a joint arrangement, they will be admitting the need for the service, and may be persuaded or outvoted by a majority of the joint board into making new expenditure, which means higher rates. Thirdly, there is sheer infatuation with the idea of their own independence, and jealousy of their neighbours. Such jealousy may seem to the unsophisticated student to be improbable, indeed, an author's fiction. He may reflect that, after all, local authorities are not acting for the benefit of the private individuals who compose the Council, but are carrying on government for the benefit of a community. Why, then, should they be jealous of neighbouring authorities whose ideas and methods may contribute to the welfare of the community? There is, indeed, no reason for jealousy. Like many things condemned by the intellect, it, nevertheless, exists. Fourthly, since co-operation is voluntary, the burden of co-operation is fixed on the local authorities; and, further, there is an additional burden on that particular authority public-spirited enough to take the lead. No one is given a definite responsibility to initiate joint schemes; no one receives special public honour or advantage for their successful establishment. The community is not taught to look to someone to take the lead. There is merely a burden, and a great deal of rough work.

The Crucial Point. Given the small chances of success, and the tremendous amount of energy and patience required to convince the other authorities, there is no special incentive to the initiation of negotiations. This leads to the final and crucial point. It may be expected, and facts support the expectation, that the establishment of good schemes is at the mercy of the most ignorant and unwilling local authority. There is the crux. Under English local government the power of veto is exercisable by the most backward local authority, while the full burden of advance and persuasion rests heavily upon the most anxious and progressive.

The Majority Principle. Any reform must rest upon an alternative principle. The creation of uniform schemes for a large area should be compulsory if the *majority of the inhabitants* of the constituent areas, or in any new provincial area that might be estab-

lished, should support it. The minority, even if consisting of one or more entire constituent areas ought to accept the verdict. This has been the means of political progress, both in local government and in the federal systems of the world; and international relations also begin to show the value of it. It is progress from the principle of *unanimity*, or of a *full veto* by any one unit of the body politic, towards the more corporate principle of Majority Rule, though sometimes that majority has not been simple, but qualified, as for example, a two-thirds majority. Applied to English local government this principle would mean that local authorities would no longer be considered to be absolutely independent except for Parliamentary regulation, but that they must necessarily and compulsorily fall within a larger frame-work area, a majority of whose inhabitants would have the right to say that schemes shall compulsorily operate over the whole of it.

Undesirable Alternatives. If this principle is not adopted, there are only two alternatives, both of which seem to us undesirable, and both of which, we hope, are undesirable to the local authorities themselves. The first is to retain the principle of voluntary co-operation and sink back into the administrative waste of the last two decades, with all their personal stress and procrastination. The second alternative is that which is already occurring, the compulsory intervention of the central government, which either commands the local authorities to make joint schemes, submitted to it for approval, or, as in the case of the Roads Traffic Commissioners, and the Electricity Areas, almost entirely supersedes local government. It is useless for local authorities to hurl their angry thunderbolts in defence of the immemorial principles of local independence before Royal Commissions and Departmental Committees, when the whole community, which is to-day very close-knit, feels only the results of local inefficiency in its own pocket, health and convenience. The most marked feature of the modern world is its plea for a higher standard of living, which means a greater amount of necessaries, comforts, and luxuries, achieved by a diminishing amount of expenditure of effort and capital and anxiety. The State will be ruthless, and is entitled to be ruthless, to local authorities which stand in the way of this civilizing progress. It would be a pity to remove powers from the localities into the hands of an already overburdened central authority. For, however highly we properly estimate the services of the permanent officials, it is desirable that supervision and control should be exercised by average citizens. But this is only possible where the work is decentralized and distributed among a number of areas. And this, again, is only desirable where the public spirit and comprehension of the local councillors is so sound technically as to avoid too high a price for the benefits of self-government.

Two questions must now be discussed. The first is, what conditions will best provide for the large-scale services which technically can best be performed in areas different from those which exist to-day? Secondly, and incidentally, what is the place of the smaller authorities within such a larger area? Let us take these questions in turn.

Special Authorities or Regions? In the course of discussion before the Royal Commission on Local Government, especially in relation to the position of the Districts and Boroughs, the question several times arose whether to seek for each service for itself an appropriate area, population, and financial capacity, and to establish a special and extra body to administer it, or whether to make some compromise with the existing areas. The Royal Commission, the witnesses, and the Ministry of Health, could not avoid supporting the latter alternative, and the grounds were two. First, that without a compendium of powers people would not be interested in the work of a local council; and secondly, that there would be a loss in the simplicity, and therefore the manageability, of the various authorities.

The same problem, but on a larger scale, faces us in relation to larger areas. There are, to-day, two alternatives available for dealing with the problem of areas. One may adopt the system of Special Authorities, or as they were called in the nineteenth century *ad hoc* Authorities. In this system, which is exemplified in the Electricity Areas, in the Road Traffic Areas, in the Drainage Boards, and Water Supply Regions, an area is mapped out which is technically the best, and then a governing body is constituted for the area composed of delegates from the responsible local authorities within the area with a power to levy the necessary rates in each of the constituent units. The common suggestion, of course, is that such authorities should be compulsorily established. The area may be mapped out either by the central authority alone, or with the consultation and assent of the existing local authorities. That is one alternative, and it has been put with considerable force by Dr. W. A. Robson in his work, *The Development of Local Government.*[1] It is an extension of the actual lines of development in the last few years. It follows, also, the suggestions made by Mr. and Mrs. Webb [2] that the country should consist of a number of original small units, and that these should be combined, like the Minty Bookcase system, according to the service to be performed. The elected representative of the original units would go to all the Joint Boards of which the unit was a constituent.

The second alternative is what may be called the Regional or Provincial solution. In this system one would discover the largest

[1] pp. 165–73.
[2] Cf. *Constitution for the Socialist Commonwealth of Great Britain*, 1920, pp. 203–46.

area of government, including several Counties, which would comprehend the main large-scale services, to be managed or regulated by a Council popularly elected for the whole of the Region, the area approaching that which would include the maximum number possible of the services of maximum size.

Critique of the Alternative Schemes. Now, the only thing which evolution and expert discussion have so far decisively demonstrated, is the necessity, in some cases, for a larger co-ordinated area. But mathematically demonstrable data to enable us to decide which alternative is likely to be better do not exist. Certainly the advantages of the Regional authority compared with those of the Special Authority have not yet been sufficiently discussed. And, perhaps, even when they are, there will be still certain incommensurable factors which will legitimately sway people to the one side or the other according to their own predilections. To an observer who does not pretend to have more knowledge of the inner essence of local government than is revealed by the available evidence and the acquaintance of many practitioners of local government, there seem to be weighty considerations on either side.

The Merits and Demerits of *Ad Hoc* Authorities. If a Special Authority is created it offers the following advantages, leaving out of account political difficulties. Firstly, regardless of existing vested interests one can proceed to map out an area which will give the best technical results. It is conceivable, for example, in the case of Education to plot out areas of elementary, secondary, and technical education, which will give the most economical relationship between the technically-best distribution of a variety of schools, their location at points serving the maximum number of pupils with the minimum of travelling difficulties, and the provision of the most skilled officials and organization at the lowest price per head. Similarly, and more obviously, with the production of Electric Lighting and Power. And, in the case of Drainage and Water Supply, the situation is even more obvious, because the whole thing depends upon certain unalterable geographical features. Secondly, the Special Authority has the political advantage that it proceeds piece-meal. It does not suddenly take away from the existing authorities a group of functions, but plucks them one by one, and still leaves the authorities standing. These seem to be the only advantages, and we do not seek to minimize their force.

Disadvantages of Special Authorities. The Special Authority has, however, certain disadvantages. Its very essence is disintegration. If one can imagine a congeries of Roads Councils, Education Councils, Housing Councils, Regional Planning Councils, Police Councils, Drainage Councils, Water Supply Councils, Sewerage Councils, Transport Councils, Vagrancy Councils, besides a host of smaller

Councils with one, or a few, or many functions—all of them proper, and useful technically, we may already sense the disintegration and the complexity implied. It must not be imagined that anyone suggests that each of these Councils or Boards would govern an area necessarily coincident with even a single one of the rest. Each one would be of a different size, and the areas of each would either wholly contain some other area, or zig-zag across the others' frontiers.

We are entitled to look at such an arrangement, first, from the standpoint of the electorate. The ratepayer would no longer be confronted with the policy of local authorities each administering a number of powers in some sort of co-ordination. He would be looking at his own authority, and at a number of diverse councils, each one responsible for a particular subject. If we cared to contemplate the principle, and envisage its application, let us say, to ten services, and this is a *very* conservative estimate, then the popular understanding of government would be seriously obstructed. Of course, it is possible to say that popular understanding and interest are worth little, if anything at all. But that is a different line of argument; and there are sound answers to it.

Secondly, there would no longer be any real co-ordination of the local government budgets. Now this is a serious fault in any collective economy. In the central government, economy is secured by the collaboration of the spending Departments, with the controlling Department, the Treasury. Economy in this, its true sense, is the best utilization of available means by mature comparison of all the respective demands for expenditure, the total also being related to the economic welfare of the country. It is a serious fault in a system when the various spending authorities do not first put their heads together to consider what proportion expenditure upon each branch should bear to the rest, and a great deal has already been done, and is being done, as we show in a later chapter, to secure this co-ordinating factor in financial and administrative activity.

Thirdly, there is bound to be administrative disintegration. In West Ham, the tramway authority, being also the education authority, reduces the fares for children going to and from school as an educational measure. Local authorities, generally, are now careful to avoid competition for the same piece of land for housing purposes, school-building purposes, highway purposes, or for a park. Great care has to be exercised that the electricity department, the housing department, the surveyor's department, and the highways department do not come into conflict in regard to their respective interests in building operations and digging up the roads. The greatest care has to be exercised to prevent a large expenditure along one line of local services, while another, which may even be an indispensable element in the efficiency of the better endowed one, is starved. All these

problems of co-ordination are difficult enough within a *single* local governing authority, where there is already a community of feeling, and a related responsibility to one single electorate. Even here, in spite of these advantages, in spite of Committees of Co-ordination, and of the respective powers of adjustment of the Finance Committee and the Treasurer, there is always the threat of an unholy scramble for money, and of administrative disintegration. Even here, it is the most difficult thing in the world to persuade the chiefs of the various departments, the Medical Officer, the Surveyor, the Director of Housing, the Director of Education, and the rest, to submit their intense but limited enthusiasms to the moderating influence of the Clerk and the Council. As far as thought can reach, and on the basis of what we already know, a regime of Special Authorities, would have the most adverse effect upon administrative integration. No authority would know what the other authorities were doing or planning to do; every authority would have an interest not to know, but, rather, an interest to remain ignorant. Each body of experts would be under the greatest temptation to proceed as best seemed to them with their own projects. If there were no joint arrangement between all these Special Authorities, the most ridiculous and expensive mistakes might occur. On the other hand, if there were joint operation, the complexity of the system would be increased; and, moreover, one would at once have yielded a large part of the argument of those who prefer a comprehensive area from the very beginning. If there were no *voluntary* co-operation between these Special Councils the mal-administration that might occur might result in the calling in of some co-ordinating power of the central authority; but this, as far as possible, where efficiency can be obtained by local democracy, is to be avoided. It seems to me that those who sponsor schemes of this kind are under the obligation of reckoning with the likelihood of such developments, and of producing sound reasons to show why they have not been drawn into the balance and weighed against the advantages which the principle of Special Authorities offers. Leave out human nature, leave out environment, and, of course, the path of political invention is wide open.

The Teaching of Experience. Now this reasoning which tends to the rejection of the solution by Special Authorities, is supported by the reasoning of the wiser members of the Royal Commission on London Government of 1921, and by American experience. The Report by the late Sir Robert Donald and Mr. Stephen Walsh argued strongly against Special Authorities. Among other things they said:

'The majority of our colleagues, developing the proposals made by Sir Henry Maybury, propose that a purely advisory body of twenty members should be established for the area of the London and Home Counties Electricity District,

to advise and assist the appropriate Minister in matters concerning not only transport and town-planning, but also housing and main drainage. . . .'

'The moment that the proposed Advisory Committee goes behind its efforts to secure co-operation in traffic, to deal with town-planning and housing, new difficulties arise. Town-planning is essentially a municipal function, as it involves not only the making of roads, but deciding the width of the roads and the kind of traffic which would serve the roads. Housing, which inevitably follows town-planning, is still more involved in municipal government, as provision has to be made for the cost of building, for providing housing and schools, for lighting, drainage, parks, etc., in advance of the progressive development of an estate. Unless, therefore, the Housing Authority is also the Education Authority, practical difficulties arise in selecting sites, in planning buildings, and providing the cost of schools. A purely advisory authority would be unable to carry through the necessary constructive work in connection with town-planning and housing.'

American experience is particularly apposite. Progress in matters like education was achievable in many States only by that particular branch being wrenched away from control by the local council and vested in a Special Authority. Further, to simple minds in a new environment the Special Authority, as English history also shows, seems a heaven-sent dispensation. To-day, the States labour under a confused, overlapping, unco-ordinated regime of Special Authorities, bewildering to the public and uneconomical in operation. The reformers have ceased to see salvation in this system. The movement, as in England, in the late nineteenth century and recently, is energetically towards the Compendious Authority, large enough to embrace and co-ordinate the more extensive services. I find it difficult to convey, with the true emphasis, how the disadvantages of the Special Authority, as previously analysed, have marred American local government development, and the extent to which doctrine is now reversed in America. Here is one expression of opinion by a high American authority from among many:

'The problems of metropolitanism are not isolated problems but general problems closely related to one another. You cannot deal with the problem of metropolitan transportation effectively without dealing with the problems of regional planning, highway construction, and traffic regulation. You cannot deal with the problem of public health without becoming involved in the problems of the care of the poor and the problem of sanitation. There is a real reason, therefore, for regional government of a general character. Such a regional government is a recognition of the unity of the area. It need not be inconsistent with the maintenance of local governments within the existing local units capable of dealing with matters that are not regional in scope.' [1]

Is a Technically Best Area *Exactly* Determinable? Now, this is not all of the criticism of the scheme of Special Authorities. The

[1] T. H. Reed, 'The Government of Metropolitan Areas', in *Recent Trends in American Municipal Government* (Ed. Ridley), Chicago, 1930, p. 29. Cf. also, *Waste through Multiplicity of Governmental Units*, Memorandum of the American Municipal Association, Chicago, U.S.A., by Simon E. Leland, Professor of Public Finance, University of Chicago.

fact is that only in two or three cases, if even there, is it possible to measure *exactly* which area will give the greatest technical advantage. We refer to the cases of Drainage, Water Supply and Electricity Supply.[1] Outside these, the area of greatest technical advantage is exceedingly difficult to demarcate. We do not know, in actual fact, whether an area containing one million, or one and a half million, or only one half of a million, or even one hundred thousand, will give exactly the best result say, for education. For at this point, we are dependent upon the varying qualities of administrative genius and interest in public affairs of different people, rather than upon a mere consideration of such given entities as catchment areas and the generating power of the most up-to-date dynamos coupled with the carrying power of the most recently invented electric cables. There is, in other words, plenty of latitude on the frontier of the best technical area for compromise with other essentials of good and efficient local government. The great advantage claimed for the technical superiority of Special Authorities is of limited effect. Moreover, as we have earlier pointed out, local government experience shows that, however large you draw your area, there will always be a border problem, until the best area of all would be the whole of England, administered from the central authority. *Short of that, the area can never be perfect; nor can one ever avoid the necessity of joint arrangements.*

Now, though the solution we have been discussing ought not to be put out of court, it was important to point out some of its difficulties in the general structure of government, and to make sure, at least, that the next alternative, the Regional or Provincial arrangement, should itself not be ignored.

Regions. If the regional solution were adopted it would possess three great advantages. It would furnish an area large enough to include most of those services for which a large area has been found necessary; and with few exceptions (perhaps, in some cases, with none at all) it would not be difficult to include all the services necessary for the authority within its own area. With a comparatively small sacrifice of technical efficiency, this could be done if we had regard to the mapping out of the present Roads Traffic Areas, and some of the Electricity Areas. However, it is not necessary to pretend that it is possible in every case, or even in any case, to discover an area which will completely include all the services needed. Joint arrangements with bordering authorities may still be necessary, but there is this advantage over the present system and the system of Special Authorities, that since there will be fewer authorities to make these arrangements we can expect them to be made with less friction, more quickly, and when already made, to offer the smallest number of contacts which may fall apart. Secondly, there would be estab-

[1] As indicated in the preceding chapter, recent analysis has shown that the exact determination of the area of electricity distribution as distinct from generation is also subject to the human factor.

lished one single area with a single council, though with several departments, with a single budget, a single surveying mind for all services, and the power to secure their co-operation. Thirdly, the area of ultimate authority would have been increased, and, in the course of time the Regional Community would perhaps be able without too much friction to operate all over the area, and overcome the undue hostility of any particular place to necessary changes. Nor would it be impossible within the Region to provide, as now sometimes within the County and the County Boroughs, differential rating. There is the subsidiary advantage in the creation of a Regional Authority, that as local government amply illustrates, popular interest is small where an authority has only one or few services, and increases in proportion to the comprehensiveness of the services. Such a comprehensive authority supplies political parties with the incentive and the interest to organize the electorate for the capture and use of its power.

The Lesson of Surveys. It is not difficult to find a useful division of England and Wales into ten or twelve such Regions or Provinces. In fact, there are interesting surveys—particularly Mr. Fawcett's [1]—already in existence which seem to me to deal with the main problems. There would seem to be not much difficulty in relating these to the fifteen water areas proposed by the Water Power Resources Committee.[2] In a slightly different order of things we have a large number of Regional Schemes for limited purposes made voluntarily by neighbouring local authorities.[3] Further, the Ministry of Health, in the really brilliant report of the South Wales Regional Committee, indicates both the problems and their solution [4]:

'Our recommendation that the first dormitory towns should be constructed by the Government and that a regional town-planning board should be constituted are called for by reason of the multiplicity of independent local authorities in a Region that geographically and industrially is a unit and needs to be planned and administered as such. Were there one master local authority for the Region, then town-planning and the construction of dormitory towns might well be undertaken by it, as the great difficulty we have already referred to, of adjusting any disparity in rateable value that might be caused by housing schemes, where the suitability of site for the purpose was the sole consideration, would not arise if the whole Region were in the administrative area of one council. We think, therefore, that the setting-up of such a new local government authority is worthy of careful consideration, say somewhat on the lines of the London County Council, which deals with certain general matters in the county, while the borough councils attend to the more particularly local affairs. It is most important that the creation of a larger local authority should not deprive the

[1] Fawcett, *The Provinces of England*, 1919.
[2] Cf. previous chapter.
[3] Cf. Annual Reports of Ministry of Health for the regular announcement of new regional schemes, mainly for surveying and planning development.
[4] *Report*, South Wales Regional Survey Committee, 1921, pp. 69–70.

smaller councils of their sense of responsibility or diminish the civic consciousness of the local inhabitants. We suggest below an allocation of functions which we think reserves for the individual councils ample and important duties, while delegating inter-urban affairs to the proposed Regional Council.

'If such a council were set up to administer the Region for which we have alternatively recommended the establishment of a regional town-planning board, and in place of the existing county councils, and if the present urban and rural authorities were re-arranged, the Regional Council might well administer over the whole Region such matters as town-planning, housing, education, traffic control, poor relief, hospitals, main drainage, bulk water supply, construction and improvement of main roads and bridges, and police. The re-arranged local authorities would no doubt have certain functions in connexion with these services delegated to them, and in addition would attend to such matters as the construction and maintenance of local roads, street cleaning and lighting, removal and disposal of house refuse, local drainage, baths and washhouses, libraries, Food and Drugs Acts, sanitary inspection, local recreation grounds, markets, &c.'

There is no suspicion of baseless idealism about the South Wales Regional Committee. They were asked to consider specific problems like housing, transport, water supply and sewerage, and did so. But their experience in the course of investigation produced this comment and recommendation. It is possible to find areas outside Greater London of between two and three million population, including both urban and rural areas, with a civic centre not too distant from the outskirts. In such a Region the area would be large enough in terms of square miles, population, and assessable value, to provide a highly skilled organization, and especially to provide opportunities such as we later show to be essential for the recruitment and life-career of local officials. Two subsidiary questions arise: the powers of the Region and the relationship of the smaller authorities to it.

The development of opinion on the subject of regions may be traced further in some of the observations made in the last chapter regarding particular services, especially in relation to town and country planning, the Barlow, the Uthwatt and Scott Reports, and in the Report of the Royal Commission on Tyneside Local Government published in March 1937, and in opinion arising out of Britain's experience with Defence Regions in World War II. Some brief remarks on the Tyneside Report and the Defence Regions may be useful.

The Royal Commission on Tyneside Local Government was set up to discover how far this distressed area could be assisted by improvements in its local government. The area is about 20 miles long in from the coast and about 10 or 12 miles across. Not much larger than the city of Birmingham, no less than 16 separate local authorities operate within it and disintegrate the services like Public Assistance, Police, Higher Education, Elementary Education, Highways, and share passenger transport with private companies. The Commission felt strongly the unified nature of the whole area and reported on the financial loss as well as the losses in efficiency and benefits from the

services due to the prevailing disintegration of government. The Commissioners urged that there should be a new single area of administration for a whole region, that the region should include both urban and rural districts, and rejected the alternative of joint boards and districts for single services. The services the region ought to take over, with all the possibilities of a distribution of power between it and the local government units within it were: Public Health, Education, Public Assistance, Police, Fire Brigades and Highways. They thought, also, that the passenger transport for the whole area could then be managed by a single organization, though here the Commissioners proposed a Public Passenger Transport Board. The area suggested was to consist of the whole of the county of Northumberland and (south of the Tyne) Gateshead, South Shields, Jarrow, Hebburn, Felling, and the urban portions of the urban districts of Whickham, Blaydon, and Ryton in Durham, since these have a community of interest with the Tyneside areas. Since there was nothing special to stop the southward range of the region, the Commissioners felt that the southern limits of the county boroughs, the municipal boroughs and the urban districts should be accepted; though some time in the future developments might suggest a southward continuation. The Commissioners, it should be observed, were opposed to the alternative of creating of Tyneside one single large county borough and leaving the remainder of the geographical counties of Northumberland and Durham as separate districts. Within the region, the various urban units were to form a single municipality for the administration of the non-regional services. It may be said that negotiations and discussions based on the Report had by the beginning of World War II brought no practical result, though, theoretically, the local authorities were in favour of the regional principle.

The Tyneside Report thus brought to the fore once again the two themes of the government of the extensive urban areas to which the name "conurbations" has been given, and the need to unite town and country under a single government. A very interesting essay in which both these themes are developed has been written by Mr. G. D. H. Cole.[1]

In 1939, on the outbreak of war, there were established 12 Civil Defence Regions for Great Britain (including one for London and one for Scotland). Upon what considerations the areas were delimited is not known to the public. What is important is that the purpose was not the conduct of local self-government in the traditional sense, but the devolution from the centre of central arrangements for defence against invasion and air bombardment, for more convenient administration, and with the idea that should London Headquarters be destroyed each region could continue as a self-operating organization.[2]

[1] See "The Future of English Local Government," in *Political Quarterly*, Oct. 1941.
[2] Cf. *Hansard*, June 11, 1941; July, 1942 (Col. 767–9).

Further, the regions with their Regional Commissioners and staff appointed by the central authority and accountable only thereto, were employed importantly as the co-ordinators of the action of local government authorities in matters of civil defence against air attack and the co-ordination of other services like food rationing, production and measures required by the total mobilization of all civic forces required by the war. In these circumstances the titles of various central government officials came to assume a local flavour such as Regional Planning Officer, Regional Health Officer, etc., but these were not local officers : they were localized central officers.

These circumstances gave a fillip to discussion of local government Regionalism, but it was not long before the local authorities, especially the big cities, energetically repudiated the view that the regional arrangements had come to stay or ought to stay. Soon, opposition to the Regional Commissioners as a forerunner of local government Regionalism crystallized on at least three counts : (*a*) the areas were held to be inapplicable, (*b*) the functions inappropriate and (*c*) the basis was regarded as undemocratic.

(*a*) The areas were regarded as too unwieldy, that is, altogether too large for the maintenance of intimate contact between Regional Office and the ratepayers, or requiring drastic change or inappropriately chosen in relation to the functions of local government. (*b*) The functions of the Regional Commissioners are, of course, central government functions in the main. (*c*) The liveliest criticism has been directed against the non-elective, non-representative basis of the Regional Commissioners' tenure. They are, indeed, the highest officials of a deconcentrated, not a decentralized system ; examples of the development of central power, not of the diffusion of local leadership. There are some local representatives invited to serve in the Regional Commissioner's advisory boards, on which sit his specialized officials who parallel their Whitehall colleagues, but this is not a popular basis.

However, so educative, as Plato long ago observed, is the force of practical example that these regions stirred up discussion once again. There are local government councillors who have seen a vision of what might be in terms of large-scale administration. If the areas are unwieldy, they look at once to broad and not parochial interests ; if they are inappropriate, they may be altered the better to suit local government exigencies ; if they are hollow of local government functions, there are many functions already ripe for transfer to larger areas ; and if they are undemocratic, then most proposals for local government Regionalism have been based on elective regional councils.

If the regional solution were adopted, especially if really large areas became the basis, an important financial reorganization would follow, not only in the spread of the area of charge for the regional services, but in the matter of central grants in aid. Various alternatives

would be available. The central authority might divide its total grants among the regions and then leave them to distribute a stated portion of the amount on principles laid down in law and regulations to the local authorities within each region. The central authority might designate a portion to be allocated in the discretion of the regional councils to the smaller authorities in order to even out financial inequalities or assist special local developments. In whole or in part, the grants passing through the regional exchequers to the smaller authorities might be used as a sanction for such inspectoral powers exercisable by the regions over the services in which they have a planning or sub-legislative power, while the smaller authorities conduct the actual administration.

A better plan perhaps is, that the central authority should retain its present procedure in making direct grants to all local authorities, regional or otherwise, in aid of the services for which each is responsible but to permit the region to assist the poorer authorities either in specified directions or in any at its discretion, in much the same way as the county now has the power to assist smaller authorities in respect of certain health services (Cf. Additional Notes at Chapter III, page 52.) There is nothing in these alternatives which need affect either the main lines of the system or local rates or the method of Block Grants as introduced in 1929 on a formula of need—the latter, indeed, might be extended.

My own views on the appropriate re-organization of areas march closely with those presented by Mr. Cole in the article to which reference has been made, though I have doubts about his terminology. It would mean some 12 regions in England and Wales, though Mr. Cole calls them " Provinces," but the final determination of such regions, and the area to be embraced, could not possibly be arranged otherwise than through an official Commission. The Labour Party proposals,[1] which are based upon making the administrative counties the comprehensive authority for all local government within their area, of course with an assignment of power to the county boroughs and other authorities within them, and also with amendments to the areas of the counties, would result in some 60 regions. Many problems still would not be solved by this halfway house between the many hundreds of existing authorities and the 12 suggested generally. An important question is whether a reform as disturbing as that proposed by the Labour Party is worth while, as compared with a much larger reform, having regard to the tremendous opposition and administrative difficulties which must in any case be encountered—just as much difficulty will be met in the course of seeking re-organization into 60 areas as in re-organization into 12 or 20.

Powers of the Region. The powers would fall into two classes,

[1] *The Future of Local Government*, 1943.

those of direct administration and those of policy-making and inspection. Closer examination would show in each case how far power would be direct, and how far merely co-ordinating and supervising. Large-scale services are housing, prevention of overcrowding, Class I and Class II roads, the provision of hospitals for infectious disease, crematoria, town planning, electricity supply, water supply, land drainage, and sewage disposal, prevention of pollution of rivers, licensing of public service vehicles, the organization of transport, the organization of a regional library, with affiliations with the smaller areas, elementary, secondary and technical education and relations with provincial Universities, the regulation of advertisements, police, the administration of the education, recruitment and transfer of officials, the establishment and maintenance of aerodromes, administration of vagrancy arrangements, inebriate reformatories, lunatic asylums, administration of the Diseases of Animals Acts and the Destructive Insects and Pests Act, administration of the Weights and Measures Acts and Food and Drugs Acts, supervision of midwives, provision for the welfare of the blind, the treatment of tuberculosis, licensing, the organization of hospital districts. Then, other powers which ought to be exercisable by the Region should be a bye-law making power, the power of reorganizing areas in much the same way as now given to the Counties to reorganize the Districts, and the power of applying certain General Statutes by Order to authorities within their area, without the need for going to Parliament.

It would be impossible within the scope of this work, or in fact of several works, to prescribe a complete scheme dealing in detail with each item listed above, and further, with the determination of the exact frontiers of each region. Nor is the above list exhaustive. But if the information and the officials of the central and local authorities were available, one could with no very great difficulty decide both these matters. The important thing is, that *the final word in those subjects which require co-ordination, would be said, whether in terms of its own administration, or whether in terms of guiding principles by a large area, the Region.*

The Smaller Authorities. What would be the position of the County Boroughs, the Municipal Boroughs, the Districts, and the Parishes within the Region? They would have their own range of powers as at present, though reduced to the extent of the power carried over to the Regional Authority. This would, of course, cause a reduction in the interest taken in their work, but as against this there would be an increase in interest for the work of the Region as a whole. In any case, the solution by the establishment of Special Authorities is in this particular respect no better than the Regional solution. For it also takes away from interest in the authorities, but provides no comprehensive local governing body which would engender

a new interest. The County Councils, the County Boroughs, and the other authorities would still have their own elections. Elections with only a small proportion of the electorate participating are still better than the government of areas by committees of a larger authority, and both the Parishes and the Districts ought to have the power of complaint to the Regional Council where the Districts or the County do not properly fulfil their duties, in the way that the Parishes now have a right of complaint against the Rural District Councils in public health administration. The continued existence of locally elected smaller authorities is of the utmost importance in a largely bureaucratized civilization. The official is indispensable and we owe him much gratitude. State and municipal monopolies are necessary and desirable. But just as necessary and desirable are safeguards against abuses of power in the name of the public—sheer tyranny, stupidity ill-will, and red-tape.

One question remains and that is the finance of such a system. The existing local authorities would still raise their own rates for their own self-administered purposes, and then they would be obliged further to contribute towards the great common charges for the Regional services from which they also benefited. This would be an advantage in two ways. First, where it was found desirable by careful reasoning applied to local circumstances, the Regional authority would administer and this would give the economy of large-scale organization. And secondly, the poorer areas would receive some advantage from their partnership with the urban areas in a single area of government. Where, as at present, a single Municipal Borough or Urban District is in financial partnership with the whole of a County and its rural areas, it may suffer very severely by the partnership. With the spread of the area of charge over many urban communities and many rural communities, the burden is averaged out. Moreover, there would be the incidental advantage of uniform valuation for rates within the Region. It would be possible for the Region, at the request of any unit of local government situate within it, to determine whether a joint scheme should operate by the compulsion of several units situated in its area.

Now, no scheme of governmental reorganization has perfect features. But the Regional solution is, in our opinion, sounder and more desirable than Special Authorities. One thing, however, is questionable: which way development is in practice likely to occur? Now, the Special Authority system is useless without compulsion: that is the abundant teaching of English history. Will the central government be able to do all that is necessary by piece-meal gradual compulsion along the different lines, and by stage after stage, when compulsion becomes necessary to secure the setting-up of each new Special Authority? Is it not likely that the local authorities, while not spectacularly

a new interest. The County Councils, the County Boroughs, and the other authorities would still have their own elections. Elections with only a small proportion of the electorate participating are still better than the government of areas by committees of a larger authority, and both the Parishes and the Districts ought to have the power of complaint to the Regional Council where the Districts or the County do not properly fulfil their duties, in the way that the Parishes now have a right of complaint against the Rural District Councils in public health administration. The continued existence of locally elected smaller authorities is of the utmost importance in a largely bureaucratized civilization. The official is indispensable and we owe him much gratitude. State and municipal monopolies are necessary and desirable. But just as necessary and desirable are safeguards against abuses of power in the name of the public—sheer tyranny, stupidity, ill-will, and red-tape.

One question remains and that is the finance of such a system. The existing local authorities would still raise their own rates for their ceeded to abolish the *ad hoc* authorities, and to amalgamate functions in the hands of compendious authorities. The Regional arrangement seems to us so desirable for the reasons advanced in the preceding discussion, that we should prefer the growth of an opinion that this, and this alone, is worth while, and that all efforts should be bent on the proper Parliamentary persuasion thereto of those who now rule English local government.

PART III

CONSTITUTION, POWERS AND ORGANIZATION

CHAPTER VIII

THE CONSTITUTION AND POWERS OF LOCAL AUTHORITIES: JUDICIAL CONTROL

I

LOCAL authorities do not possess the inherent and independent power to frame their constitution or determine the scope and character of their functions. Controversy may revolve around whether this is right or wrong, advantageous or disadvantageous, but the law is quite clear.[1] The general authority of local governing bodies does not issue independently out of their own will; but it is derived authority, derived from Parliament. The structure of local authorities, the electorate, the size and term of the council, areas, committee organization—the fundamental principles of these are imposed upon them, sometimes as a command, and sometimes as permission within limits established by statute. Finally, what the local authorities must do, and what they may do, what they must spend, and what they may spend, these vital things are dependent upon the specific authorization of Parliament. For the actual application of the principles laid down by Parliament, the Departments in Whitehall have, of course, considerable power delegated to them by the statutes.[2] Outside the combined effect of the authority given by Parliament and its application by the administrative Departments, English local authorities, no matter how considerable in area, wealth, or population, even the great Metropolis itself, cannot spend a single penny or acquire a square inch of land, or perform the most trifling function. The local

[1] Dicey, *Law of the Constitution*; Keir and Lawson, *Cases in Constitutional Law* (1928), Section on 'Judicial Control'; Kyd, *Corporations*; Arnold, *Municipal Corporations* (1930); Street, *Ultra Vires* (1930). Cf. also the doctrine of limitation laid down in *Attorney-General v. Newcastle-on-Tyne* (1889), 23 Q.B.D. 492; *Attorney-General v. Manchester Corporation* (1906), 1 Ch. 643.

[2] This subject is admirably treated in the *Report of the Committee on Ministers' Powers*, 1932.

authorities acquire their being and their capacity to function from outside.

The interesting questions are, what is the foundation of this system? how in fact do the local authorities acquire their structure and their powers? what have they made of their powers? what are the advantages and disadvantages of the system? and are there more acceptable alternatives?

Non-sovereign Governing Bodies. The foundation of the English system is that local authorities are artificial persons, corporations, created either by charter of the Crown, or by statute, to exercise certain defined duties and powers. They cannot possess more rights than any individual persons generally do by the Common Law or by statute, unless they are definitely granted certain privileges. Any person may do as he likes, excepting as he is restrained by the existing body of law. He cannot oblige others to do certain things, or to refrain from activity, or surrender their property, or to suffer any nuisances he chooses to create. An association of persons is in no better situation. If, then, any single person, or a group of persons, wishes for powers beyond those which are the common possession of all, they must wait until Parliament confers these upon them. Parliament may *oblige* associations to perform certain things, or it may simply *permit* them to take action. And it may permit them either on its own initiative or upon their request. This is a simple derivation from the British principle of the Rule of Law and the Sovereignty of Parliament.

The sovereignty of Parliament, or, to put it in other words, the subjection of all individuals and groups to its will, is a principle which may be and is disputed. But that is a question which, for the moment, need not be discussed at length. If, however, that question were discussed, the historical problem might arise, 'Which came first, the central government and its authority, or the local governing bodies and their authority?' No one is capable of answering that question. If we choose to go back far enough, history discloses a simultaneity of central and local attempts to govern. The central government won; so much so that the Boroughs, even the powerful City of London, begged and paid heavily for privileges from the Crown.[1] From Norman times there is no doubt about the sovereignty of the central government and the derivative subordinate nature of the authority of the local governing bodies. In fact, if we follow the profound researches of the Webbs, we are bound to admit that County, Borough and Parish were units of 'local obligation' rather than units of spontaneous self-government.[2] This judgment may stand even if we give due weight to the power of Boroughs to make bye-laws for the order

[1] Cf. Webb, *The Manor and the Borough.*
[2] Webb, *Statutory Authorities*, Chaps. V and VI.

and good government of the town. For it is not difficult to show that where this bye-law power was challenged, the Law Courts did not permit it more than an exceedingly restricted field,[1] while the municipal corporations themselves did not dare to press this authority very far, but petitioned Parliament for Local Acts which would endow them with the powers they desired.[2] We may, therefore, accept the principle of the sovereignty of Parliament not only over individuals, but over local authorities, without further ado.

Corporations. Nor is that all. Those associations of citizens in limited neighbourhoods called local authorities, are granted the privileges of incorporation. In some cases all the citizens, and in others the governing body, are assumed by the law to be, not a number of separate individuals, but *one person* with the rights and obligations of a single person.[3] This is a device of very great convenience. The best definition of a corporation is that given by Kyd[4]:

'A corporation or a body politic or body incorporate is a collection of many individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive, according to the design of its institution or of the powers conferred upon it, either at the time of its creation, or at any subsequent period of its existence.'

The essence of this definition, and indeed of all the authoritative definitions of a corporation,[5] is twofold: that the corporation is a *creature* of some superior body, and can be destroyed as well as developed by the body which made it, and, secondly, that its privileges are defined by some instrument, and except for the doctrine of reasonable implication, *defined restrictively*. This is the character of all English local government authorities, whether originating in a Charter, or at a time of which 'the memory of man runneth not to the contrary', or by statute. And this character is common to systems of local government on the Continent,[6] in the Dominions, and in the United States of America.[7]

[1] Cf. Laski, 'Early History of the Corporation in England', in his *Foundations of Sovereignty*, 1921.

[2] Webb, *Manor and the Borough*, I, 274.

[3] Kyd, *A Treatise on the Law of Corporations*, 2 Vols., 1793–4. [4] Op. cit.

[5] Cf. Halsbury, *Laws of England* (1909), Vol. VIII, p. 301; Stephen's *Commentaries on the Laws of England* (19th Ed., 1928), Vol. I, p. 319; Street, *Ultra Vires*, 1930, pp. 16 et seq. Cf. Dicey's *Law of the Constitution*, the section in Chapter II dealing with non-sovereign law making bodies.

[6] Cf. Peters, *Grenzen der Kommunalen Selbstverwaltung in Preussen*, 1927; Hauriou, *Principes de droit Administratif*, 1930.

[7] Cf. Dillon, *Municipal Corporations*, 5th Ed., Sect. 237: 'It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second,

In Britain, and in all these other countries, local authorities are subordinate legislative and executive bodies.[1] They have no inherent authority to constitute themselves or set themselves in motion. The next question, however, is how, in practice, do they actually obtain their powers? Although the general constitutional position of local authorities in Britain is not different from that in other States, there may be, and, indeed, there are, interesting differences in the methods whereby the local authorities are actually granted their powers. We shall not at this point stop to consider foreign alternatives, but it can at once be indicated that there are two main methods of granting power to local authorities. The German method is to distribute obligations and powers to various authorities, for example, the Departments of State, and the Churches, and various other public or semi-public bodies; and it also imposes certain obligations on the municipalities, and going further, permits them to take measures at their own discretion for the benefit of their communities. They are apparently given a general enabling power. This arrangement we shall have occasion to examine more cautiously later. For the moment let us accept the general idea; even if it is not exactly true, it is possible. The British alternative is to permit the local authorities only to do what they are expressly given the power or duty to do. This is the method of *specific grant*; what is specified may be done; beyond the specific grant local authorities are powerless. Let us then turn to a consideration of the conditions upon which their powers are actually acquired.

General Statutes and Private Acts. Local authorities of all kinds acquire their powers either by (*a*) General or Public Statutes, or by (*b*) Local or Private Acts. (*a*) The first category consists of

those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void. Much less can any power be exercised, or any act done, which is forbidden by charter or statute. These principles are of transcendent importance, and lie at the foundation of the law of municipal corporations.'

[1] In the United States of America there is much talk of 'Municipal Home Rule'. This does not in any way mean that the cities are free from control by the States, or are not subordinate legal bodies. It merely means that the cities have sought and obtained a certain degree of freedom from the administrative intervention of the central authority, and that they have succeeded in getting Charters empowering them to amend their own constitutions. The term is entirely relative to the degree of *corrupt* control which the State Legislature might have exerted had the cities not pressed for a fairly independent status. Cf. McBain, *The Law and Practice of Municipal Home Rule.*

McBain accepts Dillon's view, and after a searching examination shows that American 'Municipal Home Rule' means that in practice the Courts of Law exercise more controlling power than the State administrative departments or the legislatures; but control there is.

legislation applying generally to all local authorities of a given class or classes. The initiative for their enactment is that of the community generally, though, of course, the driving force may come originally from a comparatively small group of citizens. Here, Parliament is concerned with principles which are to apply all over the country and uniformly wherever the persons or associations denoted in the statute may be. For example, the Local Government Act of 1929 is of general application to all local authorities therein mentioned by the name of their category, Counties, County Boroughs, County Districts, and Parishes. (*b*) On the other hand, the Local or Private Act is initiated by a particular local authority, and it asks for powers beyond the common ones enjoyed by all authorities. Each of these categories may affect the structure or constitution of the local authority as well as the range and nature of their functions, and, in fact, a function being imposed or granted, some actual amendment of constitution for the purpose must usually follow. Now Local Acts are altogether permissive.[1] They add privileges to the local authorities' ordinary body of powers. They issue from the enterprise of the locality. The General Statutes contain both obligatory and permissive clauses. The obligatory clauses, indicated by the term 'shall', produce a uniformity of structure and function among all authorities of the given class, although the different sizes and wealth of the authorities within the same class necessarily results in very considerable diversity; but the underlying principles are uniform. The sources of more substantial diversity in local government are the permissive clauses of General Statutes and the special powers obtained in Local Acts. We must examine this more closely.

Permissive Powers. Powers which are permissive, but derived from General Statutes, (1) can be exercised at once without any formal process of adoption or authorization, or (2) they may be exercisable only upon an Order made by a Minister, or (3) after a more complicated procedure in the case of Adoptive Acts, or (4) acquired by Provisional Orders. The powers exercised simply in pursuance of the permissive 'may' which appears so frequently in the statutes, undoubtedly form by far the largest category. Then there are powers which may be obtained by an Order of a central Department, most usually the Ministry of Health. Parliamentary authority has been given in the statute, and subsequent scrutiny or approval is not required; but the Courts strictly interpret the legality of such orders when they are challenged. For example, County Councils may be given power to execute regulations as to the treatment of persons infected with epidemic or infectious disease. So also regarding powers as to offensive

[1] Not altogether. There are occasionally compulsory provisions (e.g. the construction of a sewer), usually the price levied by certain opponents to the Bill for the withdrawal of their opposition.

trades, ambulances, recreation grounds, sky signs, and many other matters under the Public Health Acts Amendment Act, 1907, Section 3. Further, the powers of an urban authority under the Public Health Acts may be so conferred on a Rural District Council. The Ministry of Health uses its own discretion in these matters; there is no appeal from its decision; it often conducts a local inquiry before it makes or refuses to make an order.

Next, Adoptive Acts are General Statutes which begin to operate in an area only when they have been adopted by a special procedure stated in the Act. For example, under the Lighting and Watching Act, 1833, a Parish Meeting may adopt powers for street lighting, supplying lamps and laying gas-pipes, if, having given fourteen days' notice of the meeting, there is a majority of two-thirds of the electors present at the meeting, or, if a poll is demanded, two-thirds of the votes cast, being a clear majority of the electors, support the adoption. In the case of the Public Libraries Acts, 1892–1919, Public Libraries may be provided if the power is adopted by a bare majority of the meeting. One more example: by the Health Resorts and Watering Places Act of 1921, the Town Council may spend the profits from its chairs in advertising the attractions of the district. Here special notice of the meeting at which the resolution of adoption is moved must be given to every member of the Council and a public announcement must be made by prescribed methods before the Act becomes operative. There are several other Adoptive Acts giving power to run baths and wash-houses, burial-grounds, music and dancing, various sanitary arrangements, gymnasiums. These powers are widely utilized.

Provisional Orders.[1] More difficult than the acquisition of powers by the Adoptive Acts is the procedure by Provisional Order. Indeed, the procedure closely resembles that under Local or Private Act procedure. There are several Acts under which Provisional Orders may be made, including the general Pier and Harbour Acts, 1861 and 1862; the Tramways Act, 1870; the Gas and Water Works Facilities Act, 1870 and 1873; the Public Health Act, 1875, and the Local Government Act, 1888. The last two statutes give powers relating to such important matters as the supply of gas, the compulsory acquisition of land, the dissolution or alteration of districts, the amendment of local acts, alteration of the boundaries of Counties and Boroughs, the union of a County Borough with a County, the union of Counties or Boroughs, the division of Counties, and other powers regarding the formation and dissolution of joint authorities. What is the procedure? The appropriate Government Department makes an Order. But the Order is not valid until confirmed by Parliament. The initiative is taken by the local authority which desires the power, and the Minister requires sufficient evidence from

[1] Erskine May, *Parliamentary Practice* (13th ed.), Chap. XXXI.

the local authority to justify the making of an Order. There are detailed instructions to the local authorities regarding copies of the Memorial and maps, notice to be given to other authorities concerned in the change, and full information about the financial position of the authority is required. Opportunity for the statement of objections is ample and frequently local public inquiries are held at which all persons concerned in the proposal may appear and be heard. The inquiry is, of course, conducted by an inspector of the central authority. If the Minister rejects the application, the matter is at an end so far as procedure by Provisional Order is concerned. If an Order is made, it is included with other Provisional Orders in the Schedule to a Provisional Orders Confirmation Bill. Although introduced by the Minister it is not a Government Bill in the political sense carrying with it full party discipline or the collective responsibility of the Cabinet. The Committee Stage, indeed, is that of a Private Bill. Proposers and objectors appear before it by counsel and witnesses and special experts give evidence. The difference between the procedure and that upon Private Bills, which we discuss in a moment, is that the support of the Minister usually tones down Parliamentary opposition. It happens, also, that the inspector who held the inquiry may give evidence before the Committee. In fact the number of Provisional Orders rejected by Parliament is exceedingly small. The number of Provisional Orders challenged between 1925 and 1930 was only 6 out of 306.

Special Orders. Since 1919 a new procedure has been adopted for some purposes—Special Orders.[1] The difference between this and the ordinary Provisional Orders is that the Special Order is not required to pass through the stages of a Private Bill; it becomes effective if it secures approval by resolution of both Houses of Parliament. Provisional Order procedure is apt to prove more expensive than Private Bill procedure, because proposers and objectors are involved in both Local Inquiries where counsel and experts may be employed, and again in the Committee Stage in Parliament. But there is the advantage that with the Local Inquiry there is a useful extension of the opportunities of objectors, and further, the number of Orders rejected is almost negligible. Although the Special Order system was established to secure expedition and to reduce expense, the congestion of Parliament is so great as to lengthen the time taken to secure approval.

Private or Local Acts. 'A Private Bill is a bill for the particular interest or benefit of any person or persons.'[2] It is founded upon a petition solicited by the promoters. A Private or Local Act for a person or persons, in their private capacity, is most rare. Private Bills

[1] Cf. *R.C. on L.G.: Minutes*, Part II, Qs. 5188–5227; see also Jennings, *Principles of Local Government Law*, pp. 225–9.

[2] *Report from the Select Committee on Private Bills*, No. 158, 1930, App. 1. The ensuing account is taken in the main from this Report and the *Minutes of Evidence*, and from Erskine May's treatise.

for public bodies are most common. All persons who have an interest which may be prejudiced if the petition is granted, that is to say, having a *locus standi*, have the right to oppose the bill. Parliament judges such a petition for special privileges by two standards, the public interest, and the expediency of the particular proposals in relation to their local advantages and in relation to the harm they will do to vested interests. In order that all whose interests may be jeopardized by the bill may be able adequately to oppose it, Private Bill procedure is most minutely regulated. Extensive newspaper advertisement, notices, and applications to owners, lessees, and occupiers of lands and houses are required, copies of the fully drafted bill together with all plans, sections, maps, and other supporting evidence must be deposited in ample time before Parliament actually takes up the matter with the Private Bill Office of Parliament and with various Governmental Departments. A Court of Referees of the House of Commons consisting of the Chairman of Ways and Means, the Deputy Chairman and not less than seven members appointed by the Speaker, and assisted by Mr. Speaker's Counsel, decides the *locus standi* of any objector to the bill where the promoters have challenged the *locus standi*. The bill is read a first time by its simple presentation without discussion. On Second Reading Members of Parliament may object, and should opposition be pressed, then debate must settle the principle at issue. Opposition is rare, but it does occur. Often weeks elapse before the Second Reading is taken, owing to the congestion of Parliament, and attempts to propitiate opposition. But the general testimony is that opposition and delay at this stage frequently serves to produce compromises between the parties, and so saves delay and expense later.

The next stage, and, in fact, the really vital stage, is in Committee. Until 1930, all bills promoted by local authorities by which it was proposed to create powers ' relating to police, sanitary, or other local government regulations in conflict with, deviation from, or excess of, the provisions of the general law ' went, whether opposed or unopposed, whether containing non-municipal clauses also, to a special Private Bill Committee called the Local Legislation Committee. This Committee was first established in 1882 under the name of the Police and Sanitary Committee to ensure that all bills containing local government matters should be considered by the same Committee. It was hoped by such a specialized Committee to secure a certain expertness of judgment brought to bear by members experienced in local government, to secure a continuity of policy, the growth of an instructed judgment and the accumulation of precedents, and a sense of values which might easily be applied to new problems. The Committee originally consisted of seven members. The number gradually grew until there were fifteen members, and they were given the power to divide into two committees, and in that event,

to apportion the bills among them. This system did, in fact, achieve its main objects, for it provided a quasi-permanent body interested and expert in local government, made it possible to secure expedition, while allowing for the discussion and settlement of important and novel problems by the meeting together of the two sections. This Committee dealt with about 20 per cent. of all the Private Bills that came before the House of Commons. Before its members there appeared Parliamentary Agents and expert Counsel, and financial and other experts to argue for and against the merits of the proposal. Upon every proposal it received a report from the administrative Department concerned, and officials from the Department appeared to state the reasons in support of their attitude, to be cross-examined by counsel, and to cross-examine witnesses for the bill with a view to revealing weaknesses. From the localities there appeared the Town Clerk, the Borough Treasurer, the Surveyor and the Medical Officer of Health. There is no doubt of the very valuable service rendered by this special committee or the fullness of the opportunity available to both promoters of and objectors to the proposals.

Nevertheless there were objections. The first was that by segregating all local legislation (numbering about an average of eighteen bills a year, including those sent down from the House of Lords) there was considerable congestion leading to loss of time, and, therefore, added expense in keeping witnesses in London. Moreover, a large amount of the clauses in the bills referred did not deal with local legislation at all. The average of local legislation clauses was in fact in the year 1927 only 29 per cent. of the whole bill. Although the Committee had the power to divide bills and refer those which did not concern them back to the Committee of Selection, the power had not, in fact, been used. It was shown that whereas it took sixty-four Parliamentary days per year to dispose of opposed non-local private legislation, the work being divided between six different groups, several of which might be sitting concurrently, local legislation, opposed and unopposed, took almost exactly the same time, but could only be divided between two sections of the local legislation committee. Hence, unnecessary delays in taking into consideration bills that were ready and waiting.

Nevertheless, the Ministry of Health and the Local Government Associations, with one exception, and the Deputy Chairman of the Local Legislation Committee, spoke strongly in support of the Local Legislation Committee and deprecated any drastic interference. As a matter of fact, the delay is not tremendous, nor is the added expense due to the Committee being ' something of a bottle-neck '. It must be remembered also that each bill contained not one, but several proposals. It is possible without much change in procedure to deal with the unopposed bills more expeditiously, and similarly with the

non-local legislation clauses. What seemed to weigh heavily with the Select Committee which inquired into the matter was that where a committee is specialized, business may be delayed by the lack of a quorum caused by the illness or professional preoccupations of its members. Therefore, they recommended the abolition of the Local Legislation Committee, preferring the distribution of local legislation to ordinary private bill committees composed, in part, of members with experience of local government. This recommendation has been carried out.[1]

This recommendation and the action taken upon it seem to us to go against the weight of the evidence given before the Select Committee. Apart from the fact that all Parliamentary development shows that the private member can have no effective place in modern representative institutions unless he specializes, the Local Legislation Committee itself was a splendid example of the value of action taken by a special committee. The Select Committee recommended the abolition of the Local Legislation Committee because it felt that in this way the ' cause of expedition and economy would be best served '.[2] But the evidence showed that expedition was secured by the accumulation of knowledge and expertness due to dealing with the same or similar proposals continuously. Not only that, it made the judgment acuter and more reasonable. We consider this to be a definitely retrograde step.

Meetings of Electors and Polls. Now, before Boroughs or Urban District Councils may promote a bill in Parliament certain steps have to be taken.[3]

(*a*) Ten days' notice must be advertised of a special meeting of the Council to consider the proposals, indicating the purposes thereof;

(*b*) At the special meeting the resolution to promote the bill must be passed by an absolute majority of the whole number of the Council;

(*c*) The resolution must be advertised twice;

(*d*) A public meeting of electors must be held to pass a resolution consenting to the promotion of the bill, and if the decision of the meeting is challenged, a poll must be taken of the whole of the electors, following generally the procedure for the election of Councillors;

(*e*) A further special meeting of the Council must be held at which a confirming resolution is passed by an absolute majority of the whole number.

By the County Councils (Bills in Parliament) Act, 1903, County

[1] *Public Administration*, October, 1931, ' Local Legislation ', by E. H. R(hodes), p. 469.

[2] *Report*, Select Committee on Private Bills, Sect. 39.

[3] Borough Funds Acts, 1872 and 1903.

Councils were enabled to promote bills in Parliament without obtaining the consent of the electors, but the other requirements of the Borough Funds Acts apply.

In the Local Government Act, 1929, Section 55, Parliament enacted that Rural District Councils should have powers analogous to those possessed by other local authorities as regards the promotion of and the opposition to bills in Parliament; but that the provisions of the Borough Funds Acts relating to meetings of electors and polls *should not apply* to Rural District Councils.

The most troublesome part of this procedure is the public meeting and poll. Firstly, there is no meeting-place really capable of accommodating more than a negligible fraction of those entitled to attend. For example, in Manchester 300,000, in Birmingham 375,000 are local government electors. Nor is that all; when meetings are actually held the numbers who attend are usually ludicrously small, e.g. in Birmingham in 1924 forty persons attended in addition to the members of the Council. There is no means of checking the qualification of those who attend, and there are instances of meetings being packed by interested groups, possibly even by people from another town. When a poll is demanded the arrangements are extensive, while the numbers who go to the poll are very small. Thus, Birmingham in 1912, 3·1 per cent, 1919 3·03 per cent, 1922 7·14 per cent; Manchester, 1921, about 6 per cent. In 34 polls held between 1920 and 1925 the average per cent of those voting was only 15 per cent.[1] The Association of Municipal Associations thought this merely vexatious, since it was virtually an appeal from an instructed to an uninstructed body, and unrepresentative. Moreover, Borough elections occurred often enough for a proper discussion and settlement of such issues during them. Though the Commissioners were reluctant to use the term 'illusory' in relation 'to any of our local administration', it was common ground to them that as a means of safeguarding the ratepayers the meeting and the poll were illusory: it was asserted that well-considered schemes made by experts and accepted by responsible councils had been rejected by small fractions of the electorate, and that since there are usually several proposals of a complicated nature put on the voting paper at the same time an intelligent vote upon them was well-nigh an impossibility. On occasions the operative part of a bill had been accepted but the charge on the rates rejected.[2]

Yet Lord Donoughmore, Chairman of Committees in the House of Lords since 1911, held that the procedure was valuable because it showed whether public opinion supported the bill. He believed that if the poll were small it suggested that the promoting authority had

[1] *R.C. on L.G.: Minutes*, VII, 1426.

[2] Cf. remarks on the Manchester poll in January, 1933, in "Concluding Observations" *infra*.

no big volume of public opinion behind them. We must say at once that this is very doubtful doctrine.

The Royal Commission, noting that Parliament had already repealed the requirements of the Borough Funds Acts in regard to meetings of electors and polls in the cases of opposition to bills, the promotion of bills for the creation or extension of County Boroughs, and promotion of bills by County Councils or Rural District Councils, and noting also the general weakness of the case for meetings of electors and polls, advised their general abolition. But the special meetings and resolutions of the Council, and the special notice should remain.[1] In our opinion the apathy shown by electors at the meetings and polls we have discussed, is most relevant to the question whether local authorities can be left free to do as they like, substantially and financially, without control by Parliament or the Departments. When electors on extraordinary occasions and after special notice stay at home there is little ground to trust them with unlimited powers and much in favour of a careful tutelage.

Is the English Method of granting Powers Reasonable ? We have analysed the process of the passage of Local Acts at some length for a good reason. Upon the excellence of the procedure and the principles which underly it must depend in large part our judgment whether the method of granting the powers of local authorities in this country is beneficial or not, and whether there is an acceptable alternative. To that question we now turn.

The Unprogressiveness of Local Authorities. Now the main characteristic of the existing system is that local authorities cannot increase their powers except (*a*) at the initiative of Parliament acting on behalf of the whole community or (*b*) Parliament acting on the initiative of a locality whose proposals must be approved by the whole community as represented by Parliament. We must inquire into the nature of each of these lines of development. It is clear that advance along the former line must be fast or slow according to the social ideals of the community at different periods. During the nineteenth century, and particularly in the last thirty years, there is no doubt that the social ideals of the whole community as interpreted by Parliament were far in advance of any enterprise shown by local authorities; the exceptions are almost negligible. Even where Parliament has made statutes giving permission for certain things to be done by local authorities, hundreds of opportunities have been neglected by the local authorities. Many avenues of development and experiment are open to them in education, poor relief, public health, roads, and police, but in comparison with the number few have been utilized. If one takes the history of public libraries alone, one has an ample test of the discouraging unreadiness

[1] *R.C. on L.G.: Final Report*, 1929, Sect. V.

of the majority of local authorities to undertake great things.[1] The central authority is not at fault, nor the method by which power is granted; the power is there for the taking. The blunt and unfortunate truth is that the local authorities will not take their opportunities.

But that is not all by any means. Even where Parliament has imposed obligations in the most peremptory terms, and in the most vital matters, affecting the health, education and order of the country, the central authority has in very many cases only been able to secure a reasonable standard of efficiency by constant pressure and encouragement, by the inducement of grants, by occasional threats to act in default, by the insistence of its inspectors, by reams of correspondence —and even then there has frequently been either entire or partial default. Consider all the opportunities open to local authorities by Joint Schemes! Consider their freedom to settle the terms of recruitment of their officers! And consider the extent to which these opportunities have been turned into mere occasions for quarrels, apathetic conservatism, patronage! The cause lies not in the laws, but definitely in the mind of the local community. It is idle, therefore, to pretend as some authorities pretend to pretend, that the unprogressiveness of English municipal life is due to a system where local authorities can only do what they are specifically empowered to do, everything beyond being *ultra vires*. It is true that there is a legal limit to what local authorities may do, the local council itself being liable for expenditure and damage caused by extra-legal activities. But the unprogressiveness, in so far as it exists, is a condition of the mentality of the local community. When this changes in character, many powers already provided by the general law will be found useful. The real question involved in the extension of municipal activity is how far the local communities and the nation are prepared to extricate themselves from a civilization in which private enterprise and private profit are still the paramount principles.

The Problem of Progressive Authorities. What, then, is to be said where there are progressive municipal authorities, who already satisfy the general conditions laid down by Parliament and the central Departments, and wish to go further? Ought they to be able to decide this for themselves without any external authorization, or ought they to be subject to some other superior community? This raises the most fundamental questions of government. On the one hand it is of vital importance that any individual or association should be able to develop its own creative tendencies. All the argu-

[1] Cf. the *Report* of *Committee on Public Libraries* (1922), pp. 203 et seq.: '. . . Unfortunately a library area does not necessarily provide a library service. We have been unable to obtain any information in regard to 49 urban library areas with a population of nearly 580,000 and conclude that they have no library service. . . . Nor does the existence of a library service necessarily imply that the service is in any way adequate.'

ments in favour of human liberty support such a proposition. Someone must actually start the experiment, convert a mere thought or a wish into an act. On the other hand, such actions must be well considered before they are taken, lest existing interests are injured and lest such injury produces everywhere a lack of confidence in future arrangements. And if we argue, as so large a proportion of our economists argue to-day, that *all* industry ought to be rationalized, why not municipal activities also? Now, where such a balance has to be struck between these two considerations, the problem arises whether to leave the decision to the local community, or whether to vest the ultimate decision in the representatives of the whole nation. There is much to be said for the latter course.

Why the Central Authority should decide. In the first place, it will provide the weight of further counsel and the advantage of extra expertness. These are not to be despised, when it is considered that the range of observation and knowledge of a local community are inferior, normally, to those possessed by the national representatives. Secondly, it would appear to be rather unwise to leave the judgment upon a matter which may seriously affect the fortunes of a local community, and certainly the liberty and property of some citizens, to a council based upon elections. We know already how small a proportion of local citizens participate in local elections. Even if this number were raised as a result of adding questions of municipal enterprise to the usual subjects of local controversy, who can trust the process of election, to-day, as a criterion of what is good and just? It may be urged that the democratic system is better than any alternative. We agree that it is. It is, in fact, indispensable. But it is indispensable not so much because it has absolute and positive advantages as because, in spite of its numerous and almost mortal defects, there is no acceptable alternative. But, there is no reason why the majority principle should operate unrestrained, if there is some reasonable method of reviewing its actions. We cannot avoid final recourse to the democratic process in the affairs of the nation, but it is surely not unreasonable to temper the initiative of the majority in a small community by an examination conducted by some body acting on behalf of the national community.

It may be, and it is, urged by a few that caution is unnecessary, that if the local authority be left free to make experiments and these turn out to be failures, the failures themselves will teach the local authorities to be wiser in the future. Such an argument begs some important questions: the damage will already have been done and may be irrevocable; and secondly, experience of one mistake does not necessarily provide valid lessons for other proposals and other councillors. Of course, if there are people who want the extension of municipal activity at no matter what cost, if there is an infatuation

for the thing itself, all these questions and hesitations cease to have effect. We should imagine, however, that much the same principles would hold, for this subject, in a socialistic as well as a capitalistic State. Who dares suggest that local authorities will be freer in a socialist State than they are now, any more than individual persons will be? Surely, then, no local authority will be permitted to produce and distribute, to employ men and capital, unless by central authorization after an investigation to determine whether the national plan and budget are conformed with?

Let us assume that, on the whole, it is good government to require that a local authority which wants more powers should be required to come to the central authority to ask for them. What are the conditions which should be fulfilled before the power is granted? The conditions seem to me to be these. (1) Those who want new powers—which, it must be remembered, are powers of compulsion over the behaviour and money of others—ought positively to prove that no public disadvantage will result from grant of the power and that positive local benefits will accrue from it. (2) All persons whose liberty or property is affected should have ample opportunity to show cause why these should not be disturbed. (3) Procedure should be as rapid as possible, compatible with these conditions (4) Procedure should be as inexpensive as possible.

Now, how far does present Private Bill procedure satisfy these four conditions? The onus of proof is indeed placed upon the promoters of the bill. The Committee stage is exceedingly thorough, proceeding by the examination and cross-examination of witnesses and counsel. There is a thorough examination of the proposals by members appointed by Parliament, there is a thorough examination by a Department of State within the field of whose regular business the proposal falls. Until 1931, the examination was conducted before a Committee whose constitution permitted comparison of proposals both in terms of those brought by different municipalities and in terms of past years.[1] Both consistency and awareness were provided for. Evidence shows that all persons likely to be affected were amply notified, even more than amply, so that the Committee of Inquiry was able to recommend a certain diminution of costs by a slight curtailment of the amount of advertisement. The evidence also shows that not only private interests, who may be opponents of proposals, think it just that they should have ample notification and opportunity of stating and proving their case, *but the local authorities themselves who are not infrequently affected by, and opponents of, their enterprising neighbours, consider this condition to be fundamental.* It is possible, perhaps, to find

[1] It annually presented a Report on its work to Parliament, e.g. 1919, No. 150, B.P.P., Vol. V; 1929–30. No. 163. B.P.P., Vol. VI.

local authorities who would like all restrictions to be moved from the path of their local advance, but the testimony shows quite clearly and universally that when they regard the subject as one which may affect them, when they may suffer, for example, by the extension of omnibus services into their area, they want some board of arbitration before which they can show cause.

At the present moment, in normal circumstances, a local authority must wait between six to nine months from the time it has deposited the bill before all its stages are accomplished. No one seriously complains that this is damaging. It might be expedited to the extent of days or weeks, and if the suggestion of a Deputy Chairman of the Local Legislation Committee or of Mr. Gibbon of the Ministry of Health were adopted,[1] that there should be more members on a Local Legislation Committee working through three or four sub-committees, there could hardly be any criticism at all.

The procedure is, of course, expensive. Advertisement, printing, parliamentary agents, the bringing and keeping of witnesses in Westminster, counsel at the Parliamentary Bar, all cost money. In the case of *unopposed* local legislation, the average cost per bill is a little over £3,000. Bills opposed in one House only are apt to cost about £4,500, and £7,500 in those that are opposed in both Houses. These sums are trivial compared with the usual magnitude of the proposals. The big sums are taken up in the payment of the legal and professional charges of the agents, counsel and experts. They are responsible for a little more than one half of the entire expenditure. There is no way of avoiding this expenditure while local authorities and vested interests wish to secure themselves both of the opportunities of proving their case and of defending themselves against what they consider to be encroachments. The fees of counsel and of the agents could be reduced by Parliamentary command. It would be fair to pay the House Fees amounting to a little over 9 per cent. of the expenditure on unopposed, and not very much less for opposed, bills out of the national Treasury, on the ground that local authorities who promote or resist proposals are performing a necessary public service. Expenditure could also be decreased to some extent by an acceleration of the procedure.

Parliamentary or Departmental Judgment ? There is still one question to be answered. If it is agreed that local authorities ought not to be able to make experiments without proving their case against opposition, ought the tribunal before which they appear be a Committee of Parliament or the Department of State ? It is not unreasonable to demand that in either case the same amplitude of proposal and defence would be permissible. In that case there would still be delay ; while one bill was getting through, others would have

[1] *Evidence, Select Committee on Private Bills.*

to wait. There would still be expense. We doubt whether there is anything to choose between recourse to Parliament or a Department of State excepting this, and it is a large and important exception, that whereas all parties trust Parliament they tend to distrust Departments of State. They all value access to Parliament as a guarantee of justice. It would be a political error of the first magnitude to withdraw authority from a body which is trusted in order to vest it in another, especially expert perhaps, but in which confidence is not so gladly reposed. But that is not all.

There are people who believe that the extension of municipal enterprise would be furthered more rapidly by an administrative Department than by a Parliamentary Committee. We have no means of knowing whether that is true now, or whether it will be in the future. We only know that Parliament, as at present constituted, is very cautious in its grant of extra powers to municipalities. It does not act entirely negatively. A careful survey which we ourselves have made of the reports of the Local Legislation Committee from 1919 to 1930 shows that Parliament has not been ungenerous in extending powers in the matter of building regulations, sanitary and public health provisions, the acquisition of land, regulation of advertisements, motor, tramway and trolley transport, water supply arrangements, the purchase and sale of milk and dairy products within the boundaries of the city (Sheffield, 1920), the registration of maternity homes, of public weighing machines, notification of tuberculosis cases, control of seaside parades, the inspection of meat, regulation of street traffic, powers for the prevention of smoke and grit, the letting of premises for theatrical entertainments, the licensing of street traders, the treatment and manufacture of refuse in any manner calculated to produce a marketable commodity, to lay down, fix, and maintain gas fittings, to provide and manage a bank.[1] The Committee rarely rejected proposals made by local authorities. Where it has done so, as, for example, in the case of Walsall,[2] powers were refused (with regard to the acquisition of land for housing and town planning), until similar powers granted elsewhere shortly before had been tested by experience.

It may, of course, be argued that if there were no need to come to Parliament at all, or if the procedure were less expensive, there might be a rapid and extraordinary development of municipal enterprise in banking, the administration of concerts and theatres, libraries, art galleries, museums, parks, railway stations, and so on. This might be so. But we have no reason to believe that anything extraordinary along these lines would happen, and, in fact, there is a great

[1] Cf. City of Birmingham *Handbook*, 1932, pp. 241–5; cf. *Britain's First Municipal Savings Bank* (Blackfriars Press).

[2] Report, *Local Legislation Committee*, 1919.

deal to be said in favour of the need to secure Parliamentary approval. In so far as any desirable progress is at present frustrated by the objection of vested interests and the capitalistic mentality of Parliament, those who desire to see the municipalities managing a great deal of what is now exclusively private enterprise may well trust their fortune to the Parliaments of the future which may have a socialistic outlook. There is nothing inherent in the mind of an administrative Department which makes it a more liberal agent than Parliament for the extension of municipal enterprise.

A Local Authorities Enabling Bill. There have been suggestions for the improvement of the situation generally by a statute which would widen the area within which local authorities could act freely. Such proposals have been introduced year after year mainly by Labour Members of Parliament in the form of a Local Authorities Enabling Bill.[1] Another proposal is that made by the Ministry of Health before the Select Committee on Private Bill Procedure: that Parliament should extend the privileges granted to individual local authorities to all other authorities. 'One obvious way in which to diminish the bulk of local legislation is to reduce the present lag between local and general legislation, so that powers which are granted by Parliament as a matter of course in Local Acts may be embodied in the general law.' This had been done on various occasions, for example, in the Public Health Acts, 1890, 1907, and 1925. These extensions were exceedingly beneficial, but where they had not caught up the newer accretions of local power, local authorities were still obliged to introduce bills to obtain the identical powers which had already been given to other authorities. The view of the Ministry of Health as put by Mr. Gibbon, an Assistant Secretary of the Ministry of Health, was this:

'If one could have a kind of recognized principle that every so many years—five years would not be too short, and I would say that if it were ten years it would be a tremendous improvement on present conditions—there should be a Bill brought in which would endeavour to make general the provisions which are given as a matter of course in local Acts, I think it would be a great improvement.' [2]

Finally, it seems to us not too exorbitant to require that the central authority shall pay one half of the costs incurred by local authorities in promoting local Acts. This would be an encourage-

[1] Thus, to take one example, the Local Authorities (Enabling) Bill, 1927, was a bill to extend the powers of local authorities in matters of Finance and Municipal Trading. It substituted a system of granting general powers, subject, in certain matters, to specific central regulation and control, to the larger local authorities, for the present system of giving them specific powers for particular purposes. And thus the bill enabled the County and large Borough or U.D. Councils to trade or hold land, gave them borrowing powers, etc., etc.

[2] *Evidence, loc. cit.*, Q. 1120.

ment to local initiative, and some compensation made by the whole community for the safeguard it enjoys over local experimentation.

Ultra Vires. On the whole, then, both as to principle and procedure, there is a great deal to be said for the English system. It has, of course, certain implications. First, no authority, small or large, ill-governed or well-governed, may spend a farthing out of rates or impose any obligation upon a citizen to act or forbear outside the positive obligations and permissions of Common and Statute Law. Such action is outside the law: *ultra vires*. Any such action will be punishable, and those responsible may be surcharged personally with the expenditure, and the corporation may be sued for damages. But we pursue the question of judicial control over the local authorities in its various forms, including audit, later in this chapter.

Continental Theory and Practice. To throw the English system into relief, and also to straighten out some errors into which certain thinkers appear to have fallen, let us glance at the alternatives which operate in Prussia and France.

In Prussia, the law regards the local authorities as subordinate corporations, although the statutes, the traditions, and the Federal and State Constitutions prescribe that there shall be ample self-government.[1] What 'self-government' shall be is, however, dependent on the State Parliament and the Law Courts. Parliament has exercised its will in the following way: (1) There are, as in England, certain functions which the local authorities are *obliged* to carry out almost as the local agents of the central authority. These include such things as Police, Administration of Water Resources, Diseases of Animals, Inspection of Slaughter-houses and Food, Infectious Diseases and other aspects of public health, Highways, and Education. Altogether about 80 per cent of the total expenditure of the Prussian local authorities is expenditure on such *imposed* services.[2] (2) There are some services which have been expressly given to certain associations, for example, ecclesiastical affairs to the recognized representative ecclesiastical bodies, control of conditions of work and prices to certain semi-public syndicates. Finally, (3) there is an elastic category of self-government affairs (*eigene*) undefined by the statutes and in part obligatory, in part the subject of the free discretion of the local authority itself. The Memorandum attached to the Municipal Order of 1850 says:

'Municipal affairs are all affairs which correspond to the nature of the municipality &c., the satisfaction by means of its property and the united powers of its members of those needs which, on the one hand, seem universal to the family and private associations, while, on the other hand, they seem special from the angle of the greater political bodies and the State.'

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[1] Cf. Stier-Somlo, *Handbuch des Kommunalen Verfassungs-Rechts in Preussen* (1928), pp. 4 ff.; Peters, op. cit.

[2] *Übertragene*, or, *Auftragsangelegenheiten*.

But this is not actual law. There is in fact no statutory definition of an 'affair of the municipality'. The only legal definitions are those derivable from the decisions of the Supreme Law Courts of Prussia, on the occasions when the action of a municipality has been challenged either by a person or another local government body or by a representative of the central authority. Thus there is a limit to what Prussian local authorities may do. The Supreme Administrative Court itself has, in the past, taken a generous view of the meaning of self-government, and in a famous series of decisions has held that the municipality can draw into the field of its own activity 'everything that affects the material interest and the spiritual development of the individual and the welfare of the community'. Yet even this contains a limitation drawn from the local territorial character of the municipality. It may proceed as far as it wishes, providing the means come from within its own boundaries, and are applied within its own boundaries. Should its actions be challenged, then it must prove that they are of special benefit to the locality, and that all the means and institutions thereto are contained within the locality or by agreement with its neighbours. Municipal enterprise in the form of water supply, gas supply, electricity supply, the provision and management of theatres and cinemas, bakeries, gardens, book printing and binding *for municipal purposes* (not general supply), slaughter-houses and markets, the distribution of milk, and saving banks, these have been instituted and their legality sustained.[1] But, as soon as the extension of such enterprise to food supply more generally—bakeries, butcheries, green-groceries and clothing supply—are concerned, then *the principle of vicinity* operates, and the right to the independent extension of activities becomes of no force. There is one sphere, however, in which the German municipalities enjoy an advantage over the English, and that is, that they do not require special statutory permission for the acquisition of land. They may buy land as they will and can, and a large number of the towns own about 25 per cent of all the land in their area, and some a good deal more. It should not be forgotten that as the central authority requires so much to be spent on the obligatory functions, the local authorities are not left financially capable of making experiments. Where activities cannot be carried out without raising a loan, the local authority requires the approval of its resolution to take action by one of the higher local authorities. Since 1914 the regulation of the power to make loans (which is necessarily a regulation to do the things the municipality wants to do) is much more stringent than ever before.

It is idle, therefore, to pretend that German local authorities can

[1] For a survey of municipal enterprise in Germany, see *Reports of the International Congress of Local Authorities*, 1926 and 1929. Office of the Congress is at Palace Chambers, Bridge Street, London, S.W.1.

do as they like. They may try to do as they like, and in many minor matters they have an advantage over English local authorities. For the rest, they are challengeable in much the same way as promoters of Private Bills in England, excepting that the decision is made by a judicial and not a Parliamentary tribunal. In that case, apart from the smaller expense entailed in the judicial process, a comparison between the systems is a comparison of the mentality of Parliament and the Supreme Administrative Court of Prussia. All we can say is that in the past the Court (trained as German judges are, in economics and administration as well as in the civil and criminal law)[1] has encouraged local enterprise, but not very far beyond the English limits, and has enunciated and applied the doctrine of 'vicinity' as a limitation upon local enterprise. In the past Parliament has not been unduly restrictive. The Germans have generally pressed forward (in this connexion most importantly with the establishment of a capable and progressive local Civil Service), not simply because the law allows them to, but because they have positively willed the amenities of a better organized civilization. But English ratepayers and local councillors have been more cautious. It may yet happen that a British Parliament, socialistically minded, may press forward faster than a Prussian Court of Justice. Let us not ascribe to the discredit of the law what is in fact a consequence of civic scepticism and indifference. The law is more often an effect than a cause.

French Theory and Practice. In France, certain fundamental statutes appear to yield the municipalities a large and free sphere of activity. The statute of 1850 says that the municipalities may carry out any activity which is 'proper to the municipal authority'.[2] The question remains, what exactly is meant by 'proper to the municipal authority'. It is certainly not unlimited, and the best French authorities hold that the *principle of speciality* governs their activity. That is to say, a special authorization must be shown for anything they attempt to do. In fact, the actual functions of the municipalities are determined by four rules: (1) The municipality must carry out the services imposed upon it by the State; and moreover, the standard of efficiency and expense is determined by the Prefect who is the agent of the State. (2) If, in the opinion of the Prefect, these obligatory services are not sufficiently provided for, then the expenditure on the optional services may be reduced. (3) The local authority may proceed to establish any service which is covered by the definition of 'police', that is to say, where *order and good government is urgently*

[1] On law training, which, in the ultimate resort, is rather the deciding factor in these matters, see my *Theory and Practice of Modern Government*, II, Chap. XXX.

[2] Hauriou, *Précis de droit Administratif*, 1927, and Berthèlemy, *Traité de droit Administratif* (1930). In this account, the author has followed the leading cases, which are listed in Hauriou, pp. 184–7, through the *Receuil Sirey*. Some of the cases are dealt with in Hauriou's volumes of collected *Notes d'Arrêts*.

dependent upon such a function.[1] For example, the subsidization of medical aid in order to secure free medical service for all is proper, where, through local circumstances, it is evident that otherwise adequate medical assistance could not be obtained. However, (4) where the function is the management of public services out of a general desire to socialize them or to exploit them for a profit, the municipality will be forbidden from doing so on the grounds that the régime of private property and economic liberty are fundamental, and good cause must be shown why the fundamental rule should be departed from. Thus, for example, a municipal bakery, municipal baths in places where baths are adequately provided by private enterprise, municipal medical assistance, a municipal fish shop have been declared *ultra vires*. But municipal gas and electricity supply for lighting and power and municipal water supply have been permitted. Hence, though the local authorities have a general commission, there is a control in the hands of the central authority, an administrative control. Further, any person or persons may challenge the action of the locality before the administrative tribunals with the *Conseil d'État* as the final court to decide whether or not the matter comes within the 'police power' of the municipality. If it cannot be proved that in a strict sense health, police, security, or destitution are immediately and presently involved, then the municipality is powerless. The essence, then, of the French system is that a municipality is free to attempt an experiment, but it may be challenged, and at the present stage of development it is likely to be stopped. The fact that the municipality might be stopped prevents many things from being attempted. The English system is to impose upon the municipalities the burden of proof that powers should be granted to them. When, in 1926, the French Government issued various decrees tending towards decentralization, there was included among them one upon 'Municipal enterprise of an industrial and commercial character'.[2] Yet no enterprise can be commenced without previous authorization either by the *prefet* of the Département, or by the Ministry of the Interior and Finance, or by the Minister of the Interior and other Departments concerned, after receiving counsel from the *Conseil d'État*. There is then and subsequently an obligation to conform with certain rules of organization and operation laid down by the authorizing agencies.[3]

[1] Upon this, those who are interested may consult Foucher, *Manuel Pratique des Communes*, article 'Police Municipale et Rural'.

[2] *Décret du 28 décembre, 1926; relatif aux régies municipales.* See Dalloz, *Code Administratif*. Cf. Berthèlemy, *Les Reformes de 1926* (1927).

[3] The brilliant study by Maurice Félix, *L'Activité economique de la Commune, I, Regies Municipales*, Paris, 1932, which appeared after our account was written, supports in detail, and more subtly, what we have said. He points out that in the decisions of 30 May 1930, and 27 Feb. 1931, the *Conseil d'État* asserts that the decree-laws of 1926 do nothing more than confirm the principles established hitherto by the Court.

Municipal Enterprise: the Two Fundamental Principles. As we shall have little more to say on the subject of the powers of local authorities, it is not irrelevant to conclude this section of the chapter by a brief consideration of the question of municipal enterprise, or, in other words, the municipal socialization of services at present performed by private persons or companies.[1] Two essential questions are involved; they are usually confused but ought to be kept separate. The first is, whether the municipality is likely to be more efficient in the administration of a service than a private company; whether, for example, it will give a better quality of tramway service or water supply, or electric current and apparatus, or gas at lower rates.

No municipality, simply because it is a municipality, can guarantee that it will be more efficient than private enterprise. Whether it will be more efficient depends entirely upon the degree of skill of its officials; the wisdom and energy of its managing body; the relationship between the councillors who represent the public as consumers and ratepayers and the technical experts; the incentive to production of all concerned; its organization, procedure, and all the other things which convert a mere mass of men and women into a team adequately co-operating to achieve a given purpose. If the municipality can in these combined respects function better than any private association, then municipal productivity will be better, and will be desirable for the whole community; but it must fulfil these conditions. The mere fact that it is a municipality gives no presumption that the quality of its enterprise is superior to that of private business. If we pretend it is, then we are simply loading the scales against the ultimate triumph of municipal enterprise by ignoring the difficulties it must overcome. It is more reasonable, indeed, to say that a monopoly buttressed by the authority of the State, with a rate-fund from which losses due to administrative inefficiency can be recouped, is liable to be less productive than private industry energized by the acquisitive instincts and carried along with a ruthless disregard of all but profits.

Justice before Profit. There is, however, another tenable principle. This is, that even if the present-day process of election is continued, even if local officials are not chosen with every guarantee of efficiency, and even if the general conditions lead one to suppose that municipal enterprise will be less efficient than private enterprise, municipal enterprise is still desirable. For it may be quite reasonably maintained that when enterprises, say, electricity, gas, tramways, bakeries, dairies, slaughter-houses, theatres, are managed by the municipality their aggregate cost per unit may be greater, yet certain demerits of private enterprise will be abolished. For example, differential charges may be made to the rich and the poor. Having a

[1] Cf. especially Finer: *Municipal Trading*, 1941. A full scale, up-to-date study of the problems of municipal administration of water, gas, electricity and transport.

monopoly and full control, the municipality may construct a scale of prices ranging by degrees from gratuitous distribution to the destitute, up and up, until the very rich are charged considerably above the selling price that would rule in private commerce. Losses would be made up by taxation. Certain undesirable accompaniments of private enterprise, for example, insanitary conditions in slaughter-houses, ruthless discipline and dismissal of employees, the unhygienic production, packing and adulteration of milk and other foodstuffs would be abolished. Of this principle one can only say that if one holds it strongly, and if one believes that public control of industry cannot operate in any alternative way to full municipalization—then obviously it is the only way. And one will adopt the argument in proportion to the intensity of one's instinctive passion for this, that, or the other, element of social justice. If it is thought that the way to a more desirable state of society is to municipalize and then to reform the organization and functioning of local authorities so as to guarantee industrial and commercial efficiency as well as social justice, then one will try to do it. In the next chapters we discuss the internal organization of local authorities, and from them we shall be able to discern the conditions under which local authorities may act successfully in what is now the sphere of private industry.

II

JUDICIAL CONTROL.

Before we leave the subject of the Constitution and Powers of Local Authorities it is apposite at this point to remark that their status implies considerable external control. This, as a result of centuries of evolution, is of a twofold character: it is a control by the Courts of Law, and by the administrative Departments. We discuss Administrative Control in a later part of this work.

Judicial Control of Local Authorities. The control which the Courts exercise over local government authorities (as well, of course, as over public authorities in general) has excited considerable public concern and discussion in recent years.

In the last hundred years or so, a great number of statutes regulating different aspects of local government were passed by Parliament; these considerably increased the powers and duties of local authorities. The exercise of these powers and the performance of these duties have led to innumerable legal disputes, and the decisions of the Courts have had considerable influence in guiding local government legislation. The Courts have intervened because the local authorities, being corporate bodies with all their powers and duties laid down by statute, have often performed *ultra vires* acts or omitted to carry out their proper duties.

The powers and duties of local authorities are rarely laid down in precise and unmistakable detail in statutes. Some powers are discretionary;

others are obligatory. It has been necessary for the Courts to determine exactly what the discretionary powers of local authorities really involve, and in what circumstances the local authorities can use their discretion in the performance of their obligatory duties. In quite a number of cases, of course, the Courts have been expressly excluded by statute from interfering with the powers wielded by the central Departments over the local authorities, but these, though exceedingly important in principle,[1] are comparatively few in number when contrasted with the cases in which the Courts may intervene.

The control of the Courts over local authorities invariably manifests itself in three categories of cases:

(1) where the authorities go beyond the powers granted to them by statute (i.e. commit *ultra vires* acts);
(2) where the authorities are not performing the duties imposed on them by statute; and
(3) where the authorities exercise functions subject to appeal to the Courts.

These classes of cases, embracing the whole sphere of the Courts' activities as far as local authorities are concerned, are clearly of outstanding importance, and must be examined in some detail.

Ultra Vires.[2] The first class of cases includes activities like those which we illustrate later in our discussion of the powers of disallowance and surcharge of expenditure unauthorized by law, and the nullification of bye-laws made without statutory authority, or with it, but *unreasonably*.[3] The Courts can only prevent these powers from being exceeded; they cannot compel the authorities to exercise them. Local authorities, like any corporate body, cannot perform acts which are *ultra vires* (i.e. beyond their statutory powers); if they do not keep within the express or implied authorization of a statute, their actions are void.[4] Thus, a municipal corporation cannot spend rate-

[1] Cf. *Report* of the Committee on Ministers' Powers, Cmd. 4060, of 1932, and particularly Volume I of *Minutes of Evidence*.

[2] This subject is treated legally in Street, *Ultra Vires* (1930), and in Robinson, *Legal Liability of Public Authorities*, 1925. The *politics* of the subject is treated in W. A. Robson, *Development of Local Government*, 1930. Street observes that *ultra vires* cases did not arise before the nineteenth century. That may be true. But no one should draw the conclusion (Mr. Street certainly does not) that, therefore, local authorities could do anything they liked before that time. From the *Case of Proclamations* the control of the Law Courts over excess of powers is well-established.

[3] For example, in *Kruse v. Johnson* (1898), 2 Q.B. 91, it was held that bye-laws, as well as not being *ultra vires*, must be reasonable. For fuller discussion, see Chap. XII.

[4] *Ashbury Railway Carriage Co. v. Riche*, (1875) L.R.T.H.L. 653. It was held, in this case, that where there is an Act of Parliament creating a corporation for a particular purpose and giving it powers for that purpose, what it does not expressly or impliedly authorize is to be taken to be prohibited. This jurisdiction extends to local authorities; cf. *London County Council v. Attorney-General*, (1902) A.C. 165, in which it was held that municipal corporations could not carry out objects not authorized by the Municipal Corporations Act, 1882.

payers' money on a general parcels delivery business apart from their tramways,[1] or on a corporation laundry where only a corporation washhouse was permitted.[2] But the Courts have decided that a local authority is liable in damages for a tort which, although manifestly *ultra vires*, has been expressly and deliberately commanded by that authority.[3]

These cases, however, by no means exhaust the possibilities of judicial intervention in this direction. The powers exercised by a local authority may be well within the statutory compass, but in carrying them out, may injure the rights of some person or body of persons, in which case it is actionable for damages or other remedy. It is clearly established that corporate funds may be made liable for any injury caused in executing statutory powers.[4] Thus, in a very famous and much-quoted case, the Metropolitan Asylums Board established, as it had statutory powers to do, a smallpox isolation hospital, but in a place where it became an obvious nuisance to some local people.[5] The House of Lords held that, though the authority was doing something which was not void, nevertheless the manner in which the act was carried out was illegal. In his judgement on the case, Lord Watson said:

'If the order (i.e. the erection of the smallpox hospital) can be implemented without nuisance, they (i.e. the defendants in the case, the Metropolitan Asylums Board) cannot, in my opinion, plead the protection of the statute. . . . Where the terms of the statute are not imperative, but permissive, when it is left to the discretion of the persons empowered to determine whether the general powers committed shall be put into execution or not, I think the fair inference is that the Legislature intended that discretion to be exercised in strict conformity with private rights, and did not intend to confer licence to commit nuisance in any place which might be selected for the purpose. . . .'

Since it is an axiom of English Law that 'any interference with the personal liberty or the private property of the citizen must be justifiable in law',[6] the Courts deny, as the cases cited have shown, that local authorities have powers beyond those given to them by Parlia-

[1] *Attorney-General v. Manchester Corporation*, (1906) 1 Ch. 643.
[2] *Attorney-General v. Fulham Corporation*, (1921) 1 Ch. 440.
[3] *Campbell v. Paddington Corporation*, (1911) 1 K.B. 869.
[4] *Gallsworthy v. Selby Dam Drainage Commissioners*, (1892) 1 Q.B. 348. Lord Esher, M.R., said in his judgement: '. . . Where commissioners have to construct works, and may levy rates to pay for their construction, there is an implication, unless it be clearly negatived by something in the Act to the contrary, that it is within their power to levy a rate to provide for a liability incurred through the work being done negligently by their servants.' But in *Hammersmith and City Railway Co. v. Brand*, (1869) 4 H.L. 171, the House of Lords decided that if the Legislature authorizes by statute the doing of a particular thing, the doing of it cannot be wrong; in Lord Blackburn's words, 'no action lies for what is *damnum absque injuria*'. Thus, if the Legislature expressly authorizes a public works, which individuals claim and prove to be a nuisance, it cannot be legally treated as such.
[5] *Metropolitan Asylums Board v. Hill*, (1881) 6 App. Cas. 193.
[6] Wade and Phillips, *Constitutional Law*, p. 271.

ment, and readily deny any propensity to commit wrongs. Where, in practice, a local authority commits a nuisance, thus injuring individuals or bodies in any way, the latter can sue for damages or apply for an injunction, except where the authority has been expressly empowered by statute to undertake the specific work regarded as a nuisance (i.e. the authority has been expressly granted exemption from the legal liability which any private individual would incur for the same act).

Unfulfilled Obligations. Secondly, the Courts intervene in cases where the local authorities fail to carry out obligations imposed on them by statute. The Courts are quite clear on the procedure required to enforce the obligation. Since every duty necessarily implies a power to act, then, if the duty is one towards individual citizens, these individuals are given the right to press for a remedy in case of nonfeasance [1] or misfeasance,[2] whilst if the duties are towards the public in general, it becomes the specific function of the Attorney-General, representing the Crown, to seek a remedy. Now, these obligations are invariably of a discretionary nature, for, though they must be finally performed by the authorities, the circumstances in which they are performed (i.e. the time, place, etc.) are usually left to their discretion. Hence it is the sole function of the Courts, if applied to in regard to cases of this kind, to see that the discretion is *reasonably* [3] exercised. Thus, in *Cooper* v. *Wandsworth Board of Works*,[4] an action of trespass was brought by the plaintiff against the local authority for pulling down and demolishing his house, without giving him a fair warning of their intention, in spite of the Metropolis Local Management Act,[5] which expressly stated that the power of demolishing houses was subject to the condition that no man is to be deprived of his property without his having an opportunity of being heard. The Court held that the Board was not justified under the statute, because, in the words of Erle, C.J., 'they have not qualified themselves for the exercise of their power by hearing the party to be affected by their decision'. Thus, further, in the important case of *Mersey Docks and Harbour Board Trustees v. Gibbs*,[6] it was held by the House of Lords that an authorization to carry out certain works which necessarily interfere with private rights will not excuse a *negligent* interference causing unnecessary injury to the subject.

But the numerous cases in similar questions go to show that the aggrieved individual does not by any means always get his remedy,

[1] I.e. omission to act.

[2] I.e. a wrongful performance of some lawful act.

[3] Professor H. J. Laski, in his Note to the *Report* of the Committee on Ministers' Powers, of which he was a member, shows with admirable clarity that 'reasonableness' has a varying content for individual judges.

[4] (1863) 14 C.B. (N.S.) 180.

[5] 18 & 19 Vict. c. 120.

[6] (1866) L.R. 1 H.L. 93.

since the Courts may decide that the duty is one towards the public at large, and not towards the individual, and that, therefore, if a remedy has to be sought, it must be sought by the Attorney-General only.[1]

The latter usually takes up cases on behalf of the general public where there is nonfeasance, and more often, misfeasance, by the local authority. In an outstanding case, *Attorney-General v. Lewes Corporation*,[2] an action was brought on the grounds that the defendants were causing a *public* nuisance by discharging sewage into an open culvert, giving rise to extremely obnoxious odours. It was held that, though the culvert was admittedly an old sewer, by being out of repair it constituted a public nuisance.[3] We shall meet with many more instances where the Attorney-General brings an action on behalf of the general public when we are discussing *how* the public can obtain its legal remedies against local authorities.

Statutory Appeal. In the third and final category of cases fall, first, those powers exercised by local authorities where an appeal is permitted by statute to the Courts, as in the case of Assessment Committees. For instance, the Courts have often refused to issue writs of mandamus to people who disagree with the decisions of Assessment Committees, on the grounds that they have a right of appeal (e.g. to Quarter Sessions), and having an alternative and effective remedy, are not therefore entitled to mandamus.[4] Thus, in *Rex v. City of London Assessment Committee*,[5] the Court held that the Corporation of London, for whom the Crown was suing, had the alternative remedy of appeal to Quarter Sessions, so that a mandamus could not be granted to it. Similarly, in *Regina v. The Licensing Justices of Bristol*,[6] the Court refused to issue a mandamus to the defendants to hear and determine an application for renewal of a licence, on the grounds that the applicant's proper remedy was an appeal to Quarter Sessions from the Justices.

This class of cases also includes, secondly, those cases where points of law may be stated to the High Court, as in the power of the Minister of Health regarding audit.[7] Thus, under Section 115 of the Housing Act, 1925, re-enacting the provision of the 1909 Act, the Minister can be required to state a case to the High Court on a point of law,

[1] See *Robinson v. Workington Corporation*, (1897) 1 Q.B 619, and *Craib v. Woolwich Borough Council*, (1920) 36 T.L.R. 630.

[2] (1911) 2 Ch. 495.

[3] A similar decision was made in *Baron v. Portslade U.D.C.*, (1900) 2 Q.B. 588.

[4] The prerogative writ of mandamus is fully discussed below.

[5] (1907) 2 K.B. 764; also *Rex v. London County Council*, (1911) 27 T.L.R. 422.

[6] (1893) 9 T.L.R. 273.

[7] E.g., under Sect. 89 of the National Health Insurance Act, 1924, appeals from the Minister's (of Health) decisions are permitted to a special tribunal appointed by him. An appeal (on *points of law*) from *their* decisions goes to a selected Judge of the High Court, whose decision is final. But the Minister may, if he thinks fit, submit the question for decision to the High Court in the first instance, and its decision is again final.

in questions relating to closing and demolition orders. Three cases have occurred since 1909: *Lancaster v. Burnley Corporation*,[1] *Broadbent v. Rotherham Corporation*,[2] and an unreported case, *Rush v. Paddington Borough Council*.[3] The Audit (Local Authorities) Act, 1927, permits the Minister of Health to submit questions to the High Court.[4]

The Process of Judicial Control. We have now indicated *why* the Courts interfere in matters of local government; having shown the principles behind judicial control of local authorities, we now indicate *how* they interfere. In general, actions are taken to the Courts by persons, individual or corporate, on their own behalf or by the Attorney-General on behalf of the general public. These actions, however, are for the ordinary remedies of the law, such as damages for an illegal act done or an injunction to restrain a local authority from doing something illegal. In addition, there are the prerogative remedies, the privilege of the Crown; these are special remedies available only to the Crown on behalf of the public and only then against persons or bodies undertaking public and quasi-public functions. The Crown alone can apply to the High Court to issue prerogative writs. Moreover, all proceedings against local authorities (as, indeed, against all public authorities), no matter what their basis might be, are subject to a special statute of limitations, the Public Authorities Protection Act, 1893.[5] Under this short Act, no public authority or servants of a public authority acting strictly on behalf of that authority can be prosecuted or proceeded against unless this is done within six months after the wrong complained of (it might be an act or an omission to act or a default), or, where the wrong continues over a period of time, within six months after it has ceased. The Act also lays down that where the action is one for damages, a tender of awards before the action is begun may be pleaded by the defendant authority. This question is further discussed later.

Ordinary Remedies. Of the ordinary remedies, criminal proceedings are rarely made use of, mainly because the powers and duties of local authorities are laid down by statute, which invariably provides suitable remedies for cases of nonfeasance, misfeasance, or *ultra vires* acts. Nevertheless, there always remains the Common Law remedy of indictment in the last resort, but this is a residuary remedy only, as has been held in *Regina v. Hall*,[6] a very famous case. Where the remedy of indictment has been followed, it has been generally

[1] (1915) 1 K.B. 259. [2] (1917) 1 Ch. 31.

[3] See Vol. II, *Minutes of Evidence*, Committee on Ministers' Powers, p. 127.

[4] Under this Act, appeals against an auditor's surcharge order, go: (*a*) to the Minister when the surcharge is less than £500, though the Courts have a concurrent jurisdiction in this respect, and (*b*) to the High Court when the surcharge is for more than £500. Their decisions are final.

[5] 56 & 57 Vict. c. 61. [6] (1891) 1 Q.B. 747.

for nonfeasance or misfeasance by the authority involving a breach of a statutory duty.[1] Indictment, in any case, will not lie unless the authority has deliberately done the wrong complained of.[2]

Since indictment is rarely made use of as a legal remedy, the usual methods resorted to are actions for damages, for injunctions, and for declarations of the law.

An action for damages can only be successfully brought by a private individual in two types of cases, because, being extremely difficult to prove that the wrong done has caused an injury peculiarly to him and to no one else (in which case only the Attorney-General can bring an action), the Courts will refuse to listen to his action. So that, unless the Attorney-General can be persuaded to take up a case as being in the public interest to do so, the private individual who feels that the wrong done has been peculiar to him, can bring his action—but it will be only at a great cost that he will press his action. This, of course, is apt to discourage aggrieved individuals; in all probability, hundreds of possible actions are never brought because of the cost of litigation; this means that many wrongs are suffered because it is too expensive to get them remedied. In the famous case of *Boyce v. Paddington Corporation*,[3] Mr. Justice Buckley held that a person can sue in respect of a public wrong without joining with the Attorney-General:

(1) 'Where the interference with the public right is such that some private right of his is at the same time interfered with (e.g. where an obstruction is so placed in a highway that the owner of the premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right of access from and to his premises to and from the highway).'[4]

(2) 'Where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.'[5]

Therefore, where the power or duty can be carried out by the authority without committing a wrong, thus harming a private individual's rights, it must be carried out in that manner, or else it is illegal. A smallpox hospital, to cite a case already considered, must not be built where it is a nuisance if it can be reasonably built elsewhere where it is not a nuisance[6]; negligence in maintaining an old sewer can lead to a successful action for damages[7]; a power station emitting

[1] A corporation, and hence local authorities created by Statute, cannot be indicted for the ordinary crimes, such as felony, or treason, etc.

[2] This subject is exhaustively treated in Hawkins, *Pleas of the Crown*, Bk. 2, Chap. 25, Sect. 4. See also *Regina v. Hall*, where the present law was cogently stated by Mr. Justice Charles.

[3] (1903) 1 Ch. 109.

[4] Cf. *Lyon v. Fishmongers Co.*, (1876) 1 App. Cas. 662, and *Attorney-General v. Logan*, (1891) 2 Q.B. 100.

[5] Cf. *Benjamin v. Storr*, (1874) L.R. 9 C.P. 400.

[6] *Metropolitan Asylums Board v. Hill*, (1881) 6 App. Cas. 193.

[7] *Baron v. Portslade U.D.C.*, (1900) 2 Q.B. 588.

fumes harmful to adjoining farms led to an authority being mulcted in damages because it could have reasonably constructed the power station in such wise as to avoid emitting obnoxious fumes.[1] Very few successful actions, however, have been brought by private individuals in the class of cases where a private person may sue without joining with the Attorney-General; indeed, the experience is all the other way. This has been well illustrated in *Saunders v. Holborn District Board*,[2] where a woman brought an action for damages for injuries caused by falling in the snow which the local authority was obliged by statute to remove. The action failed, because the Court held that the duty was owed to the general public only, and not to any particular individual.

Injunctions. The next means of enforcing liability against a local authority which we shall consider is the action for an injunction, either to prevent an authority from committing an *ultra vires* act as it threatens to do, or to compel it to carry out its legal obligations. The latter type of injunction is rarely granted, its place having been usurped by the writ of mandamus. Thus, whenever an authority has threatened to do something which is *ultra vires* that authority, any individual who fears a personal injury through that act can sue for a restraining injunction. Usually, however, it is done through the Attorney-General, since the *ultra vires* act generally concerns the public and not any specific individual.[3] As a matter of actual law, the Attorney-General has an *absolute* discretion as to whether he will intervene in any particular case.[4] In general, however, he intervenes where a public authority is about to do an illegal act, which in its nature tends to injure the public, even if it cannot be proved that the act would actually lead to an injury of some sort or other.[5] We

[1] *Manchester Corporation v. Farnworth*, (1930) A.C. 171.

[2] (1895) 1 Q.B. 64; cf. also *Atkinson v. Newcastle Waterworks Co.*, (1877) 2 Ex. D. 441, and *Cowley v. Newmarket Local Board*, (1892) A.C. 345.

[3] *Attorney-General v. Cockermouth Local Board*, L.R. 18 Eq. 172, and *Attorney-General v. London and North Western Railway Co.*, (1900) 1 Q.B. 78. In the latter case, the Warwick County Council asked the Attorney-General to intervene to prevent the railway from exceeding four miles an hour when crossing a certain level-crossing, thus contravening their statutory powers. Though the railway company alleged that it was actually in the public interest that the legal maximum speed should be exceeded, the Court held there was a clear breach of a statute and therefore awarded the injunction.

[4] *London County Council v. Attorney-General*, (1902) A.C. 165. In *Attorney-General v. Ashbourne Recreation Ground Co.*, (1903) 1 Ch. 101, Mr. Justice Buckley held that the Attorney-General was a necessary party to an action by a local authority suing in respect of a public nuisance where no damage was alleged. In *Devonport Corporation v. Tozer*, (1903) 1 Ch. 759 C.A., the Court of Appeal refused to grant an injunction to a local authority unless the Attorney-General had permitted the use of his name. But in *London County Council v. South Metropolitan Gas Co.*, (1904) 1 Ch. 76, it was held that the plaintiffs (a local authority) could, *without joining the Attorney-General*, maintain an action against persons who interfered with the conduct of certain tests as to gas, the control and management of which were expressly committed to that body (i.e. L.C.C.) by statute (Gas Regulation Act, Sect. 4).

[5] Robinson, *op. cit.*, pp. 254 et seq.

have already seen in what cases a private individual may sue to recover damages or for an injunction to restrain a public authority from causing an injury peculiar to himself. In all other cases, the Attorney-General has complete discretion to permit or withhold the use of his name. He invariably permits the use of his name even where the proceedings are being taken by a private individual or even a local authority: these actions are called 'relator actions', the 'relator' being the individual or authority suing on behalf of the Attorney-General. A typical 'relator action' was *Attorney-General v. London and North Western Railway Co.*, already mentioned, where the Warwick County Council sued in the Attorney-General's name.[1]

Declaration. In much the same way, private persons and the Attorney-General may bring an action for a declaration. In an action of this sort, the plaintiff merely asks the Court to declare what the law is on the subject. These actions are perfectly legal, being permitted expressly by the rules of the Supreme Court. They are brought in cases where the law is obscure, usually as a preliminary to getting the authority to obey the law either voluntarily or by injunction or some other legal remedy. It is nowadays usual in actions of this sort to ask for both a declaration and an injunction at the same time. In *Attorney-General v. Merthyr Tydfil Union*,[2] the relators (Powell Duffryn Co.) asked for the opinion of the Court regarding the legality of the defendants' action in granting relief to coalminers out on strike, so that, if it were illegal, the District Auditor could surcharge the Guardians for the moneys spent. The Courts, let it be said, are very cautious with regard to actions for a declaration.[3] In an important judgment in 1911, it was held that a declaratory judgement can be made against the Attorney-General as defendant, representing the Crown, and that a plaintiff is not bound in such a case to proceed by a petition of right.[4]

The Prerogative Writs. Having exhausted the ordinary remedies available to the public, let us proceed to the 'prerogative' remedies, generally referred to as the 'prerogative writs', which may

[1] Wade and Phillips, ibid., p. 281. Cf. also *Attorney-General v. Tynemouth Corporation*, (1899) A.C. 293, and *Attorney-General v. Sharp*, (1931) 1 Ch. 121.

[2] (1900) 1 Ch. 516. In giving judgement, Lord Windley, M.R., said: 'As the defendants from first to last have maintained that they were in the right throughout, I think the Court ought to make a declaration to show that the action was properly brought, and to prevent any misconception as to the illegality of the conduct of the Guardians. . . .'

[3] In *Faber v. Gosforth U.D.C.*, (1903) 88 L.T. 549, it was held by Mr. Justice Eady that, although he had jurisdiction, such jurisdiction ought to be exercised with extreme caution. He found it inexpedient to make a declaration in this particular case.

[4] *Dyson v. Attorney-General*, (1911) 1 K.B. 410. This action concerned the legality of a form issued by the Commissioners of Inland Revenue, under the Finance (1909–1910) Act, 1910, in which the Commissioners imposed obligations which did not exist statutorily, together with a threat of a penalty in case of non-compliance. *Burghes v. Attorney-General*, (1911) 2 Ch. 139, was an almost identical case.

be applied if the ordinary remedies fail to give justice and to give it promptly. These writs are used only when the ordinary remedies have failed to obtain justice for a private individual or a local authority in regard to the arbitrary acts of a public authority or of a public officer. There are five prerogative writs: habeas corpus, mandamus, prohibition, certiorari, and quo warranto. Habeas corpus is now of very little importance as regards local authorities; interference with the liberty of the subject is rare in England, particularly since public opinion is so readily mobilized to criticize arbitrary acts of any kind. The writs which are most often used to control the acts of administrative authorities are mandamus, prohibition, and certiorari.

(1) *Mandamus.* This writ is used to compel a public authority to carry out its statutory obligations. It is a command issuing from the High Court directing a public authority to perform specific duties which it is neglecting.[1] The penalty for refusing to obey the writ is imprisonment until the contempt of court has been purged.[2] The writ will only issue on the application of a person who has a clear right to demand the performance of the duty by the public authority.[3] Where the public authority has refused to carry out a statutory obligation, an application from the person who may be wronged if the duty is not executed will obtain the issue of a writ. Further conditions which must be satisfied before the writ will issue are that there must be a clear demand made to the public authority to carry out the duty and a clear refusal by it to act[4]; the duty, moreover, must be a *compulsory* or *absolute* duty laid down by statute.[5] The writ, being a discretionary remedy of the Courts, will not be given, so it has been decided, if there is any other remedy 'equally convenient, beneficial and effectual'.[6] But where an alternative remedy does not exist, the writ of mandamus *must* be granted if all the necessary conditions are fulfilled.[7] Thus, the writ was refused by the Court in the case of *Regina v. Lewisham Union*,[8] on the ground that not only

[1] *Regina v. The Commissioners of Inland Revenue, In re Nathan*, (1884) 12 Q.B.D. 461, 478. In this famous case, Lord Justice Bowen said: '. . . A writ of mandamus . . . is a high prerogative writ, invented for the purpose of supplying defects of justice. By Magna Charta, the Crown is bound neither to deny justice to anybody nor delay anybody in obtaining justice. If, therefore, there is no other means of obtaining justice, the writ of mandamus is granted to enable justice to be done.'

[2] Where the wrongdoer is a local authority, the members of that authority may be imprisoned: *Rex v. Poplar Borough Council (No. 2)*, (1922) 1 K.B. 95.

[3] Robinson, op. cit., p. 222.

[4] *Regina v. Bristol and Exeter Railway Co.*, (1843) 4 Q.B. 32.

[5] *Regina v. Great Western Railway Co.*, (1893) J.P. 74.

[6] *Regina v. Leicester Guardians*, (1899) 2 Q.B. 632 (judgement of Mr. Justice Darling). Cf. also *Rex v. Stepney Corporation*, (1902) 1 K.B. 317.

[7] *In re Nathan* (see above), where Lord Justice Bowen said: 'If, therefore, there is no other means of obtaining justice, the writ of mandamus is granted.' Cf. also *Rex v. Bishop of Sarum*, (1916) 1 K.B. 466.

[8] (1897) 1 Q.B. 498.

did the applicants (the sanitary authority of the district) have no sufficient interest in the matter, but also that a mandamus was not the appropriate remedy. Several similar cases have already been mentioned, namely, *Rex v. City of London Assessment Committee* and *Regina v. The Licensing Justices of Bristol.*[1] Other well-known cases reflecting this attitude of the Courts are *Board of Education v. Rice* [2] and *Rex v. Local Government Board, ex parte Arlidge,*[3] though in these cases the House of Lords held that justice, in so far as the relevant statutes provided for it, had been done, so that no mandamus could issue.

The writ does not lie against the Crown, because no Court can compel a central Department to do its duty to its principal (i.e. the Crown), except, of course, where the Department has been expressly allotted some purely statutory duty.[4]

The remedy of mandamus has been considerably widened by the Supreme Court of Judicature Act, 1925, Section 95, which permits a claim for a mandamus in an action without making a separate application for the prerogative writ. Where the action proves that an obligation to act has been imposed by statute upon a public authority, the mandamus orders it to perform this duty. Certain statutes also provide that the central Department (in particular the Ministry of Health) can obtain a mandamus from the High Court in certain eventualities, without the usual procedural encumbrances, in order to compel a local authority to carry out its statutory obligation; for example, the Public Health Act, 1875, Section 299, expressly empowers the Minister of Health to obtain a mandamus to compel a recalcitrant local authority to carry out its sewage duties.[5]

(2) *Prohibition.* This is another prerogative writ issuing from the High Court, forbidding any inferior court to exceed its jurisdiction. It is usually used to prevent an inferior court from hearing a case which it is not legally entitled to judge, or from violating some legal principle. In recent years (since the beginning of the present century) the writ has been extended to control not only the ordinary inferior courts (e.g. Petty Sessions, Stipendiary Courts, County Courts, etc.), but also to *all* bodies which make judicial or even quasi-judicial decisions. The Courts have determinedly used it (and another writ, called certiorari) to quash or review the administrative decisions of Government Departments (e.g. Ministry of Health, Board of Education, the Electricity Commissioners, etc.) on the grounds (to be discussed later) that the decisions are 'judicial' acts, and therefore within their jurisdiction.

There are many important instances of the use of this writ. In

[1] See p. 198.] [2] (1911) A.C. 179. [3] (1914) 1 K.B. 160, and (1915) A.C. 120.
[4] Wade and Phillips, op. cit., p. 276.
[5] This is discussed from another angle in Chapter XII, *infra*.

Rex v. Electricity Commissioners, ex parte London Electricity Joint Committee Company (1920), Ltd.,[1] for example, the Court held that the Electricity Commissioners, though appointed by the Electricity (Supply) Act, 1919, with wide though carefully defined powers to make schemes for the improvement of the national electricity supply and for that purpose to hold local inquiries, had no jurisdiction to inquire into the validity of an electricity scheme for the London area, in which inquiry they would have to make 'judicial' decisions. Prohibition was therefore granted to the plaintiffs on the grounds that the proposed scheme was *ultra vires* the 1919 Act.

The meaning of a 'judicial' act had been carefully debated in *Regina v. Local Government Board*,[2] in *Board of Education v. Rice*,[3] in *Rex v. Local Government Board*,[4] and in *Rex v. Board of Trade*,[5] to quote four of the outstanding cases. In a more recent case, *Rex v. Minister of Health, ex parte Davis*,[6] a property-owner in the area affected by a proposed slum-clearance scheme in Derby, under the Housing Act, 1925, successfully applied for a writ of prohibition to prevent the Minister of Health from proceeding to consider the scheme in order to confirm it; the Court held that the scheme contained certain provisions which were *ultra vires* the 1925 Act.

A writ of prohibition can also issue against semi-public bodies (but not private social clubs) of a non-judicial kind if they make 'judicial' decisions.[7] It is manifest that the Courts are determined to hold what they have, and to prevent so-called 'administrative' law, that

[1] (1924) 1 K.B. 171. In his judgement, Lord Justice Atkin said: 'I think that in deciding upon the scheme, and in holding the inquiry, they are acting judicially in the sense of the authorities I have cited' [he had previously cited all the outstanding cases on the subject of what comprises a *judicial* act], 'and that as they are proposing to act in excess of their jurisdiction they are liable to have the writ of prohibition issued against them.'

'In coming to the conclusion that prohibition should go we are not in my opinion in any degree affecting, as was suggested, any of the powers of Parliament. If the above construction of the Act is correct the Electricity Commissioners are themselves exceeding the limits imposed upon them by the Legislature, and so far from seeking to diminish the authority of Parliament we are performing the ordinary duty of the Courts in upholding the enactments which it has passed. Nothing we do or say could in any degree affect the complete power of the Legislature by Act of Parliament to carry out the present scheme, or any other scheme. All we say is that it is not a scheme within the provisions of the Act of 1919. . . .'

[2] (1882) 1 Q.B.D. 309, 321. Lord Justice Brett said: '. , . wherever the Legislature entrusts to any body of persons other than the Superior Courts the power of imposing an obligation upon individuals, the Courts ought to exercise as widely as they can [i.e. by writ of prohibition] the power of controlling those bodies of persons if those persons admittedly attempt to exercise the powers given to them by Act of Parliament.'

[3] (1911) A.C. 179.

[4] (1915) A.C. 120 (the famous Arlidge case).

[5] (1915) 3 K.B. 536.

[6] (1929) 1 K.B. 619.

[7] *Rex v. The Legislative Committee of the Church Assembly, ex parte Haynes-Smith*, (1927) 1 K.B. 491. The application for a writ of prohibition failed here on the facts, not on the principle. The Legislative Committee were held not to have acted judicially in any way.

is, judicial decisions made by administrative Departments, from ousting their jurisdiction in public and semi-public affairs.

(3) *Certiorari.* A writ of certiorari issues from the High Court, commanding an inferior court to send up all records of a specific proceeding taken before it, so that the High Court might deal with the case.[1] Like the writ for prohibition, its sphere of action has been widened to include bodies which cannot be described as courts, but which make 'judicial' decisions in carrying out their administrative duties; once used almost exclusively in the case of inferior courts, it is now being often utilized to transfer cases under examination by purely administrative bodies (e.g. Government Departments) in order that the decisions of the latter might be quashed, or at least judicially reviewed. Certiorari, unlike prohibition, is not granted as a right except where it is applied for by the Attorney-General on behalf of the Crown: prohibition is used to prevent an *ultra vires* or administrative decision, possessing a 'judicial' or 'quasi-judicial' character, from being taken; certiorari is used definitely to quash the judicial acts of inferior courts and all other bodies of a public character.

The outstanding examples of certiorari being issued against Government Departments in recent years have been as follow. In *Board of Education v. Rice*,[2] where the Minister had the statutory duty of deciding certain questions regarding the position of a local authority and the managers of a non-provided school in the authority's area, the House of Lords held, when the case eventually came before it, that this was a judicial function, and one, therefore, for which a certiorari might issue. In his judgement (much quoted in cases of this type in the years which have followed), Lord Loreburn, L.C., said:

'The Board is in the nature of the arbitral tribunal [appointed under the Education Acts], and a Court of Law has no jurisdiction to hear appeals from their determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari.'

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[1] *Rex v. Woodhouse*, (1906) 2 K.B. 501; Lord Justice Fletcher Moulton said: 'The writ of certiorari is a very ancient remedy, and is the ordinary process by which the High Court brings up for examination the acts of bodies of inferior jurisdiction. . . . It is frequently spoken of as being applicable only to "judicial acts," but the cases by which this limitation is supposed to be established show that the phrase "judicial act" must be taken in a very wide sense, including many acts that would not ordinarily be termed "judicial". . . . The true view of the limitation would seem to be that the term "judicial act" is used in contrast with purely ministerial acts. To these latter, the process of certiorari does not apply, as for instance to the issue of a warrant to enforce a rate, even though the rate is one which could itself be questioned by certiorari. In short, there must be the exercise of some right or duty to decide in order to provide scope for a writ of certiorari at Common Law.'

[2] (1911) A.C. 179.

In this case, the Managers of a non-provided school in Swansea claimed that the local education authority had failed to discharge its statutory duties under the Education Act, 1902.

This case established that where a public department is entrusted with certain judicial duties, and carries them out in a proper judicial manner, then the Courts cannot interfere. But (and it is on this point that the sharpest controversy has taken place since this judgement) what is a 'proper judicial manner'?

Certiorari is regularly used to remove the decision of a District Auditor to the High Court, and this aspect of its use is fully discussed in Chapter X, *infra*. In *Rex v. Minister of Health, ex parte Dore*,[1] a writ of certiorari was applied for on behalf of some ratepayers in Poplar to quash the Minister's order remitting a District Auditor's surcharge on the Popular Borough Councillors. The decision of the Auditor to surcharge the Councillors for paying excessive wages to Council employees was finally upheld in the House of Lords. The Councillors sought the alternative avenue of escape, remission of the surcharge by the Minister. He remitted the surcharge. Certiorari was granted, at the instance of Dore, on the grounds that the Minister had, *in the circumstances*, no right to entertain the application. The head-note to the case, which clarifies the issue, reads as follows:

'Where borough councillors surcharged by a district auditor have appealed under section 35 of the Poor Law Amendment Act, 1844, against the surcharge by a writ of certiorari to remove the certificate of surcharge into the King's Bench Division to be quashed, the alternative appeal to the Minister of Health, given by section 36 of the Act, is lost, and the Minister has no power under Section 4 of the Poor Law Audit Act, 1848, after the rule has been discharged, to remit the surcharge.'

Then there is the well-known case of *Rex v. Minister of Health, ex parte Yaffe*,[2] which concerned a slum-clearance scheme in Liverpool, admitted to be *ultra vires* the local authority, but which had been altered by the Minister to accord with the *ex parte Davis* judgement and then confirmed by him. A certiorari was granted on the grounds that the scheme was not a scheme within the meaning of the Housing Act, 1925, and that the Minister's confirmation was therefore illegal. The decision was ultimately reversed by the House of Lords on the grounds that the facts were not the same; but the underlying principle for granting the certiorari in the first place remains unchallenged.[3]

Local Government Board v. Arlidge,[4] more than any other case, excited the wrath of certain influential lawyers against the newly-arisen 'administrative' law (or the 'New Despotism' of Government Departments, as Lord Hewart, L.C.J., terms it). It raised the important question of the judicial procedure adopted by the Local Government

[1] (1927) 1 K.B. 765.
[2] (1930) 2 K.B. 98.
[3] (1931) 47 T.L.R. 337.
[4] (1915) A.C. 120.

Board (now the Ministry of Health) in appeals against the decisions of local authorities in respect of the closing of houses unfit for human habitation. The owner of the house in question, Mr. Arlidge, had the right of appeal under the Housing and Town Planning, etc., Act, 1909, either to the Courts or to the Local Government Board, and chose the latter, which, having held a local inquiry, decided against him. He applied for a writ of certiorari to the High Court on the grounds that the local inquiry had not given him a fair hearing, or even a hearing at all, and that, in general, the inquiry was carried out arbitrarily, contrary to the principles of natural justice. The House of Lords decided, following the judgement in *Board of Education v. Rice*, that the Act permitted the inquiry to be carried out as in Arlidge's case. It was held, indeed, that nothing in the Act required the Local Government Board to adopt the procedure of the Courts of Law; it was enough if the Inquiry Board acted judicially and impartially, no matter what the procedure.

(4) *Quo Warranto.* The old writ of quo warranto has recently been completely displaced by the information in the nature of a quo warranto, which itself has fallen into almost entire disuse. It is a writ, issuing from the High Court, to determine whether the holder of a public office is legally entitled to it. It was often used in the past to contest the validity of borough council elections (of mayors, aldermen, councillors, etc.), but this method has been displaced by the provisions laid down for ascertaining the legality of local elections in the various local government Acts of the last fifty years or so.[1] Most of the points of law regarding the writ of quo warranto were finally decided in *Darley v. Regina*,[2] in which the office of City Treasurer of Dublin was disputed. The office must be one granted by the Crown or created by statute; quo warranto does not apply where the office is held during pleasure. In spite of other remedies now being available, quo warranto may apply where a councillor becomes bankrupt, and in some other cases.[3] It was used, for instance, to test the legality of appointments to the Privy Council.[4]

We have already seen [5] that there is a special statute of limitations in force, protecting public authorities and officials in their public acts. In addition to the facilities afforded to them by the Public Authorities Protection Act, 1893, it should be noted that this Act gives them other useful privileges. All their lawful acts are protected against sanctions, and even their unlawful acts, if committed *bona fide* in the execution of their statutory duties, do not carry heavy

[1] The available remedy is an election petition.
[2] (1846) 12 C. & F. 520. [3] *Rex v. Beer*, (1903) 2 K.B. 693.
[4] *Rex v. Speyer*, (1916) 1 K.B. 595, and *Rex v. Cassel*, (1916) 2 K.B. 858.
[5] See pp. 10–11.

penalties, though unlawful acts not justified make the public officials concerned liable to actions by the persons injured by their unlawful acts. The protection given by this Act does not apply to the prerogative writs, nor to actions for injunctions and declarations brought by the Attorney-General.[1] This is no place to go into the details of the position in law of the officers of the Crown. Two instances of the law granting complete immunity to public officials from proceedings against actions done in the *bona-fide* execution of their duties are those of constables acting in obedience to the orders of a magistrate,[2] even though the latter's orders may have been illegal, and the Justices of the Peace [3] in their purely judicial functions (in which respect they possess exactly the same immunity as all judges in inferior courts), though in their administrative and quasi-judicial functions they are legally liable for all illegal acts done maliciously, and so forth.[4] They are also fully liable for all acts done outside their jurisdiction.

We can thus see that judicial control of local authorities is very effective (in regard to the central public authorities, such efficiency is warmly denied by many). An authority [5] on the subject believes that the liability of local authorities has been on a reasonably intelligent basis since the judgement in *Mersey Dock and Harbour Board v. Gibbs.*[6] The whole question of judicial control was recently debated in great detail by the Committee on Ministers' Powers, which came to the unanimous conclusion [7] that the maintenance of their jurisdiction is essential, and that ' a simple and cheap access to the High Court in order to invoke it ' is now vital.[8] But the existing procedure is, in their opinion, ' too expensive and in certain respects archaic, cumbrous, and too inelastic '.[9] The remarks of the Committee were particularly illuminating in regard to certiorari. It held that ' no one will dispute that the jurisdiction of the High Court to quash the proceedings of an inferior one is important,' and recommended that this jurisdiction ought to be exercised in regard to the judicial and quasi-judicial acts of Ministers and Ministerial Tribunals also.[10] The evidence furnished by the various Government Departments and witnesses [11] on this subject of judicial control forms an extremely useful guide to the

[1] Cf. cases cited by Jennings, *Local Government Law*, p. 255.
[2] Constables' Protection Act, 1751.
[3] Justices' Protection Act, 1848.
[4] Cf. *Law v. Llewellyn*, (1906) 1 K.B. 487.
[5] Jennings, article on ' *Report* of Committee on Ministers' Powers,' *Journal of Public Administration*, Oct. 1932, p. 350.
[6] Considered above on p. 197.
[7] But see the scathing criticism by Jennings, ibid.
[8] *Report*, p. 99.
[9] Ibid.
[10] Ibid., p. 98.
[11] Contained in Vols. I and II, *Minute of Evidence*.

probable future jurisdiction of the High Courts as far as our public authorities are concerned.

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The combination of the sovereignty of Parliament, the doctrine of the specific grant of power, and accountability to the Law Courts, puts an exceedingly strong controlling pressure upon the local authorities. It tends to make them exceedingly cautious. It demands of local officials a close acquaintance with the law. In a Memorandum to the Committee on Economy in Local Expenditure (1932) the National Association of Local Government Officers: 'During the past 12 years have been enacted or issued: 116 Public Acts of Parliament; 579 Statutory Rules, Orders and Regulations; 762 Circulars; 180 Memoranda; 65 Orders in Council; 4 Treasury Minutes; 5 Schemes; 13 Instructions; 5 Leaflets—all concerning the welfare of the population of this country and requiring the most careful study . . .'

Let it be finally observed that control of legality is, in the English system, a control by the Courts, and not through administrative Departments or Tribunals, whether at the centre, or intermediate between it and the localities, as in France and Germany.

CHAPTER IX

THE INTERNAL ORGANIZATION OF LOCAL AUTHORITIES

LOCAL authorities are governed by Councils elected by universal suffrage. One is confronted by the twin problems: How does the Council organize itself to bring to bear upon the permanent administration the impact of popular wishes; and by what mechanism and processes is the body of science relating to the various services made available for the popular representatives?

The Amateur Element. Local elections are, in the Boroughs, conducted mainly on party lines; but outside the Boroughs party alignments are rarer. Even in the Boroughs the force of party feeling is comparatively weak, for the simple reason that local elections are concerned not with the whole field of sovereign power, but only with a restricted sphere of administration. However, more and more in recent years, sides have been taken in local affairs along the alignment of the national political parties. In any case, whether party feeling is intense or not, local elections are conducted with little of carefully directed reference to local policy: they tend rather to be a battle between what may be called the 'economizers' and the 'spenders'.[1] The issues are narrowed down to the question of whether such and such a party or group of men will cause the rates to go up or down. This is augmented by controversy about occasional local scandals in police or health administration or rents of Council housing estates. This description is true even of the larger towns, though in not so full a degree. There is certainly no careful analysis of the problems of administration and the policy, and the electorate shows little interest. Councils are elected for three years. In all except the County Councils there is partial renewal by the annual election of one-third of the membership. This period of service is not long in relation to the range and detail of municipal services. It is true that in the Municipal and County Boroughs and the County Councils there is a small class of Aldermen who are elected by the Councillors for a period of six years, and that this secures some continuity in office which may make for expertness in government. But though there are no avail-

[1] Cf. literature of the Municipal Reform League, and the National Association of Ratepayers.

able statistics to check the generalization, it is not usual for the majority of Councillors to go on for many terms of office. There seems to be a considerable rotation in the office of Councillor.[1]

Taken altogether, the process of election combined with the shortness of the term, the rather large rotation of office, and the small amount of experience in government, Councillors need (and some feel the need for) considerable expert assistance in order to invent and apply policy. We may and ought to give all credit to local councillors for their devotion to public service—the work is monotonous and wearing—and for their application of the general mind of the public to the control of administration. Without them we should be at the mercy of a despotism dangerous even though it were initially benevolent. Indeed, two or three score of those who have for years served in local government are extremely capable practitioners of government, and sound advisers with whom the Government consults at every turn.[2] Yet, for all that is quite properly and ultimately to be said for popular control of local government, we cannot blind ourselves to the fact that it bears many of the marks of *casual labour*: it lacks preparation, skill, purpose, and regularity of application.

The Need of a Permanent Civil Service. Everything points to the necessity of a staff of permanent skilled advisers and servants. Upon a plain view of the matter, this would seem to need neither proof nor persuasion, but we ought to remember that it is only a hundred years ago that the bulk of local officials (then Overseers of the Poor, Surveyors of Highways, Constables) were elected, unpaid, and unskilled.[3] The theory and practice of the appointment of professional skilled local officials has only developed since that time. We are still in a stage where, though the local authorities are empowered to appoint paid officials, and though in some cases they are compelled to appoint only those with prescribed qualifications, the importance of the subject is not fully recognized. Patronage and favouritism still reign in some authorities; in relation to the lower ranks an appreciable number are without adequate qualifications; and even then, such have been established only after decades of enlightened pressure.

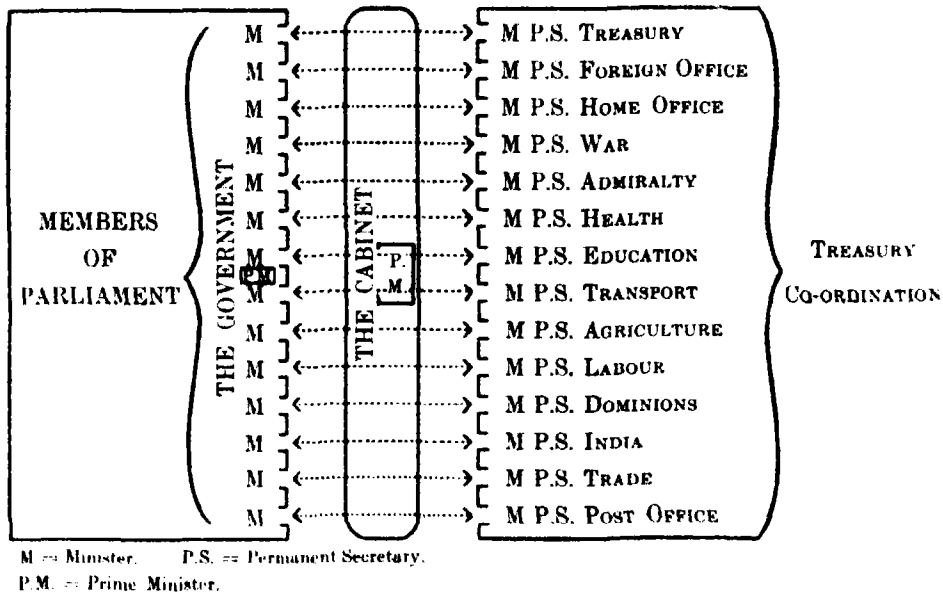
Local government requires, first, officials who have mastered certain specific techniques as in medicine, accountancy, engineering, architecture, the law, administrative organization. The need is, secondly, for a body of people with the quality of permanence, to apply a continuity of interest in municipal administration and a

[1] Replies to a questionnaire sent to many local authorities lead us to suppose that though there are many cases of very long service, a larger proportion serve no more than six years.

[2] See, for example, the names of the people on the *Committee on the Expenditure of Local Authorities*, 1932.

[3] Cf. Webb, *Statutory Authorities*, Chaps. V and VI.

policy of advance. The third necessity is for a body of servants who are, and have the reputation of being, personally and politically impartial. Finally, a body of servants with these characteristics needs to be so related to the elected amateur element as to serve them and the local community to the best advantage. What general arrangements, then, are there for the collaboration of the popular and the expert elements, for the formulation of policy and the direction and furtherance of administration?



M = Minister. P.S. = Permanent Secretary.
P.M. = Prime Minister.

It must naturally be expected that the great variation in size, population, and functions, and the nature of the area, results in diversities in organization, and, therefore, we cannot be concerned with anything but the general structure common to all authorities.

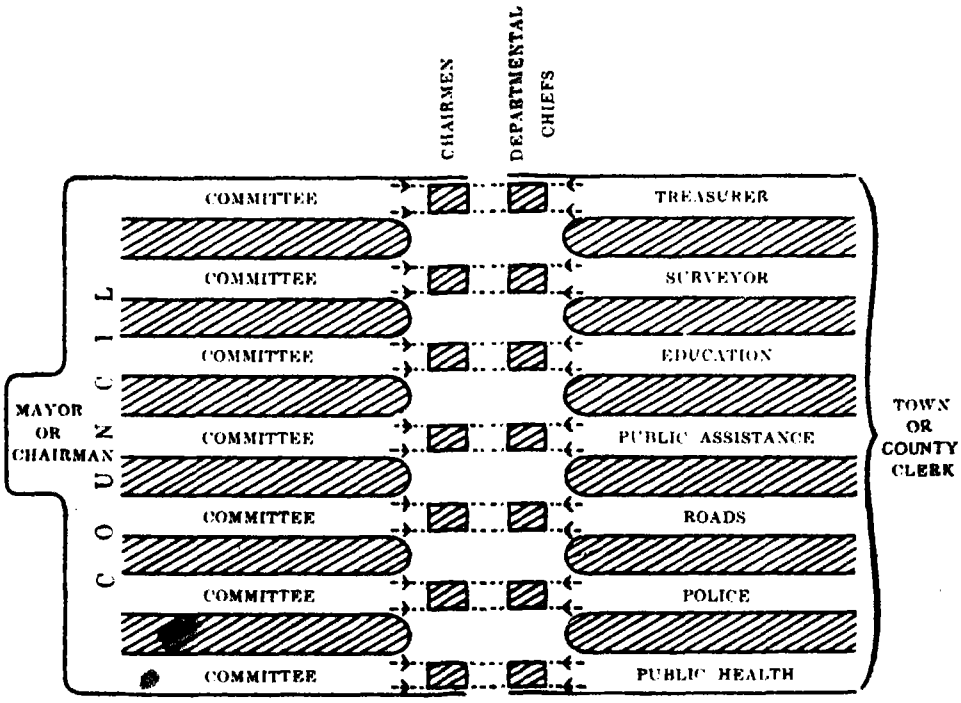
The Cabinet System. A good point of departure is a glance at the organization of the central government. Diagram A shows the connexion between the House of Commons which is elected, and the permanent body of officials in each Department. The essence of the arrangement is that the House of Commons does not come into direct connexion with Departmental officials. By a rather intricate and casual process a body of thirty or forty men get themselves selected as a Ministry.[1] Each takes responsibility for applying Parliament's power of direction and control to the body of permanent officials. For each Department a Minister acts as the link between the Civil Service and the Representative Assembly. Accordingly, the con-

[1] Cf. Finer, *Theory and Practice of Modern Government*, II, Chap. XXII, for an analysis of the British Cabinet system.

nexion between the Commons and the Civil Service is not direct, but indirect, the Minister standing intermediate between the Departments and Members of Parliament. The Minister controls and directs all the activities of the Department with the advice and assistance of the body of officials, the summit of whose organization is the Permanent Secretary and those nearest him in the official hierarchy. If Parliament wishes to produce a change in policy it approaches, not the Department, but the Minister. If Parliament wishes for information it approaches, not the officials, but the Minister. The official at the head of the Department cannot be, and is not, summoned before the Commons to explain his advice and suggestions of policy: it is the Minister who speaks to the House. In other words, the House of Commons is, in the main, an assembly for the discussion and resolution of broad lines of policy, and for the general supervision of day-by-day administration through the medium of each responsible Minister. That is not all. If it were, there might be ample provision for the control of each Department, but there would lack any guarantee that the policy of each Department should not conflict with, or overlap that of, the others. Some arrangement is necessary for the co-ordination of policy, so that the total national revenue shall be distributed among the Departments after a reasonable survey of various claims, and that in the execution of policy the Departments shall collaborate rather than compete. Such co-ordination is, in practice, secured by two devices, first, the institution of a full-time Cabinet, a group of about twenty Ministers, with collective responsibility not only for general policy, but for the policy of each Department, and secondly, the exceptional power vested in the Treasury, the financial branch of English government.

The Committee System. How does this system of indirect relationship between the assembly and the Departments combined with a full-time co-ordinating Cabinet and Treasury control compare with the internal organization of local government authorities? Here the Council is not like Parliament, in almost permanent session, but meets only occasionally, for short times. To achieve control over the administrative departments it is obliged to divide itself up into a number of committees. Each of these committees is in direct contact with, and control of the activities of the officials themselves. In Diagram B, we have tried to picture this. The committees resolve upon policy, and give orders in direct contact with the chiefs and assistant chiefs of the various branches of administration. In other words, the committee in English local government possesses at once the attributes of a political head of a Government Department and very much of the resolving power of the elected body. It even penetrates into the Departments, and participates in the higher executive control and guidance. It is as though the whole of Parliament were

broken up into from five to twenty-five different fragments (according to size and organization of the Council), each fragment being endowed with the power to direct and control one particular branch of government. Out of this system certain questions arise. 1. What is the relationship of the Chairman or Mayor to the Council? 2. What is the respective authority of the Committee and the Council? 3. What is the relationship between the Committees and the heads of the various Departments? 4. What arrangements are made for the co-ordination of the Committees and the various branches of administration?



The Chairman and the Mayor. All local authorities have presiding officers. In the Municipal and County Boroughs they are Mayors; in the Counties, Districts, and Parishes they are Chairmen. They are elected annually by the Council. What are their powers and status? Legally, they are no more than the presiding officers of their Council, though in some cases they are *ex-officio* Justices of the Peace.[1] But leaving this aside, they have no more legal power than an ordinary Councillor, except the powers usually vested in a Chairman to regulate and control proceedings, to see that the minutes are properly framed, and to sign them, and in case of equality of votes to give a casting vote.[2] Beyond that, whatever power he exercises, depends

[1] Cf. *The Town Clerk's Department*, by Wright and Singleton (1925), Chap. II.

[2] He has a series of obligations and duties, especially in relation to local and Parliamentary elections.

upon the arrangements of the Council and his own personal qualities. The arrangements of the Council include everywhere *ex-officio* membership on every committee. (In Boroughs the Mayor, by the Municipal Corporations Act, 1882, Section 190, must be made a member of the Watch Committee.) This gives the Mayor or Chairman the opportunity of knowing all that is going on in the work of the authority and of weaving together the threads.

Two things in this arrangement stand out in contrast with continental arrangements. He is *locally* elected, usually after many years of service as Councillor or Alderman, and not appointed like the Prefect in France, the Podestà in Italy, or selected for professional qualifications like the Burgermeister in Germany: he is not like these, an officer of the central authority. Secondly, he has no powers to resolve, control or execute policy beyond those possessed by the Councillors as a body. According to English law all decisions are made by resolution of the Council. There is no authority possessed by the Mayor or Chairman outside this. The result is that whether he is a dynamic force and a co-ordinating agent depends entirely upon his own personality, will, time, and wealth. He represents the local community in ceremonial, whether entirely domestic, or in relation to other public authorities and dignitaries. In many places he goes far beyond this, giving his whole time to urging forward the progress of the locality. There are many examples in Birmingham, and Manchester, and other places, where the Lord Mayor[1] or Mayor has given his whole time and a great deal of wealth for the benefit of the municipality. But this is rare. There is a too frequent rotation of office; and the office itself, taken seriously, is, as an unpaid office, too onerous for all the incumbents to regard it as more than a pleasant dignity for the space of a year.

The Committees and the Council. All authority is vested in the Council, but the terms upon which it may exercise its authority are laid down by statute. Among such terms the devolution of power to committees is of the first importance.

Until the passage of the Local Government Act of 1933, the legal basis of the committees was twofold: (*a*) the principal statutes constituting the local authorities *permitted* the councils to appoint committees to transact any part of their business which they thought would benefit by such delegation. (*b*) Certain laws *commanded* the establishment of committees for certain purposes—these were and are known as "Statutory Committees." Since the statutes making committees permissive were passed at different times and usually concerned only one or the other class of local authority but not altogether, various

[1] The title Lord Mayor is effective in the City of London, Birmingham, Liverpool, Manchester, Leeds, Sheffield, Bristol, Kingston-upon-Hull, Bradford, Newcastle, Cardiff, Norwich, Nottingham, Leicester, Portsmouth, Stockton-on-Trent, York.

shades of differences crept in regarding the extent of power the councils were permitted to make to the committees. A quite unnecessary confusion was the result.

The Act of 1933 [1] assimilated all the permissive committees of the various authorities by a single and uniform permissive ruling. The Statutory Committees still stand on their former basis, that is, each regulated by its own statute. The Permissive Committees, then, may be appointed by all local governing authorities as they think fit. Subject to a few rules laid down in the Act, the authorities are entirely free to act in the matter of composition, extent of delegation and whether the committees shall be standing or special. Finance committees must consist wholly of members of the council; and while other committees may include nominated or, as the phrase goes, "co-opted" members, at least two-thirds the membership must be councillors (the latter limitation is the legislative answer to the problem raised by co-option dealt with presently.) [2]

Before 1933 different classes of councils could delegate authority only as stated in the statutes regulating them—some might delegate powers, that is, full executive authority, the power to act and merely report back their minutes to the council at intervals stated in the council's regulations. Others might merely delegate the power to make recommendations, no power of action being in order until consideration and acceptance by the council itself. What degree of delegation is now practised depends fully on the discretion of each council with the universal limitation that *no committee may raise a loan or levy a rate.* But there may be in their delegation the power to make contracts. This freedom is used very variously by local authorities. Some grant committees powers of execution; others only of recommendation. Some discriminate between routine work to which a blanket approval will be given at the next meeting, while matters raising issues of principle are treated with special attention. Where there are Statutory Committees, for example, for education, and the council may not act prior to a recommendation from its Committee, the council is still master of how much it will delegate to the committee beyond the barest statutory minima. Generally speaking, the larger authorities, that is, territorially as in the county, or in size of population as in the great county boroughs, give more substantially delegated power, for the current business is so important, urgent and heavy (e.g. health, education, the utilities) or council meetings by reason of distance so rare or inconvenient, that the committees must act. So much reliance has to be placed on the committees that they tend to become autonomous and final in their powers. All committees, then, must

[1] Sections 85 and 90.

[2] For parish councils and meetings there are qualifications. See Act 1933, Sections 89, 90.

report to council for approval; many need only report after having begun action.

The power to appoint committees implies the power further to appoint and work through sub-committees. The work of a local government council includes so much detail that the council has to steer between setting up too many committees for a proper unity of view and tendency, and too few for the adequate study and preparation of policy. Hence, though the number of committees is still too large it is kept down by the apt use of sub-committees. In the larger and busier local authorities, these may run in the case of single committees to a half a dozen or many more, and to sub-sub-committees. The sub-committees may be entrusted with specified broad parts of a council's activities; for example, a hospitals sub-committee may fall inside the public health committee, whereas the same sub-committee may appear in another local authority as a committee in its own right.

Committees are used not merely to divide the work of a council at the centre but sometimes to decentralize geographically—as we shall see, county councils must appoint local Guardians Committees. There are cases where a county devolves its elementary education powers to a committee of local residents of a borough or urban district; such a course has been recently recommended in the government plan for the re-organization of education.[1]

Obligatory Committees. The second category of committees includes those which Parliament compels the local authorities to establish. The first example of such an arrangement is the Watch Committee of the Borough Councils which came into existence by the Municipal Corporations Act of 1835; later came the Standing Joint Committee of County Councillors and Justices for County Police purposes (1888), the Visiting Committee under the Lunacy Acts (1890). This was the result of the exceedingly inefficient and corrupt government of the municipalities, especially in the matter of police. Between 1835 and 1902 developments in committee organization were the result of the permissive clauses in the statutes we have named. Since 1902, the central authority has adopted a regular policy of requiring the institution of committees, of laying down in broad outline the constitution of those committees, and in some cases of requiring the approval of the central authority to the scheme made by the local Council for the execution of the general rules laid down by statute. The principal examples of such statutory committees are Education Committees,[2] the Committee for the Care of Mental Defectives,[3] the Agricultural Committee of County Councils,[4] the Smallholdings and

[1] Cf. p. 137 above.

[2] Education Act, 1921, Sect. 4, Sched. 1.

[3] Mental Deficiency Act, 1913, Sect. 28.

[4] Ministry of Agriculture Act, 1919, Sect. 7.

Allotments Committee in Counties and County Boroughs,[1] the Public Health and Housing Committee of County Councils,[2] Maternity and Child Welfare Committees,[3] and, most recently of all, Public Assistance Committees in Counties and County Boroughs. These committees have a very large authority either by statutory compulsion or by local delegation, but none of them can raise a rate or borrow money. We exhibit the Departmental organization of typical local authorities, and, in some cases, we state the number of Standing Committees.

Compulsory Reference of Business to Committees. We enter into some discussion of the administrative relationship between committees and the Council later, but here it is necessary to point out certain important features of the committees as established by statute.

The first is that the statutes in some cases do not permit the Council to act except upon the receipt and consideration of a report made by the committee. So, for example, in the case of Maternity and Child Welfare Committees, Education Committees, Allotments Committees, Committees for the Care of the Mentally Defective, Smallholdings Committees, the Public Health and Housing Committees of the County Council, Public Assistance Committees in Counties and County Boroughs, and Rating Committees. This obligation operates in the case of all authorities who have power to administer these services, and its only limitation is where the Council consider the matter to be urgent. But this obligation not to exercise any functions until the report of the committee has been received and considered, does not equally *oblige* the Council to delegate any of their powers to the committee. Such delegation is merely permitted: but in practice delegation is very full, so that the Council is practically dismembered.

The second feature of the statutes relating to obligatory committees is the stipulations regarding their constitution. Here the central authority has pursued a policy of making room for the appointment of people outside the body of elected councillors, and for a certain amount of territorial delegation. For example, in the case of Maternity and Child Welfare Committees, while two-thirds of the membership must be members of the Council, the rest may be appointed from persons who are specially qualified by training or experience in subjects relating to health and maternity, and at least two must be women. Again, Education Committees must consist of at least a majority of members of the Council, and the rest of people appointed on the nomination or recommendation where it appears desirable of other bodies, including associations of voluntary schools, of persons of experience

[1] Small Holdings and Allotments Act, 1908, Sect. 14 and 50.
[2] Housing and Town Planning Act, 1909, Sect. 71.
[3] Maternity and Child Welfare Act, 1918, Sect. 2.

in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the Council act, and provision must be made for the inclusion of women as well as men among the members of the committee.[1] In the Counties, the County Council may appoint local subcommittees consisting wholly or partly of members of the committee. In Public Assistance, as we have shown elsewhere, the County is obliged to establish local Guardians Committees, and they devolve to them substantial powers.[2] Other examples could be given, but there is no necessity, since the principle is sufficiently stressed, namely, that interests and experts shall be added to the body of elected councillors, and that where, as in education and public assistance, localization of the day-by-day work of the Council is essential, there shall be the proper territorial arrangements.

The Principle of Co-option. There is, therefore, both permissive and obligatory scope in the work of local government for the inclusion of persons who have not been elected as councillors. There is, in fact, a remarkable amount of obligatory co-option. Why is this, and what is to be said for the principle? The causes leading to statutory obligation to appoint persons to positions of authority in local government committees are three. The first is that the democratic process does not assure that all types of opinion shall receive representation, for the simple reason that elections are controlled by groups who do not, for various reasons which seem good to them, include all who deserve to participate in local government, and there are many whose services to the community are of inestimable value, but who are repelled by the process of securing votes. Secondly, even were representation complete, it does not follow that the representative body would contain all the *expertness* necessary to wise decisions, for the principle of democratic election is not choice for knowledge or wisdom, but popularity. Thirdly, as we have pointed out, local councillorship is casual labour. Councillors do not possess all the time requisite to a mastery of the work of the Council, and it is beneficial that other people shall be added whose interest or expertness will be a constant spur to attendance. Co-option is, in fact, a rather remarkable addition to the technique of democracy, and may one day prove to be its salvation.

Local authorities make the most interesting and remarkable use of the power and the obligation to co-opt, and secure the devoted services of many whose advice might otherwise cost considerable fees; in co-option they have at their command rich resources of scholarship, mind and energy. Yet there are two things of which one cannot fail

[1] For example, the Kent County Council includes representatives of the various religious denominations, and others 'with experience with regard to Elementary Schools'; 'a person representative of second grade Secondary Schools for Boys', etc. *Diary*, 1931–2.

[2] P. 147 ff. *supra*.

to be aware. In some places there is an unfortunate tendency to co-opt people, not because they are expert or have a proper economic or spiritual interest involved in a particular service, but as a compensation prize to political colleagues who stood for election to the Council but were defeated. The second thing is the fear expressed by the Associations of Local Authorities that compulsory co-option gives power to persons who possess no definite financial responsibility towards the electorate. The Associations [1] admit the value of the work done by co-opted members but the fundamental fact, important, as we shall later see, in other respects, is that neither the Council nor its Finance Committee has the time to review, and if necessary, amend, the resolutions and actions of committees and subcommittees. The result is that one or two members who spend a great deal of time and thought on subcommittees and committees are able to get their views ultimately adopted by the Council, and to impose a financial burden on the electorate without bearing electoral responsibility. The Associations made certain proposals. Only persons possessing special knowledge and experience should be eligible for appointment. No obligation should be imposed upon local authorities to co-opt. In all cases of co-option the number of co-opted members should not exceed one-third of the total number of the members of the committee. Finally, co-opted members should be subject to the same disqualifications as elected members in regard to voting on matters affecting their personal interests, a thing quite possible in the case of teachers on the Education Committee and tenants on the Allotments Committee.

Committees and Heads of Departments. In the committees, which are the real workshops of local government, policy is decided, resolutions are made either for immediate action or for the approval of the Council, a general control over the activities of the staff is exercised, and the estimates of expenditure for the relevant Departments are prepared. All these functions are carried out by the committee in direct contact and consultation with the chief and assistant chief of each Department, the Director or Secretary of Education, the Medical Officer of Health, the Engineer or Surveyor, the Director of Housing and Town Planning, and so on. The agenda is usually framed by the Chairman or Deputy Chairman with the assistance of Clerks under the control of the Town Clerk or County Clerk and with the collaboration of the officials of each particular Department.[2] The Departmental Chief is the servant of the Council and the servant of the committee.[3] He gives his technical advice, he provides

[1] Cf. *R.C.L.G.: Final Report*, 3436, Sect. VII.

[2] Cf. Wright and Singleton, op. cit.; Montague Cox, *Municipal Organisation* (1922).

[3] The Town Clerk and the Treasurer are, legally, the servants of the electors, appointed or dismissed by the Council.

statistics, plans, explanations, reports, and answers questions and criticism.

It is impossible, however, for a person who is at once an expert in a particular branch of municipal service, a citizen, and a human being to remain merely a technical automaton. Nor do councillors wish their servants to be entirely without initiative in the actual suggestion of policy. For they know very well that local government would collapse in a state of hideous inefficiency if officials merely waited until they were commanded to emerge from their scientific abstraction to suggest what ought to be done. The more technical the issues involved in policy, as, for example, in the management of Public Utilities, the less is the committee capable, as a whole, of independently proposing what shall be done, for this depends so much upon what is technically possible. And it is to the credit of local councillors, that, without surrendering their own discretion and the right to control their officials, they are prepared to accept the aid of science as offered to them.

Since, however, some councillors are liable to be annoyed by advice proffered by officials, officials themselves have been obliged to work out more or less consciously the tactics of winning the confidence and support of committees. Those who have had experience in the actual practice of local government will remember the peculiar kind of deliberate diffidence, and the attitude of ' your humble servant ', which becomes the enthroned official better than a crown. They will not have failed to recognize the strategy whereby this diffidence will dissolve like the mists of the morning the moment the official discerns any strength in the rays of the councillors' plea to him for assistance —even when it is a silent plea. He seems reluctant to give his advice, and then, again, he presses it, but with none of the aggressiveness which would provoke disapprobation. Committees are rescued from many a hesitation by a timely and merciful hint. Indeed, one is almost inclined to apply to the relationship of some committees and the Departmental Chiefs the famous lines from Byron's *Don Juan* :

> The tears were gushing from her gentle eyes,
> I wish, indeed, they had not had occasion.
> But who, alas, can love and then be wise ?
> Not that remorse did not oppose temptation.
> A little still she strove, and much repented
> And whispering I will ne'er consent, consented.'

But this is not all. The Departmental Chief is not always content with his influence as exerted in committee. There are, especially in the urban areas, frequent opportunities for contact with the Chairman and Deputy Chairman, and it is neither unknown nor improper for the official to have especially sympathetic relations with those members of

the committee who show a predilection for his view of things. Tactful soundings may assure him that when the committee actually meets three or four people will be his ardent supporters. He and the Chairman occasionally go up to London to plead the case of the authority for more powers, or a loan, or a remission of a surcharge, or for advice, or they meet the Inspectors who are acting for Whitehall.

The value of this direct connexion between committees and officials cannot be overestimated. The councillors are brought into direct contact with a great body of pure science. In their own occupations, in their families, in their political parties, they have learnt something of human nature. They have, however, not been able to master, nor even to approach, the vast body of scientific learning drawn from experiment and impartial testing of co-ordinated facts, and from the wisdom accumulated by the central Departments and passed on to the local authority by Inspectors and correspondence. The standard of living and social well-being of the world to-day is, as never before, crucially dependent upon the application of exact knowledge to its policy-making, its activities, its indescribably intricate and interlaced human inter-relationships, its organization, and its apparatus. This is contributed by the professional official. On the other hand, the councillors have the opportunity of permeating the expert with the will of the community; they let the official know both what the public will not stand and what it insists upon having. The expert himself has the occupational disease of the expert, the incapacity to see his own enthusiasm in due proportion to all the other enthusiasms and interests which constitute the total character of government and humanity. It is the committee's business to introduce and impose the sense of proportion after hearing what science has to say. We have seen a clause of the Poor Law Code beautifully but narrowly interpreted by the official; and a more fruitful interpretation put upon the same thing by an ingenious councillor. The official knew the law, the councillor possessed the creativeness.

The Council and the Committees. Normally, all actions of committees must be reported to the whole Council either for approval or for record. The dominating fact, however, in the relationship between the committees and the Council is that the meetings of the Council are few and of short duration, both unavoidably. The reason for this is not far to seek. Councillors are usually occupied in some profession or business which they could not leave without the prospect of serious loss or ruin: this accounts for the matter generally; and then in rural areas and as regards County Councils there is the factor of distance and the time and expense involved in travelling. We have had occasion to point out in an earlier part of this work that the County Councils suffer seriously from absenteeism, and this in spite of the fact that there are only four statutory meetings a year. The

difficulty of attendance has for long raised the question of the payment of councillors.[1] If there are few Council meetings, there are, especially in big cities, hundreds of meetings of committees and sub-committees a year, although, here again, the problem of attendance is a serious one, and we have already observed that it has its repercussions upon the question of the co-option.

Thousands of resolutions are passed in the aggregate by the committees of varying force and significance. They are finally passed on to the Council. Wide-spread experience shows that about 95 per cent of all the resolutions and proceedings are passed without challenge or discussion, that of the few which are challenged, all but an infinitesimal proportion are challenged reasonably and wisely. Most are challenged not seriously, but because they give the opportunity for the expression of some private fad, or merely for the sake of speech itself: the local press reports proceedings. A very few resolutions raise matters of principle sufficiently novel and serious to provoke earnest discussion, and these sometimes lead to a recommittal of the resolution. The Council itself, then, offers the final opportunity to the dissentients on the committees to raise matters upon which they have not received satisfaction, and it is the last line of criticism and control of policy. Owing to the casual, part-time, nature of local councillorship, this control is without serious practical worth.[2] But it must always be remembered that if an institution of control does not in practice busily operate, control is still exercised by the mere fact of its existence. Officials and committees know that the re-opening of a question is not beyond the realm of possibility.

Disintegration and Co-ordination. No one who has had experience of local government or enjoys the acquaintance of local officials, can fail to be aware of a tendency towards the disintegration of the work of local authorities. In the last thirty years they have with increasing speed had imposed upon them a vast body of social functions, the number and nature of which may be most conveniently discerned from any abstract of their budgets. It is as though a small part-time council of management had been suddenly called upon to run the equivalent of ten or fifteen large businesses with thousands of consumers and scores of employees. Now the instinctive reaction to this is to establish new Departments and divisions of Departments,

[1] Section 52 of the Act of 1929 enables County Councils to pay the travelling expenses of their members in the discharge of their duties. Payment for lost time is not allowed; only such committees as affect the *whole* County count for expenses.

[2] Speaking in the Debate on the Audit Bill, on 12 December 1927, *Debates*, col. 1931, Mr. Gillett said, 'When you are on the Finance Committee, the bills come up in vast numbers, and the members of the Committee sign them without the smallest idea in many cases as to their details, but they sign them on the word of the Chairman of the Committee.'

and to set up for each of these divisions a special committee of management. That is the first reaction. The second may sometimes be the attempt to co-ordinate the policy of all these Departments, divisions, and committees into some rationally comprehensive scheme. There is ample evidence that outside a few of the more progressive large boroughs like Manchester, Birmingham, Liverpool, there is not a sufficient apprehension of disintegration. The Departments and the committees tend to act almost as independent entities, particularly since the process of delegation has been pressed very far. So much so that in such branches of administration as those within the health services, in land acquisition, housing, and highways, there have been ludicrous clashes of policy.

Now the tendency to disintegration is furthered by certain factors which deserve indication. In the first place, it is the English practice in local government, in contrast to the central Civil Service, to have the technical expert at the head of his Department. In the British Civil Service, the heads of the Departments are not technicians. They are administrators whose business it is, as Sir Warren Fisher has said, to act as a kind of shop-walker to see that the technicians do their work. Experts (the Medical Officer, the Surveyor or Engineer, the Treasurer, the Director of Education and the rest) are not naturally equipped with a sympathy for other branches of the municipal service, and there is no one within his Department to act as a mediating factor between the enthusiasms of the Department and all the rest. Secondly, the committees too frequently bear no rational parallel to the Departments. They always tend to be more numerous than the chief divisions into services, their number is large, and their membership is large. This corresponds to no reasonable principle of efficiency either in each Department or in the work of the local authority as a whole. It corresponds too often to the ambitions of councillors to become chairman or deputy chairman, or to fill certain committees like the Watch Committee or the Education Committee or the Finance Committee which may come into the public eye. There is, by the way, a notable absence of enthusiasm for membership of such committees as the Library Committee. Further, there is a constant temptation to councillors to specialize because it is very difficult to master more than one branch of business thoroughly. Imagine the time necessary to acquire sufficient knowledge of electricity generation and supply, or tramways, or education or housing or public assistance, to be able to control policy in any real sense!

Counteraction to Disintegration. It is obvious that against these inherent tendencies to disintegration some definite stand must be made. One can discern the desirable line of action by an examination of the process of co-ordination in the central government, and by observing the suggestions of the best experiments already made

in the more considerable local authorities. The central government has a vast amount of work, and its Departments have their special loyalties and jealousies, but disintegration is overcome by three agencies, the Cabinet, the Treasury, and the administrative chiefs of the Departments. The main features of the Cabinet as a co-ordinating agent are the *full-time* service of its members and their collective responsibility. The work of the Cabinet requires twenty-four hours a day. As to collective responsibility, the theory is that in the controlling principles, at least, and in the general trend and dove-tailing of Departmental policies, there must be collective counsel, a collective plan and collective responsibility. Every man has a finger in the pie of his colleagues' departments. Even then, to secure the proper application of the theory, has required the special apparatus of the Cabinet Secretariat and the organization of relationships between the Departments and itself.

The Treasury occupies the key position in the co-ordination of the work of the administrative Departments.[1] It controls the numbers, pay, conditions of work and organization of the whole Civil Service. It has emphatic and unquestioned authority over them. All estimates of expenditure must pass its most challenging scrutiny, and it requires an adequate reason not only why expenditure should be increased, but why it should not be decreased. For this purpose the Chancellor of the Exchequer is accorded by tradition a weight in the Cabinet second only to the Prime Minister's, and it is his business to defend economy against the spending Departments in the Cabinet. The Treasury does not reserve its powers of control until the moment when estimates must be deposited with it, but maintains an every-day contact all the year round with the Departments. It is, at least, as much through financial co-ordination, as through collective discussion and responsibility that one secures the co-ordination of policy. For all the lines of development can be stated in terms of money, and to what extent each line of development shall be pursued is made, in the central government, to depend upon the total available for distribution among the claimants, having regard to the wealth of the country. And, finally, the expert's belief of each Department that there is nothing like leather is tempered by the mind of an administrator who, though identified with the interests of one Department, may one day be transferred to another.

None of these counteractions to disintegration is present in the same degree in English local government.

In the first place, there is no principle of collective responsibility. One is confronted by a number of committees, the chairmen of which are usually the nominees of the majority party on the Council, and

[1] Cf. Finer, *The British Civil Service*, and Heath, *The Treasury* (Whitehall Series).

often hold office for decades,[1] becoming narrow-minded, if benevolent, despots. These committees tend by reason of the very large amount of work imposed upon each to become specialized in their knowledge and their interests. Members are drawn from all parties, the very notion of collective responsibility vested in the majority party is absent. The nearest approach to this principle, although it is so far removed from what we know in the Cabinet System that its very mention merely emphasizes the absence of the real thing, is the occasional meeting of councillors in their own party caucus, for the general discussion and framing of policy. Except for occasional meetings of the Finance Committee, there are no regular meetings of all the chairmen of the various committees for the discussion of general policy. The essential difficulty is the casual nature of the councillors' application to municipal work: there is no one on the spot all the time to care for all the services together. Consequently, there is an enthusiastic scramble for the rates. Fads and considerations of prestige are liable to be effective, not in the measure of their relative value within a system, but in the measure of the will, persistence, and log-rolling genius of their sponsors. The most lop-sided developments have occurred: over-much street-lighting and too few schools; abnormal enthusiasm for Maternity and Child Welfare Schemes and neglected slums; the Town Hall is expensively rebuilt, but tram fares are high; school doctors are well supported, but the streets are so untended that respiratory diseases spread. Mr. Arthur Collins playfully says:

'A local political crisis of the first magnitude may easily be created by a suggestion that one committee is overloaded in its work, and that, say, the town cleansing, one of the duties formerly executed by Committee "A", shall in future be entrusted to a new Committee "B", or transferred to another Committee "C" with which that particular branch of work to be transferred is more closely allied, such as the Highways or Public Works Committee.'

The Finance Committee. Organized co-ordination, in so far as it exists, now operates with varying efficiency, and on the whole, very little efficiency, through the Finance Committee. Now, as we have already remarked, the decision on all matters in local administration rests with the Council as a whole, and so also in regard to finance. There is no Department or Committee of local administration with the status and powers of the British Treasury and the Chancellor of the Exchequer. Only one general statute obliges the establishment of a body in local government with special powers regarding finance, and that applies only to County Councils. Accord-

[1] Cf. Simon, *A City Council from Within*; Morrell and Watson, *How York Governs Itself*. Some authorities do not permit chairmanships to be held for more than two or three years: thus, Coventry, Glasgow, Kent, Hendon, York, West Ham.

are to be paid after confirmation by the Council, and to cause such accounts and the accounts referred to in paragraph 7 to be submitted to the Council.

'9. To negotiate all loans of money which may be ordered by the Council.

'10. To direct and superintend the keeping of the accounts of all the Departments of the Corporation.'

Nevertheless, the Finance Committee is not sufficiently detached from the individual interests of the councillors as spokesman for their own Committees. The City Treasurer of Carlisle says:

'There is still a tendency on the part of some to regard the duties of the Finance Committee as being those attaching merely to the passing of Bills and the levying and collection of rates and other revenues of the authority, and any interference by it in the collective work of the Council, through its several Committees, is regarded as an intrusion, and particularly is this so where the Finance Committee's activities touch upon those performed by Trading Committees.'

Mr. Arthur Collins [1] says:

'The evolution of a code of financial regulations in use in some boroughs constitutes a record of long and sometimes painful history, so often is there considered to be a conflict of interest between the various spending committees, on the one hand, and the finance committee on the other. There appear to be few phases of local government more controversial in some places than the relationships which ought to exist between committees in charge of public services requiring money for the maintenance and extension of their activities, and the finance committee upon whom falls the burden of provision to the services . . . it may be said that in many cases this conflict is not one of principles so much as personalities . . . the general verdict might be that it was not sufficiently detached from the influence of the spending departments to be able to exercise independent judgment in the formulaton of its policy, and in the presentation from time to time of its reports to the council upon the financial aspects of the proposals of other committees.'

Now, it is difficult in the highest degree to prescribe a constitution for a Finance Committee which shall be neither despotic nor powerless. It must always depend for its efficacy upon the extent to which councillors are severally prepared to subject themselves to common control. But this is by no means universally granted. So eminent a local official as Dr. R. H. R. Tee, Town Clerk of Hackney,[2] says:

'That there should be a special Committee, whose primary function is to consider and regulate the finances of the authority as a whole, is really a necessity in any large local authority. But that such a Committee should have the power to control finances, if by that is meant to exercise the power of veto over proposals involving expenditure, is neither necessary nor expedient.

'Finance enters into practically every sphere of activity of a local authority, but for that very reason it is impracticable to allow the Committee specially charged with looking after the finances of the Council to deal with the policy involved in the proposals of other Committees and exercise a veto. The members of the Finance Committee and the Chief Finance Officer and his staff cannot be experts in every branch of activity of a large modern local authority which may and generally does possess important public utility undertakings.'

[1] Article cited, p. 437.

[2] *Public Administration*, Oct. 1927, p. 445.

Were the principle of control by the Finance Committee fully acknowledged, then the problem of its composition would be the least to cause anxiety: and without that acknowledgement, as so often at present, a well-organized Finance Committee is powerless. We must always bear in mind Sir Henry Bunbury's dictum, that 'the power of financial control is the power to say No! to somebody who wants to do something.'. One line of progress has already been opened, and that is the growing trust reposed in the Financial Officer, or Treasurer, who is head of the Revenue, Expenditure and Accountancy Department (whatever its exact appellation), and who serves all the Committees as financial adviser and points out the effect of each set of proposals upon the general programme and total commitments of all Committees. In the future the Finance Officer is, together with the Town Clerk or County Clerk, certain to play a great part in the co-ordination of the diverse services of the local authority.[1]

So far, however, co-ordination in local government is generally inadequate. System is produced through the activities of the Mayor or Chairman; there is some co-ordination through the Finance Committee and the Finance Officer; departmentalism is mitigated by the practice of putting the same member on a number of different committees; and finally, in some places, there is a co-ordination produced by the Town or County Clerk who makes it his business to be more than a recorder and office manager, and deliberately sets out to make of the heads of the Departments a team, and of himself a co-ordinating assistant to the Committees and the Council. To this last factor, and to future development we must devote some consideration.

Town Clerk and County Clerk. By statute, every County appoints a Clerk of the Peace, who besides acting as Clerk of the Peace is also Clerk of the County Council.[2] The method of appointment is a relic of the mentality of the year 1888, when the Local Government Act provided that he should be appointed by the Standing Joint Committee of the County Council and Quarter Sessions.[3] The statute does not prescribe qualifications, ~~a question we deal with in the next chapter~~. Parishes,[4] District Councils,[5] and Borough Councils[6] are required to appoint Clerks. The various acts specify

[1] The Finance Officer has been given exceptional responsibilities by the Law Courts: in *Attorney-General v. De Winton*, (1906) 2 Ch. 106, it was decided that the Treasurer is not a mere servant of the Council, but stands in a fiduciary relation to the burgesses as a body, and cannot plead the orders of the Council as an excuse for an unlawful act. Hence the law requires him to resist his masters, who may dismiss him, where they require him to make an illegal payment: if he obeys the Courts will punish him.

[2] The account follows the evidence given before the *R.C.* on *L.G.: Evidence*, Vol. XIII, Qs. 2,394 ff. and Memorandum.

[3] Sect. 83.

[4] Act 1894, Sect. 17.

[5] Public Health Act, 1875, Sects. 189 and 190.

[6] Act 1882, Sect. 17.

the duties of the Clerk very cursorily, if at all, while the qualifications and method of recruitment are not specified. That also is a matter which we discuss in the next chapter.

It is, however, clear that at the date of the statutory establishment of these officers, the intention was not more than to provide officers who would be chief of the clerical staff, the director of the various legal proceedings which arose in the course of the Council's work, the legal adviser of the Council and its Committees, the keeper of the various charters, deeds, records, and documents. In the Counties, of course, the Clerk was actually an important officer to sit with the amateur Justices of the Peace. The idea had not yet even dawned of the Clerk as an administrative officer or manager with a dynamic policy of advance and co-ordination, for the very simple reason that in the 'eighties of last century hardly anyone regarded the municipality as an agency for the provision of a large complex of vital social services. Such a conception is the growth of the last generation. One needs only to compare the expenditures as shown at different periods in the table at page 218, to obtain concrete evidence of this. Mr. Dickins, of the Town Clerk's Office, Sheffield, is in as good a position as any man to voice the change we can all observe [1]:

'When I first entered the municipal service in a Town Clerk's office, the work of the staff was to a great extent of a routine character, the work of one day was very similar to that of another, and there was comparatively little call for initiative and effort. What a change there has been in this respect! Every year new duties are imposed on the local authorities, and they have taken over many services that at one time were thought to be entirely outside the scope of the municipality. The result is that increasing responsibility is placed upon the staffs. It is impossible for the heads of departments to make themselves acquainted with all the details of the work of their departments, and in fact they have to delegate more and more responsibility to the seniors on their staffs. That this system is likely to extend appears to me to be obvious. It is, I think, being more and more recognized that those in the higher positions cannot effectively fulfil their duties if they are immersed in details, their duty should be to take general surveys and give directions. This means that their assistants and subordinates must increasingly take responsibilities, and I look upon this aspect of the case as indicating the increasing importance of securing that entrants into the service shall be of the right type and shall have proper qualifications.'

As a result of this; as a result, further, of the casual part-time nature of local councillorship, and the tendencies to departmentalism, the need arose for a co-ordinating agency. Moreover, economy (the best utilization of available means) is not merely a question of planning all activities for to-day, but of co-ordinating all the relevant factors for a considerable way into the future. For in modern government there is no present which is separable from the future. The

[1] *Public Administration*, July 1928, pp. 278 ff.

necessary features of such an agency are, that it shall be in *permanent* operation, and so placed as to survey all the activities of the Council, and the coming years, while preserving detachment from the special interests of each individual branch. By a gradual and almost unconscious process, Town and County Clerks began to feel responsibility for the initiative in such co-ordination, and then the more enlightened councillors and observers began to suggest that either the Clerk himself, or some officer specially appointed, should occupy not merely the clerical and legal headship of the authority but the managerial headship.

The Clerk as Manager. The tendency is all in the direction of concentrating in the Clerk's Department the threads of legal advisership, clerical management, and the office of survey, co-ordination, forethought and planning. The Clerk is already and necessarily in continuous contact with all Departments. English local authorities are so enmeshed in a closely-woven network of law and Departmental Orders that the flicker of an eyelid is dangerous without previous legal advice, and the general adviser has until the present been the Clerk. Consider, for example, the list of statutes the powers under which are devolved to a single Committee, the Health Committee, in any locality. Further, as keeper of the records, he directs the body of clerks necessary for the taking of minutes and their subsequent distribution (and interpretation) among the various Departments and the members of Committees who have undertaken various duties. Town Clerk and County Clerk have, almost necessarily, been lawyers, whether solicitors or barristers. They have, as certainly, become co-ordinating agents, whether voluntarily or involuntarily; and, no less positively, the force of things keeps a position ever open for such a co-ordinating agent.

The question is, whether the function of co-ordinating administrator is to be vested in the Clerk, or whether he is to relapse into the legal adviser of past years, making room for a new office altogether, that of Town or City Manager. Already most of the large authorities consciously select as Town or County Clerks men who are not only expert and experienced in the law and office organization, but who by actual experience in smaller authorities, have demonstrated the qualities of a progressive administrator. The actual qualifications and recruitment of such officers may be reserved for discussion in the next chapter. All we need say at this stage is that more and more the Clerk is obliged to become the co-ordinating factor. If one were asked for the main reason why this is so, the answer would not be merely that municipal services have increased in scope and detail, for the same thing applies to central government, and there is no demand for a single professional manager there. No. *The fundamental reason is the casual, intermittent, part-time nature of*

local councillorship which makes a co-ordinated policy impossible: the electoral process itself does not provide a permanent body of governors continuously active, while the services demand it. The defects of the electoral process are the opportunities of the professional official.

What more is needed besides deliberate reconstitution of the office of Town or County Clerk? First, there must be a rational distribution of business among Departments and Committees, to produce the minimum number consistent with comprehension of all the work (including 'visiting' sub-committees) while avoiding congestion of each Committee.[1] Now Bacon's *Essays* are read in many Council Schools, and the wise old man says: 'Above all things, order, and distribution, and singling out of parts, is the life of dispatch; so as the distribution be not too subtle: for he that doth not divide will never enter well into business; and he that divideth too much will never come out of it clearly.' Secondly, the paramountcy of the Finance Committee, and the Finance Department needs to be acknowledged and applied. The informal and occasional meetings of the chiefs of Departments with the Town or County Clerks already instituted in some places should either be made general by the Standing Orders of all the Councils, or the central authority should require by statute that such an 'Administrators' Conference' should meet every month under the chairmanship of the Clerk to consider the general progress of all branches of local administration. Lastly, the Councils themselves should establish special Committees of Co-ordination and Control. There are already some attempts towards such an arrangement.

The Special Committee of the Lancashire County Council has proposed that:

'For the purpose of ensuring as far as possible that the policy of the County Council in relation to its varied powers, obligations and functions is co-ordinated and guided by proper considerations of necessity, urgency and commitments authorized, or likely to be authorized, in the various branches of the County Service, the Committee of Chairmen be dissolved and a Special Committee, to be called the Co-ordination Committee, be appointed. Its main powers are:

'(*a*) to consider and decide any matter or question in which more than one of the Standing Committees of the County Council are, or are likely to be, concerned, and in the event of any such matter or question coming before a Standing Committee in the first instance, the Standing Committee shall refer it to the Co-ordination Committee, and the question whether or not any such matter or question is involved in connexion with any subject matter with which a Standing Committee has to deal, shall be decided by the Co-ordination Committee.

'(*b*) to consider any question of principle and policy relating to any matter within the province of the County Council, and particularly to scrutinize comparatively the annual Estimates of County expenditure submitted by the

[1] Cf. Simon, op. cit.; cf. also Ikin, *The Education Department*, Chap. IV; *R.C. on L.G.: Evidence*, XIV, 39, 310 ff.; and *Final Report*, pp. 114, 115.

respective departments, and to make representations thereon to the Finance Committee.

'(*c*) to consider in relation to the officials and staffs under the control of any Committee of the Council, including the Education Committee (exclusive of Teachers), Agricultural Committee, and any Committee statutory or otherwise, appointed by the County Council, any proposal to fix a new scale of salaries or alter the numbers, salaries, or bonuses of the officials and staffs other than any periodical increases of salary in accordance with an adopted scale; and no proposal to alter a scale or increase the number or salaries of officials other than in accordance with an adopted scale shall be operative unless and until approved by the Co-ordination Committee. . . .

'(*h*) to consider any other matter specifically referred to the Co-ordination Committee either by the County Council or by a Committee or Committees of the County Council, and, after making all necessary inquiries, submit a report thereon to the County Council or to the Committee or Committees concerned, as the case may be.

'The Co-ordination Committee is to consist of the following members:

'The Chairman, Vice-Chairman, of the County Council;

'The Chairman, Vice-Chairman and one other member of the Committee;

'The Chairman, or if he is unable to attend, the Vice-Chairman, and one other member of the other Standing Committees of the County Council, including the Education Committee, Public Assistance Committee, Agricultural Committee and Standing Joint Committee, together with such other members, not exceeding seven, as the County Council may appoint.'

The City Manager: an American Alternative. Now, foreign experiments usually attract a good deal of attention, especially when they bear striking names. It is not strange that the City Manager plan which has developed in the United States during the last twenty-five years should have caught the attention of students and practitioners of local government, especially as English needs were pointing towards a similar institution. It is, however, important that no foreign experiment shall be allowed to affect opinion before it has been subjected to careful scrutiny. The City Manager plan is briefly this, that the elected Council itself is restricted by the constitution to resolution of policy, and criticism and control of administration and finance, while the executive work is concentrated in the hands of a single official, appointed by the council. In other words, there is a separation of powers, to the extent that the councillors are primarily responsible for the formulation of policy while executive action and the control of municipal servants are vested in the Manager. However, there is no complete separation of powers, because the Council has a controlling authority over the Manager, by criticism and resolution, and the Manager has in practice (though not always by law) a power of advice and sometimes participates in the deliberations of the Council. The system, though known colloquially as the City Manager plan, is also referred to as the Council-Manager system.

There are just over three hundred and fifty cities in America

working with such a constitution, and they fall into the following groups according to size:

Population	Number of Cities	City Manager	Per Cent.
2,500 to 10,000	2,183	174	8
10,000 to 25,000	606	107	16
25,000 to 50,000	185	34	18
50,000 to 100,000	98	23	23
Over 100,000	93	19	20
	3,165	357	

The City Manager plan therefore does not work in all of the American cities, or even in the majority. In 1931, it was in operation in only 1 out of 5 of the cities with populations in excess of 25,000. There are other constitutions in operation in other cities, and a word or two regarding these may make the nature of the City Manager scheme more easily comprehensible.[1]

Mayor and Council System. First, there is the Mayor-Council form. In this the Council and the mayor are separately elected. Powers are divided, the legislative function being vested in the Council, and the executive function in the mayor. The mayor is not a member of the Council, but he may recommend resolutions and policy, and may veto measures passed by the Council. There are thus set up by parallel authority directly issuing from the people two separate agencies of government confronting each other. The power of appointment and control of officers is vested in the mayor; and he prepares and submits the budget. This system is the result of a long struggle to concentrate administrative responsibility in one man, and follows the general principles of organization in the Federal and State Governments. Its chief merit is that it produces co-ordination. But it inevitably organizes friction between the councillors and the mayor, because each can claim as good an authority as the other, and the tendency of every institution of government is to increase its own powers. This system operates in New York, Boston, Philadelphia, Detroit, St. Louis, and many other places. It is known as the Strong-Mayor system. A variant of the Mayor-Council system is the Weak-Mayor form. The powers of the mayor are limited: his power of appointment is exercised under the control of the Council or it does not exist at all; his veto power is limited; and the budget is prepared by the Council.

The Commission System. The second type of American municipal organization is the Commission System. In this, a number of councillors or commissioners are chosen equal to the number of

[1] Cf. Anderson, *American City Government*; for the history, Story, *The American Municipal Executive*.

administrative Departments. All the powers of government, legislative, financial and executive are fused and concentrated in the commissioners. Resolutions and policy are made by the commissioners as a group, and this achieves, if anything can achieve, the collective responsibility of the commission to the electorate. There is a mayor, sometimes elected by the voters as such, in other cases chosen by the commissioners from among themselves, and he acts as the president of the commission and the ceremonial chief of the city government. The commissioners receive salaries, are practically whole-time officers, and meet often. Each commissioner is individually responsible for the administration of one department of government. This system secures simplicity for the electorate, a Council small enough to act with expedition and to concentrate an appreciable degree of responsibility upon each member, and unifies and co-ordinates policy and administration. Yet there are serious criticisms of this form of government. In the first place, there is no external check upon the commission, excepting through the organizations which pretend to represent public opinion, and these are too remote and intermittent to have any timely effect. In regard to the co-ordination of the estimates, it is rather obvious that the five or seven men who are themselves the heads of spending Departments are likely to co-ordinate, not so much as one mind detached from departmental temptations, but as several men bartering the minimum amount of concessions. In some places this defect has caused provision to be made for a Controller who is separately elected in order to prepare the annual budget which may not be increased by the commission above certain maxima.

The City Manager.[1] The deficiencies inherent in both the schemes we have sketched, and the realization that both co-ordination and popular control must be adequately provided for, gave birth to the City Manager plan. Its main features are the division of legislative and executive authority, the vesting of the former in the elected council, which also has the power to appoint, criticize, and dismiss at its will a City Manager, who is the executive authority. An extract from the Charter of Dayton describes the main features of the Manager's powers :

'1. To see that the laws and ordinances are enforced.

'2. To appoint and remove all directors of the Departments and all subordinate officers and employees in both the classified and unclassified service, subject to the operation of the Civil Service Commission.

'3. To control all Departments and Divisions.

[1] Cf. Anderson, op. cit.; White, *The City Manager*, 1929; frequent articles in the *National Municipal Review* (New York); regular contributions in *Public Management* (Chicago), the Journal of the City Managers Association; the Annual Proceedings of the City Managers Conference, and the brilliant article by Louis Brownlow, *Public Administration*, Oct. 1931. Compare also H. A. Stone and others: *City Manager Government in U.S.A.*, Public Administration Service, Chicago, 1940.

'4. To investigate the affairs of any Department or the conduct of any official or employee.

'5. To request the commission to appoint advisory boards.

'6. To prepare and submit to the commission a budget.'

There are of course variations in the extent of the power given to the Manager. For example, sometimes important functionaries like the Clerk or Solicitor or Treasurer are directly appointable by the Council. He is often excluded from control of the tax assessment arrangements. The budget is sometimes prepared by the Council or a committee controlled by it. But the main intention and achievement is obvious: to secure that one man shall have all the strings of control and guidance united in his hands. In order that this may be done efficiently, and with memories of the ugly interventions of the elected councillors in the golden days of graft, many charters specifically prohibit the Council and its committees from interfering in administration, and especially in appointments and removals from office and municipal purchases.

The Difficulties of the City Manager. The problems arising out of this system are two: first, the extent to which the Manager participates in the creation of policy, and secondly, his relationship with the Council. As to the making of policy, there is a great division of opinion among existing Managers. One school holds that the Manager is the executive servant of the Council, that he should therefore occupy himself exclusively with the execution of the Council's resolutions, that he should give advice only when definitely asked for, and should recognize that the initiative in, and the responsibility for, policy rests with the Council. The second school looks to a robust and progressive Manager who shall give the Council a lead, and the extremists in this school go even farther and seek to become the leaders of municipal policy, as though they and not the Council were trustees for the people. We may take it that there is in practice a continual oscillation between the two views. The experience of two decades, and the opinion which is now maturing as a result of it, is rather that the Manager is not an executive leader independent of the Council, and ought not to be, since the principle of popular responsibility is fundamental, and such responsibility is vested in the elected body. The actual history of the Manager has been a history of daily struggles between the will to lead and defence against the Council and the hostile elements in the city. That the Manager has effected co-ordination is undeniable; but so far, perhaps because the time is yet early, and partly because the early years have been years of struggle for existence itself, they have as yet made little contribution to the science of administration. The foreign observer cannot fail to be struck by the large extent to which engineers become City Managers. Further, the average term of the City Manager is, so far,

four or five years, by no means a long time. The term is cut short owing either to their leaving for better-paid jobs, whether in a larger city, or in private industry, or because political opposition drives them away.

This brings us to the relationship between the Manager and the Council. Control by the Council is amply provided for. The function of resolution is vested in them. They have the acceptance of the budget. They appoint the Manager for an indefinite period, and they can remove him from office, usually by a bare majority. He is recognized as the servant of the Council: 'He shall serve at the will of the Council.' Everything then depends upon whether they are prepared to collaborate with him, whether they are prepared to encourage him in their schemes, to give him latitude or to make his life a harassed retreat. Now the Council cannot possibly avoid discussing the activity of the Manager, since it feels a responsibility to the electorate, and because, no less than he, it feels the urge to govern. The Manager is either required by law, or is invited, to attend at Council meetings. Now no rule at present exists, and it would defy the genius of mankind to invent one, to secure automatically a proper relationship between two institutions so placed. In American conditions the situation is particularly difficult. The City Manager plan was one hopeful way out of the prostitution of municipal government by corrupt politicians. Experience shows that so far, even although the city charters provide for the election of councillors by non-partisan groups, the old gangsters still have the uncanny faculty of coming back. Quite apart from that, there is the permanent recognition that the system itself only *permits* of better government, but whether it is produced depends entirely upon the mentality of the electorate and of the councillors.

The ultimate truth is, that where the force of democratic election is located, there not only is, but ought to be, not only ultimate control, but the formulation of policy. The City Manager system simply provides the opportunity of co-ordinating the several branches of policy, and of instructing the elected amateurs for the better performance of their own function, *if they wish to perform it better*. The strength of the City Manager's function has been best put by Mr. Louis Brownlow, himself a former distinguished Manager, and now University lecturer and research organizer at the University of Chicago, in a brilliant article in *Public Administration*.[1] He says:

'The city manager isn't a czar, nor any other sort of monarch. He is more nearly a prime minister without portfolio. The manager himself, except of necessity in the smaller villages and towns, doesn't personally direct the affairs of the several departments of the municipality. He doesn't give orders directly to the staff. He doesn't interfere directly in the ordinary operations of the

[1] Oct. 1931, pp. 408–9.

municipal machinery. He manages all the departments, but he directs none of them.

'Put in another way, his chief function is to serve as the responsible co-ordinator with power; to see to it that all of the departments of the municipality work together to carry out the policies that have been determined by the council so far as that is possible within the limits of the funds which council has appropriated for the several services. As such co-ordinator it is his business, of course, to keep council always advised of the course of events and to make recommendations even in the field of finance and of policy that seem to him to be necessary for the better administration of the entire government. . . .

'It is the city manager's business to see the municipal structure as a whole and to prevent such unbalanced programmes, although I must confess that I have known a few managers, too, thus to pay undue attention to their own pet enthusiasms.

'It is a particular part of the manager's business to subdue the dragging effect of inter-departmental jealousies, and to this end he has been given the power to appoint on his own terms the heads of departments.'

Experience has revealed the weakness of the Manager in his conflicts with the Council, so much so that the suggestion has been made (though we freely confess that it is not widely shared) that, to strengthen the Manager, appointment and dismissal should be taken from the Council and lodged in a separately elected Board of nine electors. The Council would then have only the right to impeach the Manager for incompetence, or incompatibility between it and him. The Board would decide. We mention this proposal, not because we think it is desirable, or feasible, but because it reveals the nature of the Council-Manager relationship. The reader can himself now decide what elements of the system are applicable to English problems. The problem is to secure co-ordination without destroying democratic responsibility. Let us now turn to consider what German experience teaches.

The Bürgermeister.[1] German municipalities are governed by the collaboration of an elected council and an appointed executive. The Council is elected for four years, the executive is appointed for terms ranging up to twelve in certain Prussian towns, with unlimited re-eligibility. The Council is endowed with the power of making resolutions and of control over the administration of all affairs which are entirely in the discretion of the municipality (not, for example, the management of the police forces which are State-provided and controlled) excepting matters of 'current administration'. Thus the Council has the full decision of policy regarding the utilization of municipal property, the budget, local taxation, loans, the issue, amendment or abolition of local bye-laws, the administration of land, and the power of criticism except in matters falling within the sphere

[1] Stier Somlo, *Handbuch des Kommunalen Verfassungsrechts*; Hensel, *Kommunalrecht und Kommunalpolitik*; Report on Germany, *International Congress of Local Authorities*, Part I; Boldt, *Stadtverfassung und Stadtverwaltung in Preussen* (1931).

of current administration. But the authority of the Council is fundamentally limited to passing resolutions.

The execution of resolutions is reserved to the local executive. Hence, there is at once a striking distinction between the English system in which the resolving and the executive power are fused together in the Council and delegated to committees. In German municipalities there is a clear separation. Moreover, where there exists, as in all the East Prussian Provinces, the *Magistrat* System, the resolutions of the Council become effective only when the *Magistrat* has given its approval thereto. If the *Magistrat* refuses such approval it has to explain the grounds to the Council. If, then, no understanding is reached, a mixed commission is established of Council and *Magistrat*. If this does not arrange a settlement then the next higher local governing authority settles the matter. Where a local Council goes beyond its sphere of authority or violates the law, the local executive is obliged to veto the action, and may be compelled to do so if negligent, by the controlling State Department. The statutes give the Council the authority to control the municipal administration, but its exact powers are not stated in detail. Usage and judicial decisions admit the Council's right to require information regarding the execution of their resolutions and the expenditure of municipal revenues. The Council may require the production of the necessary documents and set up committees of investigation to which, however, the Bürgermeister may nominate a member.

The Executive. Administration of municipal affairs, as well as the execution of the duties imposed upon the municipality by the central government, are vested in the executive authority (*Stadtvorstand*). The executive is variously organized according to the State, and, in Prussia, a distinction is made between the Rhineland Provinces and the rest of the country. In the Rhineland the executive consists of a single Bürgermeister, in the rest of the country a *Magistrat* with a Bürgermeister at its head. In the *Magistrat* system the executive, that is the *Magistrat*, consists of a number of paid and unpaid members with a Bürgermeister as president. In the simple Bürgermeister system the executive power is vested in one man only, the Bürgermeister, although for the convenience of administration, where the town is large and business heavy, he may have as assistants (*Beigeordnete*) paid or unpaid officers, but they are *subordinate* to him, obliged to obey his instructions, and he takes full responsibility.

These systems are distinguished by the fact that in the Bürgermeister system the Bürgermeister is simply and solely the administrator and controller of the execution of affairs, whereas the determination of policy lies entirely with the Council. In the case of the *Magistrat* system, the *Magistrat* itself with a Bürgermeister at the head forms a kind of Second Chamber, the consent of which is necessary to the

establishment of municipal resolutions. We shall see later that the law makes arrangements for close personal connexion between Bürgermeister and Council. We now sketch in a little more detail the respective nature of these executive organs.

Magistrat. The *Magistrat* consists of the Bürgermeister and a Vice-Bürgermeister, a number of unpaid members (called *Stadrat*, *Senator*, *Ratsherr*) and the heads of the various Departments, for example, the Clerk, the Treasurer, the Architect, the Director of Education. The numbers are established by various statutes, and a certain liberty is permitted to the local authorities to fix the number. All persons eligible for candidature to municipal government may be elected as unpaid members of the *Magistrat*. They are elected by the Council for a period of twelve years, that is, for three times as long as the term of a councillor. The paid members are similarly chosen, including the Bürgermeister, and in some parts of the country the appointments need the approval of the central authority. The statutes regulating local government do not lay down any special qualifications for *Magistrat* or the Bürgermeister, but the paid members who are the heads of technical Departments are, of course, chosen for their technical and administrative qualifications. Either the central authority, or the local governing authority intermediate between the city and the central government, has the power of approval of appointments to the *Magistrat* and this power of approval is in the free discretion of the relevant authority. The reasons for refusal are, occasionally, incompetence, but usually, in the rare cases where this occurs, political extremism. The members of the *Magistrat* are subject to all the obligations, and they are very severe obligations, imposed by the statutes and case law relating to Civil Servants.

The *Magistrat* forms a council directed by the Bürgermeister, who leads and supervises the whole of the administration of the municipality. The Bürgermeister organizes the *Magistrat*, conducts its proceedings, has a casting vote, appoints them to the various branches of administration and to committees and can revoke their power at his discretion. The supervisory power of the Bürgermeister applies to everything that comes within the scope of administration, including the work of committees and the financial and accountancy branches. And he has the disciplinary power, coupled with the power of imposing fines, upon officials to carry out his executive and supervisory duties. There are various well-organized means whereby differences between the *Magistrat* and the Bürgermeister can be settled by the larger local authorities.

The *Magistrat* has a resolving and an executive function. Its consent is necessary to the validity of the resolutions passed by the Council, in all cases where the Council has power. Its administrative power especially relates to the administration of the municipal property

and revenues, the allocation of income and expenditure according to the resolutions of the Council, supervision of accountancy and Treasury arrangements, the assessment and collection of municipal taxes, the administration and supervision of municipal institutions. The *Magistrat* is the authority controlling apparatus, offices organization and records, and appoints and supervises officials. Moreover, it is responsible for the direction of day-by-day administration, and this, without the previous consent of the Council. Where the main lines of policy, which are the concern of the Council begin, and where action in relation to day-by-day affairs ends, is a matter with neither statutory nor other written definition.

The Bürgermeister System. Where the municipalities have a simple Bürgermeister system, there is no other deliberative and resolving authority than the Council. The authority of the Council in matters of resolution and control is complete and almost exclusive. The Bürgermeister is by himself the unique executive organ of the city. But, by statute, he is chairman at Council meetings. Let that be compared with the chairmanship of English Town and County Councils, where the chairman is elected by the Council, and where the Chief Official is much exercised even to dare go beyond the prompting of Chairman or Councillors for fear of being accused of bureaucratic usurpation.[1] The Bürgermeister has the full right to participate in discussions, which, in fact, he usually leads, full voting rights, and where necessary, a casting vote. To aid him in his executive work he has by statute two paid or unpaid assistants. In other respects he exercises, broadly, the same powers as the *Magistrat* in the system we have just described.

In both systems the law provides for Committees strictly subordinate to the executive organ for the assistance of the executive. These Committees consist either entirely of members of the *Magistrat*, or together with councillors, or of members of both bodies and appointed citizens. Where the Bürgermeister system operates the commissions consist of councillors only or of councillors and citizens under the presidency of the Bürgermeister or one of his assistants. The work of the committees is decided by the Bürgermeister or the *Magistrat* and not by the Council. They are usually parallel with a well-defined branch of municipal service.

Having indicated the main features in the constitution of this arrangement, let us consider its advantages and disadvantages. There is ample evidence that co-ordination is secured, though with somewhat less efficiency in the *Magistrat* system than in the Bürgermeister system. Co-ordination will always be better secured by one person than by several, though the quality of the co-ordination is another

[1] Though cases are also known in England where the Chairman is much exercised even to dare go beyond the promptings of the Chief Official.

question. Secondly, the statutes do not say that this co-ordinating administrative agent is to make policy, or assume any responsibility for the leadership of the municipal policy. In so far as the Bürgermeister in Germany has become distinguished as a leader of the local community, and as a dynamic creative factor in municipal policy, this is something which has not developed out of the law. It is the consequence of several factors : his opportunities, the general tradition of government by experts which has two hundred years of experience and widespread approval behind it, and the practice of municipal councils in selecting those men as Bürgermeister who have high administrative capacity and a sense of municipal leadership.

The opportunities of a co-ordinating executive branch assured by statute of freedom of action, excepting for the occasional criticism of a locally elected body, are such that when it speaks on questions of policy, it speaks with so much compelling knowledge of the realities of experience, that its advice on policy is almost unchallengeable, even when it ought to be challenged. As to the tradition of government by experts, that is as powerful an influence in German life as is the tradition of democratic control in English life. Indeed, while from 1689 the best of English political philosophy and jurisprudence was applied to the problem of creating a free Parliament, German thinkers and statesmen in the same span of years concentrated their attention on the development of a race of benevolent experts. The currents of thought set in such violent motion by the War and its aftermath, have somewhat affected the influence of the old tradition, and the *Magistrat* and the Bürgermeister are often challenged and censured in a way unparalleled before 1914 by the Municipal Councillors, and there are complaints of the influence of political partisanship in municipal affairs, and in the *Magistrat* particularly.

However, the time has not yet come of which it could be said that political pliancy is preferred by the Councils to proven proficiency for the situation when they choose their executive for his long term of years. The men who are chosen are still, as before, those who have progressed by a long series of stages. They begin with the Universities where they have studied law, political science, administration, and economics, and proceed either into the State Civil Service or the Federal Civil Service, or into various considerable administrative positions in industry or commerce. Then the progress from the smaller towns to the intermediate and the larger municipalities, either as Assistant Bürgermeister in larger towns or Chief Bürgermeister in a small one, until, at last, they appear with a score of others before the Town Council in answer to its widely disseminated advertisement for a Bürgermeister or a member of the *Magistrat*. Some have even been Ministers of State or Federal Governments. There is no qualification laid down by statute for the position of Bürgermeister, but good

sense, and love of the city, combine to the selection of extremely capable men. Every one expects the Bürgermeister to be capable and responsible, and, therefore, only men who can reach this standard are selected, and once they are selected, both law and public opinion give them considerable power, and make of them not only the actual leaders of municipal affairs, but also the ceremonial chief. He replaces the Mayor of the English system. All this, quite as much as the margin of freedom to initiate new municipal services, accounts for the generous and inspiring development of German municipalities.

There is considerable controversy regarding the comparative merits of the *Magistrat* system and the Bürgermeister system. On the whole so much is the Bürgermeister system favoured, that it alone has been included in the project of the Law on Municipal Self-Government of 1930, put before the Prussian Diet, and in a similar law drafted by the German Association of Towns. Those who support the Bürgermeister system do so on the ground that it gives an energetic personality conscious of his purpose, the possibility of firmly administering the town without being hemmed in by the cumbrous apparatus of the *Magistrat*. The opponents of this system criticize it on this very ground, that it places the fate of the town at the mercy of the ideas of one single personality. And further, in the large towns, in any case, it is argued, the Bürgermeister is bound to rely very largely upon his assistants. It is pointed out that in the *Magistrat* system, where the Bürgermeister is not the master of its members, there is a real opportunity to secure thoroughness and mature consideration; that all matters of policy must go through two stages of examination, by the Council and by the *Magistrat*. The supporters of the Bürgermeister system counter this by the observation that since the War this double-barrelled arrangement is stultifying where the two bodies are of a different political complexion, while, where they are of the same complexion, party discipline takes away from the independence of the *Magistrat*. There is complexity and tediousness. The more Germany suffers from the storms of party politics, and the vicissitudes of elections with their swing of the pendulum, the more apparently do they look to the independence and technical expertness of the executive authority whether the one or the few. At the moment, they expect the unity of the executive to save them from instability, and personal contact between Bürgermeister and Council, as provided by statute, in the simple Bürgermeister arrangement, is most favoured.

Conclusions. Thus, we have seen that in their different ways the American and the German systems strive to secure, and in large measure do secure, the co-ordination of administration and of policy. But they are successful not simply by force of law, but as a result of tradition and the contemporary state of mind. Neither of the

systems is flawless; neither maintains itself even in its imperfect state without the support of willing and comprehending assent—and that is, in fact, their chief lesson.

Co-ordination and progress in English municipal government are amply provided for by statute in so far as the position of the Council and the Clerk are concerned. The real problem is not to amend or add to the law, but to bring about a change in the mind of Councillors and the public. Then the Clerk would be appointed because he possessed, not only a knowledge of the law, but also the faculty of guiding the various branches of local government in a well-considered and dovetailed scheme, producing for the future, as for the present, the greatest utility in relation to the means of the municipality. In the largest authorities separate room could be found for a Legal Adviser and a City Administrator. It would be a devastating criticism of all the pleas for local self-government if those who put them forward could not achieve these ends without Parliamentary compulsion.

CHAPTER X

THE MUNICIPAL CIVIL SERVICE

I

THE PRESENT SYSTEM

VITAL as organization is to the effectiveness of administration it is as nothing compared with the significance of Men and Women. It is upon the actual qualities of intellect and character that government depends: this is prior in importance to statutes, institutions and apparatus. The efficiency of local government is determined by the efficiency of local committees and local officials. This is a truism too frequently forgotten, and therefore it can never be too frequently reiterated. Local authorities employ nearly one million servants of all kinds. There are (1) 225,000 teachers; 64,000 police; 50,000 Poor Law officers. This accounts for 340,000. (2) There are about 176,000 workers in the various enterprises. (3) Then one other undifferentiated category of 350,000 contains a large part of the professional, administrative and clerical staffs. As it is authoritatively estimated that clerical are to manual workers in the relation of 1 to 4, we may take it that they number one-fifth of categories (2) and (3), that is, over 100,000, excluding Poor Law.[1] This body of 100,000 administrative and clerical is, of course, recruited and qualified so variously in different parts of the country that one can hardly speak of 'a Municipal Civil Service'. Each local authority

[1] *Local Government Employees* (p. 191, Census Reports—Industry, 1925).

	Male	Female
In Tramway Repair Depots	2,717	66
,, Gas Works	26,908	520
,, Water Works	15,589	344
,, Electricity Supply	21,566	532
,, Omnibus Services	1,061	36
,, Tramway Services	59,003	1,809
,, Harbours, Docks, Piers, Lighthouses, etc.	41,672	772
,, Canals and Conservancy Boards	1,197	16
,, Police	62,667	1,532
,, Poor Law	19,049	29,806
,, Education	63,355	160,954
,, Other Local Government services	299,987	51,588
	614,771	257,975
Total	872,746	

is entirely independent, and as yet there is lacking the status, dignity and consciousness of a uniform profession which distinguishes the British Civil Service. It is, as a matter of fact, by recalling the characteristics of the Civil Service of the central authority, that one attains a vivid comprehension of the conditions and problems of municipal officials.

The most significant features of the British Civil Service are these.[1] Every post is open only to selection by merit. The tests of merit, and the salary scales pertaining thereto are established by a single authority: the Treasury in consultation with the Civil Service Commissioners. Candidates compete with each other, either by written tests, or by their testimonials and interview. Such competition is *open* to all from whatever part of the country they may come. Qualifications are laid down in relation to classes which are common to all the Departments whatever the character of their service. The examining body is the Civil Service Commission, and this body, subject to no other Department of Government, conducts its examinations in full independence of the Departments which afterwards employ the various officials. Through the Whitley Councils there is some guarantee of justice and appeal in disciplinary matters. There are deliberately arranged avenues of promotion, and special Promotion Boards to select from candidates for promotion. Regular systematic reports upon the officials serve as evidence for promotion and increment purposes. The operation of this system for nearly two generations has produced a profession highly efficient, and with a deep sense of duty.

Nothing so comprehensive and well-organized exists in the local authorities, except in a few County Boroughs and County Councils. Certainly no Local Civil Service exists as a unified profession spread all over the country, with uniform minimum tests of efficiency and a unified scheme of pensions, salaries, and working conditions. The question is, then, What does exist, and why?

Local Freedom of Appointment. The various general statutes which constitute the local authorities give them full power to appoint such officers as they think fit; and in a few cases oblige them to appoint officers. With a few exceptions which we discuss in a moment, there is no statutory prescription of qualifications, or method of selection, or salary. All these things are fully left to the local authorities which administer the particular services. The basic principle is that the local authorities are entirely autonomous in their employment policy. The statutes say they shall appoint 'such servants as they think fit',[2] and, although the powers of the District

[1] Cf. Finer, *The British Civil Service.*

[2] 1. Section 3 (10), Local Government Act, 1888, vests in the Council of the Administrative County the appointment, removal, and determination of the salaries of the County Treasurer, the County Surveyor, the Public Analyst, any officer under the

Auditor and the Courts of Law have been extended to question the reasonableness of a salary deemed excessive, they have not yet been extended to questioning the fitness of an officer to hold an office, on the ground that the salary is reasonable but the qualifications are not. This is the general rule.

Offices Controlled by the Central Authority. However, there are some situations, the work of which is so vital that the central government, representing the whole community, could not possibly permit the local authorities to exercise autonomy in them. The mere mention of these situations, and the law relating to them, explains why they are regulated, and at the same time suggests why other services have not yet been regulated. Regulation extends to Medical

Explosives Act, 1875, and any officer whose remuneration is paid out of the county rate (other than the Clerk of the Peace and the Clerks of the Justices).

2. Section 189 of the Public Health Act, 1875, provides that:

'Every *urban authority* shall from time to time appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer. Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors, and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.

'Subject, in the case of officers any portion of whose salary is paid out of moneys voted by Parliament (or by a County Council under Section 24 (3) of the Local Government Act, 1888), to the powers of the Local Government Board under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances as the urban authority may think proper; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure.'

3. Section 190 of the Public Health Act, 1875, provides that:

'Every *rural authority* shall from time to time appoint fit and proper persons to be medical officer or officers of health and inspector or inspectors of nuisances; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act. . . .'

By Section 191:

'A person shall not be appointed medical officer of health under this Act unless he is a legally qualified practitioner; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament (or by a County Council under Section 24 (3) of the Local Government Act, 1888), and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act.

'The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts by the local authorities of such districts, and the Local Government Board shall by order prescribe the modes of such appointment, and the salary and the charges of such officer shall be borne by such authorities.

'Any district medical officer of a union may with the sanction of the Local Government Board and subject to such conditions as the said Board may prescribe, be appointed a medical officer of health; and a medical officer of health may exercise any of the powers with which the inspector of nuisances is invested by this Act.

'In case of illness or incapacity of the medical officer of health a local authority

Officers of Health; Sanitary Inspectors; Health Visitors; Inspectors of Weights and Measures; Poor Law Officers; Teachers and Chief Constables, while there are certain basic regulations regarding police qualifications and pay.

Medical Officers. By the Public Health Act of 1875 every urban and rural sanitary authority was obliged to appoint a fit and proper person to be Medical Officer of Health.[1] Naturally, the statute does not permit the appointment to such an office of any person unless he is a legally qualified medical practitioner. Up to 1929, if the local authority accepted a grant in aid of his salary, the Minister of Health required to be satisfied regarding the qualification, appointment, duties, salary and tenure of office of the person appointed. The Minister might also by Order prescribe the qualification and duties where no grant-in-aid was given. Since 1929, the special grant-in-aid for medical officers having been abolished, the power of control rests upon Section 104 of the Local Government Act of 1929, which gives the Minister ample powers to secure all that he wants in regard to Medical Officers. By the Local Government Act of 1888 County Councils were empowered, not obliged, to appoint Medical Officers of Health. The Minister was given power to see that no person should be appointed unless he were legally qualified to practise certain

may appoint and pay a deputy medical officer subject to the approval of the Local Government Board.'

By Section 192:

'The same person may be both surveyor and inspector of nuisances; but neither the person holding the office of treasurer nor his partner, nor any person in the service or employ of them or either of them shall be eligible to hold or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk nor his partner, nor any person in the service or employ of them or of either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer.'

By Section 17 of the Municipal Corporations Act, 1882—

'(1) The Council shall from time to time appoint a fit person, not a member of the Council, to be the town clerk of the borough. (2) The town clerk shall hold office during the pleasure of the Council. (3) He shall have the charge and custody of and be responsible for the charters, deeds, records, and documents of the borough and they shall be kept as the Council direct. (4) A vacancy in the office shall be filled within twenty-one days after its occurrence. (5) In the case of the illness or absence of the town clerk the Council may appoint a deputy town clerk to hold office during their pleasure. (6) All things required or authorized by law to be done by or to the town clerk may be done by or to the deputy town clerk.'

Section 18 provides—

'(1) The Council shall from time to time appoint a fit person, not a member of the Council, to be the treasurer of the borough. (2) The treasurer shall hold office during the pleasure of the Council. (3) A vacancy in the office shall be filled within twenty-one days after its occurrence. (4) The offices of town clerk and treasurer shall not be held by the same person.'

Section 19 says—

'The Council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the Council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be reappointed.'

[1] Cf. *R.C. on L.G.: First Report.*

specified branches of medicine. Further, this Act stipulated that no person should be appointed Medical Officer of a County or of a District with a population of 50,000 or more, unless he were a legally qualified medical practitioner, and registered as holder of a diploma in sanitary science, public health, or State medicine, or had been during three consecutive years Medical Officer of a District with a population of not less than 20,000, or had been for not less than three years a Medical Officer of the Local Government Board. The appointment of a Medical Officer by County Councils was made obligatory by the Housing and Town Planning Act of 1909. The Act gave the Minister power to prescribe his duties by General Order; and also provided that the officer should not be removable by the Council without consent of the Minister of Health; the officer must be appointed for an unlimited period. In 1921, the Public Health Officers Act laid it down that all Medical Officers, providing that they were restricted from engaging in private practice, must be appointed for an unlimited period, and should be removable by the local authority only with the consent of the Minister of Health.

Sanitary Inspectors were first imposed upon local health authorities in 1848, and the obligatory nature of the appointment was included in the Act of 1875. It was not until 1891 that qualifications were regulated by the central authority, when by the Public Health (London) Act, Sanitary Inspectors in the Metropolis had to hold a certificate of competency approved by the Local Government Board, or to have previously served as Sanitary Inspectors. Although the more enlightened local authorities required the qualification of the Royal Sanitary Institute and similar bodies, and the practice spread, no central rule was established until 1922 when an Order of the Ministry of Health laid down a qualification, the matter being standardized in 1926. Even here, until 1929, those local authorities who refused a grant-in-aid could, and did, appoint persons without adequate qualifications. The history of the central authority's attempt since 1875 to secure a competent municipal medical staff is a history of strenuous efforts and widespread local resistance, of disappointment for the central authority and dirt and disease in hundreds of areas.

The only qualifications which local government officers are required by statute or regulation to hold are as follows:

(*a*) *Medical Officers of Health.* Statutory Rules and Orders, 1926, No. 552. Paragraph 5:

'A person shall not be qualified to be hereafter appointed or re-appointed as a medical officer of health of any district or combination of districts, unless, in addition to the qualification prescribed by any statute, he is also either registered in the medical register as the holder of a diploma in sanitary science, public health or state medicine, or has had not less than three years' previous experience of the duties of a medical officer of health.'

(*b*) *Sanitary Inspectors.* Statutory Rules and Orders, 1926, No. 552, Paragraph 16:

'A person shall not be qualified to be hereafter appointed or re-appointed as a sanitary inspector of any district or combination of districts unless he is the holder of—

'(A) a certificate of the Royal Sanitary Institute and Sanitary Inspectors' Examination Joint Board; or

'(B) a certificate of the late Sanitary Inspectors' Examination Board; or

'(C) a certificate issued before the 1st day of January, 1899, by the Sanitary Institute, now known as the Royal Sanitary Institute; or

'(D) in the case of an appointment as sanitary inspector of a district or combination of districts outside London a certificate of the Royal Sanitary Institute issued before the 1st day of January, 1926;

'Provided that if the local authority employ a qualified veterinary surgeon for purposes connected with the inspection of meat, they may, with the approval of the Minister, appoint him as a sanitary inspector for the purpose only of exercising the powers and duties of such an officer in relation to meat, notwithstanding that he does not possess one of the qualifications prescribed by this Article.'

(*c*) *Health Visitors.* Statutory Rules and Orders, 1930, No. 69, Paragraph 8:

'Any person appointed to be a health visitor shall be a woman who, prior to the 1st April 1930, has held the appointment of health visitor with the approval of the Minister, or who has obtained the health visitors' certificate issued by the Royal Sanitary Institute under conditions approved by the Minister, or the diploma issued under the Board of Education (Health Visitors' Training Regulations, 1919).'

(*d*) *Inspectors of Weights and Measures.* Statutory Rules and Orders, 1907, No. 698, Paragraph 2 of the Schedule:

'No person can be appointed by the local authority to act as an inspector of weights and measures unless he has obtained a certificate of qualifications from the Board of Trade (section 8 of the Act of 1904). Every inspector, as soon as he is appointed, must enter into recognisance to the Crown in the sum of £200 for the due performance of his duties (section 43 of the Act of 1878). The penalty for any breach of duty imposed by the Weights and Measures Acts or the Board of Trade Regulations under the Act of 1904 is a fine not exceeding £5 (sections 49 of the Act of 1878 and 5 (4) of the Act of 1904). No inspector must be financially interested in the making, adjusting, or selling of weights, measures and instruments (sections 12 (1) of the Act of 1889).'

Section 8 (3) of the Act of 1904 provides that no person other than an inspector duly appointed under the Weights and Measures Act should act as such inspector under a penalty of £10, or £20 for a repeated offence.

The inspector must accordingly be careful never to relegate to an assistant any of his statutory duties in such a way that the assistant could be held to be acting independently as an inspector. Assistants should act throughout under the personal and immediate supervision of an inspector.

Poor Law Officers. The Royal Commission of 1832–4 realized that the efficiency of poor relief administration depended upon competent officials. Indeed, one of the main faults with the system

which had failed was its administration by unskilled overseers. In view of the strong feeling of the Commissioners it was a great concession to the new Guardians when the Act of 1834 permitted them to appoint officials—but though to the central authority was reserved the power of fixing the salaries, duties, method of appointment and the kind and number of Poor Law Officials; and established its power of dismissing officials (Sect. 46). The Act of 1869 gave the central authority power to appoint necessary officers if the Guardians refused to do so. Some of the officers—Clerk, Treasurer, Chaplain, Medical Officers, were dismissable only by the central authority; others, the Master, Matron, School Teachers, Nurse, and Relieving Officer could be dismissed by the Guardians only with the consent of the central authority. Down to recent years, however, the central authority had not laid down qualifications, although some Guardians appointed only those who had taken the examinations of certain Schools of Social Science. Then the Poor Law Officers' Association themselves established an Examinations Board for Relieving and Institution Officers. Upon the transfer of the Poor Law administration to the Counties and County Boroughs in 1930, the Ministry included in the Public Assistance Order of 1930:

'No person shall be appointed to be a Public Assistance Officer, Assistant or Deputy Public Assistance Officer, Master, Superintendent, Steward, or Receiving Officer who has not had previous experience as an officer in local government or poor law administration in an office the duties of which are similar to those of the office to which it is proposed to appoint him, or such other experience as the council, with the consent of the Minister may prescribe.

'Provided that nothing in the Article contained shall prevent the council from appointing a person to be a Relieving Officer who holds the Relieving Officer's Certificate issued by the Poor Law Examinations Board, or to be a Master, Steward or Superintendent who holds the Master's Certificate issued by that Board.'

Teachers.[1] The qualifications of Elementary and Secondary School Teachers, are in relation to the recognition of the Schools for Grant, laid down by the Board of Education. Indeed, the Board has all along been a powerful driving force in setting the standard.

Police.[2] By the Police Act of 1919 and the Rules made under it, a very high degree of control over the terms of appointment, promotion, pay, discipline, and training of the police is vested in the Home Office. The Home Office has had since 1839 the power of approval of the appointment of the Chief Constable in Counties.

The Reason for Central Regulation. Why has the central authority acquired control over the qualifications, and in some cases the tenure, of these classes of officials? In the case of some of them, for example, Medical Officers, Poor Law Officials, and Constables, it

[1] Cf. Selby Bigge, *The Board of Education.*
[2] Cf. Saville, *The Police System of England and Wales.*

was feared that their duties might bring them into conflict with the interests of local councillors or their relatives or friends, owing to the penal character of some of their duties or their power to confer benefits. They needed protection. Secondly, it was recognized that especially in the case of Health Administration, Police, and Education, the service was so vital, and the consequences of inefficiency so serious, that there must be a guarantee of a minimum uniformity of qualification, and what was once true of health and police only has become true also of Roads Administration. The tendency of the local authority is perhaps to give more consideration to salaries and their effect in raising rates than to the necessities of the service and the appropriate qualifications. Thirdly, the central authority gradually assumed the obligation to contribute towards the expenditure of local authorities, and clearly, the charge would be indefensible if the money were expended upon inefficient service. The central authority could not subsidize inefficiency and corruption when it had already gone to considerable trouble to put its own Civil Service in order. Furthermore, in all these services where the qualifications of officials and their tenure is partly or wholly regulated by the central authority, one can discern the essential need for uniformity of administration—for example, particularly in the case of Health, and the Inspection of Weights and Measures. We might hazard the generalization that the necessity for uniformity of standard in the qualifications and recruitment of officials varies in proportion to the part played by uniformity and co-ordination in the technical efficiency and economy of each particular service.

The Existing System.[1] When we pass beyond the very narrow scope of these central rules, we find extreme diversity of principle and practice. Unfortunately, it is not always the result of enthusiasm for efficiency. Recruitment on the basis of recognized public qualifications is practised by the larger authorities; among the smaller authorities there is a great variation of entrance test, whether public or internal to the authority itself; many of the smallest authorities have no set test at all.

The vacancies are often, but not always, advertised; and simple patronage, appointment on political grounds and appointment of relatives, simply because they are relatives, are occasionally encountered. Let us consider the subject a little more systematically in order to do full justice to the authorities.

[1] The ensuing description is based upon the *Memoranda and Evidence* submitted to the *R.C. on L.G.* in Vol. XIII of the Minutes and the Commission's Final Report; the *Memorandum* submitted by the National Association of Local Government Officers to the present *Departmental Committee on the Recruitment and Training of Local Officials.*

The author has also had the advantage of examining the answers to the *questionnaire* sent out by the National Association of Local Government Officers.

The servants of local authorities may be divided broadly into three classes, (*a*) the professional or technical, (*b*) the administrative and clerical, and (*c*) manipulative workers. The last class we do not deal with here; their situation is largely regulated by their Trade Unions. The proportion of the first to the second class can be gauged from some examples: the Salford Borough Council, employing about 850, have 235 in the Technical Staff and 645 clerical and administrative [1]; Birkenhead has 109 to 268; Barnsley, 52 to 119; Shipley (Urban District Council), 11 to 47; the County of Hampshire, 29 to 290; the County of Kent, 155 to 470.

The Professional and Technical Service. There is little criticism to be made of recruitment in the professional and technical branches. There are certain defects, however. One deplores the fact that the smaller authorities have no special officer to act as Treasurer or Accountant, but employ the Clerk or the local bank for this purpose. Such arrangements make impossible the carrying out of a permanent internal audit in these small authorities. Nor has England been adequately served by the part-time Medical Officer of Health. Any list of the principal technical officers employed by local authorities readily conveys that their work requires the application of some special scientific knowledge, or of an art or craft. The employment of such officials without their competence guaranteed by certain scientific bodies, whose impartiality and solicitude for the subject-matter as distinct from the candidate are above suspicion, would have immediate disastrous results. Roads would subside; buildings would collapse; gas works would explode; electrical plant would not function; books in the libraries would be classified higgledy-piggledy and would be borrowed with a really touching permanence; the streets would be filthy or flooded; the parks would be overgrown with weeds and infested with vermin; water would not be pumped into the houses, and, if it were, might arrive contaminated; accounts might be falsified, or kept so that they lost any meaning; at every step all the officials and the councillors might involve themselves in ruinous legal proceedings; the trams would either not run at all, or go backwards, or skip the lines; typhoid, smallpox, diphtheria, and ptomaine poisoning might rapidly spread. So perilous are the potential effects of incompetence, that as a result of development in the last thirty or forty years, local authorities require that almost all who desire such technical positions must produce the certificates of certain bodies as a preliminary to appointment, and, then, there is competition because the situations are sought by ample numbers of candidates. Such examining bodies are the:

[1] Cf. Article by Mr. L. C. Evans, Town Clerk, Salford, in *Public Administration*, July 1928, pp. 286 ff.

(*a*) Institute of Chartered Accountants.
(*b*) Society of Incorporated Accountants.
(*c*) Institute of Municipal Treasurers and Accountants.
(*d*) Medical Schools.
(*e*) Institute of Civil Engineers.
(*f*) Royal Institute of British Architects.
(*g*) Chartered Surveyors' Institute.
(*h*) Institute of Gas Engineers.
(*i*) Institute of Mechanical Engineers.
(*j*) Institute of Electrical Engineers.
(*k*) Royal Sanitary Institute.
(*l*) Institute of Chemistry.
(*m*) Chemical Society.
(*n*) Chartered Institute of Secretaries.
(*o*) The Law Society.

It is, however, only truthful to say that improvement in the qualifications and status of such officials has come about less through the efforts of local councillors, than of officials' associations, and the country owes these a great debt of gratitude. It should be noticed that in many cases young men enter into the service of a local authority as a junior entrant with either no test at all, or with a School or Matriculation Certificate, and enter a Department where ultimately a technical qualification is required, and this they obtain while at work, either by attending a local technical school or by taking the correspondence course of the National Association of Local Government Officers. Of course, this is hardly possible in the case of the Medical Officers, the Chief Education Officers, Chief Engineers. But, in other branches, it is possible to arrive at the top by continued education and promotion, although, as a matter of fact, the chief situations of all are frequently filled by people who have had experience already in such a situation in a smaller authority. This type of recruitment, where there is a uniform qualification vouched for by a scientific body, and then local choice, is a not unsound compromise between centralization and local independence.

The Administrative and Clerical Staffs. When we turn to the administrative and clerical officials, that is to say, those who are concerned with the taking and distribution of minutes, correspondence, filing, précis, drafting, collecting material, dealing with the public in simple cases, orally or in writing, investigation, maintaining organized relations between the technicians and the public and the various Departments, the situation is different. It is possible to define what is required of the more strictly clerical officers; they must do certain writing tasks at a certain speed and with not excessive inaccuracy. A general education, as given in the higher branches of the elementary schools, and up to the age of sixteen or seventeen

in the secondary schools, is sufficient. If all local authorities made it a point of honour to recruit, let me say, at the minimum age of sixteen, boys and girls with the Matriculation Certificate or its equivalents, and then put them through a serious probation, and provided for their continued education until they were adults, the main battle for local efficiency would have been won. But this does not happen in fact. As we have said, there is an extraordinary variety of recruitment of the clerical staffs. In many cases recruitment is at the age of fourteen without any examination qualification at all. In perhaps as many cases, there is a minimum age of fifteen, the local school providing a testimonial. In fewer cases, comparatively, the minimum age is sixteen, and the Matriculation or any other publicly recognized equivalent is accepted, or the Certificate of the National Association of Local Government Officers is acceptable. In a number of authorities that can be counted on both hands there is a special Appointments Committee (for example, as in Manchester and East Ham), with a systematic arrangement for advertisement of vacancies, interviews, and distribution of successful candidates among the various departments. Nor is this all. In some Counties and Boroughs the Clerk is allowed to accept articled pupils into the service, and whether these are really superior or not, the mere fact that they can pay the fees and get their articles, gives them at least an initial advantage over competitors of equal and even superior brains.

The Difficulties of Uniformity. Why is there this haphazard and inefficient method of recruitment for the local government service? There are some facts which, idealists though we be, cannot be ignored. The first is the great variety in the size of the local authorities. This fact we have sufficiently stressed and demonstrated in regard to previous problems, and its application to the present one is vital. One of the best authorities [1] on this subject observes that

'probably not more than twenty-five (local authorities) employ over 500 officers; 2,720 local authorities have a population of less than 30,000, and the maximum number of whole-time officers employed by any one of these authorities is not more than 50. It would be a fair estimate to say that over 2,000 authorities do not employ more than 2 or 3 whole-time officers. On the other hand, 6 authorities employ upwards of 2,000 whole-time officers, but the local authorities which employ a total number of officers equal to one of the larger ministerial offices of the Civil Service can be counted on the fingers of both hands.'

The numbers of officers employed (apart from outside labourers and foremen) in the Counties varies from 36 in Anglesey up to 2,340 in the West Riding. Among Urban Districts the range is from under 10 to over 100, and it has been observed that where the population is under 15,000 there is hardly place for a full-time Clerk unless he

[1] L. Hill, 'General Secretary National Association of Local Government Officers,' in *Public Administration*, July 1928, p. 312.

does the Treasurer's work also. The conclusion from this is that if uniformity of qualifications is required it can only be a minimum and general uniformity.

Secondly, there is a very great variety in the local opportunities of making a career. In one authority there may be an available line of promotion which will not only tempt intelligent and ambitious youngsters (or their parents) to enter the service, but will give them an incentive to improve themselves and offer their lifelong energies and devotion to the authority. In other places, on the other hand, there are only a few part-time jobs. This, incidentally, results in the handing over of work to a subordinate, and in offices like that of Medical Officer or Town Clerk to a clash of interests between public affairs and private practice. Further, jobs which are petty or part-time can be only an inducement, not to stay with the authority, but to leave it.

If, then, some improvement is to be made in respect, say, of all the authorities below a population of 30,000, it can only be accomplished if it helps to provide easy and convenient ways of making a life-career for those who necessarily commence in their own areas. For it must not be forgotten that 95 per cent of the staffs of local authorities are originally recruited from within the administrative area of the local authority making the appointment.[1] This is due not only to local favouritism, which we discuss later, but to the fact that boys and girls cannot afford to leave their homes for other districts at the age of fifteen or sixteen.

Thirdly, the size, finances, and functions of the local authorities, even in the same general category, vary so much and vary in such subtle degrees, that the character of a job even of principal officer, bearing the same designation in two contiguous authorities, is different. This, again, means that uniformity in recruitment and after-training can only be very general. Finally, there is at present, and even with rational reorganization, there must always be, a gap between the qualifications of some officers and their tasks. The truth is that the functions of local authorities increase so rapidly, not only in number but in standard, that the qualifications of many officers, even where they have any definite qualifications at all, soon become antiquated. Some arrangement ought to be made for continued education. Now the various factors we have indicated have provided too many local authorities with the excuse for *inefficient* methods of recruitment, whereas the only logical implication was *variety* of recruitment.

Local Autonomy. One other factor has militated against the creation of a service adequate to modern responsibilities: it is local autonomy, with its legal and moral foundations. There is a certain

[1] Hill, loc. cit.

bias against ' outsiders '. It is not a permanent obstacle to excellent candidates, but as a resistance sometimes operates disadvantageously to the service. It is hardly effective at all in the situations worth over £250 per year, for here the connexion between incompetence and bad service becomes especially evident. But until recent years many authorities bitterly resisted the attempts made by the various associations of technical officers, and of the National Association of Local Government Officers, to secure the institution of impersonal tests, uniform conditions of service, and a unified superannuation system.[1] The situation was changed in the last twenty years, especially in the last decade ; and the transfer of officials from one authority to another in a life-career, which might begin in an insignificant Rural District, and end with the Clerkship of a great Borough, becomes progressively easier and more frequent. Continuous vigilance and potential correction are still, however, indispensable.

There is as much diversity of promotion as of recruitment. The variety of jobs and the great diversity in the composition of the various councils produces the diversity. The result is a combination of seniority and merit, as decided by the superior officer of the Department in which the official works, and where the work borders on the technical, the attainment of extra qualifications. There is an additional factor : simple favouritism. London offers the only example of a definite test whereby officials pass from a Minor to a Major Grade, for the simple reason that London is the only place with a staff large enough for such classification. There is very little indeed to be said for the intervention of an external authority in the promotions within any local authority ; but if the standard of the service in general is to be raised, it must include some uniform system whereby clerks who take defined qualifications at a certain age, say eighteen, are given a fair chance of employment in the higher branches of other local authorities. Bound up with this question is the extent to which local authorities deliberately encourage continued education.[2] A few authorities do this, and they do it by the offer of an annual bonus in addition to the scale of salary where degrees or diplomas are taken by their officials. In some cases there is a fixed bonus, as, for example, in Birmingham. Some authorities consider each case on its merits ; and, often, promotion prospects are improved by examination successes.

Security of Tenure. With few exceptions (Medical Officers, Sanitary Inspectors, and Surveyors or Engineers, where the central government used to contribute to the salary of the officers and County Clerks)[3]

[1] Made permissive by Statute in 1922 (Superannuation Act), almost every local authority of any magnitude has now adopted the scheme. See N.A.L.G. 10, Memorandum, Appendix H, to present *Departmental Committee on Recruitment and Training of Local Officials*.

[2] Cf. Report on this question in *Public Administration*, Jan. 1933.

[3] Cf. Act, 1932.

local authorities may terminate the appointment of an officer at their own discretion, and in the case of *Brown v. Dagenham U.D.C.*[1] it was held that it was beyond the legal power of the local authority to bind itself to dismiss only after notice: dismissal could be only 'at their pleasure'. In the vast majority of cases local officials enjoy a practical security, and according to many critics in private industry, too much security. It is essential that a local authority should be able to get rid of an incompetent or apathetic or disagreeable servant, and it is difficult to deny them the right of dismissal where technical competence is beyond criticism, but where the servant is personally so disagreeable as to cause friction. On the other hand, there are many local government officers whose duty brings them into conflict with private and vested interests. The district is small, the relationship between the servant and his master, the local councillors, is very close and direct, and the mind of local personages may be parochial.

Hence, no doubt exists that some arrangement is required to make the officer's integrity and scientific and functional independence compatible with control by elected councillors. Various suggestions have been made to secure such an arrangement. The National Association of Local Government Officers suggests appeal to the central authority (and they have had ample experience of cases of victimization); and their latest suggestions are for appeal to the Industrial Court or a specially established tribunal.[2] The Society of Town Clerks propose that a four-fifths majority of the Council should be required for dismissal of an officer. The Urban District Council Clerks preferred an appeal to the central Department, and suggested, indeed, that the danger of wrongful dismissal was increasing. Other associations of local officers also point out the dangers of victimization and look to appeal to the central authority for dismissal only by special majorities. The associations of local authorities themselves resist any such proposals on the grounds that harsh treatment is infrequent, that local government ought not to be impaired, and that intervention would not improve the relationship between officers and their Councils. Yet we must again insist that the problem is not to be evaluated by enumeration of the victimized: to every case of victimization there are probably hundreds of cases where fear of it has caused the official to turn a blind eye to local abuses which it is his duty to report and remedy. The only solution offered by the Royal Commission on Local Government,[3] was that the right to make contracts between Councils and their officers should be enlarged to include provisions for reasonable notice of termination.

The Chief Officers. A few considerations in addition to those in the concluding paragraphs of the last chapter may be discussed

[1] (1929), 1.K.B. 737.
[2] Cf. *R.C. on L.G.: Evidence.*
[3] Final Report, 1929, Cmd. 3436, Para. 471.

usefully at this point. The chief legal and administrative officer of the County Council is the County Clerk. By the Act of 1888, the Clerk of the Peace to the Justices became Clerk of the County Council. When this arrangement was made the County Councils had very little to do, and the combination of the work of the County Council with the judicial and licensing functions of the Justices produced not only the harmonious co-operation of two authorities, but also enough work to justify the employment of a full-time Clerk. All this has changed, and the Counties have sufficient to do to occupy a Clerk of their own, under their own control and acting as the supreme manager and supervisor of their services and office arrangements. It has, however, been urged on good authority, that if the offices are separated the Clerk of the Peace would be in demand for only a few days per year. In order, therefore, to allow for the claims of the County Council, the County Councils Association and the Society of Clerks of the Peace arranged a compromise whereby :

'The County Council shall appoint their own Clerk at a salary and emoluments to be fixed by them with the approval of the Home Secretary, and shall in making such appointment have due regard to the fitness of the person so appointed to perform, if need be, the duties appertaining to the office of Clerk of the Peace, for which purpose the County Council shall ascertain the views of the Chairman of Quarter Sessions.

'The person so appointed shall, with the consent of a Committee consisting of the representatives of Quarter Sessions on the Standing Joint Committee, become Clerk of the Peace, at an additional salary to be fixed by the County Council with the approval of the Home Secretary.

'In the event of such Committee withholding their consent, Quarter Sessions shall thereupon be entitled to make a separate appointment to the office of Clerk of the Peace, and, subject to the approval of the Home Secretary, to fix the salary and emoluments therefor.'

There is considerable pressure on the part of the Clerks themselves in favour of the provision that the Clerk of the County Council shall be a member of the legal profession, as hitherto always in practice, though not necessarily by law. They resist the idea of the appointment of administrators, who may have come into local government by way of a general University education, and varied experience, but without legal training. Their representative said [1] :

'Where I think a mistake is made is this. In a County Council where the members of the County Council themselves administer, we do not want skilled administrators. In a Government Department you have only perhaps two or three who are members of one of the Houses of Parliament, and therefore a large amount of administration is done by the staff. The administration in a County is done largely by the members of the County Council. They do not want

[1] Sir Charles Longmore, K.C.B. (Society of Clerks of the Peace of Counties), *Evidence*, Qs. 38,333 ff.

administrators. . . . If you have got a body of eighty they all either can, *or think they can*, [Observe! author's italics] administer themselves; and what they require is the assistance of some advisers on questions of law, engineering, accountancy, and so on. . . . The Minister lays down certain lines and certain things go before him, and that is the type of administration which does not take place in the County Council office; the members of the authority can administer themselves, and have small Sub-committees to go into small questions. As long as they have these various classes of advisers which I suggest, they do not want any administrators. . . . They do not want to be told what to do.'

This attitude at once resists the idea that the Clerk be chosen outside the ranks of lawyers, and views with timidity his assumption of powers not only to advise, but also to urge and persuade. However, even those who hold these views envisage the position of the Clerk as one of general integration and adjustment. Experience also shows that County Clerks are not chosen merely because they are lawyers, or directly from the ranks of lawyers. They have previously served as assistants in the offices of Clerks, or as Town Clerks, or in the offices of Town Clerks. Nevertheless, a conscious effort is not yet universally made to set up proven capacity to administer as of prior importance to mere legal qualifications. In the more populous Counties there is very much to be said for a division of work into the two branches of Clerk and Legal Adviser.

What we have said of the qualifications and career of County Clerks holds good of the Town Clerks and the Clerks of Districts. 'The duties of a Town Clerk have like the British Constitution, grown up by practice rather than being defined by any statement of law.' [1] There is ample and even enthusiastic recognition of the co-ordinating and managerial position of the Town Clerk. It is fully recognized that Council, Committees, and all the Departments need to be linked together, and that he shall survey all activities. There is no need, at any rate, to criticize the spokesmen of the Chief Clerks of our local authorities, that they do not perceive the nature of their function. They say they know how essential it is to domesticate the details of the work within a large and general plan, that they see the need for speculation upon general policy, and for the production of a spirit of conscious co-operation among the various heads of Departments. Yet they are just as convinced, and we are just as convinced, that given the minuteness and stringency of legal control over local authorities, it would seriously hamper their work if the Clerk did not have a thorough grounding in the law. In the past, of course, this has involved the practically exclusive choice of the Clerk from among barristers and solicitors, principally the latter.

The Legal Mind and the Administrative Mind. Now there is a good deal which can be said, and has been said, against such a method of selection, if one merely compares the paper qualifications

[1] *Evidence*, Q. 38,146.

of a solicitor with a highly realistic account of the work of local authorities. But this is surely not a proper method of judgement. What we have to ask is, to what extent the growth in the activity of the Council itself has already caused local authorities to choose people with adequate administrative capacity. That they have begun to do this, and that they do it, in many cases is undeniable. For almost every Town Clerk's vacancy there are about fifty applications, and it is wrong to give the impression that the applicants are just out of their law school, or have just passed the Bar Examinations. All of them have been in local government, and have progressed from one authority to another, doing their administrative work and acquiring experience. Yet the habit is not sufficiently wide-spread of looking for organizing genius first, and regarding the law as a quality of lesser importance.

We do not wish in any way to deny the fundamental necessity that the Clerk shall have a thorough grasp of the law, nor to depreciate the worth of a legal training. We may be sceptical about the view that legal training tends to foster an attitude of caution and discouragement rather than ingenious and busy creativeness, and that legal practice does not encourage one to use the law as a tool rather than as a prohibition. Yet there is a great deal to be said for more freedom in the choice of administrators who have acquired experience outside the ranks of the law, especially in the largest authorities of all. We have something to say upon their special training in administration in summing up the discussion at the end of this chapter. Here let us merely say with reference to the demands made by the Universities for opportunities to enter the local service that if University graduates are tempted by some of the plums in the local government service, let them take their law examinations and obtain a few years' experience in the Clerk's Department—by the age of thirty they will have a well-established position. They have no right to expect that local government should be remade to suit the convenience of antiquated teaching traditions at Oxford or Cambridge.

Technical Chiefs and Administrators. We have incidentally observed that the heads of the Departments in local government are the technical experts, and not as in the central Civil Service purely and simply administrators. Is this wise? Could the practice of the central government, if applied to the local service, yield good results? At least one person of long and intensive experience, Sir E. D. Simon, former Lord Mayor of Manchester, believes [1] that at any rate the education department, the public health department, and the treasury department would best be headed by an administrator. He argues that (especially in regard to the Medical Officer of Health) he has to make few technical compared with administrative decisions. This is the argument in full:

[1] *A City Council from Within.*

'He has to make hundreds of decisions every week. And how many of them depend on his own knowledge as a doctor? I believe that few, if any, would be more difficult to make if he were a layman dependent on the advice of doctors working under him. Even now the medical officer of health must be largely guided in purely medical matters by his assistants. . . . General medical knowledge is no doubt useful to him occasionally; but there is a danger. It must tend to become more blurred and out-of-date the longer he remains in an administrative post; and there is a real risk of an old and autocratic medical officer of health, who has become an administrator but still thinks himself a doctor, obstructing the progress and effective work of his younger and medically abler assistants. So long as the head administrator must be a doctor the field of choice is narrowed. The Committee must select not the best man available but the best doctor available. And they will tend to pay much attention to his purely medical qualifications, which, in fact, will be almost irrelevant to his success in conducting the business of the committee. I believe that if a first-class municipal civil service existed, from which experienced members were appointed as head officials by health committees, we should get on the average better business management than is now the case.'

There is a good deal in this. But there is a good deal to be said on the other side. Which layman is likely to know *the relative urgency of the various activities* of the Public Health Department well enough even to be able to know what principle to apply to such a decision as that cited by Sir E. D. Simon—to settle the date of the holiday of the Superintendent of a Maternity Centre? It is all very well to say that the administrator would call in the technician when wanted—the question is how can the administrator independently know *when* the technician is wanted? We ought not to fall into the error of concluding that the practice in the central government is natural and proper because it happens to exist. It is the practice of a time when the Government did very little that required a technical head; and it may possibly be a bad habit. Is that not so? In the last twenty years, indeed, there have been several attacks on the system. Of course, administrators should take the burden of merely administrative work from the technician, but that can be done under their direction as colleagues rather than as superiors. Nor is there any reason why medical men should not furnish capable administrative talent either. However, we merely urge caution; and that each municipality be considered on its own merits.

II

THE FUTURE

Until recently politics have everywhere occupied more attention than administration, and the agencies and processes of social persuasion and direction have attracted more service than the institutions required to execute political decisions. It is now becoming more urgently realized that Modern Government, whether it be democratic or dicta-

torial, must collapse unless it discovers and applies the secret of recruiting and retaining a sufficient body of efficient, zealous and impartial officers. We have to fear and guard against a chronic loss of energy and creativeness, more even than collapse, for whereas collapse is a concrete and emphatic lesson, sub-acute administrative debility may screen and protect unhealthy roots.

The Services of the Permanent Official. Without minimizing the valuable contribution to government of the elected Councillors, their directive force, their freshness of mind, their democratic responsibility and authority, we must admit that without the permanent presence of a corps of professional officials we should not only lack good government, but we necessarily should lack any government at all. The modern administrative official contributes three things at least which no other agency of government can give : they are expertness, permanency, and the guarantee of impartial advice and execution. He not only carries out the laws and the regulations, but helps to formulate the law in substance and draftsmanship, and to persuade the representatives of the electorate to follow the dictates of science. He is an element of stability in a flux, not only of science, but of popular and party doctrines, defeats and victories. The State is action : and the commonwealth needs not only politicians but impartial and expert servants, otherwise it is faced with disruption or paralysis. The official provides what the politician has not the time, the knowledge or the interest to perform.

Modern local administration, like modern central administration, becomes ever more heavily charged with business. It is true that there is a relative shifting of the weight of business to the central authority ; yet, nevertheless, the absolute amount of business placed on local authorities becomes every year weightier, and this has its implications in terms of the number and quality of its officials. Local and central government to-day employ together over one million of the population ; that is, one in seventeen of the occupied population. It is not merely for the good credit of local government that the training of officials is urgent, but for the credit of government generally, for though local authorities have a legitimate sphere of autonomy they are over an even larger sphere the partners of the central authority in joint enterprises for the good of the whole State. With the increasing claims of the central authority there is little hope for the maintenance of local self-government should it be properly convicted of incompetence. All, therefore, depends upon the quality of local officials.

The Measurement of Administrative Efficiency. Why has so little attention hitherto been given to the problem ? Mainly, I think, because, as in many administrative questions, it is not possible to make obvious to the man-in-the-street that such-and-such a definite

number of pounds, shillings and pence, could be saved if officials were more competent. This is one of the branches of knowledge in which exact quantitative statement of values is impossible. Those, however, who observe closely can appreciate the ultimate significance of this truth: in public administration it is impossible to measure either the collective or individual productivity of the employees with the same exactness as in private business. For, apart from the different spirit which reigns in each, their purposes widely diverge.

In public administration there is always some deviation from the price-system. The principle of payment for personal benefit, sold by the individual producer and bought by the individual consumer, is not in full operation, and this for transcendent and collective reasons of charity, health, public safety, the spread of knowledge, and so forth. Hence, when we judge of the productivity of the administrative authorities, we are in a region where *exact* measurement is impossible. We have to fall back on general terms like: bad, good, excellent, healthy, unhealthy, ignorant, well-educated. But as soon as the automatic monetary test of good and bad, solvency and insolvency fails, we have lost one of the best means to secure efficiency. In the absence of measurement, it is extremely difficult to detect and remedy mismanagement. Hence public administrators (local councillors and their chief advisers) are obliged to take far more care than their managerial counterparts in private enterprise, that entrants into the public service have the knowledge, interest and zeal which, of themselves, and without the threat of bankruptcy or the incentive of profit will yield results of the best quality. For fear of our inability to measure and reject the product when the job is irreparably finished, the public administrator must be the more careful to recruit and retain officials only by the best conceivable tests and training. He has, further, the obligation to discover and provide the most effective means of a *continuity of incentive*.

Now, if a clerk or an administrative officer is not quite up to the standard of his work, or if he is incapable of seizing opportunities to the general advantage of the local authority (to take simple examples among hundreds, the purchase of a building plot, the correct timing of a loan, the reorganization of office arrangements, the conclusion of a joint scheme with a neighbouring authority), no one will notice the damage, until too late, if at all. The results may be insidious and pervasive, and ultimately ruinous. But they are ruinous only ultimately. Hence, though an especially close scrutiny is needed because detection of slackness is, in fact, particularly difficult, very little concern has, in fact, been shown. Even where efficiency has been prized, it has been rather in the form of executive robots than active-minded creating, enterprising workers. It is not yet understood that public business is replacing private business. Vast sums in capital

and current expenditure are administered by local officials. They must not only be as progressive as the industrialist or merchant whom they are replacing, but far more so.

Doubtless, also, the tendency to slack administration was and is strengthened by the lack of pecuniary responsibility of the superiors and the chief in a department.[1] They will not suffer in pocket, and hardly in votes, if their town or county is financially damaged or socially shamed through their bad appointments. Nor is anything so difficult as the inculcation of the truth, that though an appointment made by personal or party patronage may be individually pleasing to the Council or the officer who makes it, it is a crime against the public weal because it is an arbitrary tax. There are signs, however, that the days of personal and political favouritism and a permanent fit of administrative absence of mind, are over. But that is not enough: the positive qualities of comprehension and enterprise must be enlisted.

The Conditions of an Efficient Service. If an efficient local machine is desired, one must take the steps to produce it, and these seem to me to be the indispensable conditions.

I. The difficulty of the small local authorities must be dealt with firmly, in order to relieve them from purely arbitrary behaviour, which is usually coincident with deficient administration, if not worse. One way, which is slowly being followed, is the increase in the size of local government areas. Short of this there are two other solutions: to treat all local authorities below a certain population in separate classes, or to lay down certain minima which would operate for *all* local authorities whatever the size. Whatever plan is adopted, it involves some *uniform* regulation, even if it is only of a minimum character. This can be accomplished in various ways. (*a*) The local authorities themselves, through their associations, can establish rules of recruitment and standards of education to operate over the whole State. (*b*) The associations of local government employees might do this. (*c*) The central government, through the department which supervises local government, might do this. The ideal which affords both efficiency and self-government, is an arrangement between the first and second possibilities. Already the National Association of Local Government Officers, which has a membership of over 70,000, has shown the way. It has persuaded many authorities to require an entrance qualification of its Preliminary Test; it holds examinations twice a year for this and more advanced certificates; it encourages promotion by merit and continued education; it has correspondence courses for some professional examinations and for the Diploma of Public Administration which is awarded at various Universities; it is

[1] We do not mean legal responsibility for moneys in their trust; we mean the lack of direct relationship between the salary of the official and the productivity of his work.

a party to the Provincial Whitley Schemes at work in London (17 Boroughs), Lancashire and Cheshire (34 authorities) and the West Riding (94 authorities), setting and guarding standards of recruitment, pay, pensions, and conditions of services. If such arrangements are not fully made, perhaps inclusive of a representative of the central authority, then the third alternative—central control must gradually come. Further, it would be possible, and in some cases desirable, not to extend the range of the rules uniformly over the whole territory, but to make or allow differences for various regions, when larger than the present Whitley Provinces.

II. Further, it is not enough that the proper authority should make the rules, it would need to see that they were respected. This would imply a right of complaint, at least, to whatever governing body were created. Such an authority would not intervene in any individual cases of appointment or dismissal, but would lay down standards and listen to and publish complaints against their violation only.

III. This unifying body would need the power (*a*) to make a general classification; (*b*) to state ages of entry; (*c*) to relate pay, pension and general conditions of employment to these classes; (*d*) to establish and supervise standards of education and recruitment and promotion; (*e*) to establish and generally supervise the execution of special schemes of administrative training both before and after entry, and to negotiate with the education authorities and the Universities for the furtherance of such schemes; (*f*) generally to encourage movements within and without the service tending to the improvement of training for scientific administration.

IV. Owing to the great variety among local authorities in territorial size, range of functions, and financial capacity, it would be pedantic futility to demand a strict adherence in every case to such rules; but deliberate evasions should be subject to censure by the unifying authority. Honest deviations would, indeed, be previously communicated and reported upon in full by the local authority making the appointment. All hope lies in the growth and promotion of a community opinion among local authorities that administration must not be merely good, but robustly excellent, and that it is below the level of administrative ethics to seek to disregard the precepts of the central body and the practice of the best local authorities. But there must be flexibility.

V. It must be the object of the central body and the several local authorities to foster the idea that the local Civil Service exists only as a unity, and not as the preserve of a series of locally compartmentalized, independent, and jealous patrons, anxious to employ the local products even when they are inefficient and expensive compared with other fellow-citizens who happen to have been born or to reside outside the frontiers of the local authority. On the contrary, active

encouragement ought to be given to transfer from authority to authority, as much for the benefit of the career of the local official as for the efficiency of the service.

VI. One can envisage a threefold classification of the local services: (*a*) Clerical, (*b*) Administrative Minor, and (*c*) Administrative Major, though it is perfectly obvious that all three would not and need not be employed at the same time by any authority; only in the few very large authorities could the classification operate completely. We think of the clerical officers entering the service between the ages of 16 to 18, the Administrative Minor Officers as entering from 18 to 22, and the Administrative Major from 22 onwards.

VII. What are the suitable qualifications and training of the respective classes? Now, there are the routine and special duties to provide for, and there are general administrative relationships and processes to be understood and managed. The ideal way is an education which gives both; which teaches a clerk the law and practice of local taxation (because he is in the Treasurer's Department), and also teaches him the significance of the government of human societies in general. In the Clerical Class we need not dispense with the School-leaving or Matriculation Certificate, but the group of qualifying subjects should include Civics and Rudiments of Economics. By Civics we mean the nature of citizenship, an account of the activities of the State, and an introduction to constitutional law and practice. Some people in fact may ask less than this, but no one would ask more from young persons. Every effort must be made to enable the entrant to *understand* the significance of the process of public administration of which he is a part. He cannot be expected by the addition of these studies to be transformed into anything grander than a youth, but added comprehension and perhaps an additional zest, a standard of public service to which one may consciously appeal, are not to be despised. They will hardly prevent his hands from becoming inky or protect his reports and files from blots. These studies are best begun young: they stimulate thought.

VIII. We do not think, as some of our friends in local government offices think, that young persons should not be allowed to enter the services from the outside at, say, 18 to 22. This would be to exclude talent because it pursued education or other occupations. Some proportion of the places at least should be reserved for suitable candidates. Those who enter the Service at 18 should have a Higher Secondary School Certificate, and proficiency in certain special subjects; they should be (1) Economics; (2) Economic and Social History; Central and Local Government (History, Law and Practice). All these should be taught and examined, not as a technique, so much as studies in humanism, the adaptation of man to environment and of environment to man. It is not so much knowledge as understanding

that is wanted. To these subjects ought to be added a fourth : Elementary Social Psychology : fundamentally essential for an understanding of all government, and in particular for the administrator as a clue to his relationships with subordinates, colleagues, superiors, and the public.

The established clerical officials could be promoted into the higher grade either as a reward for obviously brilliant work and exceptional promise without further test, or on the passage of the Local Government Diploma I examination at the age of 18 to 22, the examination to be of a standard equivalent in scope and rigour to the entrance test imposable upon entrants from outside. If it is believed that they are at a disadvantage compared with those who come from schools, they could be given a reasonable number of service marks.

The Administrative Major Grade ought to be wide open to every kind of applicant who promises administrative leadership as well as knowledge of the law. It could be open to (*a*) non-University candidates by exceptional promotion and the acquisition of Local Government Diploma II Examination ; (*b*) Graduates of Universities who acquire the said Diploma ; (*c*) administrators or lawyers of special merit.

The subjects of the Diploma II would be, (1) The History, Theory, Law and Practice of Central and Local Government, both constitutional and administrative (with as many as four papers in the relevant examination) ; (2) Economics and Public Finance (two papers) ; (3) Economic and Social History ; (4) Statistical Method ; (5) *The Principles of Administration.*

Administrative Science. The last subject would be studied and taught on the basis of actual practice and the work of eminent administrators, the essential purpose being to bring out the reaction of men to administrative problems. We ought to discover the principles and psychology of government by learning (*a*) how men like Richelieu, Colbert, Frederick the Great, Stein, Napoleon, Hamilton, actually governed, and (*b*) how, over a period of two or three hundred years, institutions and methods were adapted to their objective and the environment, and why one method failed while another succeeded. Such a subject is not yet taught anywhere in the world, but it ought to be.

It might be asked, Is it supposed that these studies, and especially the last, will make good administrators ? Will it teach young men how to *do* things ? The answer is, ultimately, Yes : because it teaches them to think. One has also to teach that the final object of administration is action, not thought. Let us remember Napoleon's maxim : 'The error of the administrator is to believe that administration marches by itself.' It is important and possible to teach that successful administration depends not on indulgence in one's own fancies and

temper and theories, but on the strict use of one's self as an instrument to a given end. Hamlet, with 'resolution sicklied o'er with the pale cast of thought', would have ruined a modern state. It is possible to teach the essentials of the relationship between superiors, colleagues, and subordinates to the end that the common object is secured with the least friction and the maximum stimulation of inventiveness. It is not easy, and it is not altogether innate in man, to be a good colleague, an obedient and enterprising subordinate, or a chief who can both invent the means of progress and harness the loyal energies of his staff to its realization.

Action, action, and action again, is the essence of administration —action, that is, after invention and planning. A wise teacher can reveal from the history of great administrators and the development and analysis of modern problems, the pattern of originality, self-mastery, grasp of purpose, and the co-ordination of apparatus and fellow-men necessary for the attainment of given ends.

Nor is that all. The public administrator needs to learn, and can be taught, that he *serves the public* and has the obligation of satisfying, not his taste for governing others, but the public's wants, and he must be politically neutral. He must grasp the fact that the monopoly character of municipal services renders it liable to stagnation and petty tyranny, avoidable only by special effort.

It is not claimed that such studies are an exact and complete guide to the tasks of government of the future; but they offer a guide to the future: a series of well-considered indications, and a method. We shall never add sagacity or courage where they were not born, nor logic where it has not been constantly encouraged. But where these exist we may add the extra *awareness and comprehension* of distilled experience, and the concrete logic of the technical compulsions of the environment we seek to control. We will not make plans on the assumption that water runs uphill without a force to pump it. Not that the historical method has to be followed, as history. Good working hypotheses are obtainable by measuring the teachings of history by what we see around us every day. Buffon said: 'To judge what has already occurred, and even to judge what will happen in the future, we only need to examine what actually happens around us.' The rest must, of course, be learnt in the clinic of experience. But we must not forget that the really vitalizing factor in administration is not merely experience. The widest experience is bound to be narrow: what is important about it is so to think about it as to attain its mastery and assimilation. It seems to be administratively bad to insist upon a degree or diploma in *law*, as in England, as a *sine qua non* for entry into the higher administration. Local government law can be learnt; or in the largest authorities, special advice can be bought, and supplied to the administrative official.

IX. There are still many people who have a horror of examination tests, especially as a means of selecting administrators. There is justice in the plea that examinations do not test all the desirable qualities : what we have said regarding the place of *action* in the work of administration has emphasized this. A day will doubtless come when our knowledge of 'glands' or internal secretions, and of the accompanying physiognomy and build of body, may give us visual and dependable signs of administrative uptake and drive. The day is not yet. Long experience, however, shows that without examination tests there is only a very rough-and-ready guide to capacity, and favouritism fills the vacuum. At least examinations compel people to learn the prescribed subjects (which ought to be carefully selected to fit the vocation), and are some guarantees of application, discipline of mind, knowledge and resourcefulness. Finally, the examination system is the only one which allows of wholesale comparison of results on the same standard. However, an oral examination, or an interview, should form part of the entrance test.

X. In order to teach, we must have schools ; but in order to plan our schools with the greatest economy, we must come to some uniform arrangement regarding the curriculum and the length of the course. Then we can ask how far present resources are adequate, how far they must be newly created. This should be explored by a joint council of the Associations of Local Authorities, the Associations of Local Officials, and representatives of the Ministry of Health and the Universities. When this is done, it will be found that the institutions at least exist : the University Colleges, and the Technical Colleges run by the larger authorities. The supply of teachers can be provided in a few years, and these can either give lectures within the University curriculum, or special courses for officials, or they can establish their course at the other institutions of learning. Wherever the country is urbanized and provided with good tramways, motor transport or railways, a centre of teaching might serve all points within a radius of thirty miles. To make the area of teaching wider imposes formidable difficulties in travelling expenses and travel-fatigue.

XI. *All* local officials, *including the technicians*, should be encouraged to take the Diploma of Public Administration as a stimulation to thought, and as a means of supplying the incentive to co-ordination in each unit to be co-ordinated.

XII. Although there is usually a probationary term of six to twelve months, probation is in practice not probation ; only flagrant misdemeanour or a truly formidable stupidity meet with dismissal. Certainly, there is no arrangement in England (as there is in Prussia) whereby a young man or woman entering into the office will come under the special tutelage of a superior whose duty it is to guide, encourage, and judge the entrant.

Now, if the methods of recruitment are rather loose and inexact, and in smaller authorities entirely haphazard, the question of *probation* increases in importance : it should be a period during which the entrant is given a full and sympathetic but rigorous practical test. The test should be comprehensive and refer to the independent responsibility of the official and his power to *act* rightly ; his potentiality to grow should be judged. If these are unsatisfactory there must be a ruthless termination of the appointment, or a definite decision that advancement by seniority within restricted limits is alone possible.

XIII. The unifying authority ought to provide prizes for essay competitions each year ; this without prejudice to any local schemes which might be established.

XIV. Either the unifying body, or the central government ought to keep a complete census of local government officials, showing aggregate numbers, main classes, the numbers in the grades, and the class and grade salaries, etc., and aggregate pay. It is not proper that statistics of the local service are so difficult of discovery by the student, or, indeed, by the local officials, the authorities, or the central authority. The first step towards improvement is knowledge.

XV. Local officials cannot be expected to undergo special training and to become energetic and devoted workers unless they are assured of proper monetary rewards. At present local authorities have only a *voluntary* superannuation system ; only recently have the greater number of authorities adopted the arrangements permitted by law. Further, local councillors, who may not be very wealthy themselves, sometimes suffer from a perverse jealousy in establishing salary scales for their officials. It is not difficult to persuade oneself that the public must be safeguarded by offering only low salaries. Yet the plain truth is that until society itself is much changed, it is idle to expect men and women adequate to the highest demands of a constantly progressing local government to seek lifelong service therein.

These things are essential to make local administration capable of performing its tasks. It ought not to be forgotten that it is as beneficial to the welfare of a nation that sound administrative inventions shall be made and applied, as to discover new oil-fields or markets for our commodities.

In 1934 the Hadow Committee on Recruitment and Training of Local Officials made a number of recommendations for the improvement of the Local Government Service. It especially recommended the establishment of a regular relationship between secondary education and recruitment, the establishment of the minimum age of 16 as entry into the Local Government Service, the publication of all vacancies and the setting up of a Central Advisory Committee to advise measures for the improvement of the Local Government

Service and candidates for the Service. Long and difficult negotiations resulted finally in the establishment of the Central Advisory Board, which is composed of representatives of the Local Government Associations with the exception of the Association of Municipal Corporations which refused to participate. The Ministry of Health supplies the Board with a Secretary.

One other important fact may be noticed. In order to assist the creation of a Local Civil Service of standing, and favour the promoting of nation-wide transfer, Parliament passed the Superannuation Act in 1922 (amended 1937). This gives to local authorities in general permission to establish superannuation schemes, whereas hitherto some local authorities had only had such power by local acts. The schemes need the approval of the Minister of Health, the purpose of the approval being the promotion of uniformity and free transfer. By March 1939 almost all local authorities had established schemes: but about one in ten of the smaller authorities had not.

PART IV

THE CENTRAL-LOCAL RELATIONSHIP

CHAPTER XI

HISTORY AND CHARACTER OF THE CENTRAL-LOCAL RELATIONSHIP

LOCAL AUTHORITIES do not act in perfect liberty. As we have already seen, the law hedges them about very narrowly, imposing obligations and granting powers. The law does not stop there, but provides for its own execution through two means, Administrative Control and Judicial Control. A very close relationship exists between the local authorities and the Administrative Departments in London, and the Law Courts. We have already discussed Judicial Control, and now turn to Administrative Control. The central authority exercises a control or guidance: a general tutelage and discipline. This power is a growth of the nineteenth century—and the last thirty years have seen an immense expansion of it. We address ourselves to the questions why and how did Central Control arise? By what methods is it now exercised, and what are its merits and defects? The subject is as interesting as it is important.

The Character of the Problem. We are confronted with a large number of local authorities or, to leave general terms, many local communities of people. It needs no demonstration that such communities bear within them the seeds of both good and bad administration. Because there are many local authorities, and because they are composed of ordinary human beings, they are subject to all the difficulties which arise when individuals live close together, and extra ones which arise when individuals associate in corporate entities. Since they are close to each other, the action of one affects the next. Now, fear of injury resulting from a neighbour's action more powerfully affects authorities than prospects of receiving gratuitous benefits. The activity may also be injurious to the whole country, and not merely to a neighbour. These are things which any observer of government must note.

The Attitude of the Central Authority. We could trace the attitude of the central to the local authorities historically, but it is rather a pedantic method of approach. Here it is better to extract the essentials only from the course of development. The stages follow two intertwined lines: theory contributed by political philosophers, and theory and recommendations applicable to actual changes of law and administration. The important steps were these. (1) The views published by Jeremy Bentham in the *Constitutional Code* [1] exerted an influence upon his disciples, Edwin Chadwick [2] and James Kay-Shuttleworth,[3] the former making them effective in poor law, police and public health administration, the latter in educational administration. (2) The Poor Law Report of 1834 and the administrative system installed under the control of the Poor Law Commission. (3) The Report on Police Forces of 1839. (4) The Minutes and administration of the Education Committee of the Privy Council from 1839 onwards. (5) The Reports on the Health of Towns and the practice of the Board of Health from 1848 onwards, especially the Reports of the Royal Sanitary Commission 1869–71. (6) John Stuart Mill's contribution in his *Representative Government* of 1861. (7) In the last two generations there are numerous reports and parliamentary discussions regarding education, poor relief, police, roads and public health, and these we have amply analysed in earlier chapters.

The Rationale of Central Intervention. Here we simply present the main features of this development, while subsequent discussions contain particulars. Central intervention occurs, as in the case of individual citizens, to counteract anarchy.

1. Local authorities are liable to be deficient in knowledge, owing to the comparatively small range of facts with which they are familiar. Their field of view is small for two reasons. They govern in a few respects a tiny portion only of a nation which itself is but a tiny fraction of the inhabited earth. Councils are elected for three years, and few of the councillors have a very long and continuous connexion or interest in municipal policies. To establish causal relationships, and therefore to have the better clue to the proper remedy, wholesale collection and sifting of statistics are necessary. And in the centre a permanent body of professional officials appropriately attends to this task. It is not straining the facts too much to say that as authorities grow larger, and themselves employ permanent skilled advisers and administrators, in the same proportion is stringent central control unnecessary. The

[1] Cf. account of Bentham in Halévy, *Growth of Philosophical Radicalism*, London, 1930.

[2] His life and work have not yet been adequately chronicled. See, however, Webb, *Poor Law*, II, Chap. I; Marston, Edwin Chadwick, and Richardson, *Health of Nations*, 2 vols, 1887, this being almost an autobiography.

[3] Cf. Frank Smith, *Life of James Kay-Shuttleworth*.

Poor Law Report of 1834 said of the narrowness of range of local administration:

'We must again state that while there is no province of administration for which more peculiar knowledge is requisite than the relief to the indigent, there is no province from which such knowledge is more effectually excluded. The earlier part of our report shows the consequences of acting upon immediate impressions, or upon conclusions derived from a limited field of observation. At present the experience which guides the administration of relief is limited to the narrow bounds of a parish, and to a year of compulsory service. The common administration is founded on blind impulse, or on impressions derived from a few individual cases; when the only safe action must be regulated by extensive inductions or general rules derived from large classes of cases, which the annual officer has no means of observing. Capacity for such duties comes by intuition, even to persons of good general intelligence, as little as an intuitive capacity to navigate a ship or manage a steam engine. The influence of the information and skill which any officer may acquire may be destroyed by other officers with whom his authority is divided, and even though he may prevail it usually departs with him when he surrenders his office. The improvements which he may have introduced are not appreciated by his successor.' [1]

2. Bad examples are apt to be more contagious than good since effort is required to maintain a good standard, while the neighbour's behaviour offers a convenient excuse for slackness. But this, in the case of services which are vital in modern views of civilization, and in which maladministration may ruin health, peace, security, education, transport, is especially grave. The nature of these services requires their extensiveness; local disintegration is destructive of their benefits.

3. Even within the local community itself powerful interests may work against its good. As we have seen, local butchers may have an interest in the corruption of sanitary inspection, or police may be bribed by wrongdoers. It becomes necessary for the outside authorities to save the community against itself, or rather, against some of its members.

4. There is distrust of the value of government of the locality by democratic methods—or rather a qualified benevolence towards such methods. The central authority acts in order to save local authorities from having to take remedial action when a remedy is too late—e.g. in the audit of accounts.

5. The repugnance to self-taxation is almost universal. In proportion as the central authority is impatient for the execution of a social policy, it has been found necessary to coerce and bribe localities to do their share. It should be remembered that almost every local function has begun as a voluntary power, and had, owing to dire necessity, to be made obligatory. The claims of one's private purse are much more startling than a sense of the common good of 10,000 fellow citizens, and especially of thirty-five million. 'What's Hecuba

[1] Reprint of 1894 from H.C. 347, p. 233.

to him or he to Hecuba?' The central authority, composed of Parliament, the Departments of State, and the great political parties, exists to teach the relationship of the behaviour of citizens to the fate of those hundreds of miles away. Mrs. Browning's lines express my thought well:

> 'A red-haired child
> Sick in a fever, if you touch him once,
> Though but so little as with a finger tip,
> Will set you weeping; but a million sick . . .
> You could as soon weep for the rule of three,
> Or compound fractions.'

6. Not all local authorities are able to supply the minimum of services they need for themselves and the protection of the general good. Areas, as we have amply pointed out, were created irrespective of local finance. The central authority, to secure the national well-being, supplies the money, and of course it requires a control over the expenditure.

Yet there are two limits to central control. The first is a respect for local independence, the 'vigour' and 'independence', the 'immemorial' rights of the race. Even the centralizers by profession are pervaded by such a sense of restraint. Secondly, there is a clear recognition of the practical impossibility of *uniform* administration—there are too many areas, the resistance is too great, officials are costly, and time and space offer numerous obstacles. The Royal Sanitary Commission of 1871, reporting in 1871, a crucial date in the central-local relationship, regarded the problem thus[1]:

> 'The principle of local self-government has been generally recognized as of the essence of our national vigour. Local administration, under central superintendence, is the distinguishing feature of our government.
>
> 'The theory is, that all, that can, should be done by local authority and that public expenditure should be chiefly controlled by those who contribute to it.
>
> 'Whatever concerns the whole nation must be dealt with nationally, while whatever concerns only a district must be dealt with by the district.
>
> 'But local administration has its drawbacks. The smallness of the parochial unit of area minimizes the material for public officers.
>
> 'The spirit of that self-government, which Englishmen have always vindicated to themselves through every developing period of their history, has led to the growth of many discrepancies in their institutions, and to many disconnected and even conflicting laws. Imperfect local administration has been the natural result. Local administration must nevertheless be maintained, but it should be at the same time simplified, strengthened and set in motion. . . .
>
> 'Arbitrary government furnishes examples of simpler plans, more uniform practice, and more systematic codifications of law. Its machinery is naturally more perfect, though the working may be often less effective, than that of the local government of which we have experience.

[1] Report, 1871, p. 16. (Parl. Papers, XXXV.)

'New nationalities, sprung from our own, have also had the great advantage of a clear field, on which to lay down complete schemes of government based upon the example, traditions, and experience of the past.

'From both these very different conditions, as shown by the governments of France and of the United States of America, useful hints may be gained for systematizing local government in England.

'We must endeavour, in dealing with any part of such government, to avoid increasing complexity of detail, and to keep in view the utmost possible simplification of the whole. It would constitute perfection to combine with the economy and efficiency of systematic organization the energy and interest of distributed administration.'

Larger Authorities are Freer. It was pointed out in the Poor Law Report of 1834 that central control was urgent because local authorities were small. The idea behind this opinion we may infer from the general character of the Report: the small authority was incapable of employing the most skilled officials, its organization was likely to be inefficient, its range of knowledge inadequate, its public spirit withered. And it is a fact that the central government controlled the small very strictly. As services were handed over to larger authorities, especially the Counties and County Boroughs, the central government became disposed to relax the strings, and give the authorities the lead. Indeed, it was unnecessary to bother about the details of administration by such wealthy and large-minded governing bodies.

In Police administration, in Education, in Public Assistance since 1930, the central Departments realized that they were confronted by bodies with a good corporate conceit of themselves. The central authority knows very well that there are strict if undefined limits to its power of regulating the local authorities. It cannot expect the Legislature to abolish a local authority for recalcitrance: it does not wish to supersede an authority for fear of the trouble and the general odium. It is unavoidably obliged to live with the local authorities, who have quite good spokesmen, a body of acquired rights, and a considerable historic constitutional position. They were, they are, a *power* in the State. When the present trouble is passed, the central authority will still need their assistance, and a ready, good-natured obedience from them. It wants no memory of coercion to cast grit into the cogs of co-operation. Hence it must accept local authorities a great deal on their own terms—especially the larger ones. It must accept them as given factors. It must always remember, also, that there are Members of Parliament representing the localities, and that often they are, or have been important members of local councils. The Departments fear Parliament. In government, what cannot be commanded or crushed, must needs be courted.

The Rise of 'Administrative' Control. The outstanding characteristic of the modern central-local relationship is that it is

'administrative' and all that we have of it has come into being in the last hundred years. Before 1835 the connexion between the local and central authority could have been called statutory and judicial, but not administrative.[1] It is clear that the first thing which the central authority, regarding the chaos of local government will do is to command. First, then, there is an attempt to get uniformity of behaviour by laying down uniformity of rules. Especially from the sixteenth century onwards attempts are made to impose uniformity of behaviour by statutory command. This is found to be insufficient. The next step is to make a second statute. The shriller command is made by means of a preamble which contains observations of bad administration in the past and then the statute proceeds to lay down the new rules.

Judicial Control. But people may not understand a law, or if they do understand it, they may not obey it. Therefore the law courts acquire a jurisdiction to interpret the law and punish offenders. In this system one waits until a law has been disobeyed and then one applies a cure by judicial action. Nothing happens until after an offence is committed. There is hardly a question of prevention, and certainly no arrangement for *continuous* prevention. According to English law it is only a case that is decided, and the principle which decides it may later be overturned. If another case occurs, analogous to the first, the same even, and if the matter is challenged, there is another case. Until 1834 the chief method of central control was this judicial method. Individuals like Justices of the Peace, or the Constable, or the Overseers, or the Highway Surveyors, or the Vestry for the Parish, were 'presented' before the Courts and ordered to rectify a wrong or to pay a fine.[2] But there was no authority like the central Inspectors of to-day to prevent matters coming to such a pass. Yet a detective force was necessary. The institution of the 'common informer' arose. Statutes provided that whoever told of an offence would get a proportion of the fine. This operates well in a village community where the amateur inquisitor knows his neighbours. But even there the system may well fail because the inquisitor can be intimidated. This informal part-time detective system certainly could not operate in great crowded communities with urgent problems. The Judges on Circuit interpreted the law, and their interpretations together with *obiter dicta* contributed to the development of local government. Broad guiding principles were established, for example, the Judges decided that a person's general ability to pay

[1] In most of the States of America administrative control is still lacking; control is, with small exceptions, judicial and statutory control. It is widely recognized that control by statutory arrangements, particularly when they are detailed to avoid inflexibility, is too rigid. Judicial control is apt to be pettifogging, time-consuming, and expensive.

[2] Cf. Webb, *Parish and the County*, Book II, Chap. IV.

rates should be determined by the value of the hereditament occupied and not by fees, salaries, etc., received. Gradually the law and the dicta were embodied in the manuals used by Justices of the Peace and Overseers. Finally, when the judges on circuit found defects in administration and deficiencies in the law, they would, on their return to London, advocate the enactment of a new statute.

This connexion between central and local authorities can hardly be called coherent. It lacked prophetic and preventive method—it was not even curative.

Attempts at Central Control. One determined attempt was made to send a current of energy through the machinery from the central source, and its history is instructive. It was the direct outcome of the need to introduce an ameliorative element into the hitherto oppressive Poor Laws. The terrible distress and misery of the 'nineties of the sixteenth century caused the quickening of the central government's interest in the administration of the Poor Laws, and Burghley's administrative energy united with the feeling of the two Houses of Parliament and their leaders like Bacon, the Cecils, the great lawyer Coke, Archbishop Whitgift and other ecclesiastical leaders, to create the engine of central direction. In 1587, Burghley had already drafted a long order commanding the Justices in detail to undertake a wholesale campaign to alleviate the famine by equitable distribution of all available foodstuffs, and to set the poor on work.[1] The Justices were required to transmit reports of the situation in their localities and the action they had taken. The commission of the Justice of the Peace was altered to include a wider definition of duties.[2]

In 1595 a special address was made by the Lord-Keeper to the Justices of London and the Home Counties at the Star Chamber—they were charged to do the work imposed upon them by Statute and Orders, in detail and 'with a Herculean courage'—and were threatened with withdrawal of their commissions if they disobeyed. The ecclesiastical power was called in—on holy days the Bishops and the clergy preached to the administered and the administrators. Explanations of the Statutes were issued to the Justices, who were enjoined to enforce them.[3] Judges' 'expositions' of the law were circulated in 1601. In 1603 evaders of the poor-rate were threatened with action before the Council. Then followed a stream of Orders from the Privy Council to the localities, prescribing the duties of Justices and ways and means of their execution. The bad local machinery—the lack of regularity, system and practicableness leading to diffusion and loss of responsibility—was specially singled out for

[1] Cf. Leonard, *Early History of English Poor Relief*; Webb, *English Poor Law History*, Part I, Chap. II.

[2] Cf. Beard, op. cit., pp. 141–3 and 168–71; cf. also Prothero, *Select Statutes*.

[3] Leonard, op. cit., pp. 143, 144.

attack in 1609,[1] the 'want of good correspondence between direction and execution' was indicated. The whole country and parts of the country received alternate attention. In 1620 a special commission was set up by the Privy Council to occupy itself with getting the Poor Law enforced—Orders and Proclamations followed. In 1630 'Commissioners of the Poor' consisting of members of the Council were established. Its sub-commissions dealt with special localities. It prepared the 'Book of Orders', published in 1631:

'Orders and Directions, together with a Commission, for the better administration of justice, and more perfect information of His Majesty, how and by whom the Laws and Statutes tending to the relief of the poor, the well-ordering and training-up of youth in trades, and the Reformation of Disorders and Disordered Person were executed throughout the Kingdom. . . .'[2]

For some years this Book which was widely circulated in pamphlet form was the code of Poor Law administration. Its main instructions related to the machinery for local government, the Justices were to divide and assume responsibility for particular hundreds, they were to hold monthly meetings and to confer with the constables, churchwardens and overseers, to discover what had been done and who had offended against the law, to punish neglect, and report every three months to the Sheriff. Such reports were to go to the Judges of Assize and then to the Lords Commissioners. This period of central activity is thus summed up by its most recent historians:

'There was, in fact, from 1590 to 1640, what is not found in English history before that period, or after it until the establishment of the Poor Law Commission in 1834, an almost continuous series of letters, instructions and orders, emanating from a Central Government department, in the names of the Privy Council or some members of it, either to the Assize Judges, or the Lord Lieutenants or High Sheriffs of the various counties, or directly to the Justices of the Peace in Quarter Sessions, insisting that the statutes for the relief of the poor and of maimed soldiers, for the maintenance of tillage and the repression of vagabondage, for the regulation of alehouses and of the sale of ale and bread, and the repression of recusance and crime should be put into operation. . . . We gain a vision, between 1590 and 1640, of a group of vigilant and indefatigable Privy Councillors, wielding unquestioned authority irrespective of which monarch sat on the throne, and constantly in receipt of information from all parts of the country. . . . What the successive great officers of State were establishing was, in fact, a mighty organized system of Local Government, co-extensive with the Kingdom, with a regular official hierarchy, based upon just the amount of centralization required to ensure that the administrative machinery was everywhere working according to plan.'[3]

The attempt failed. For the Civil War broke down the connexions between the central and the local authority, and perhaps

[1] Webb, op. cit., pp. 74–5. [2] Eden, *State of the Poor* (1797), I, pp. 156–60.
[3] Webb, op. cit., pp. 78–9.

that war was in part caused by the resolute attempt to bring the localities—which means the local gentry—under the control of central Executive. The aftermath of the attempt was a state of anarchy in which the destitute, swollen in numbers by the consequences of the war, lived and died in cruel misery. 'At this day', said Sir Matthew Hale about 1659, 'it seems to me that the English nation is more deficient in their prudent provision for the poor than any other cultivated and Christian State.'

It is clear that the machinery was wanting. Had the whole Privy Council been able to transport itself everywhere and every day to the localities, and to give their orders and injunctions every moment that the ardour of the Justices and Overseers showed signs of failure, their orders and injunctions would have been worth more than the paper they were written on. For it is not enough for an organ of the State to will, the will must be embodied; for administration requires continuity of incentive, and, therefore, ultimately, officials specially engaged with a continuously provided inducement to obey. It was long before this was understood, and consequently no attempt was made to provide payment for all that officialdom outside London and not directly employed by it, and called then not local government, but 'the subordinate government of the realm'

Preventive Administration. In the modern State we attempt to anticipate all possible mistakes and say to a permanent and well-staffed Department: 'See that these mistakes do not occur!' In a community with little State activity the old method could operate: the number of mistakes that could be made was small. But from 1800 onwards we are in an increasingly urban and industrial civilization: there is an increase in the organized activities of a rapidly increasing number of people. Government controls a greater number of vital links, there arises the apprehension of many collisions and breakdowns.

In 1834 there were nearly 15,000 different Poor Law authorities, and therefore that number of interpretations of the law and ways of giving or refusing relief. There, for the first time, the faults of local authority were exhibited and the needs of the new civilization appreciated. The Poor Law Commission which resulted was the first administrative control in English local government. Once that battle was over—and it was a stiff battle—there were still others to be fought, but victory in the first spelt victory in the rest. The central authority proceeded from conquest to conquest for the establishment of administrative control. There is still judicial control—some aspects of which we have dealt with in a special chapter.[1] There has been added to it the incessant enveloping watchfulness and intervention of administrative departments. The administrative method is predictive and pre-

[1] Chap. VIII, *supra*.

ventive, and operates through people who are permanently employed to keep their senses awake to all that goes on in local government.

The Sources of Authority. Certain central Departments have the power to control the activities of the local authorities. That controlling power is derived in each case from some statutory grant of power, and the central Departments have no power except what is derived from statute. Yet the present efficiency of their power is the offspring of some things which are not statutory. It is practically self-evident that power depends on prestige, and the prestige of the central authorities in their relationship with the local authorities is dependent, apart from their statutory power, upon two things, the length of time for which they have been exercising control and guidance, and the *cumulative effect* of all the powers they exercise. As local councillors and officials enter office, they are confronted by the fact that Departments in London, equipped with large powers of control, have been operating and consolidating their authority, their skill, methods, and organization for decades, generations, and even centuries. Further, the inherent efficiency of each means of control when used is sustained and strengthened by the consciousness that the controlling Department possesses many other means of being beneficent or troublesome.

Value of Central Aid. Apart from any disciplinary powers which the central Departments have acquired by statute they acquire authority from their sheer value to the local authorities. The central government has three qualities much sought by the localities. In the first place it has a large body of officials with rare skill in various branches of administration. Few local authorities can afford to provide themselves with such experts. Their advice is free to the localities. Secondly, no local authority can match the central government in the range of its information. Thirdly, the central government is above the battle waged between local authorities and various interests in the areas; it is without any bias, as an arbitrator, save that of national good sense.[1]

Grants-in-Aid and Central Control. Central control is linked closely with grants-in-aid made by Parliament to the local authorities; but it must be remembered that grants are not given chiefly to secure to the central authority a sanction for the power of superintendence. Grants serve the purpose of alleviating the inequity of the local taxation system. They also help to enable local authorities to maintain certain services at a national minimum standard. It is at this point that the connexion is established between grants and control. Parliament requires a national standard of efficiency in certain services;

[1] Cf. *Report*, Poor Law Commission, p. 238: 'A refusal by a person who is nearly an equal excites more animosity than one by a person who is comparatively a stranger and has greater authority.'

the local authorities are reluctant to raise the rates, or are too poor to find them, and therefore Parliament must find a proportion of the charges. But it never does so without guarantees of efficiency, and the guarantees consist of one or several of the measures which the central authority may take to control the local authorities.

Among these guarantees is the withdrawal of all or part of the expected grant, and it is a formidable engine. It has been said that central control over local authorities was purchased by grants, that the central authority, as it were, bribed its way, and there is substance in the generalization. But, in fact, when grants were first linked with the efficiency of local authorities (by Peel in 1846), financial adjustments were the first consideration, and the stipulation of efficiency, though quite deliberate, was an afterthought. That history, however, we deal with at some length in the appropriate chapter. Here it is only necessary to accentuate four things: (1) that the grant is always and inevitably linked with control, (2) that the power to withhold the grant has powerful psychological foundations, (3) that the grant may become so large that local government itself is threatened, and (4) that there is an especially close link between the grants and inspection by the central authority's agents. This point, the Inspection-Grant relationship, we are obliged to defer until later, asking the indulgence of the reader for this on the ground of complexity of all these arrangements which necessitate cross-reference, while the other points deserve some illustration at once.

Parliament has never been willing, is not willing and ought not to be willing, to grant moneys to be spent by the Executive, whether centralized in Whitehall or localized, without guarantee of control over the objects and methods of expenditure. But just as clearly the form and the extent of the control is properly variable with the skill and trustworthiness of the body that actually spends the money. This doctrine has been amply taught by the administrative experience of the nineteenth century. The last comprehensive inquiry into the grant-in-aid system was made by the Kempe Committee in 1914. Recommending a considerable increase in grants it found itself at once compelled to lay down conditions of Government control.[1]

'In whatever form grants are made power should be reserved to the proper Government Department to reduce them to any extent necessary to enable the Department to exercise effective supervision over local administration. It is not easy to express a decided opinion as to the proper limits of Government control. It is, however, so closely connected with the claim of local authorities for Government grants, that we venture to put forward three considerations which appear to us to have an important bearing on the question.

Large Authorities are Freer. 'Firstly, as we shall have occasion to notice later on, there has been a marked tendency during the last hundred years towards

[1] Departmental Committee on Local Taxation, Cd. 7315, 1914, pp. 22–3.

the enlargement of the areas of administration of semi-national services, resulting in the creation of more responsible authorities. It would not, for instance, appear to be necessary to exercise the same detailed control over the educational administration of the more important authorities set up under the Act of 1902 as was probably called for in dealing with the multitude of minor local authorities and managers of voluntary schools which existed previous to that Act, especially as the new authorities then created have by this time gained considerable experience.'

Freedom Encourages Local Interest. 'Secondly, if semi-national services are to continue to be locally administered, it is most important that local interest in them should be fostered, and that the most capable men should be encouraged to offer their services on local councils. To ensure this, local authorities should be given considerable discretion in the administration of these services, and not reduced to the position of agents of Government Departments.'

Degrees of Control. 'But thirdly, owing to the great diversity of character shown by local authorities, and the great differences in their circumstances, the same degree of control is not necessary in all cases. One authority may be allowed a discretion in a certain matter which it would be dangerous to give to another. The decision as to exactly how much responsibility should be allowed to each authority must, therefore, rest largely with the Government Department concerned. But we would urge that the general line to be followed should be to allow as much responsibility and independence as is compatible with the best interests of the service. With broader areas of administration we are confident that many of the details now dealt with by Government Departments could safely be left to local authorities, leaving to the Departments their proper function of guidance and control in matters of principle and general policy.'

The Penetrative Power of Grants. However, a local authority might resist the power of the Inspector and his master, the central Department, by refusing to accept grants-in-aid. It would not then become immune from central control, or even largely immune, for there are many other methods of control, and the power to control loans, for example, is especially effective. But it would get considerable immunity. At what cost, however? It might refuse to establish a service which the Ministry desired; or it might refuse to develop a service the progress of which was desired by the Ministry. In those cases it might lose popularity in its own area and possibly suffer at the next local elections. Supposing, however, it avoided such unpopularity only by adding to the rates sufficient to provide for the gap left by the refusal of a Government grant, this in itself would tend to unpopularity. The possibility of unpopularity on these grounds, and the desire to benefit the locality at the expense of the general taxpayer as distinct from the local ratepayer, are the foundation of the effective power to superintend by the central authority. The lumping together of the health grants under the Act of 1929, and the possibility of the withdrawal of *any part* thereof, as described later, accentuate the penalizing effect of the grants.

The More Grants the Less Local Independence. Several discussions at critical stages in the history of various local government services very pointedly demonstrate that as the proportion of

the grant to rate expenditure increases there is an irresistible impulse towards the reduction of the independence of the local authority. The more the allowance received by the son the more stringent the control over its expenditure by the parent.' In 1922 the Board of Education was faced with a strong demand for the reduction of its expenditure, which is, of course, composed mainly of grants to the local education authorities. A Committee under Lord Meston was established to investigate the matter (incidentally, it never reported) and to this the Board addressed a Memorandum on its Grant System.[1] After delineating the principles which a grant system must embody, the Memorandum said :

'Indeed the growth in the cost of education may ultimately break down the present system of local government of education: for if in the interests of economy we assume that there must be a limit to the proportion of the expenditure which is to be met from the grant, and if the remaining cost which has to fall upon the rates is greater in some areas than the rates can bear, then no grant system can satisfy the required conditions, and it would be necessary to make some *structural alterations in the system of local government or some radical modification of the primary responsibility of Local Authorities for educational expenditure.* This has already happened once in the history of education in this country, when the rising cost drove the voluntary bodies, by whom Elementary Schools had formerly been maintained, out of the field.'

The same line of reasoning is excellently illustrated in the *Report of the Committee on Schemes of Assistance to Necessitous Areas*, of 1926.[2] The Committee was established to find a way of helping certain Poor Law Unions in industrial areas quite crushed beneath the burden of their destitution. Several schemes for their assistance were submitted. Those of any financial value at once broke down on the score of the control which it was universally admitted those giving assistance were entitled to demand over those who were assisted. Thus Mr. E. J. Johnson, Borough Treasurer of West Ham, one of the most afflicted areas, thought that it would be almost a necessity for a Government Department to fix scales of relief, varying with the class of area. The late Mr. Neal, Chairman of the Sheffield Board of Guardians, held that it was necessary to lay down that no expenditure above a certain point should count towards earning a grant. Above the datum line expenditure must be borne by the local ratepayer. He advocated the fixing of a maximum amount of relief for the family, and to prevent extravagance otherwise he depended upon reports from the Auditor who would especially inquire into alleged extravagance. The Committee itself went on to show that the mere fixing of a maximum was insufficient as a safeguard of the Treasury :

'The whole tenor of our investigation of the working of excess numbers shows that the widest scope for extravagance arises, not by reason of an exces-

[1] Memorandum on the Grant System, Board of Education, Cmd. 2571, 1926.
[2] Cmd. 2645, 1926.

sive maximum, but from differences of administration within the relief scale itself, and particularly in the varying assessments of the family income to be taken into account in determining the amount of relief to be given. . . . We regard the prescription of scales for the governance throughout the country of the relief actually to be given not only as impracticable, but as incompatible with the whole system of administration of poor relief . . . the measurement of the actual amount of the excess would be impracticable, since it would involve a certification of the reasonable exercise of the Guardians' discretion in each individual case. . . . Even if it be assumed that complete written records of the facts of the case on each occasion on which it came before the Guardians were available, it seems to us to be out of the question that the District Auditor could review so large a proportion of the cases as would justify him in declaring the proportion of the expenditure of the Union which should be regarded as unnecessary and properly excluded from any calculation of grant.'

It was, indeed, on this rock that the schemes broke down.[1] The failure led inevitably (in the circumstances of the industrial depression and financial anxiety of the next few years) to the abolition of the 640 Poor Law Unions as the areas of poor relief and rates for the poor, and the transfer of *both administration and charge* to the 62 County Councils and the 83 County Borough Councils. Central control follows a central gift.

We must always remember Alexander Hamilton's phrase: 'In the long run the control over a man's income is a control over his will!'

* * * * * * *

Some time after this chapter was written, my friend Dr. Adolf Schüle, of the University of Berlin, published his treatise on English Local Government from the Standpoint of Central Control, *Staat und Selbstverwaltung in England*. The foreign student of our institutions frequently emphasizes aspects we are in danger of ignoring owing to their familiarity. Schüle makes these observations on central control. The central government has an enormous number of local authorities to supervise—it is possible that the number is too many for efficient supervision without bureaucratic dangers. Yet the system has the merit of simplicity—the relationship is direct, not as in Germany or France indirect, and therefore the wishes of the central government have an immediate impact on the local authorities, and *vice versa*. On the Continent there is a loss of time and mutual understanding due to the indirectness of the central-local relationship; the intermediate authorities acting not only as channels, but as insulators.

[1] Exactly the same problems and arguments were involved in the attempts to secure the Equalization of Rates in the London Area. Cf. Report of the Royal Commission on London Government, 1923, Cmd. 1830, pp. 82 ff.

CHAPTER XII

THE MEANS OF CONTROL BY THE CENTRAL GOVERNMENT OVER THE LOCAL AUTHORITIES

THE central government secures control over the local authorities by these means.

1. It has a general tutelary power over certain services.
2. It is responsible for applying the law by Rules, Orders, and Regulations
3. It maintains special advisory organizations.
4. It is a factor in the grant of powers by Orders, Provisional and Special Orders, and Private Bills.
5. It has a power of approval in relation to (*a*) alterations of areas; (*b*) administrative schemes; (*c*) bye-laws; (*d*) fees and tolls.
6. It prescribes the qualifications and tenure of certain officials.
7. It has a power of action in default and invoking control by the Law Courts.
8. All local loans require its authorization, except where loan powers have been obtained direct from Parliament.
9. It hears appeals in certain forms of administrative action.
10. It has the power to make inquiries and obtain reports.
11. It audits all local accounts, with certain exceptions discussed later.
12. It has a power of inspection, usually coupled with the making or withholding of grants-in-aid.

I

TUTELARY POWER

The central Departments are made responsible by statute for the efficiency of the service coming within their jurisdiction. For example, the Ministry of Health was established 'for the purpose of promoting the health of the people throughout England and Wales'[1]; the Home Office, in regard to police administration[2]; the Board of Education, 'There shall be established a Board of Education charged with the superintendence of matters relating to education in England

[1] Ministry of Health Act, 1919, Sect. 1.
[2] County and Boroughs Police Act, 1856, Sect. 1.

and Wales'[1]; the Ministry of Transport, 'For the purpose of improving the means of, and the facilities for, locomotion and transport. . . .'[2] They are the general promoter of the service entrusted to them; and therefore act as mentor, guide, philosopher, friend and encourager of the authorities responsible for the local execution of the powers. Their character in this respect may be learnt from their Annual Reports, and occasional special reports. They publish notes and comments and explanations of recent and pending legislation. They bring to the attention of local authorities (which, as a rule, means to the higher local officials and the most zealous councillors), the recommendations of national and international conferences, this tending to keep their administration and special technique up-to-date.[3] There are centralized statistics comparing all local authorities and establishing comparisons between different points of time. From time to time, in cases of emergency, skilled advice is circulated in the form of general memoranda, or by letters in individual cases, or by personal conference. Committees and Commissions of Inquiry are established. Analyses of costs are extracted from the expenditure of many localities and published, with notes upon their significance. The best experience in any particular line of administration, e.g. sewage-disposal, educational methods or equipment, road construction, police equipment, is disseminated, with the benedictions of the Departments. They closely watch the effect of the new statutes, and of their memoranda and advice, and reconsider policy in the light of their observations. The local authorities find in the central Departments, not merely an occasionally bothersome stimulation to sometimes unwilling exertion, but a ready source of information, of the highest quality, that would cost a handsome fee if sought from private legal, medical, engineering, financial, building or administrative experts. All this improves local administration, adds to the knowledge of the central authorities, evokes the gratitude of the local authorities, and leads them to look to the central Departments as benevolently concerned with the improvement of local government.

II

APPLICATION OF THE LAW

Besides this general tutelary function central Departments are responsible for carrying out the statutes concerning the constitution and functions of local authorities. Because Parliament is congested, impatient, sometimes artificially divided in opinion as a consequence of the party system, and generally incapable of dealing with the

[1] Board of Education Act, 1899, Sect. 1.
[2] Ministry of Transport Act, 1919.
[3] Cf. Annual Reports presented to Parliament and published by the various Departments.

detailed application of policy, it couches its statutes in general terms, and leaves their application (with the possibility, therefore, of variation from time to time as changes of circumstances require) to the Departments. The Departments apply the law by means of Statutory Rules and Orders and Regulations.[1] In other words, though Parliament lays down the general principle, and in many cases has a right to ratify or reject the Orders and Rules which the Ministers subsequently make, the form of the law which is imposed upon the local authorities, is the law as made by the Departments. Here are some examples. The Board of Education is by the Act of 1921 required to make from time to time 'regulations prescribing the manner and form in which notice is to be given as to the continuation school which a young person is required to attend', and so forth. (Sect. 79.) The Home Secretary is required by the Police Act of 1919 to make 'regulations as to the government, mutual aid, pay, allowances, pensions, clothing, expenses and conditions of service of the members of all police forces within England and Wales, and every police authority shall comply with the regulations so made'. The Ministry of Transport may, by the Road Traffic Act of 1930,

> 'make regulations for any purpose for which regulations may be made under this part of this Act, and for prescribing anything which may be prescribed under this part of this Act, and generally as to the use of motor vehicles and trailers on roads, their construction and the conditions under which they may be so used and otherwise for the purpose of carrying this part of this Act into effect and in particular, but without prejudice to the generality of the foregoing provisions, may make regulations with respect to any of the following matters.'

The Ministry of Health is by the Local Government Act of 1929 given so many separate powers of regulation in various branches of Public Health that we have not the space to reproduce them here, and must rely upon the student himself scanning the Act, which in itself is a liberal education. The powers of the Ministry of Health under the Poor Law Act of 1930 are as follows:—

> 'The Minister of Health (hereinafter in this Act referred to as the Minister) is subject to the provisions of this Act, charged with the direction and control of all matters relating to the administration of relief to the poor throughout England and Wales, according to the law in force for the time being. . . . Provided that nothing in this Act shall be construed as enabling the Minister to interfere in any individual case for the purpose of ordering relief. . . . Except where otherwise provided by this Act, all powers given by this Act, and all powers given by every other Act, whether public, general or local relating to—
>
> (*a*) the building, altering or enlarging of workhouses;
>
> (*b*) the acquisition and disposal of workhouses and the sites thereof;

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[1] This 'subordinate legislation,' as it has been called, has been the subject of considerable controversy. The situation is analysed and remedies for alleged evils are recommended in the *Report* of the Committee on Minister's Powers, Cmd. 4060, of 1932; and the powers of the Departments are described at length in the First Volume of the *Minutes of Evidence* presented to the Committee.

(*c*) the preparation of houses for the reception of poor persons, and the dieting, clothing, employment and government of such persons;

and all other powers of regulating and conducting workhouses and of the government care, and employment of poor persons therein, and all powers auxiliary to any of the powers aforesaid or in any way relating to the relief of the poor, shall be exercised by the persons authorized by law to exercise the powers, under the control and subject to the rules, orders and regulations of the Minister.'

Thus, intermediate between Parliament which makes the law and the local authorities who are vested with rights and powers or loaded with duties, are the central Departments who fit the broad rule to the circumstances the details of which they alone are able to know. In this class, though not with the same status in law, are the Memoranda and Circulars which the central Departments issue immediately after the enactment of a Statute, as in Public Health, Public Assistance, and Roads Administration in 1929. They explain the provisions of the law, its intentions, and suggest the lines upon which the statutory obligations might best be administered.

III

ADVISORY BODIES

The Departments in Whitehall have established a large number of bodies for research or consultation on the subjects they administer; and these are of incalculable importance to local authorities, as they make available for them the scientific results attained by specialists in particular fields, or policies embodying the greatest common agreement among otherwise diverse interests. In the first category, for example, we find the Medical Research Council; in the second, the Regional Water Committee, the Central Valuation Committee, and perhaps, the Consultative Committee of the Board of Education. It is possible to draw up a long list of Advisory Bodies of these types—one of the most fruitful contributions of twentieth-century administrative inventiveness to the task of government. Moreover, each Department gathers together the contributions of Advisory Bodies in other Departments scientifically part and parcel of its own work. For example, the tuberculosis work of the Ministry of Health benefits from that of the Industrial Fatigue Research Board.

IV

THE GRANT OF POWERS

We cannot omit from the controlling power of the central Departments that which they exercise in relation to Provisional Orders, and Special Orders and Local Acts. As we have already shown in detail, where local authorities desire extra powers or extensions of area they are obliged to lodge certain information and plans with the central

Department specially concerned.[1] The Department reports to Parliament on the merits and the significance of the proposals and its attitude thereto, and the Committees which usually decide the matter are naturally much influenced by Departmental opinion. In order to get a favourable opinion there is previous consultation between the central Departments and the local authorities concerned, in which the views of the Department naturally bear fruit. Indeed, improvement in administration elsewhere may be not improperly part of the bargain for a favourable report. For example, might it not be a condition of support of a bill permitting expenditure and loans for a tramway undertaking or a new Town Hall that money should first be spent on bringing health administration up to a sound standard?

Such departmental powers are not strictly administrative, they are concerned with the creation and establishment of laws, and they are administrative only in the sense that a general principle or permission stated in a general statute is being applied to a particular case. The central Departments' power is increased immediately by their particular part in the process, and, further, by the cumulative effect we discussed earlier.

V

SANCTIONING AUTHORITY

The central Departments have considerable *sanctioning* authority, and this in four main fields: (*a*) alterations of area (amply discussed already in Part II); (*b*) bye-laws; (*c*) administrative schemes for the execution of services established by law; (*d*) fees and tolls charged by local authorities.

(*b*) **Bye-laws.** According to a judicial definition a bye-law is[2]:

'An ordinance affecting the public or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bye-law, they would be free to do or not do as they pleased. Further it involves this consequence —that, if validly made, it has the force of law within the sphere of its legitimate operation.'

Local authorities obtain their bye-law-making powers from two main sources. (*a*) First, Counties (for the whole of their area excepting the Boroughs) and County and Municipal Boroughs have power by their constitution to make bye-laws 'for the good rule and government' of their area, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act

[1] Cf. Chap. VII, *supra*.
[2] Russell of Killowen, in *Kruse v. Johnson*, (1898) 2 Q.B. 96.

in force throughout the Borough.[1] (*b*) Secondly, bye-law-making powers are conferred under various statutes such as the Highways and Locomotives Act, 1878, the Advertisements Regulations Act, 1907, the Education Acts, and the Public Health Acts—to all authorities administering powers under those Acts.

It is essential for the easy and appropriate operation of local government that some latitude to command and prohibit be left to the local authorities on the spot. For example, the Kent County Council has a bye-law for the good rule and government of the County that 'No person shall sound or play upon any musical or noisy instrument, or sing in any public place or highway within 50 yards of any dwelling-house after being required to desist by an inmate of such house personally, or through his servant, or through a constable'. Another makes it a punishable offence for a person, other than authorized persons, to refuse to depart from an Elementary School, and behaves in a disorderly fashion, upon being requested to depart.

Thus, again, Section 46 of the Tramways Act of 1870 authorizes a local authority in whose area a tramway is laid to make regulations and bye-laws (provided they are not repugnant to the general law and subject to their not being disallowed by the Minister) regarding the speed and stopping of tramcars, the distance to be preserved between following cars and traffic on the road in which the tramway is laid. Again, bye-laws have been used to prevent annoyance by the operation of wireless and other loud-speakers.

It is, however, proper for the general reasons discussed in the introductory section of this chapter, that the subordinate areas of government should be subject to certain national principles. Accordingly, the bye-law-making power is subject to two controls: the one administrative, the other judicial. In the one, the first class of bye-laws ('order and good government') must be submitted to the Home Office, which may disallow them, while the second class need the approval of the Department within whose jurisdiction the subject falls, e.g. the Board of Trade, the Ministry of Transport, the Home Office, the Board of Education, the Ministry of Health. The purpose and the value of this control is not difficult to divine—the central authority's wider experience is at the disposal of the local authority to avoid error of judgment or law or to enable the intention of the local authority to be achieved in the best way. Sir Edward Troup says[2]:

'At one time so many bye-laws had been rejected on one or other of these grounds that Borough authorities almost ceased to make them; but, after the Home Office undertook the examination of all draft bye-laws submitted to it, and refused to pass any which appeared open to exception bye-laws regained

[1] By the Local Government Act 1933, by-laws regarding "nuisances," if relating to public health or other matters concerning the Minister of Health require the confirmation of the Minister. In some cases local authorities are *obliged* to make by-laws, for example, building by-laws, on penalty of action in default by the Ministry concerned.

[2] Troup, *The Home Office* (1925), p. 224.

their reputation and there is now a list of "model bye-laws" dealing with such subjects as street music, street cries, street obstructions, indecent acts, etc., which can be adopted in any locality where they are needed and which have so far stood the scrutiny of the courts. New bye-laws are also from time to time required to deal with new conditions, and the drafting of these is a matter of no little difficulty.'

The model bye-laws prepared by the central Departments are based on long experience and in relation to the proposals of hundreds of authorities.[1] Indeed, it is not easy for a local authority to get any *original* bye-law approved: the central Department demands precedents!

The second right of control is through the Courts of Law. A bye-law is 'subordinate' legislation in the sense that it is made by virtue of a particular grant of power by statute, and is therefore controlled by that originally empowering clause, and it is subject to the principle of 'reasonableness', a creation of the Common Law. Here is an example. The Worcester County Council made a bye-law that 'no person shall in any street or public place, or on land adjacent thereto, sing or recite any profane or obscene song or ballad or use any profane or obscene language'. The penalty was not to exceed 40*s.* for each offence. The Court (Queen's Bench Division, *Strickland v. Hayes* (1896)) held that the bye-law was invalid, because it was 'unreasonable', and this on two grounds. First, (*a*) that the phrase 'or any land adjacent thereto' was an extremely wide prohibition, going

'far beyond what is necessary for the good rule and government of the county. It would apply to anybody—a person swearing in a passion in any place, a yard, or stable, or house adjacent to a public highway. To uphold that I think would be to go a great deal further than the makers of this Act of Parliament ever contemplated. It might give rise to a very considerable tyranny. . . .'

And, secondly, (*b*) the bye-law did not include anything which would show that it ought to be construed so as to mean 'to the annoyance of the public'.

'It is quite possible here that someone may be convicted for reciting or singing a bawdy song or swearing or cursing in a public place without a soul hearing it or being annoyed. I do not think that the true construction of this bye-law as it now stands necessarily involves the annoyance of the public—all you have to do is to show the justices that an offence has been committed, annoyance or no annoyance. I think that goes too far. That is to say, such a bye-law as this, unrestricted as it is—I was going to say incautiously worded, but unrestricted as it is—goes far beyond what is necessary for the good rule and government of the county.'

Thus the Courts can be called in by any person aggrieved by the fact that a bye-law is outside the power of the local authority or apparently within its power, but 'unreasonable'.

The positive or tacit approval of bye-laws by the central Departments does not make them legal if they are inherently illegal. Yet

[1] Obtainable from His Majesty's Stationery Office.

it has been said that the Courts, since they are dealing with public representative bodies, ought not to be too strict in invalidating bye-laws on the grounds of unreasonableness.' The full doctrine is interesting as a clue to the attitude of the Law Courts to local autonomy, a problem we shall meet again when we deal with audit. (1) Russell of Killowen, L.C.J., held [1]:

'I have thought it well to deal with these points in some detail, and for this reason—that the great majority of the cases in which the question of bye-laws has been discussed are not cases of bye-laws of bodies of a public representative character entrusted by Parliament with delegated authority, but are for the most part cases of railway companies, dock companies, or other like companies, which carry on their own profit, although incidentally for the advantage of the public. In this class of case it is right that the courts should jealously watch the exercise of these powers, and guard against their unnecessary or unreasonable exercise to the public disadvantage. But, when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, " benevolently " interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet. I think courts of justice ought to be slow to condemn as invalid any bye-law, so made under such conditions, on the ground of supposed unreasonableness. . . . I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn bye-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for instance, they were found to be partial, and unequal in their operation as between different classes: if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men the Court might well say, " Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*." But it is in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A bye-law is not unreasonable merely because particular judges may think it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the county, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges.'

(2) Sir F. H. Jeune held [2]:

'I agree with the contention urged before us that it is material to consider by what authority the bye-law was made. It was made by the County Council

[1] *Kruse v. Johnson*, (1898) 2 Q.B. 88 ff. [2] Loc. cit., p. 103.

of Kent—that is to say, a public representative body to which Parliament has confided the duty of making bye-laws for the good rule and government of the inhabitants of Kent and the prevention of nuisances in that county. Three considerations appear to me to apply with especial force to such an authority, dealing with such subject-matter. First, the case is wholly different from that of manorial authorities, or of trading corporations such as dock or railway companies, who often have a pecuniary interest in their bye-laws, or even of such a municipal corporation as might be supposed to have trade interests involved. Secondly, such an authority as a county council must be credited with adequate knowledge of the locality, its wants and wishes. Thirdly, the opportunity afforded by legislation for a request for reconsideration, and an appeal to higher authorities, by members of the public shows that any bye-law which comes into force has secured at least the acquiescence of those whom it affects. Cases may be imagined where, in spite of these considerations, this Court, acting in discharge of its undoubted powers and duty, might feel compelled to hold a bye-law made by a county council invalid on the ground that it was unreasonable. But, when a question of the requirements and wishes of the locality is involved, this Court should, I think, be very slow to set aside the conclusions of the local authority.'

(3) Mr. Justice Mathew, dissenting, held [1]:

'In none of these cases is there any indication of the principle which I understand to be now contended for, namely, that such ordinances should receive a special kind of interpretation. The powers conferred on County Councils have been spoken of in the discussion as something previously unknown to the law. But from the earliest times when charters were granted to towns municipal affairs have been managed by elected representatives of the inhabitants. The bye-laws made by such bodies have been frequently declared to be invalid. Take, for instance, the bye-laws which have been held to be unreasonable restraints of trade, and which are referred to in the judgement in *Mitchell v. Reynolds*. No case has been cited in which there is any trace of the principle now contended for, that such bye-laws are to be interpreted with any particular indulgence because of their popular origin. If this view be adopted, it seems to me the judges will be placed in an anomalous position. Where they differ from bodies not popularly elected their jurisdiction to pronounce upon the validity of a bye-law would remain unimpaired: but where they differ from bodies like a county council, their position would be altogether different.'

(δ) **Administrative Schemes.** In many statutes, and more and more in recent years, the powers of local authorities can only be carried out after receiving the approval of the central Department to a scheme which they are obliged to prepare and submit. Here are some examples:

Education Act, 1918:

'With a view to the establishment of a national system of public education available for all persons capable of profiting thereby, it shall be the duty of the council of every county and county borough, so far as their powers extend, to contribute thereto by providing for the progressive development and comprehensive organization of education in respect of the area, and with that object any such council from time to time may, and shall when required by the Board of Education, submit to the Board schemes showing the mode in which their

[1] Loc. cit., p. 110.

duties and powers under the Education Acts are to be performed and exercised, whether separately or in co-operation with other authorities.'

Maternity and Child Welfare Act, 1918:

'Any local authority within the meaning of the Notification of Births Act 1907, may make such arrangements as may be sanctioned by the Local Government Board, for attending to the health of expectant mothers and nursing mothers, and of children who have not attained the age of five years and are not being educated in schools recognized by the Board of Education.'

Local Government Act, 1929:

'The Council of every county and county borough shall prepare, and within six months after the commencement of this Act submit to the Minister, a scheme (hereinafter referred to as an administrative scheme) of the administrative arrangements proposed to be made for discharging the functions transferred to the Council under this Part of this Act.

'If a Council fail to submit to the Minister an administrative scheme within the time allowed for the purpose the Minister may, after consultation with such local authorities as appear to him to be interested, and (if and so far as the scheme relates to education) with the Board of Education, himself make an administrative scheme. . . .'

Isolation Hospitals Act, 1893:

'For the purpose of securing the provision in every county of suitable means for the proper isolation and treatment of persons suffering from infectious disease, the council of the county shall, as soon as may be after the commencement of this Act, make a survey of the hospital accommodation for the treatment of infectious disease provided by the council and by the councils of any districts partly or wholly within its county.'

The importance of this form of sanction can hardly be exaggerated. The sanction is no mere formality, as many Councils have learnt to their cost when they have sent up inadequate schemes. The central Departments are concerned with the technical appropriateness of the scheme, its cost, and its general relation to the rest of the Council's administration, both as to administrative relationship and as its proportion to the budget of the authority. It is particularly through this means of control that the most up-to-date science is brought to bear by the central authority upon the development of local government services. In some instances, as we saw in the discussion of the distribution of powers among the various areas in Part II, the power to sanction schemes, for example in the provision of Isolation Hospitals, gives the Ministry of Health the power to prevent administrative waste by overlapping provision by neighbouring authorities, or to suggest the inclusion of contiguous areas in joint schemes. In some cases the central power of sanction may be quite minute, as for example in the requirement of the Board of Education's Regulations that 'New premises or enlargements or alterations of existing premises and plans thereof must be approved unless the Board otherwise direct'.

Yet the central authority is not unnecessarily meddlesome: it respects the freedom of the local governing bodies, and would prefer to see this exercised properly without the need to intervene. Indeed, there are central administrators who look with horror upon the task of approving schemes made by local authorities. Negotiation is difficult work; in the ultimate resort it is the local authority that carries out the scheme; and there are usually a large number of authorities to deal with. It is a formidable task, indeed, and an ever-increasing one.

(*d*) **Sanction of Fees and Tolls.** Charges for certain public utilities administered by local authorities require the approval of the Minister. Thus in regard to burial fees, market tolls,[1] slaughter-houses, the Ministry of Health has authority. Hackney carriage fares and charges for electricity are approved by the Ministry of Transport. Charges for water and gas supply are usually laid down as to maxima in the Local Acts. The Board of Education is not without influence, if without *direct* power, regarding school fees.

It can be generally said that the central authority is concerned to fix maximum charges, with the general policy of safeguarding the service against loss, but not seeking more than a prudent profit.

VI

QUALIFICATIONS AND TENURE OF LOCAL OFFICIALS

We have already indicated the objects and methods of this aspect of Central Control (pages 249–54). Let us only add two things. First, the community has not found it possible, and this not on mere theory but after bitter experience, to trust all local governing bodies to appoint adequately qualified officials, and pay such salaries as will secure an adequate supply and contented application. Nor has it been possible altogether to trust local authorities to retain officials who are conscientious in executing their function where this is unpleasant to councillors or their protégés.

Secondly, although the central authority has advanced a certain distance in the control of qualifications and tenure of local officials, the result does not begin to compare with the power exerted by the central authority in continental countries. In Germany and France all local officials come under a disciplinary code, and most under salary and pension arrangements imposed by the central authority. Moreover, the chief of the executive, the Prefect of the French Département, the Präsident of a German Provinz, the Maire of a French Commune, the Bürgermeister of a German City, are either central appointees, or appointment is subject to the sanction of the central

[1] Under Public Health Act, 1875. Where markets are maintained under Local Acts, the tolls are prescribed by the Statute.

authority. They act as agents of the central government, even as its invigilator over the local council (as auditor, inspector, and compelling authority, all in one), as well as the executive officer of the local authority. This is still one of the principal distinctions between English and continental local government, despite the progress of centralization in England.

VII

DEFAULT

If a local authority does not do what the law says it must do, the central authority has power in some cases to act, and to charge the defaulting authority with the expenses incurred. Secondly, there is another means of compulsion, the issue of a writ by the High Court, a writ of *mandamus*, which is a command to the local authorities to execute their statutory duty.

The modern power to act in default is dependent upon Section 299 of the Public Health Act of 1875. This empowers the Ministry of Health (formerly the Local Government Board) to fulfil the neglected function. A person who has an interest in the service in question makes a complaint that, for example, there are insufficient sewers, or no water-supply within a reasonable distance of the nearest house. The Ministry has power to appoint persons to perform the duty, and then by Order it may direct that the expenses of such action, together with a reasonable remuneration for the person who administers the performance, shall be paid by the authority in default: and that Order can be enforced, if necessary, by the Courts. The person or persons appointed to act in default, have all the power which the local authority in that respect possesses excepting the power to raise a rate.

The other controlling method is to ask the Courts to command the local authority to carry out its obligations. The writ is granted when no easier method of securing proper administration exists, when as the Courts have said, as a remedy it is 'most beneficial and convenient and effectual'. If the local authority does not obey this writ it is liable to be committed for contempt of court.[1]

These methods have been used very rarely and only in the gravest cases. They are not favoured by the central authority and the Royal Sanitary Commission of 1871 described the difficulties very clearly[2]:

'The remedy by *mandamus* does not appear adequate. The process is long and dilatory; and the case, when at last brought to issue, would be of a nature which a Court of Law is eminently unfitted to try. Details of sewers and sewage: quantity and quality of water supplied; character and volume of water within reach; capacity of works to be constructed, their nature and

[1] Cf. discussion of this on p. 203, *supra*.

[2] *Circa* p. 35.

general arrangement; state of domestic offices; mode in which scavenging is done and removal of refuse carried on: these and similar questions would be the points for discussion, and the mere statement would appear to afford sufficient proof that they cannot with any satisfactory result become the subject of judicial decision. . . . At the same time, however, it does not appear desirable that the central authority, where it can be avoided, should itself undertake the performance of any works. In so doing it would saddle itself with an onerous and unnecessary responsibility, and would undertake duties which it would not always be able to discharge satisfactorily.'

The procedure is too direct an interference with local authorities; it wears the aspect of an unconstitutional breach of the conventions of local self-government, and, as a matter of fact, the central authority uses it rather as a threat to a refractory local authority than as an instrument for getting its will performed. The way in which the Ministry of Health regards these powers of coercion can be gauged from the following questions and answers during a session of the Royal Commission on Local Government.[1]

The *Chairman* asked the representative of the Ministry of Health:

'As a matter of fact the measure of the usefulness of these powers is not the action which is taken directly under them, but chiefly the value of having a big stick?

Answer. Yes.

Chairman. In practice it does not work?

Answer. It has been effective in some cases.

Chairman. Because people did not know what a *mandamus* was perhaps?

Answer. The *mandamus* is simply the end of a long process. It is the finishing touch.

Chairman. Then the nervous system gives way.'

The following résumé of evidence before the Royal Commission[2] sums up the situation:

Sir Walter Nicholas. Have you any record to what extent these powers have been exercised?

Sir Lewis Beard. I was coming to that. This is a quotation from *Lumley's Public Health* (Ninth Edition): (*h*) 'The alternative procedure open to the Ministry of Health under the section—of appointing some person to perform the duty—is never adopted by them, and was not favoured by the Local Government Board. It was once stated on behalf of the Local Government Board in proceedings in the High Court that they had found it practically impossible to perform the duty of a defaulting authority by means of some other person, and that it was not for them as the central authority to descend into the arena of local difficulties and to undertake to do for a defaulting authority that which the statute clearly required the authority to do.' That is correct, is it not? —I have no doubt it is. . . .

The Act of 1929 made some important amendments of the machinery of action in default; we have described them in earlier pages.[3]

[1] *Minutes*, I, Qs. 1,673 ff. [2] *First Report*, pp. 426, 427.
[3] Compare also Additional Notes, p. 522, at Chap. III, p. 52.

Extraordinary Action in Default. There are extraordinary occasions when, for example in regard to Poor Relief, the central authority may not be satisfied with the administration. It may observe insufferable faults in local government, and yet be unable to deal with them in the ordinary way. It then has to apply for extraordinary powers over the local authorities. This occurred in July 1926, when the Ministry of Health secured the passage of the Board of Guardians (Default) Act. In this case several Poor Law Unions, situated in 'necessitous areas', had a very high incidence of destitution and a very low rateable value. Expenditure out of current revenue and loans was extremely high. Added to that, popular government in a small area put a great strain upon the elected Guardians, for large numbers of electors were destitute and naturally voted for those who promised to give generous relief. The Act's principal clause was [1]:

'Where it appears to the Ministry of Health that the Board of Guardians for any Poor Law Union have ceased, or are acting in such a manner as will render them unable to discharge or perform any of the functions exercisable by the Board, the Minister may by order under this Act appoint such person or persons as he may think fit (whether qualified or not, to be Guardians for the Union), for such a period not exceeding twelve months as may be specified in the Order, and the person so appointed shall be deemed for all purposes to constitute the Board.'

Orders of this kind, made by the Ministry, had to come before Parliament within twenty-one days, in which period either House might disallow the Order.

VIII

THE DETERMINATION OF APPEALS

Most Departments have under various statutes the power to hear and determine questions arising out of the local application of statutes, either where the interpretation of the terms of the statute is in question, or where the facts of a concrete case in which a local authority has taken action are in dispute. For example, the Board of Education decides appeals as to the provision of new public elementary schools, whether an enlargement amounts to provision of a new school, orders as to payment of costs of a public inquiry, questions arising between the local education authority and the managers of a non-provided school. The Ministry of Health decides, among many other cases, disputes between local authorities regarding the terms and conditions of causing their sewers to communicate; and settles objections raised by persons affected by the construction of a reservoir by local authorities;

[1] 16 & 17 Geo. V, c. 20, Sect. 1.

decides appeals relating to certification by the local authority of means for rendering harmless matter polluting streams; decides whether and how far the objection of a local authority to a County Council order forming an isolation hospital district shall have effect; determines disputes or differences between the medical officers of a district and a county regarding the information which the latter may require from the former for the purposes of his duties. The other Departments have powers comparable in extent and importance.[1] Only two things will be said on this subject. These powers are not infrequently asked for by the local authorities themselves, especially when the matter concerns disputes between two or more authorities. The Departments are in a position to know the situation better than any other form of tribunal in the country, and the procedure is intimate and inexpensive by comparison with ordinary judicial costs. Secondly, in many cases the Departments' appellate authority is final and binding; the Law Courts are excluded. In some matters, however, cases may be stated to the High Court; these have been dealt with in a previous chapter.

IX

INQUIRIES AND REPORTS

The fundamental condition of wise central control is knowledge of local conditions. Whitehall obtains a regular flow of exact information. First, there are the various Local Inquiries, conducted by central officers, when alterations of area, authority for loans or extra powers, are sought. Second, the Local Taxation Returns Acts, 1860 and 1877, and the Municipal Corporations Act, 1882, require that all local authorities shall annually make returns of receipts and expenditure with such particulars as the central authority prescribes. Yet, third, until 1929, no *general* power to command information existed. Medical Officers were obliged to report; central Inspectors could obtain information as a direct derivative of grant conditions (Education), or/and by means of a stringent power of inquiry (Poor Law), or as a simple implication of the grant-efficiency relationship (Police). Such gaps as these arrangements left are filled up by Section 51 of the Local Government Act, 1929. This requires all local authorities to 'make to the Minister such reports and returns and give him such information with respect to their functions as he may require'. An extensive power! Besides everyday information, we need that which will present a comprehensive and dynamic picture of local government, as much for the instruction of posterity as of contemporary students.

[1] For a full list, see Vol. I, *Minutes of Evidence of Committee on Ministers' Powers:* Memorandum Government Department, 39–57–1; 1932.

X

LOANS

Akin in purpose and effect to the central sanction of administrative schemes, and sometimes directly connected with it, is the power of the central Departments over loans. Any scheme of development which involves an expenditure of greater magnitude than that which can, or properly ought, to be raised out of the rates of two or more years, that is, any substantial capital outlay, requires a loan. Local authorities are not necessarily wiser than men in their private capacities in deciding whether to pay out of current income or to make overdrafts and loans—to obtain assets, certainly, but at the same time to involve themselves and their successors in debt. Perhaps a local authority is especially prone to prefer debt to immediate payment, for immediate payment is at once unpopular; but when a debt is incurred the repayment of capital and the provision of interest fall upon yet unborn generations of councillors and ratepayers, and the voice of these regarding the merits of the loan and the onerousness of the accompanying financial burden is not heard.

The loans of local authorities are raised either upon the authority of a Local Act, or of a Government Department acting under powers conferred by a General or a Local Act. By far the greater amount of loans is made by powers granted by the central Departments.[1] Local authorities are controlled in their borrowing powers by two instruments: (*a*) they cannot borrow except according to certain statutes which define the purposes and state the maximum periods for repayment[2]; and (*b*) the central Departments sanction the scheme and the occasion of the loan and exercise a discretion regarding the period for repayment. In fact, the sanctioning authority for loans is vested mainly in the Ministry of Health, even when the subject comes under the general superintendence of other Departments, e.g. school buildings and the Board of Education, and roads and the Ministry of Transport. However, there are exceptions to the power of the Ministry,

[1] Some idea of the proportion which the two sources of loan authority bear to each other is inferrable from these figures. (*Ministry of Health Report*, 1931–2, p. 151):

Sanctioned by Government Departments (excluding London)

1928–9	£74,578,852
1929–30	£91,457,580
1930–1	£90,472,678

Local Acts

1928–9	£8,717,868
1929–30	£15,978,075
1930–1	£8,219,360

[2] E.g. Education Act, 1921; the Mental Deficiency Acts; the Tramways Act, 1870; and the great structural statutes. Some examples are, for purchase of tramways a maximum of 30 years; for electricity plant, 20 years; land for housing, 80 years, and for schools, 60 years. Cf. Johnson, *Loans of Local Authorities*, 1925.

such as Electricity (Electricity Commissioners), and Tramways (the Ministry of Transport), and gas undertakings by the Board of Trade.

Two things are material here: firstly, the theory that a single Department should have concentrated within it the sanctioning of loans; and, secondly, the general principles upon which the central Departments act in granting or withholding sanction. 'There is a good reason', says the Ministry of Health, 'for the concentration of the power to sanction loans in one Department, because that is the only way in which the whole financial position of a local authority can be effectively brought under review.' [1] It is, of course, important in the interests of real economy, that is, the spending of money so as to obtain the greatest utility, not merely of each pound in relation to the immediate object of expenditure, but of the aggregate expenditure relative to all the competing lines of expenditure and to the total amount of available revenue. This object can only be accomplished if the central authority regards the several lines of local expenditure as items in a system. The central authority is also concerned for the grants-in-aid which may become payable if loans are sanctioned for certain projects. It has to envisage continuous future annual charges. Now this can be effected by several central authorities acting in concert—one may be responsible for the technicalities of a decision, say, in regard to schools, and then may confer with the ultimately responsible Department which has a wide surveyance of all the obligations of the local authorities. This is, in fact, what occurs.

Now, the Machinery of Government Committee of 1918 proposed that the Treasury should be the authority responsible for the sanction of loans, and there would be some advantage in this, because the financial experts are concentrated within the Treasury, and the Treasury is more involved than any other Department in the Money Market. It has been estimated that about one-third of the total annual investments of the country is made in the enterprises of local authorities.[2] The views of the Committee of 1918 have recently been reinforced by the Estimates Committee of the House of Commons [3]:

35. 'The stage at which the State is really committed to expenditure from voted monies in future years is when the responsible Department are asked to sanction a scheme submitted by a Local Authority, and it is at this stage, therefore, that in the opinion of your Committee financial control requires to be strengthened. Accordingly they recommend that the responsible Departments should be invited in future to submit for prior Treasury sanction a programme of such Departmental sanctions as are estimated to be required during each financial year. The amount to be sanctioned by the Treasury would be an aggregate figure, within which the Department concerned would be at liberty to deal with individual cases submitted during the period in question. If, owing to exceptional circumstances, it were desired to exceed the original limit,

[1] *Minutes*, I, *R.C. on L.G.*, p. 58. [2] Cf. Colin Clark, *The National Income*, 1932.
[3] *Second Report*, Select Committee on Estimates, 1932, p. 9.

a further application would need to be made to the Treasury, and the approval of the latter obtained, before the spending Department could enter into an excess commitment. Such an arrangement would enable the Treasury to make a comprehensive survey of the position, including the effect of the proposed commitments on future Budgets, and to advise the Government from time to time of the financial effect of their development policy. At present the absence of any obligation to consult the Treasury at the sanction stage of these commitments constitutes a gap in the system of financial control over public expenditure.'

Yet there is a very weighty reason why the present procedure should be maintained—a competent decision can only be reached by a Department which is in continual touch with local authorities and knows their capacities and needs. This, to-day, is the Ministry of Health; and it will remain so, so long as the comprehensive local governing authorities continue to exist. But some special consultative arrangement between Treasury and Ministry of Health should not be difficult to devise, for the day is not far distant when the planning of investment and public works will be the paramount function of government.[1] *

This brings us to the second element in the policy of sanctioning loans, namely, the general administrative principles adopted by the Ministry. The Ministry must be satisfied that the works are needed, that they are suitable and soundly planned, that the financial condition of the authority warrants the raising of a loan, and the standards already attained or which ought to be attained, in other services of urgent importance.[2] General comments on cases of this kind can be found in the Annual Report of the Ministry of Health.[3] To make its judgement on loans, the Ministry requires information regarding the area, population, rateable value, rates levied in recent years, existing debt, unused borrowing powers, margin of powers under restrictions, and plans, sections and estimates of the works proposed. The Ministry of Health continually gives wise advice to local authorities on the principles of borrowing, and almost in every Annual Report there are examples of this.[3]

XI

AUDIT

The accounts of all Counties, Urban and Rural Districts and Parishes are annually audited by officials of the central authority—the District Auditors.[4] Extraordinary audits may be, and from time to time are

[1] The subject is generally treated by Cole, *Intelligent Man's Guide through World Chaos*, Chap. XII, Basil Blackett; *Planned Money*, 1932; *Report* of the Liberal Industrial Enquiry, 1928.

[2] For example, sanction of loans for a sewerage system is sometimes made dependent upon co-operation with adjoining authorities.

[3] One may read a remarkably interesting article on the subject by a Principal Assistant Secretary of the Ministry of Health, Mr. I. G. Gibbon, called 'Borrowing by Local Authorities', in *Public Administration*, January 1928.

[4] *The Law of Local Government Audit*, by W. A. Robson (1930) is the best up-to-date treatise on the law of audit.

* The reader is referred to Additional Notes, p. 523, at Chap. XII, p. 314.

held; and they enable the central authority to begin operations the moment a local emergency is sensed, and before harm is caused by delay. The general accounts of County and Non-County Boroughs are not audited,[1] but their Education (Act of 1921, Sects. 123 ff.), Housing Accounts (Housing Act, 1919, Sect. 7 and subsequent Orders and Statutes), and, since 1929, the Public Assistance Accounts of County Boroughs, are audited by the District Auditors.[2] Further, County and Non-County Boroughs may by local Act subject themselves to audit by the Ministry of Health. The choice to do so is not always voluntary: for, should a local authority get into some financial difficulty from which the Ministry is able to extricate it, it has not been unknown for the Ministry to expect the Borough to accept audit as the price of its assistance. By 1940, 106 non-county and 9 county boroughs had accepted district audit, 30 under the Local Government Act of 1933.

Two questions arise: why are the County and Non-County Boroughs exempt? and what are the principles, practice and problems of audit where the central authority does possess power of audit?

The County Boroughs and Municipal Boroughs are exempt from central audit because, in 1835, when the Municipal Boroughs were reformed, the tide of democratic sentiment was full, and it was believed that elections were sufficient to secure purity of administration: by its promises and threats election would act as the purifier of accounts. Moreover, the central authority had hardly won its right to intervention; for in the matter of Poor Law reform which was being accomplished contemporaneously, the establishment of audit was difficult, in spite of the fact that the governing interests looked forward to a reduction of Poor Law expenditure. Hence the Municipal Corporations were left free of control by audit, and when the statutory basis of the corporations was amended and extended in 1882, the freedom of the Borough from audit was maintained: according to a former Counsel to the Lord Chairman of the House of Lords, because the Corporations were 'too strong in Parliament'.[3] But the Act of 1882 provides that there shall be three Borough auditors, two elected annually by the burgesses (by the Representation of the People Act, 1918, 'local government electors'), called elective auditors, and one appointed annually by the mayor, called the mayor's auditor.[4] This

[1] Police and Roads Accounts are audited by District Auditors, but only to certify the accuracy of the claim for grants, not to surcharge.

[2] The accounts of Boards of Guardians were subject to audit. Upon their supersession it was necessary to make provision for the continuance of audit; this happened automatically in the Counties; for the County-Boroughs a Statutory arrangement was necessary; Local Government Act, 1929, Sect. 17.

[3] Cf. *Report*, Evidence on Joint Committee on Municipal Trading, 1903, No. 270, Q. 340.

[4] Municipal Corporations Act, 1882, Sects. 25–7.

system applies to County Boroughs also, because the Local Government Act of 1888 (Sect. 34) does not include the County Boroughs in its provisions regarding finance. These elections and appointments take place amidst the general indifference and almost complete ignorance of the body of ratepayers. Referring to the weakness of this type of audit, Mr. Justice Farwell commented[1]:

'They have no power to surcharge: and even if they ought, as Lord Russell of Killowen says in *Thomas v. Devonport Corporation*, to make public any illegal payments by report to the Council and the burgesses, this is a duty of imperfect obligation. There is nothing to compel them to do so and very little to induce them; and so far as I know, they have not done anything of the sort in the present case. *It is difficult to understand why the Legislature in 1882 should have authorized a system of auditing which is quite illusory* when they have seven years before (in the Public Health Act of 1875) created an efficient method.'

It is not, as a matter of fact, difficult to understand why the Legislature should have contradicted the wisdom of seven years before: the vested interest in local independence, and the difficulty of dealing with so resistant a matter, is quite sufficient explanation. The motives were strongly expressed before the Joint Committee on Municipal Trading of 1900 and 1903.[2] The Municipal Corporations, especially the larger ones, violently objected to central audit as derogatory to their dignity, and vexatious—partly because it would disarrange their routine, partly because they thought councillors would not be able to bear the responsibility of a disallowance with consequent surcharge. The Committee recognized the farcical nature of the existing local audit, but recommended the abolition of Government audit, and its replacement by locally appointed auditors, the qualifications to be laid down in a statute, approval of appointment by the central authority, and submission of their reports to the central authority.

As the Boroughs are not precluded from employing professional auditors, some boroughs employ such auditors, authority to do so being sometimes founded in a local Act; some Municipal Corporations appoint them under their general authority to appoint 'the other officers'. When we have analysed the system of central audit operating in relation to the rest of the local authorities we shall come to the irresistible conclusion that the County and Non-County Boroughs should be brought under the system which is found justifiable in the case of the Counties, Districts, Parishes, and certain other authorities.[3]

[1] *Attorney-General v. De Winton*, (1906) 70 J.P. 368.

[2] Joint Select Committee on Municipal Trading, No. 305, 1900; No. 270, 1903.

[3] Since this was written, the Committee on Local Government Expenditure (*Report*, 1932, p. 126) has recommended 'that all accounts of Municipal Corporations should be audited by District Auditors.' Section 239, Local Government Act 1933, permits boroughs to replace elective by professional audit and prescribes a list of professional bodies from which auditors must be selected.

Evolution of Audit. There was no audit under the complete control of a central administrative Department until 1868. But the practice of audit of local accounts under the direction of an authority *external* to them is quite old. The Poor Law Act of 1601 obliged churchwardens and overseers to account to two Justices of the Peace, and in 1744 the Poor Law Act required the accounts to be in writing and 'verified' by oath or affirmation.[1] The only checks on the veracity of the accounts and the propriety of the administration of the funds they represented was the remote possibility of an objection by a Justice, and the qualms of conscience. The history of accountancy and audit shows that such a check is not always effective. Even Gilbert's Act of 1782 went little further. Guardians of the Poor under this Act were to nominate three persons 'respectable in character and fortune'—and one was to be appointed as 'visitor' by two Justices. The jurisdiction of the 'visitor' arose when there were disputes respecting the accounts between the Guardians and the Treasurer. Then, 'by every prudent mean in his power', he was 'to enforce and promote the rules and regulations enacted under this Act for the preventing all unnecessary expenses and burdens on the said parishes. . . .'

In 1810 Justices were given the power to disallow and strike out of the accounts of the Overseers all charges and payments which they deemed to be unfounded, and reduce such as were exorbitant. Although this was a stringent provision the audit of the Justices was regarded as little more than a mere formality.

The modern system of audit dates from 1834, when the Poor Law Amendment Act of that year provided for the issue of orders and regulations 'for the guidance and control of guardians, vestries and parish officers so far as relates to the management or relief of the poor, and the keeping, examining and auditing and allowing of accounts.' The Poor Law Commissioners allowed each Board of Guardians to elect its own auditor and fix and pay his salary. But detailed instructions as to the duties of the auditor were issued to each Union. In 1844 the Commissioners were empowered to combine the Parishes and Unions in England and Wales into Audit Districts, but the power to elect a person to be the Auditor of the District was left to the Chairman and Vice-chairman of each Board of Guardians. The power of the central authority exercised through the auditor has steadily increased: the 1844 Act abolished the powers of Justices and of all other persons to examine, audit, allow, or disallow Accounts.

The option of appealing either to the High Court or to the Poor Law Board was given, to persons surcharged, by the Act of 1848, and Boards of Guardians were enabled to appeal direct to the Board and so save costs of litigation.

[1] Cf. Dorothy Marshall, *The Poor in the 18th Century*, pp. 57–86.

The central authority assumed complete control of audit in 1868, when the Poor Law Amendment Act provided for the appointment of District Auditors by the Poor Law Board without the Guardians having any say in the matter. Under the District Auditors' Act, 1879, the system of audit was reorganized, and extended to the accounts of sanitary authorities, county, parish and district councils, and some of the expenditure of borough councils.

Operation and Problems. We have now to consider: (*a*) the qualifications and terms of appointment and control of the District Auditors; (*b*) the law relating to their powers, and the problems arising out of their use; (*c*) possible alternatives to the system.

The District Auditors' Act of 1879 empowered the Local Government Board to appoint or remove the District Auditors, to assign their duties and make regulations. Appointment was rather haphazard until 1912, when the qualifications of accountants or auditors of the various Institutes were added to that of barrister or solicitor.[1] Since November, 1926, the position of District Auditor has been accessible, by open competitive examination, to men and women between the ages of 21 and 24. There are now 87 Auditors for the whole country: there is one Chief Inspector of Auditors, who is apparently a travelling inspector, one Inspector at Headquarters, 6 Inspectors of Audit also travelling, 20 District Auditors, 23 Senior Assistants, and 36 Junior Assistants. The whole country is divided for the purpose of audit into districts. A District Auditor is in charge of a district, and he is assisted by one or more Senior or Junior Assistant Auditors, and a clerical staff.

'The District Auditor, in the course of his duties, has to deal not only with other Civil Servants, such as Treasury and other officials, who are experts in the law and finance of local authorities, but he also has to hear and adjudicate upon objections made to items in the accounts by ratepayers and other interested parties who not infrequently are represented by solicitors or counsel. Difficult questions of law, finance and accountancy arise, and it is therefore essential that a District Auditor should possess not only a sound knowledge of all legislation affecting local authorities, and of accountancy in all its branches, but also qualifications of initiative, self-reliance and sound judgment.'[2]

The Civil Service Commissioners have elaborated a scheme for appointment and training. The subjects of examination are much as for the Inspectors of Taxes, and follow with some modifications the general scheme of examination as prescribed for the administrative class—i.e. mainly non-technical. Entrants are put on probation for a period of two years, when they take a qualifying technical examina-

[1] Audit and the qualifications of auditors were closely investigated by the Royal Commission on the Poor Laws, 1905–9; see especially *Report*, Vol. I, pp. 123 et seq, and Vol. II, pp. 360 et seq. The recommendations as to organization and qualifications have been generally followed.

[2] Civil Service Commission Leaflet, *District Auditors*.

tion in the accounts of local authorities, and the law relating to district audit and local government. Normally not more than two trials at this examination are allowed. The salary is then advanced and the entrant is on the road to become Senior Assistant. The duties are exceedingly onerous; there are many complicated controversies, and occasionally important constitutional issues arise.

The District Auditor's powers are laid down in Section 247 (7) of the Public Health Act of 1875. Now, the auditor is put into a very strong position in relationship to the authorities whose accounts he audits, because should there be an appeal against him, his costs are paid even if the Court finds he is wrong and quashes his disallowance.[1] But if the councillors or officials are unsuccessful in challenging a disallowance they must meet the cost from their own resources. This becomes very important in cases where strict legal issues are less involved than problems of 'excessive' or 'unreasonable' expenditure.

The Powers of the Auditor. The powers of the Auditors are defined in the main by the Public Health Act, Sections 245 to 250, which amply provide for the production of accounts and supporting evidence. Section 247, Sub-section 7, is the core.

'Any auditor acting in pursuance of this section shall disallow any item contrary to law, and surcharge the same on the person making or authorizing the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved, shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made.'

Now let us distinguish the various obligations and liabilities.

1. There is a disallowance of expenditure which for any reason is illegally made or is not legally accounted for. The person or persons responsible for the illegality are *surcharged*, that is to say, personally charged, with the amount in question, and liable for the repayment thereof. Hence councillors and officials upon whom the responsibility for illegal expenditure can be fixed are liable in their own pockets for their illegality. They cannot make good any illegal acts of expenditure by going to the rate-fund for reimbursement. The burden lies fully on them. This is a potent control over councillors (and not less officials): it holds the rashness of councillors in check, and it contributes to that ascendancy of lawyers and the legal mind in English local government to which we have already more than once referred.

[1] Now regulated by Audit (Local Authorities) Act, 1927, Sect. 2, Sub-sect. 5; and Poor Law Act, 1927, Sects. 154 ff.

2. It is clear that there are certain plain illegalities: for example, embezzlement and defalcations, usually on the part of officials handling money and accounts, and no one can deny the value of central audit in detecting these. The mere presence of Auditors is a threat preventing a good deal more. Such activity forms a large part of the routine work and usefulness of audit.

3. Then there is expenditure which is plainly *ultra vires* the powers of the Council, and which may arise either out of their ignorance of the law, a *bona-fide* belief that committees have the right to do such and such a thing, or out of an interpretation of the law rather favourable to the course which the Council wishes to pursue. So in the famous Cockerton Judgement, in 1901, when expenditure was made on education of a 'secondary' nature without due authorization.[1] So also in the case whether Education authorities might provide meals for necessitous school children during school holidays as well as during terms—under the Act of 1907: this was disallowed, and not until the Act of 1914 could the authorities proceed as they originally desired. In 1910 the West Ham Corporation borrowed beyond its powers by way of overdraft for capital purposes for which it had not obtained sanction to borrow,[2] and there are many other cases of this kind. In 1922,[3] the power of a local authority to authorize visits to 'places of educational value and interest' in school hours did not extend to the actual provision of such places, and doubt was even raised whether theatrical performances fell within the empowering clause; consequently, expenditure on performances of Shakespeare was disallowed.

4. Then there are occasions when councillors or officials give themselves the benefit of the doubt in small payments or allowances. This is not crass dishonesty, but innocent laxity of thought, or 'imprudence'. For example, gas consumed by a Lord Mayor of Dublin was at one time charged on the municipal treasury; subsistence allowances were made to members of the Council and officials when absent from home on municipal business on too liberal a scale, or without plain legal authority; excessive cab fares have been paid; an omnibus was maintained to convey councillors to committees on their round of public duties.

5. Difficulty and controversy have arisen over the term 'negligence' and 'misconduct', the question being what amplitude the Auditor and the Courts should permit to the discretion of a duly elected local authority. What are to be the limits within which its own views of right and wrong, in the interpretation of its legal duties, may prevail without interference? In a leading Irish case[4] it was

[1] *R. v. Cockerton*, 1 K.B. 726 and C.A.
[2] *Attorney-General v. West Ham Corporation*, (1910) 80 L.J. Ch. 105.
[3] *R. v. Lyon, ex parte Gatti*, 1 K.B. 234.
[4] O'Brien, L.C.J., in *R. v. Browne*, (1907) 2 Ir.R. 505.

held that simple negligence was not enough to invalidate expenditure —it must be 'crass' negligence:

'The word "negligence" is associated in the section with the word "misconduct", and involves, I think, some element of moral culpability. A body such as the appellants are I think responsible only for *crassa negligentia*. Certainly, the standard of care exigible from them is not higher than what is exigible from the paid directors of a company.'

In *R. v. Carson Roberts* [1] (1908) Cozens-Hardy, M.R., said:

'Now the power and the duty of the auditor must be recognized as of the utmost importance for the protection of the ratepayers, and I am not prepared to place a narrow construction upon this sub-section.'

Yet, persons whose conduct is attacked would find a protection in the Court, for 'this extraordinary jurisdiction conferred upon the Auditor is subject to review in the King's Bench Division'.

Then there are diverse attempts to distinguish the policy from administration, with a subsequent admission that the auditor may question the latter but not the former. Fletcher Moulton [2] held the impossibility of distinguishing between the two, and that Section 247 did not indicate or support the distinction:

'The auditor's duty is to examine, correct and pass such accounts as are brought before him, and that is all. He has no jurisdiction to pass judgement on the diligence or wisdom of an employee of the council any more than he has to pass judgement on his sobriety. The employee is responsible for such things to his employer alone.'

But Farwell, L.J., said:

'The auditor's contention is that he is not merely to audit figures, but is to act to some extent in a judicial capacity, and is to inquire for the purposes and to the extent necessary to give effect to section 247 of the Public Health Act, 1875, into the conduct of the accounting parties, and to hear and determine cases of illegality, negligence and misconduct in relation to the accounts, and for this purpose to require accounting parties to give explanations and evidence. The respondents deny that he is entitled to do anything beyond audit in the strict sense, and that he must accept such answers as the accounting parties think fit. The auditor does not claim, nor could he, in my opinion, properly claim to exercise any control over questions of policy, but he does claim the right to check and challenge all items of administration. It is not easy to draw the line between policy and administration, or to give a definition by way of example, but, in my opinion, the establishment of a works committee would be a question of policy, into which the auditor could not go, but the payment of abnormally high wages to the workmen employed by such committee would be a matter of administration.'

6. Finally, the relationship between the Auditor, the Courts, and the local authorities, involving the governmental discretion of the

[1] (1924) 1 K.B. 514. [2] Ibid.

latter, was perhaps best revealed in *Rex v. Roberts*.[1] We describe the case in some detail as it reveals to what extent the Auditor and the Courts may control the social policy vested in the local governing authorities by the statutes clearly, and *apparently*, without reserve.

In 1921 and 1922 the Poplar Borough Council were paying £4 a week minimum wage to the lowest grade of unskilled workers, men and women alike. After much patient remonstrance the Auditor felt compelled to surcharge the councillors, who had authorized such a wage, with the amount of the difference between £4 a week and what the Joint Industrial Councils accepted as a standard for similar work outside the Borough Council. The surcharge amounted to £5,000. The councillors applied to the High Court for a writ *certiorari* (the form in which such disallowances are questioned) asking that the disallowance be quashed. The Auditor argued that the amount of wages paid in 1921 had shown a marked rise over the amount paid in 1920. In 1920 he did not object, because the cost of living was so high that the amount then seemed reasonable. But in 1922 it was far above Trade Union weekly rates. He announced his intention to surcharge, and gave councillors an opportunity of making a defence. They merely argued that they considered themselves 'model employers', and intended to pay as such. The Auditor's case was that the payment was *so excessive* as to come within these words from the Act of 1875: 'Shall disallow every item of the account contrary to law, and surcharge the same on the person making or authorizing the making of an illegal payment.' He held that, above a certain point, the payment ceased to be wages and became mere largesse, mere alms. It could be 'so' excessive as to be illegal.

This implies that there is a principle inherent in the nature of the Auditor's function which makes legality a matter of 'reasonableness': 'so' excessive! For the councillors, Sir Henry Slesser argued that the payments were not contrary to law; the law constituting the Councils allowed them to employ people where necessary, and 'to pay the salaries they think fit'[2]; the councillors had not contravened the Act. But, he said, they may have been negligent; for it is possible to be negligent in executing a legal power. In fact, however, they had acted with great deliberation. The King's Bench (the Lord Chief Justice, Mr. Justice Sankey and Mr. Justice Salter agreeing) gave judgement for the Auditor. Mr. Justice Sankey said[3]:

[1] (1924) 2 K.B. (C.A.) 695; House of Lords, *Roberts v. Hopwood*, (1925) A.C. 578.

[2] Metropolis Management Act, 1855, Sect. 62: 'The Board of Works for every district under this Act, and the vestry of every parish . . . shall respectively appoint or employ, . . . such clerks, treasurers, and surveyors, and such other officers and servants as may be necessary, and may allow for such clerks, treasurers, surveyors, officers, and servants respectively such salaries and wages as the board or vestry may think fit.'

[3] Op. cit., at p. 521.

'We desire, however, at the threshold of our judgement, to say that we do not propose to lay down any hard-and-fast rule as to what sum a borough council may expend, or what sums a district auditor may surcharge. By law the decision as to such payments rests primarily with the council themselves, and we should not desire to say anything to fetter or embarrass their discretion when it is properly exercised. Circumstances alter cases; what may be proper to be paid in one year may be entirely improper to be paid in a subsequent year. What may be proper to be paid in one district may be improper to be paid in another. Again, we do not desire to fetter or embarrass the discretion of an auditor in his duty of coming to a conclusion whether a surcharge should be made, or, indeed, to fetter our successors by laying down general rules as to when an auditor is to be held right or wrong. While, however, it is neither desirable, nor, indeed, possible, to lay down a definite standard, it is always possible, although not always easy, to say whether on the particular facts of a case a borough council has exceeded its powers and whether an auditor has been right in making a surcharge. The question, on a proper determination of the law, becomes largely one of fact. To deal with section 62 of the Metropolis Management Act, 1855, we cannot think that the words "as they think fit" entitle a council to pay any sum that they like to any of their employees. We are not in agreement with the argument that as long as they do not pay a sum of money to persons to whom they are not entitled to pay it, or for purposes to which they are not entitled to devote it, they can do as they please. The council are in a fiduciary position, not merely towards a majority who have elected them, but towards the whole of the ratepayers. A councillor is not entitled to follow the course which in his private capacity he might think it proper or advisable to pursue, but must confine his discretion within the limits imposed by law. He is not entitled to be unduly generous at the expense of those on whose behalf he is a trustee. We think that a payment to a servant entitled to be employed and entitled to be paid by the council may be of so excessive a character as to go beyond the limits of legality and become an illegal, or *ultra vires*, payment. In cases near the line it would be as difficult for an auditor to surcharge as it would be for this Court to overrule an auditor. Assume, for example, that a wage of £3 was admittedly proper, and the wage paid was £3 3*s*.; it might be that in such a case an auditor could not, and probably would not, interfere. Supposing, however, a wage of £3 to be a reasonable one, and a wage of £30 to have been paid, there would be material on which an auditor could and ought to find the payment to be illegal and to make a surcharge. In our view the present case is not near the line. The auditor has gone into very careful calculations. He has taken into account everything that ought to have been taken into account. He has even gone so far as to add to the wages which he thinks proper to have been paid a considerable additional sum, but, in spite of all that, he finds that the figure of £5,000 has been paid over and above the total so ascertained. We think that this sum is of such a character as to bring it within the words "an item of account contrary to law", within the meaning of subsection 7 and we therefore think that he was right in disallowing it and surcharging it as he did.'

The Court of Appeal reversed the former decision. Two of the three appellate judges supported the councillors, and one, Mr. Justice Bankes, supported the Auditor. He argued[1]:

'In relation to labour, the market price is not a universal one; it may, and does, vary according to local conditions, but I think it is true to say that

[1] *R. v. Roberts*, (1924) 2 K.B. (C.A.), at p. 712.

the standard rate of wages in any given locality for any of the well-recognized forms of labour is ascertainable and can be ascertained. A private employer can, of course, disregard all standard rates of wages in the sense that he can pay his employees as much above the standard rate as he pleases. His money is his own. He can employ it as he likes, and no one has any authority, statutory or otherwise, to complain if what he is in substance doing is making gifts to those he employs, in addition to their wages. Not so, however, the public authority entrusted with the duty of the expenditure of public money. This expenditure, so far as it is expenditure upon wages, must be confined to expenditure upon reasonable wages, and what is reasonable can only be ascertained according to law by a consideration of those matters which are strictly relevant to that question. In the case of the private individual dealing with his own money, it is not only competent to him, but it is a humane and praiseworthy action, to approach the question of what he shall pay his employees from the point of view of what will enable them to live up to what he considers a reasonable standard of comfort, and to disregard altogether the question of what other people are paying for similar services or the sum for which he could obtain the service. Not so, in my opinion, a public authority who adopted the same attitude. In their case they would be disregarding the relevant facts, and would be coming to a decision upon extraneous matter. They would be opening the door to the district auditor to enter and to disallow and surcharge. Considerable latitude should, in my opinion, be allowed before the line is drawn between what is and what is not an expenditure contrary to law. Weight should be given to every legitimate and relevant consideration which could be urged in support of the challenged payment. If, after that has been done, a district auditor finds that a payment has been made in excess of what can be supported on any such ground, then it appears to me that he has no option under the statute but to disallow and surcharge.'

He considered that the word 'exorbitant' which had been used in earlier Acts of Parliament had now been omitted because the principle was well understood. The policy of the 'model employer' was outside their power. The real question was, could they have ascertained the standard of pay for such work as they were paying for? It was their business to pay only that. He re-affirmed the principle of a limit, but again, a reasonable limit, to the discretion of local authorities.

The dissenting Justices, Scrutton and Atkin, L.JJ., also held that statutory but *excessive* payments were disallowable, but they held that the discretion of the local authority needed a broader interpretation. Thus Scrutton, L.J.[1]:

'The question is not whether I should have sanctioned these wages; I probably should not; nor whether the auditor or the Whitley Council would have sanctioned these wages; it is for the Poplar borough council to fix these wages, which are not to be interfered with unless they are so excessive as to pass reasonable limits of discretion in a representative body.'

However, the House of Lords unanimously reversed the decision of the Court of Appeal. Lord Sumner's opinion[2] is of very great

[1] *R. v. Roberts, ex parte Scurr and others*, (1924) 2 K.B. (C.A.), 721.
[2] (1925) A.C. 600.

interest as a statement of the relationship of local councillors to their local community and the law:

'*Bona fide* here cannot simply mean that they are not making a profit out of their office or acting in it from private spite, nor is *bona fide* a short way of saying that the council has acted within the ambit of its powers and therefore not contrary to law. It must mean that they are giving their minds to the comprehension and their wills to the discharge of their duty towards that public, whose money and local business they administer. The purpose, however, of the whole audit is to ensure wise and prudent administration and to recover for the council's funds money which should not have been taken out of them. If, having examined the expenditure and found clear proof of bad faith, which admittedly would open the account, the auditor further found that the councillors' evil minds had missed their mark, and the expenditure itself was right, then the expenditure itself would not be "contrary to law" and could not be disallowed. Bad faith admittedly vitiates the council's purported exercise of its discretion, but the auditor is not confined to asking, if the discretion, such as it may be, has been honestly exercised. He has to restrain expenditure within proper limits. His mission is to find if there is any excess over what is reasonable. I do not find any words limiting his functions merely to the case of bad faith, or obliging him to leave the ratepayers unprotected from the effects on their pockets of honest stupidity or unpractical idealism. The breach in the words "as they may think fit", which the admitted implication as to bad faith makes, is wide enough to make the necessary implication one both of honesty and of reasonableness. It might be otherwise, if the express words were to be read as absolute and unqualified, but if they are to be read as subject to some qualification, I think that this qualification must be derived from the purpose of the statutory audit, which is the protection of the ratepayers' pockets and not the immunity of spendthrift administration. Secondly, in the case and for the purpose assumed, the auditor, when he reviews the accounts, is entitled and bound to use his own judgement as to the wages which would be reasonable under the circumstances. He must do so, in order to measure from that datum the excess of the wages paid, and to decide if the excess is so great as to be evidence of *mala fides*. So it will be also with the Courts of Law on appeal.

(*b*) 'Much was said at the Bar about the wide discretion conferred by the Local Government Acts on local authorities. In a sense this is true, but the meaning of the term needs careful examination. What has been said in cases which lie outside the province of auditors altogether is not necessarily applicable to matters which are concerned with the expenditure of public money. There are many matters which the Courts are indisposed to question. Though they are the ultimate judges of what is lawful and what is unlawful to borough councils, they often accept the decisions of the local authority simply because they are themselves ill equipped to weigh the merits of one solution of a practical question as against another. This, however, is not a recognition of the absolute character of the local authority's discretion, but of the limits within which it is practicable to question it. There is nothing about a borough council that corresponds to autonomy. It has great responsibilities, but the limits of its powers and of its independence are such as the law, mostly statutory, may have laid down, and there is no presumption against the accountability of the authority. Everything depends on the construction of the sections applicable. In the present case, I think that the auditor was entitled to inquire into all the items of expenditure in question, to ask whether in incurring them the council had been guided by aims and objects not open to them or had disregarded considerations by which they should have been guided, and to the extent to which they had

in consequence exceeded a reasonable expenditure, it was his duty to disallow the items. . . .'

Net Effect of Central Audit. One or two cases of this kind in a decade have become of sensational importance, because they have involved social policy where political feeling has tended to run rather high. The social reformer regards the auditor as a person who can cause enormous disturbance and great altercation. He is, in fact, a much more humdrum person. The Annual Reports of the Ministry of Health show that he exercises a much less revolutionary function. Since local authorities are afraid of being surcharged there is usually much consultation between them and the Auditor prior to any doubtful expenditure. This helps to meet the complaint that councillors are worried by the thought that they may be surcharged owing to the rather vague definition of the words ' reasonableness ' and ' excessive '.

Actually, year after year the Auditors discover that several hundred people have made small mistakes, that a few have embezzled money entrusted to them, or kept accounts badly. Many make restitution ; some come before the Courts ; others are not proceeded against. Some surcharges are quashed by the Ministry of Health ; We have constructed a Table to give a picture of the regular activity of the machinery of Audit. We must remember that outside the Municipal Corporations and County Boroughs over £400,000,000 are spent per annum, liable to audit : the amounts disallowed are trivial compared with this. The average per annum in the years from 1923 to 1931 is about £50,000.

Policy. Now let us consider the various issues.[1]

Is there any reason to amend the system of audit ? Nobody would wish to see the system abolished entirely. No internal audit can be trusted with the regular control of legality. Were local councillors and officials perfectly honest, well-acquainted with the law, and obedient to it, then there would be no place for Audit. In the measure in which these things are lacking, Audit is indispensable. The main question, then, is should it extend to such questions as arose in the Poplar case ? What can be urged *against* the system ?

(*a*) It is unduly restrictive of the freedom of local authorities.

(*b*) The character of the restriction is decided by judges trained not in administration but in individualistic principles of law rather hostile to the contemporary progress of State collectivism.

(*c*) The Ministry of Health has the power to spur on Auditors to question the expenditure of socialistically progressive local authorities.

(*a*) In regard to the first question the issue seems to be this. If the Auditor and the Courts are not allowed to question ' reasonableness ', control is reduced to questions of compliance with the statutes.

[1] Comparison of the treatment of Audit in this work may well be made with the treatment by W. A. Robson in his *Development of Local Government*, pp. 335 ff.

Survey of District Audit, 1919–1931.*

Year	1. Total amount of Local Expenditure audited in England and Wales	2. No. of Disallowances and Surcharges with Amounts involved	3. No. of Decisions on Appeals against Disallowance and Surcharge made by Ministry during the Year	4. No. of Cases in which Decision of the Auditor was confirmed	5. No. of Cases in which Decision of Auditor wholly or partly reversed	6. Cases in which Remission was refused—wholly or partly	7. In the remainder of Cases, the Persons concerned were relieved of their Personal Liability	8. Reports made by Auditors re L.G. Accounts Audited
1919–20	Above £107 million†	No. 1,302 involving	No. 143 involving	No. 133 involving	No. 5 ‡ involving	No. 5 involving	No. 128 involving	
1920–1		1,680 ,,	198 ,,	190 ,,	8 ,,	7 ,,	183 ,,	
1921–2		1,541 ,,	189 ,,	166 ,,	23 ,,	10 ,,	156 ,,	1,500
1922–3		958 ,,	135 ,,	121 ,,	14 ,,	6 ,,	115 ,,	
1923–4	£328 millions	828 ,, £37,594	89 ,,	86 ,,	3 ,,	3 ,, £1,118	83 ,, £11,513	
1924–5	£343 millions	838 ,, £61,016 §	67 ,, £4,312	62 ,, £3,918	5 ,, £394	7 ,, £126	55 ,, £3,792 remitted	3,500
1925–6	£381 millions	699 ,, £85,810	70 ,, £15,745	60 ,, £14,704	10 ,, £1,041	3 ,, £119	57 ,, £14,585 remitted	3,750
1926–7	£413 millions	517 ,, £111,974	88 ,, £68,560	82 ,, £68,515	6 ,, £45	16 ,, £1,459	66 ,, £67,056	3,250
1927–8	£480 millions	543 ,, £23,941	90 ,, £84,070 ‖	75 ,, £83,837	7 ‡ ,, £233	14 ,, £2,511	61 ,, £81,326	2,600
1928–9	£469 millions	367 ,, £49,857	50 ,, £39,728	37 ,, £39,156	7 ,, £572	7 ,, £1,032	30 ,, £38,124	4,442
1929–30	£491 millions	431 ,, £21,547	22 ,, £1,739	16 ,, £1,524	6 ,, £215	4 ,, £1,164	12 ,, £420	4,206
1930–1 ¶	About £480 millions	382 ,, £19,790	20 ,, £1,218	16 ,, £1,120	4 ,, £98	3 ,, £318	13 ,, £802	4,405
1938–9	,, £500 ,,	111 ,, £5,380	16 ,,	15 ,,	1 ,,	—	—	—

* Figures obtained in some cases from the *Ministry of Health Annual Reports*, in some from the Ministry of Health by correspondence. Where gaps appear the figures were not obtainable.

† In addition, Poor Law expenditure audited amounted to over £23 millions.

‡ Remainder—5 in 1919–20, 8 in 1927–8—'discharged on the merits' of the case—(6 in 1928–9).

§ In regard to £3,310, 'it appeared that there was little or no prospect of recovery owing to the death or financial circumstances of the person surcharged or other similar causes.'

‖ This figure obviously includes a number of cases in which the decision was given during the year, but the disallowance or surcharge dated from before it. The same in most years.

¶ The report mentions that the accounts of 10,844 Authorities were audited in this year, and 10,748 in 1929–30.

But if then control of expediency as well as legality is wanted, such a kind of audit would throw upon Parliament the duty of wording its statutes so as to cover at least flagrant abuses. The flagrant case, unfortunately, compels safeguards, and these make the law seem harsh. Now surely no one will to-day pretend that Parliament can forecast all such abuses and fully draft the appropriate remedies to operate automatically? Indeed, Parliament daily devolves powers to make Rules and Orders, to supervise individuals, companies, and local authorities, to the Administrative Departments. To resort to Parliament is to resort to an over-occupied, under-equipped, and unadaptable machine. If, then, there is to be any right of central review at all, it had better be in the more sensitive hands of the Department concerned with local government: statutes cannot be made to embrace all cases. But this brings us back to the present system —with an appeal against the Department (or rather, the Auditor) to the Law Courts. Hence, the question of undue restriction of local freedom is ultimately a question for the Courts.

(*b*) Have the Courts been unduly restrictive? Surely, no one who has read the cases and the opinions can think they have. Cases like the Poplar case are exceedingly rare, and there is much hesitation and attempt at reasonable understanding before the Auditor attacks them or the Courts concede the Auditor's charge. Now, could one conceive of a better training of judges to secure local liberty? People have talked as though to train the judges in social science would cause them to be more liberal to local authorities. No social scientist can accept this as likely to be true. Do not social scientists profoundly, even fiercely, differ? If judges were trained in economics, political science, and the history and contemporary working of local authorities, they might be *more*, not less, severe. However, it may also be admitted that matters might be no worse than now. This question is somewhat bound up with the third.

(*c*) It is true that the Minister of Health has the power to instruct the Auditors, and if they obeyed him, every penny of expenditure could be questioned and taken to law. But there is no satisfactory evidence of a malicious, partisan use of this power. Indeed, one Minister has expressly denied its existence as part of the tradition of his office[1]:

'It has been said that the Auditors are my Auditors. They are not my Auditors. They are entirely independent of me. I have never attempted to give a District Auditor instructions as to what he should do; I have never sought to influence a District Auditor in carrying out his duties. It would never have been any use if I had. As a matter of fact the action of the District Auditor has often been the cause of some embarrassment.'

[1] Neville Chamberlain, Debates, Third Reading, Audit (Local Authorities) Bill, 13 Dec. 1927. The whole series of debates on this bill is of great interest.

The Position of the Ministry of Health. The Ministry, however, is not the mere controller of the Auditors, it has additional powers.

The Act of 1875 arranged two avenues of appeal from the Auditor's disallowance. One, which we have discussed, is the appeal to the Law Courts. The second is to the Minister of Health. Up to 1927 there was no limit of money conditioning the appeal to Minister or Courts; in 1927, a limit, which we indicate later, was established. Now the Minister had (*a*) the power to quash the surcharge on legal grounds; (*b*) power to confirm the surcharge; (*c*) power to confirm the decision *but remit the surcharge* on equitable grounds. The Table shows to what a large extent such appeals are made, and the extent to which they are either quashed, confirmed, remitted or paid for out of the Council's funds. The Ministry is in constant communication with local authorities in relation to matters arising out of the Auditors' Reports—about two thousand authorities will be dealt with, matters rectified, accountancy methods reorganized, and year by year about one hundred officials cease to hold office owing to mismanagement disclosed by audit.

Moreover, by the Local Authorities' Expenses Act of 1887, expenses of local Councils must not be disallowed by the Auditor if they have been sanctioned by the Ministry of Health. The object of this power was explained in the Local Government Board Annual Report of 1887–8:

'The power of sanction is intended to be used in those cases where expenditure is incurred *bona fide*, but in ignorance of the strict letter of the law, or inadvertently without the observance of requisite formalities, or under such circumstances as make it fair and equitable that the expenditure should not be disallowed by the Auditor . . . we do not regard the Act as intended to supply the want of legislative or other authority for particular expenditure, or classes of expenditure, and as justifying us in giving prospective sanction to recurring expenses.'

This is repeated in the report for 1929.

This, however, does not make an illegal expenditure legal. It does not prevent ratepayers from instituting proceedings to show the illegality of the expenditure and to get redress. The power merely prevents the District Auditor from being an agent in the disallowance and announcement of such expenditure. In fact, of course, this diminishes the number of actions which would otherwise be taken against local authorities, and in a way extends the power of the local authorities to spend. It is a wise provision.

The Act of 1927. In 1927, the King's Bench [1] held that where an appeal was made to the High Court, the alternative appeal to the Minister of Health is exhausted, and the Minister has no power to remit the surcharge.

[1] *R. v. Minister of Health, ex parte Dore*, (1927) K.B. 765.

In 1927 the Audit (Local Authorities) Act was passed. The Report of the Ministry of Health,[1] commenting upon this change (undoubtedly the result of the Poplar case), was as follows:

'The necessity for altering the law on this matter had arisen through the difficulties created by the adoption by certain local authorities, in connexion with wage and other payments, of a policy based on political and social considerations, in pursuance of which large amounts had been unlawfully expended. Audit law had not been devised to deal with such circumstances, and did not provide either a suitable procedure or a satisfactory remedy. Hitherto there has been an appeal from an Auditor's decision alternatively to the Minister or to the High Court. It was felt to be desirable that the Minister should not be called upon to determine major appeals which might arise upon an Auditor's decision in regard to payments based on such considerations as are referred to above. . . .'

This would have involved an Administrative Department, controlled by a political Minister, in passionate political controversies. Therefore the matter, where serious, was delivered over to the Law Courts and judicial procedure. Thus, appeals against an Auditor's decision involving sums *in excess of £500* must be made to the High Court only. The avenue of appeal to the Ministry was here closed. Appeals relating to amounts of £500 and under may be made to either Court or Minister, and either of these might 'confirm, vary, or quash'. This adds to the Court the new right to 'vary' the decision of the Auditor.

Further, Court and Minister are given an equitable jurisdiction (hitherto possessed only by the Minister) to declare that a person surcharged 'acted reasonably or in the belief that his action was authorized by law'. He may be relieved from his financial liability.

Moreover, the Act added an additional penalty to the pecuniary ones involved in surcharge, a penalty designed to deal especially with deliberate 'advanced' local politics. Where the amount involved is over £500 a surcharged person not obtaining the declaration mentioned above, becomes disqualified from being a member of any local authority for five years.

Finally, following contemporary criticism of the growth of the judicial power of Administrative Departments the law provided that:

'(*a*) The Minister is enabled to state any question of law arising in the course of an appeal in the form of a special case for the opinion of the High Court, and he is bound to do so if so directed by the High Court; and

'(*b*) any appellant or applicant may apply for a personal hearing by a person appointed by the Minister for that purpose.'

[1] *Annual Report*, 1929, p. 135.

CONCLUSION

It seems to me that the law and organization regarding audit are not oppressive to the local authorities. They provide beneficial guarantees to the whole country, and to the minority in each local community, without unduly curbing the independence of the local majority.

However, if it is still felt that the Minister may take sides and embarrass progressive local authorities (though he could hardly find the time to do it),[1] and if it is still believed that the Courts ought not, by reason of the individualistic bias of the Common Law, be allowed to judge of the reasonableness of public administration, though they are only called in rarely and as a last resort, there is a remedy. We could adapt the model of the French *Cour des Comptes*, or the Prussian *Rechnungshof*, special courts of accounts, which have jurisdiction over local as well as central accounts.[2] As law courts they enjoy judicial independence of the politicians and administrative departments. They are, moreover, composed of judges educated in economics, political science, and 'public' law as a special body of law relating to public administration, in addition to their usual law studies. Yet it ought not to be overlooked that both in France and Germany there is audit severer than our own, in the sense of 'economy and reasonableness' as well as legality, by the intermediate sanctioning local authorities who act on behalf of the State.

Or we could enlarge and suitably organize and empower the Comptroller and Auditor-General's Department; and why should there not be an annual or biennial Committee on Local Accounts like the Committee on Public Accounts which serves the House of Commons and the public? Such a body, if not the Ministry of Health, might well report from time to time upon accountancy problems, and financial organization, and the revelations of comparative costings analyses. Too little has been done in the past in these matters; one such comparative analysis, that on Refuse and Street Cleansing[3] has already had a revolutionary effect. The Board of Education's

[1] E.g. Miss Susan Lawrence's answer to Mr. Neville Chamberlain's argument previously cited: *Debates*, Col. 2160: 'According to the Act, the Minister's powers over the Auditors end with his prescribing certain technical rules, so that the Minister can say, "These are not my Auditors" with perfect truthfulness in one sense; but they are "his Auditors" in the sense that he chooses them, that he determines their salary, and that they can either remain junior district auditors all their lives, or, at his good pleasure, climb up to the very heights of the Civil Service. In that sense they are "his" auditors, and there is no example of civil servants with this ambiguous status being entrusted with these powers in any legislation that I know of except in one Act of Parliament passed by this House. . . . This is precisely the position of the appointed guardians under the Guardians' Default Act.'

[2] For France, cf. Allix, *Traité-Élémentaire de la Science des Finances* (1931), 410 ff.; for Germany, cf. Blachly and Oatman, *The Government of Germany*, .

[3] *Collection and Disposal of Refuse and Street Cleansing by Local Authorities*, 1925.

analysis of the cost of education per child in Elementary Schools is also salutary.[1] Further, the Committee on the Expenditure of Local Authorities,[2] beset with the problems of an unparalleled economic depression, again and again urgently reiterates such suggestions as this:

'We have in various places in our report drawn attention to the wide variation of expenditure on comparable services administered by different authorities, and we have no doubt that closer administration by local authorities and a more careful check by the Government Departments would bring about very large economies without in any way impairing the service. One of the most potent means of securing more effective administration lies in the proper use of statistical returns and costing systems. . . . We are, however, not satisfied that sufficient use has been made by the departments of the central government or by the local authorities themselves of the very varied and complete information which has been gathered together and thrown into statistical returns and other forms. . . . We regard it as a most important function of central Departments, that where wide differences are found in the cost of what would appear to be comparable services, definite action should be taken to discover the reason for these variations, and to assist local authorities whose expenditure is high to reduce that expenditure by closer administration, and by adopting the practice which has been found successful and economical by other authorities.

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[1] Board of Education, 1932, *Cost per Child, Elementary Education.*
[2] *Report*, Cmd. 4200 (1932), p. 18.

CHAPTER XIII

INSPECTION IN GENERAL

THE Inspectors have been called the 'eyes and ears' of Whitehall. But, to-day, they do not merely see and hear on behalf of the central authority, they often speak and even act for it. The 'principle of inspectability' is generally regarded as the characteristic English bond between the central and local authorities. There are other bonds, as we have seen, but this is accounted of principal importance, and, in comparison with foreign institutions, distinctive of the English system. This view is sound. The peculiar significance of inspection resides in three facts; its intrinsic value, the extent of its employment in the English as compared with foreign systems, and its relationship with grants-in-aid.

Here are 2,000 major local authorities, each responsible for an extensive and complicated series of functions, involving the expenditure of hundreds of millions, and employing hundreds of thousands of officers. It has been admitted that central control and guidance are necessary and beneficial as well for each local authority as for the nation as a whole. The statutes provide it. How can the central Departments even *know*, let alone affect, activity and expenditure, without actual presence among the authorities? The Departments must, in fact, be mobile and local to accomplish their work. Visualize about 200 separate Police Forces, nearly 150 separate Public Assistance Authorities each with a group of institutions, some 2,000 Health Authorities each responsible for a cluster of health services, over 300 Education Authorities with about 21,000 Elementary Schools, 1,360 Secondary Schools, and 550 Technical Schools, about 150 major and many hundreds of minor Road Authorities! One can only be dismayed at an attempt to superintend without personal and local presence in some form. The possibility of requiring oral or written reports from the local authorities themselves, cannot bear consideration for reasons which must have become quite plain from previous discussion. To get local authorities to provide returns and reports, unless there is indisputable legal compulsion, is nearly as hopeless as getting blood from a stone—it means the hire of clerks!

The Personal Touch. *Contact through Inspectors has the out-*

standing merit of flexibility and manifold adaptability. Administrative action by the central authority, conducted in writing, whether in reference to the authorization of activities, or the standard of their efficiency, would tend to resolve itself into a series of Yes or No-hard and fast rules, graded perhaps, but hard and fast. But, just as in life generally, the appropriate action is rarely one extreme or the other; there are many, many degrees between Yes and No. Through the Inspectorate it is possible to qualify the response of the central authority. On the Inspectors is necessarily devolved, whether by law, regulation or practice, the power of approval or disapproval of the local administration of the law. What is more, the power is exercised on the spot, in relation, not merely to a report of the facts, but to the immediate evidence of the senses, as affected by all the local circumstances of personnel, environment, history and custom.

Nor is that all. It is important to avoid the process of communication in writing so far as this is possible. A tone of acrimony is apt to enter into an exchange of letters. There is a universal truth in Lord Morley's observation, made when he was Secretary of State for India and, necessarily, in written correspondence with the Viceroy: 'The worst of all dispatch-writing is that it is so apt to engender a spirit of *contention*, both in the man who writes and still more in the man who reads and has to reply. He naturally throws himself into a defensive, or even an aggressive attitude, and he asks for "a not unfriendly access to your minds."' [1]

Finally, even were it possible to maintain a spate of letters adequate to each case, each additional dose increases the recipient's resistance; but the mere presence of a person is enough to be compelling, even if he says nothing. Oral suggestion is very powerful, for there is the effect of character as well as brains.

Directness of Contact. Yet this does not at once imply the existence of inspection as exercised by the British Inspectorate. For its main feature is its *directness*; the Inspectors are the immediate servants of the central Ministries. But both in France and in Prussia the superintending authority of the State is executed not entirely or mainly by Inspectors acting directly for the central government; it is applied *indirectly* through intermediate authorities like the *Provinz* and the *Regierung* in Prussia, and the *Département* in France. On the Continent, the State acts upon the local authorities through a hierarchy of intermediate authorities, and, in the main, inspections are inspections of the intermediate authorities. In Britain, inspection is direct; there are no intermediate authorities; and, in fact, as we have amply seen in previous chapters, the smaller authorities furiously resent the very idea of intermediate supervising bodies, and emphatic-

[1] Morley, *Recollections*, II, 221, 222.

ally prefer direct connexion with, and judgement by, the central Departments. Obedience in public, as in private life, is more readily rendered to a distant power, and the more reluctantly to those whose proximity enables us to know their passions, egoisms and ignorance.

Inspection and Grants. Inspection is linked with the grants made by the central authority. The object is efficiency: the surest testimony to efficiency is the Inspector's report, the least annoying urge to efficiency is the Inspector's advice, and the most potent sanction of efficiency is the withdrawal of a grant on the Inspector's report.

Now, while the grants operate as the sanctioning force behind the power of the Inspectors, it must not be believed that the grants of themselves produce efficiency of inspection. The efficiency of inspection depends, according to the Association of Inspectors of the Board of Education,[1] upon four factors: (1) Number; (2) Skill; (3) Frequency of Inspection; and (4) Independence of the authorities to be inspected. The actual history of inspection reveals yet other factors: (5) The exact definition of the Inspector's purpose by the central authority, and the adequacy of the legal means of getting information; (6) General organization—such as the areas of inspection, conference between Inspectors of various areas, a relationship of confidence and frequent communication between a properly organized general staff at headquarters and the Inspectors, and amicable relations between Inspectors and the associations of the teachers, police, and others actually inspected.

Let us now simply indicate the main cases where grants and efficiency are linked together, especially where inspection is involved. Previous to the Local Government Act of 1929 there were a large number of grants for specific purposes, the evolution of which we discuss later. Since 1929, the principal grants are for Police, Education, Roads, Housing, and for a body of services from the General Exchequer Contribution. The Police Grant, equal to 50 per cent of the cost of the Police, is given on the award of a certificate of efficiency by the Inspectors of the Constabulary. The Education Grant, founded upon a complex formula, does not fall below 50 per cent of the approved expenditure and sometimes rises to 70 per cent or 80 per cent thereof, and is given to schools which satisfy the Board of Education regulations.[2] The Code of Regulations says: 'In order to be recognized, a school or centre must comply with the requirements of the text of these regulations; and if it does not so comply recognition may be withdrawn.' 'Recognized,' according to the definitions of the Board, means 'recognized by the Board for the purposes of payment of grant.' Then the third article of the Regulations says:

[1] Statement before Royal Commission on the Civil Service (1929–30), *Minutes*, p. 495.

[2] But by the National Economy Act, 1931, the Statutory minimum was removed.

Every school or centre must be kept on a satisfactory level of efficiency and must be open to inspection by an inspector.' Regulation 10 (*c*) requires that information as to the curriculum, syllabus and time-table must be accessible to the Inspector. The Education Act of 1921 says:

'The Board of Education shall, subject to the provisions of this Act, by regulations provide for the payment to local education authorities out of moneys provided by Parliament of annual substantive grants in aid of education of such amount and subject to such conditions and limitations as may be prescribed in the regulations, and nothing in this Act of Parliament shall prevent the Board from paying grants to an authority in respect of any expenditure which the Authority may lawfully incur.

'The grant is conditional upon the Board being satisfied that the Authority—

(i) have performed their duties under the Act;

(ii) have complied with the requirements, so far as applicable, of the Regulations of the Board relating to elementary education, including these Regulations; and

(iii) have supplied punctually such information and returns as the Board require.

'If the Board are not satisfied on any of these matters they may withhold or make a deduction from the grant.'

The Act of 1929 left the 'classification grants' [1] towards Class I and Class II roads outside London and the County Boroughs untouched. The percentage grants for the construction of new roads and bridges, and of major improvements on all Class I and Class II roads wherever situated, and percentage grants for the improvement of unclassified roads were also untouched. The usual grants are 60 per cent towards the Class I, and 50 per cent towards Class II roads respectively. The 'construction' grants vary in size, and are sometimes 70 per cent, sometimes much more, of the total cost. The conditions of the grants are that the Ministry is satisfied that the road policy is nationally and locally beneficial, and not extravagant. These conditions are examined by the Road Divisional Engineers of the Ministry, of whom there are six. In the words of the Ministry [2]

'for the purpose of facilitating the general supervision and co-ordination of road works throughout the country, for the examination of applications for grants, and for advising Highway Authorities as to the most suitable works to be undertaken by them and the most economical method of attaining the desired results, England and Wales have been divided into six divisions, each under the charge of a Road Divisional Engineer who is able to help in personal contact with the authorities in his area and thus give close attention to local needs and problems.'

The Health Grants. Up to 1929 there were separate grants for the services of maternity and child welfare, treatment of tuberculosis,

[1] That is to say, grants which are given in aid of maintaining, or keeping the roads in good repair, but not, save in minor matters, for new construction.

[2] *R.C. on L.G.: Minutes*, II, 387.

treatment of venereal disease, welfare of the blind, and treatment of mental defectives. In each case the grant followed efficiency, and efficiency was under the superintendence of the Ministry of Health's Inspectors. The Local Government Act of 1929 abolished these separate grants, constituted a fund of about £45,000,000 to be divided among the local authorities according to a formula, there being no specification of the amounts to be applied to particular items of expenditure. This necessarily dictated a change in the nature of the conditions of the grant, for the amount of the grant goes to each authority as a block sum. Under the old system the grant was for an individual service, and no reduction of a grant, say, on tuberculosis, could be undertaken, because there was a deficiency in maternity and child welfare work, or refusal to commence any other grant-aided service. The new conditions make it possible for the Minister to reduce the block grant for an individual deficiency in any of the body of public services; and it may extend to coercion to commence a service which is voluntary, in spite of the fact that this has been deprecated by one Minister of Health.[1] Let us look at the statutory conditions.

'The Minister may reduce the grant payable in respect of any year under this part of this Act to any council by such amount as he thinks just, if—

'(*a*) He is satisfied, either upon representations made to him by any association or other body of persons experienced or interested in matters relating to public health, or without any such representations that the council have failed to achieve or maintain *a reasonable standard of efficiency and progress in the discharge of their functions relating to public health services*,[2] regard being had to the standards maintained in other areas whose financial resources and other relevant circumstances are substantially similar, and that the health or welfare of the inhabitants of the area of the council or some of them has been or is likely thereby to be endangered; or '

'(*b*) He is satisfied that the expenditure of the council has been excessive or unreasonable, regard being had to the financial resources and other relevant circumstances of the area; or

'(*c*) The Minister of Transport certifies that he is satisfied that the council have failed to maintain their roads or any part thereof in a satisfactory condition:

'Provided that, wherever the Minister makes such a reduction, he shall make and cause to be laid before a Parliament a report stating the amount of the reduction, and the reasons therefor.'

The width of discretion given to the Minister, and the potential number of 'complainants,' are astounding. The final proviso, of course, would prevent rash attempts at disciplining local authorities, for the report containing reductions of grant would no doubt be sharply criticized in the House of Commons. The total effect of the

[1] Cf. footnote 1, p. 320.

[2] Section 134 defines 'Public Health Services' to include 'services relating to maternity and child welfare, lunacy, and mental deficiency, and the welfare of the blind'. It includes also services under the Public Health Act—i.e. tuberculosis, and venereal disease, and many other services.

new arrangement is to give the Minister control over any public health service provided by the public health statutes, and to enable him not only to keep an existing service up to a standard of efficiency but to urge 'progress', and to penalize deficiencies in any branch of the health services by reduction of the block grant from a trifle to the whole of it. The term 'progress' may play a very great part in the future evolution of local government. An even more formidable power is the power to reduce a grant because the expenditure of the Council is deemed 'excessive and unreasonable'. This has tremendous potentialities by the side of which the powers of disallowance, surcharge and remission under the law of audit are as nothing.[1]

The Effect of Loss of Grant. All these conditions, then, support the authority of the Inspector—in some cases his report is required by statute, in some simply by the practice of administration.

Yet, as we have shown, it is a mistake to imagine that the excellence of Inspection is the effect of the pleasure and pain residing in grant power. It is quite conceivable that grants might be given with never a reduction, precisely because Inspection is inefficient. It might be superficial. A grant might be reduced or withdrawn for the same reason. The grants are the ultimate sanction of central control but the excellence of Inspection depends on the Inspectors.

The Services of the Inspectors. The history of Inspection shows that its services are threefold: (1) inquisitorial and protective, (2) ameliorative, and (3) administrative. In the first place, and from the outset, the Inspectorate was deliberately set to watch over the efficiency of the service administered by the local authorities in order that Parliament's intentions should be uniformly carried out,[2] and that grants to implement them should not be received by authorities who did not fulfil the conditions. However occasional the visits, the advent of the Inspector, not least when notified in advance, caused, and causes, a renewal of effort, and an overhauling of practice and ideas.

Don't You Think ? Secondly, the initial skill of the Inspector, the authority derived from his status, the knowledge acquired by

[1] Mr. Neville Chamberlain, 23 Jan. 1929 (*Hansard*, Vol. 224, Cols. 2, 3): 'I cannot force local authorities to give adequate maternity and child welfare services. But if I had a lever before in being able to offer them something on condition that they spend a little themselves, I would have a much more powerful lever under this proposal, for I could take away from them that which they had got and there is no limit to the amount of their grant which I could take from them. . . . What I am saying is that the Minister will have a lever which he never had before and, quite probably, instead of having to put that lever actually into operation he will only have to whisper into the ear of the local authority "Clause 86" and I think it will be unnecessary for him to go to extremities because no local authority is going to resist a reasonable demand for adequate services of this character, and no local authority is going to risk the loss of a grant which will in future form a large and, in some cases, a very large part of its whole income.'

[2] *Report*, Poor Law Commissioners, 1834; Reprint, 1894; pp. 230 ff.

extensive observation and sometimes by intensive investigations, his mere mental capacity as a man, and as a neutral outsider, gave him the power to urge on the improvement of the services. He brought to bear novel standards and the most recently discovered knowledge on matters to which the local administrator's mind had become habituated and narrowed. Here the good is done, not by aggressive commands, but by an appeal to the administrative broad-mindedness of the local official or, it may be, the Chairman of the Committee. Administrative improvement has been effected far less by the direct advice, 'You ought!' than by the subtle flattery of the question, 'Don't you think . . .?' The one is as between superior and inferior, the second between equals.

Thirdly, the field of central approval has, in recent years, grown so vast and involved, especially with the rise in the amount of the grants, that to avoid serious delay and misunderstandings and a congestion of business in the centre, a considerable amount of decision has been devolved upon the Inspectors.

CHAPTER XIV

INSPECTION IN POOR RELIEF; PUBLIC HEALTH; ROADS

I

INSPECTION IN POOR RELIEF

WE have a century's continuous experience of Inspection in Poor Law Administration. This branch of inspection is the oldest, and goes directly back to the famous Poor Law Report of 1834 and the administrative revolution to which it gave rise. Neither the Report nor the Poor Law Amendment Act entered into details regarding *inspection*; the first simply recommended, while the second gave, power to appoint Assistant Commissioners. Yet the value of personal agents in the localities had been amply proved in the course of the Inquiry:

'There is no comparison', said the Instructions of the Commissioners to the Assistant Commissioners, 'between the information afforded by them [written questions and answers] to the Central Commissioners, and that could be obtained if it were in their power to sift the facts and the opinions contained in the different replies by the inspection of documents and cross-examination of witnesses; if they could ascertain the state of the poor by personal inquiry among them, and the administration of the Poor Law by being present at vestries and at sessions of magistrates.'

The whole tenor of the Report of 1834 was that there should be strict and detailed central control. At one point, indeed, the Report envisages complete centralization,[1] parting from the thought with the consideration that uniformity of standard in administration might be obtained without so extreme a measure. Nevertheless, the power given to the central authority to control the Boards of Guardians was exceedingly detailed and penetrating and the Assistant Commissioners, later known as the General Inspectors, were and remain the agents of the central authority in such control.

Numbers and Distribution. At present there are one Chief General Inspector, twelve General Inspectors, and fourteen Assistants. All, save the Chief General Inspector, are allocated to fourteen Poor Law Inspection Districts. The purpose of this geographical distribution of the work was explained by Mr. James Stewart Davy, a former

[1] Report cited, p. 244.

Chief General Inspector, in evidence before the Poor Law Commission of 1909.

'They (that is, the Districts) are planned for the purpose of the saving of travelling expenses and the saving of time. Then also we like to get certain industries in one man's district as far as we can, that is to say, we like to have one man for Yorkshire and one man for Lancashire.' [1]

In other words, it is desirable, if a proper judgement is to be made regarding efficiency, that various units of administration in like circumstances should be compared with each other. Inspectors become concerned with a survey of regional causes of efficiency and deficiency and local variations within a common region, rather than comparisons between separate places which may have the same status and legal powers but the character of which is otherwise not comparable. Allocation to a particular District tends to soften the effect of the fact that the Inspector is an agent of London, and to produce a neighbourly relationship between the Inspectors and the local authorities and officials. Similar considerations and arrangements are effective in the other branches of inspection.

The Authority of the Inspectors. What authority have the General Inspectors? The authority of the present Inspectors rests, in the first place, upon the Poor Law Act, 1930, Section 9 (1 and 2).

'The Minister shall, subject to the consent of the Treasury as to number, by order appoint Inspectors for the purpose of assisting in the execution of this Act, and may assign to the Inspectors such duties as the Minister may think fit, and the Minister may remove any such Inspector. An Inspector appointed under this Act shall be entitled to visit every workhouse or place wherein any poor person in receipt of relief is lodged, and to attend any meeting of a County or County Borough Council or Committee or Sub-Committee held for the relief of the poor and to take part in the proceedings, but not to vote at the meetings.'

The Inspector has ample legal power to make effective this authority, for in the case of *R. v. St. Pancras*, in 1858,[2] the Court issued a *mandamus* to a Board of Guardians (which then, and until 1929, was the Poor Law Authority) to compel them to allow the Inspector to inspect and measure a workhouse. It was laid down that the Inspector may do what is necessary to secure the information required by the Minister.

There is one other factor of extreme importance in the power of the Inspector. The Minister may cause such inquiries to be held as he may consider necessary or desirable for the purpose of the Act and the valid orders made under it.[3] The Minister, *and any Inspector* properly appointed, may require the attendance of any person when and where he wishes, to give evidence or to produce documents in his possession or power relating to any matter in question at the

[1] *Minutes of Evidence*, Q. 1,738. [2] 22 J.P. 384.
[3] Act, 1930, Sect. 160.

inquiry. Minister and Inspector have the power to take evidence on oath, to administer an oath for the purpose, or, indeed, require the person examined to make and subscribe a declaration of truth. But no person can be required to answer such a summons more than ten miles from his place of abode. Persons who refuse or neglect to attend, or to give evidence, or who wilfully alter, suppress, conceal, destroy or refuse to produce any books or other documents required, are guilty of misdemeanour. The Minister may appoint for a short time any person to act as an Inspector to conduct a special inquiry.

These powers, then, are sufficiently formidable. But it should be remembered that it is in the main a power of investigation and consultation, and by no means a power of *correction*: correction is the business of the Minister. Of course, these powers as they appear in the Act of 1930 go back to certain of the principal enactments regarding Poor Law administration. They are not new.[1]

The question now is how the General Inspectors use their powers. This can be answered from the Minutes of Evidence and the Reports of the Royal Commission on the Poor Laws of 1906–9, and from the few published Annual Reports of Inspectors to the Minister. The duties of an Inspector are to attend a meeting of every authority in his district at least once a year. He must inspect and report upon workhouses and all other Poor Law Institutions. He must advise as to communications bearing on current Poor Law work received from his district. He holds inquiries. This implies a regular round of duties, including conferences with chairmen of local Councils and various officials.

The Inspector has to bear in mind the statutes relating to Poor Relief and the General and Special Orders issued by the Ministry of Health applying in detail (in extreme detail, indeed), the general principles, down to the amount of bread and gruel which may be provided for a tramp's breakfast. It is his business to see that the will of Parliament and of the Ministry is obeyed in all these respects, and by all the local authorities, every institution, school, home, casual ward, at the prescribed standard. He reports annually to the central authority in general terms, but singles out exceptional deviations, whether good or bad. Since the Minister himself is by law [2] prohibited from interfering in particular cases, the Inspector is similarly restrained, but particular cases can be affected by a well-timed discussion of principle. All this comprises, as it were, the *inquisitorial* element of inspection. But valuable and indispensable as this is, there is another side to inspection which is not less important. Inspectors are advisers and consultants.

[1] Cf. Webb, *English Poor Law History*, Part II, Vol. I; cf. Jennings, *The Poor Law Code* (1931).

[2] Cf. Poor Law Act, Sect. 1.

The Inspector is welcomed by the local authorities as a consultant on Poor Law problems in relation to cases of special difficulty, and in relation to general principles which he is able to master and expound because he has so wide a range of comparative experience.

'I should like to say that an efficient Inspector should be looked upon by the Guardians as their confidential adviser and friend. He should so direct his conduct that they should turn to him in case of any emergency, and if he does that he is able, as a matter of fact, to settle a great many questions on his own initiative without troubling the Board. My view of the best Inspector is that he is the man who represents the view of the Local Authorities at Whitehall as much as he does the views of the Whitehall authorities in his district.' [1]

It must be remembered that such an authority is not based upon any powers, but is derived from an enlightened dissemination of mastered experience. If he discovers deficiencies in local administration the first step is not to complain to the Ministry, but to secure amendment by friendly discussion, and by tactful reference to the best practices of other places. On its highest plane, the art of inspection is to awake doubts about the validity of each local authority's settled conviction that it is a model of perfection. Indeed, it not seldom occurs that the Inspector is sent for by the local authority.

The influence of the Inspectors springs mainly from their value as experts taught by experience, and their dissemination of comparative practice. Where this fails of effect either through the obstinacy or ignorance of a local authority, through some serious breach of the law, or continued resistance to the reasonable demands of the Inspector acting as the agents of the central authority, there is nothing for it but to appeal to the Ministry of Health to take action. In major issues especially forceful steps must be taken, but in minor issues the Inspector is given authority by letter to settle the matter at once. Where the central authority directly intervenes it lays down doctrine or admonishes; the Inspector smooths over minor difficulties by verbal discussion. Obviously, the consultative value of the Inspectors is enhanced by conferences between them, and there was a custom of a week's conference of Inspectors in London, partly convivial, and partly for discussion of common problems, and informal conferences with the political and administrative chiefs of the central authority. These conferences were discontinued towards the end of the nineteenth century, but were resumed about 1911. They are now held every six months, and sometimes more often. There is an annual conference held by the local authorities themselves and Regional Conferences of Public Assistance Committees, and here the Inspectors attend but do not participate. Further, there are official local conferences. Finally, the Inspectors often come to Whitehall severally for the determination of policy on novel and special cases.

[1] *Royal Commission on the Poor Laws*, 1905–9, *Minutes of Evidence*, Q. 1,602.

In evaluating the system of Poor Law inspection there are three things which deserve a short examination. The first is the general outlook of the Inspectors. This is very largely determined by the ideas and sentiments of Parliament and the central authority, professing to represent public opinion and the recommendations of social scientists. These have suffered variation. From 1834 to about 1885 the Poor Law Inspectors were responding to the principles of 'deterrency' and 'less eligibility'. They had to see that the Guardians kept strictly within the austere rules permitted by the *laissez-faire* economists and the middle and upper classes who paid the poor rates. Workhouse relief on rigorous conditions was the central element in this régime. The objects being narrow and specific, it was not difficult to recruit, almost at random, the appropriate Inspectors.

From 1885, however, with the encouragement of the Local Government Board, the more progressive Guardians began building a comprehensive system, not so much of relief, as of reliefs, on more generous principles than deterrency and dispauperization. The Guardians provided hospitals, maternity homes, institutions for the epileptic, sanatoria for the phthisical, homes for the aged, a variety of types of homes, schools and nurseries for infants and children, and farm colonies for the able-bodied. The Poor Law authority was developing into a universal provider, through a large number of specialized services, for a particular class of the population. To adapt its method of inspection to the new situation, the central authority would have required to substitute for its body of General Inspectors a co-ordinated body of men, each a master of a special technique. The necessity is evident when one reflects upon the immense amount of physical, psychological and sociological science involved in the proper treatment of each particular class of the destitute. But the Minority Report of the Poor Law Commission points out that,

'Every Board of Guardians embarking on one or other of these enterprises finds in the Inspector either amiable tolerance or silent disapproval, but never the guidance, the suggestiveness and the effective control that come only with superior knowledge.' [1]

It ought to be said in slight modification of this general description that the inspection of the educational activities of the Poor Law authorities was transferred to the Board of Education (and, incidentally, this provided the opportunity for the employment of lady inspectors in branches where men were less competent or desirable).[2] Further, that the expansion of the hospital branch of the Poor Law caused the appointment of two Medical Inspectors of Infirmaries and Workhouse Sick Wards.

[1] Chap. XI, pp. 367 ff.
[2] *Report, Royal Commission on Poor Laws*, Vol. I, p. 126.

This non-specialization of the Poor Law Inspectorate resulted in lax recruitment. No special qualifications were established, although in practice people were appointed who had had Poor Law experience either as members of Boards of Guardians, Assistant Inspectors, or permanent officials of the Local Government Board. Both the majority and the minority of the Poor Law Commission recommended established qualifications (to include a theoretical knowledge of the history and problems of Public Assistance) and a period of probation. Before appointment as General Inspectors they should as a rule be Assistant Inspectors.

There are ample signs also that there were not a sufficient number of Inspectors, for the Commissioners of 1905 doubted whether a single visit in the year could give an Inspector an intimate knowledge of the manner in which Guardians administer relief or have any considerable influence upon their policy. One of the Inspectors stated in evidence that he had not time to devote to the examination of the causes of pauperism, that the number of Institutions to be inspected took up most of the time, and that Inspectors were out of touch with the details of Outdoor Relief.

Since 1909. How have these various factors fared since 1909? There has been no new departure in the method of recruitment of Inspectors except, perhaps, that intermediate officials of the Ministry of Health are promoted to the rank of Inspectors more than formerly. There has been no significant increase in numbers, save in relation to the added duties thrown on the Public Assistance Authorities since 1931 by the 'Means Test'.[1] There has been some diminution of the amount of work coming under their survey owing to the Old Age Pension Acts, the establishment of the Labour Exchanges, and the institution of National Health and Unemployment Insurance. Each of these great measures relieved the Poor Law Organization of potential obligations, and furnished specialized treatment outside the Poor Law. Further, the establishment of school clinics, the feeding of necessitous children at school, the maternity and child welfare clinics and extensions of the public health services, also conduced to the same end. Yet there still remained an enormous core of Poor Law services serving over one million people per year who came under the surveillance of the General Inspectors.

No real change could come about until the whole notion and mechanism of a single comprehensive Destitution authority was broken

[1] The Public Assistance Committees have to examine the 'means' of all those insured unemployed whose period of covenanted benefit has finished, and who therefore have to apply for 'transitional' benefit. The anomaly has occurred in many places where the Committee, in its capacity as an Unemployment Committee, has refused 'transitional' benefit, or at least reduced it, but, in its capacity, as the Poor Law authority, has had to make up the deficit in the applicant's income by granting him poor relief!

up. If, as the Minority Report of the Commission of 1906 recommended, the various classes of the destitute were sorted out and each transferred to the normal appropriate department of the County Council or County Borough (for example, the sick to the Public Health Committee and Department, the children to the Education Committee and Department, the feeble-minded to the Mental Deficiency Committee and Department, the vagrant to some other branch of the local authority), the supervision and inspection would be rationally redistributed to the particular central Department having jurisdiction in each of these fields. Then, instead of the Poor Law Division of the Local Government Board and its General Inspectors, there would be the Board of Education, the Home Office, the Ministry of Labour, the Board of Control, and the Ministry of Health. Each of these, supervising its own particular branch of local administration, would send out its own special Inspectors.

Since 1929. The Local Government Act of 1929 went some way towards stimulating such a development. It permits the County Councils and the County Borough Councils, which have taken the place of the Boards of Guardians, to give any assistance it has the power to give, either by way of Poor Relief, or by powers under the Public Health Act, 1875; the Local Government Act, 1888; the Mental Deficiency Act, 1913; the Maternity and Child Welfare Act, 1918; the Blind Persons Act, 1920; the Public Health (Tuberculosis) Act, 1921; the Education Act, 1921. Such arrangements, however, are permissive, and, as we have shown, authorities have not been quick to seize in full this opportunity of an enlightened care for the unfortunate.

One thing the Act of 1929 definitely accomplished: it reduced the number of local authorities responsible for Poor Relief from 642 to 145, by transferring responsibility from the Boards of Guardians to the 62 Counties and the 83 County Boroughs. In so far as the Inspector is concerned with many lines of policy and principles, his task is enormously lightened, for policy-making has been concentrated in about one-fourth of the former number of authorities. The County Councils are obliged to decentralize the execution of policy to local Guardians Committees—and while this somewhat discounts the concentration of inspection, there is still some gain as these, according to the schemes approved by the Ministry of Health, number less than one-half the previous number of independent Poor Law Unions. In time, also, the number of separate institutions will diminish. Otherwise, the General Inspectors still command the field. Scrutiny of their published reports shows that they still operate much as in 1906. But with the new, larger authorities they cannot intervene so heavily as with the old Boards of Guardians, and the Ministry of Health follows the policy of lesser interference. The will of Whitehall is more impressed upon the Inspectors than before 1914, and they are

somewhat less free as observers and spokesmen. There is very close attention to the legal conditions of relief; there is occasional condonation of slight deviations from the regulations to allow for local and temporary circumstances; there is strict vigilance on administrative methods such as workhouse arrangements and the classification of the destitute. The Inspectors, to take a few examples, observe the work of voluntary charitable organizations; they seek to analyse the causes of the rise and fall in the amount of destitution in their area; they philosophize upon the deficiencies of control over the spending of money given by way of Outdoor Relief; they mark the general progress of local government, and so on. The prevailing attitude of mind, however, is the attitude that the condition of a pauper ought to be, on the whole, less eligible than that of an independent labourer, and that the business of the Inspector is to inspect with severity on this principle, as implemented in detail in the Relief Orders of the Ministry of Health.

II

PUBLIC HEALTH

Inspection in Public Health. As soon as a Central Board was established in 1848 local investigations for its purposes necessitated the appointment of Inspectors. They were mainly sanitary engineers and usually local residents. By degrees in the late sixties permanent inspectorships were established, recruited from specialists in various branches of medicine. Extensive surveys of special subjects were made, for example, of vaccination and diphtheria, and the studies had a most important effect upon legislation and administrative practice; but the Inspectors were also concerned with general supervision of sanitary administration. Sir John Simon,[1] the Chief Medical Officer, describes the motives which led to their appointment, especially of the latter, and incidentally characterizes the principles of inspection:

'Granted, as of common sense, that all existing laws of the country are to be obeyed, and that, so far as administrative duties and responsibilities are delegated to local authorities, the central government is bound to see that the administration is honest and effective—surely the law which concerns the public health would not be a privileged field for disobedience or evasion, nor even for failures due to want of knowledge and skill. Evidently, therefore, from the date of the new law, the statutory inquiries of the Medical Department must of necessity more and more tend to be inquiries into the local administration of that law intended. Making such inquiries we might no doubt from time to time come on a case of wilful and obstinate sanitary malfeasance against which we have to take the invidious position of public complainant: but we knew that, with infinitely greater frequency, the cases claiming attention would be cases of imperfect local enlightenment, imperfect often even as to the provision of the law. Still more often imperfect as to the connexion between unfulfilled law

[1] *English Sanitary Institutions* (1888), p. 315.

and existing local excesses of disease: and we had reason to believe that, in this very large class of cases, the local authorities, which ought to be instituting reforms in the spirit of the new law, would often be most glad that the inquiring central Department should give them its skilled interpretation of the local sanitary needs. . . . Any one, who, during the then sittings of Parliament, observed the questions which were occasionally asked of Ministers with regard to local threatenings or excesses of disease, or who read the ordinary newspaper comments on local epidemics, could see that such questioners and commentators assumed the central government to be a real supervisor of local sanitary administration, ready, where needful, to assist with skilled advice, and ready, in last resort, to enforce the law'

Of course, the Royal Sanitary Commission saw that central inspection was a crucial element in good public health administration. It found from the evidence of the Secretary to the Local Government Act Office that there were not enough Inspectors to do the work adequately—'and yet, in the opinion of our most competent witnesses, effective inspection is the key to the working of the whole machinery'.[1] It saw in an inspectorate of varied technical attainments the means of bringing the Chief Medical Officer into relation with the thousands of medical officers in the country, of providing external pressure and vigilance to authorities which needed to be stirred up, and to help those in each locality who 'would gladly avail themselves of an external pressure compelling them to act'. Unfortunately, upon the creation of the Local Government Board in 1871 the Public Health and Poor Law Divisions were not kept separate, and the Public Health inspectorate was swamped and diluted by the General Inspectors who had hitherto inspected Poor Law administration only. This gave the primacy to 'deterrent' and rate-saving considerations over those of preventive medicine; and while making provision for inspection of the local authorities from the standpoint of the *legal* compliance with statutes and administrative regulations, but certainly not from the standpoint of the maintenance and improvement of public health.[2]

This initial error has been wiped out with the growing perception of the importance of preventive medicine and the amount of money spent upon it. The Ministry of Health now has a very large and varied staff of specialized medical experts as Inspectors.[3] Besides

[1] *Report*, 1871, p. 33. [2] Simon, op. cit., pp. 372 ff.

[3] Cf. Evidence of Dr. (now Sir) Arthur Newsholme before Royal Commission on the Civil Service (1911–14), especially Questions 22,970–22,973, as an indication of the trend away from the arrangements of 1871 towards those of our own day.

'The medical inspectors are specialized and highly trained men: they have to be capable of carrying on investigations; they have to be epidemiologists and have to understand an enormous number of things, and have to exercise at times very great tact and firmness?—That is so.

'They are really picked men?—They are picked men, and it ends in actual fact in nearly every medical inspector specializing in some particular direction. If you want an investigation of a sudden outbreak of typhoid fever, there are two or three men you would pick out for that particular class of work; if on the other hand it was a housing investigation, another man would be picked out; and so with tuberculosis, and so on.'

Inspectors of chemical processes, whether in private or municipal enterprise, and a large number of officers connected with the National Health Insurance System, it has some 15 Engineering Inspectors, and about 50 men and women sharing the work of the central and local administration of Public Health.

Until the Local Government Act of 1929 the nature of the grant system compelled the Inspectors to concern themselves in great detail with the domestic interior of each local authority, and this, in part, dictated specialist appointments, and distribution of work into special divisions. It also interfered with the *general* supervision of the health work, as a co-ordinated system, of each local authority. The Act of 1929 achieved two objects, it brought into contact the Poor Relief medical services with those which fall under the ordinary Public Health authority; and it provided for health administration to come under the authority of the larger local units. These have their effects in two ways: the Health Inspectors will soon extend their functions to the Poor Law medical services (which are in many cases, and may in all cases, be transferred to the normal Public Health Committee), and it relieved the central authority and its Inspectors of detailed intervention in local affairs. Moreover, the Block Grant made the latter development easy. Circular 1072 [1] of the Ministry says that 'the principle underlying the Local Government Act, 1929, is that local authorities should have as much freedom as possible in administering the health services'. It proceeds to extend that freedom, and thereby relieves its Inspectors. The Ministry holds itself, instead, in readiness to give skilled advice where it was formerly compelled to intervene.

'The inspection by the Medical Officers of the Department of these services, and of the institutions and premises in which the services are carried on, will, in future, usually form part of the general inspection of public health services to be undertaken from time to time in each area. These inspections, both general and particular, will be required in order that the Minister may be satisfied that each Local Authority is maintaining a reasonable standard of efficiency and progress in the discharge of their functions relating to public health services, as defined in the Local Government Act, 1929, regard being had to the standards maintained in other areas whose financial resources and other relevant circumstances are substantially similar.' [2]

Naturally, even under the pre-1929 circumstances, the Ministry acted as all the central Departments of English Government do, with extreme circumspection and helpfulness. Even the notion of 'the big stick' was discouraged, but even where that bogey was indispensable it was kept well in the background. Friendly co-operation was the key to progress, and, if it did not succeed in producing speedy improvement in the smallest and most ignorant authorities, it did

[1] 12 Feb. 1930.

[2] Cf. also *Annual Report*, Chief Medical Officer, 1930 (32-3-0-30), pp. 145 ff.

succeed in producing wonderful results elsewhere. How often, indeed, do the local authorities, the Town or County Clerk, the M.O.H., the Chairman of the Public Health Committee, and one or two keen ordinary members thereof, ask for conferences with the Ministry's Inspectors and the Ministry itself! They are certain of obtaining the highest available skill in State Medicine—for nothing, and with grace. The Health Inspectors are not, like those of the Board of Education or the Poor Law Division, located in special areas, owing to the need for constant conference with Whitehall, due to the peremptory demands of action remedial to disease. In 1939, however, 5 regions were established to which the health inspectors were allocated, it being thought that this method would give more continuous and comprehensive contact with the health administration of the areas.

III

ROADS

The Ministry of Transport does not itself build roads, but it has a firm road policy: it acts through its grants (often over 70 per cent, in one case over 90 per cent) and its Divisional Engineers.[1] Control does not, however, imply standardization; England is still highly diversified. The Engineers act as moderators of potential extravagance issuing from technical error or unbalanced enthusiasm, not as dictators. Naturally, with grants at issue, the Engineers are confronted with what they may deem local petulance, when their advice is opposed to that of the local Surveyor. Yet they pursue the principle of relaxing rules for good cause, rather than that of multiplying restrictions. At least twice a year they meet at Headquarters; the exchange of views is extremely valuable; the results gently percolate through to the various local authorities. This process of cross-fertilization is assisted by the very frequent circuits made by the Director of the Roads Department. Of course, local authorities are heavily indebted to the Ministry for legal advice.

[1] Cf. pp. 12 and 137.

CHAPTER XV

INSPECTION OF LOCAL EDUCATIONAL AUTHORITIES

THE experience of educational inspection is so rich in lessons, administrative, financial, and educational, it has been so deliberately fashioned and refashioned to changing purposes, that we intend to recall its development, dwelling at some length on the critical stages.

The State first made a grant-in-aid of education in 1833. Before that time attempts to establish a system of State education had failed. In 1833, in the full tide of the Reform era, a sum of £20,000 ' to be issued in aid of private subscription for the erection of school houses for the education of the children of the poorer classes in Great Britain ', was voted for the ensuing financial year, and thenceforward annually. The money was administered by the Treasury, in aid of voluntary subscriptions, and it was paid to the two great religious school societies —the National Society and the British and Foreign School Society. Not until 1871 was a direct relationship established between the State and the Schools through the ordinary local government authorities—the Church of England, the Roman Catholic, and the Nonconformist ecclesiastical school institutions, administered the schools and the State grants. Until 1839, the grant was conditional merely upon submission of school accounts to audit, and such reports as the Treasury required.

Attempts to secure a State system of education, with a Board of Education at the head, were made in 1835, in 1837, in 1838: and were defeated.[1] In 1838, a Select Committee on Education of the Poorer Classes urged the increase of the grant. But the Committee could not recommend, nor could Parliament accept, the establishment of State education with a central superintending authority. For Anglicans and Dissenters feared the rise and triumph of secular instruction. Hence the maximum progress possible was an increase of the grant to £30,000 per year, the distribution of the grant through the religious societies as before, and (source of future progress) the appointment of a Committee of the Privy Council on Educa-

[1] Cf. Birchenough, *History of Elementary Education* and Frank Smith, *History of Elementary Education to 1902*, give a good review of the subject.

tion,[1] the Committee to consider 'all matters affecting the education of the people', and to 'determine in what manner the grants of money made from time to time' should be distributed.

The Secretary to that Committee was John Kay-Shuttleworth,[2] the very practical disciple of Bentham, friend and colleague of Edwin Chadwick, a Manchester physician who had consecrated his extraordinary energies to public administration. A member of the Manchester Statistical Society, a pioneer in the inspectorial experience of the modern State, and especially interested in the education of the children of the poorer classes, he was the ideal choice in the formative period of State intervention in education. The developments of the next few years must be regarded as mainly inspired and executed by him.

An Order in Council of 3 June 1839, embodied the recommendation of the new Committee that no further grant be made, now or hereafter, for the establishment or support of normal schools, or of any other schools, unless the right of inspection be retained, '*in order to secure a conformity to the regulations and discipline* established in the several schools, *with such improvements as may from time to time be suggested*' by the Committee. A part of any grant voted in the present year may be usefully applied to the purposes of inspection and to the means of acquiring a complete knowledge of the present state of Education in England and Wales.'

No one can doubt the potency of the example of the institutions of inspection by the Poor Law Act of 1835: and, in its hinterland, of the ideas of the Radical thinkers.

In September 1839 the Committee issued a Minute embodying the Regulations governing grants.[3] The award of a grant depends on the Committee's being satisfied of the need, financial capacity and efficiency of the Schools—and this by reference *either to Inspectors*, or to the Societies. Recipients of grants were required to bind themselves to submit their building account to audit and to furnish reports as required.

'The right of inspection will be required by the Committee in all cases: Inspectors, authorized by Her Majesty in Council, will be appointed from time to time to visit schools to be henceforth aided by public money and the Inspectors will not interfere with the religious instruction, or discipline, or management of the school, *it being their object to collect facts and information and to report the result of their inspection to the Committee of Council.*'

From 1840 until 1869 Inspectors were necessarily appointed from among the clergy,[4] since the Committee could otherwise make little

[1] Accomplished by Order in Council and without the assent of Parliament. Cf. Selby-Bigge, *The Board of Education.*

[2] Cf. Frank Smith, *Life of Kay-Shuttleworth*; and Kay-Shuttleworth's own work, *Four Periods of Public Education*, 1862.

[3] The Minutes here referred to are published in the Parliamentary papers.

[4] Most, but not all, were clergy.

headway against the resistance of the Churches. The State was obliged to concede the right of the authorities of the various Churches to approve the Inspectors prior to appointment.

The action of the Inspectors as the *guardians* of the money voted by Parliament is explained in a letter of Kay-Shuttleworth to the National Society:

> 'They [the Committee] would not consider that they could adequately discharge the trust reposed in them by Her Majesty, or could give a faithful report to Parliament, if they left to the Society, to whom the public money is to be granted, the sole power of reporting on the efficiency of their own arrangements, and the right of excluding officers appointed by the State, to which they are to be indebted for a part of their resources, from all inspection or examination of the schools.'

From the beginning inspection was neither merely formal nor merely *preventive*. It was used to foster and encourage continuous improvement in the ends and means of education. Applicants for grants had to answer seventy-five questions: and in the Instructions to Inspectors [1] appeared one hundred and forty questions and thirty-four supplementary questions regarding the efficiency of a school. They were to concern themselves mainly with the mechanical arrangements: form of buildings, dimensions and arrangement of class-rooms, arrangement of desks; with the books and apparatus used as means of instruction; the arrangement of classes under one or more teachers (monitors and pupil-teachers); the system of rewards and punishments; whether the 'mutual' or 'simultaneous' method of instruction was used, together with the individual method; number of masters, assistants, monitors, etc.; age and knowledge of pupil-teachers (if mutual method applied); period during which each monitor had been employed, what payment, if any, he received, number of children under his care, and their average age; arrangement of hours during week; attainments of pupils in reading, writing, arithmetic, singing, drawing, and degree of proficiency in each, also the pupils' acquaintance with the simple or more complex movements of physical exercises. Further, when necessary, Inspectors were to examine into knowledge of geography, grammar, history of England, etymology, while special attention was to be paid to the degree of moral training and religious instruction of the children.

Progress of Inspection. The grants continually increased, the functions of the Inspectors expanded. The Secretary arranged the Inspectors' tours, advised them of advancements in the practice of education, was in continual correspondence with them while they were in the provinces, answering hundreds of questions, abstruse and simple, sophisticated and naïve. He scrutinized and commented upon their Reports, which, from 1843, were communicated to the Com-

[1] *Minutes*, Committee of Privy Council on Education, 1839–40, pp. 22–45.

mittee after each school inspection. The Schools and the Societies writhed—and responded.

From 1843 extra grants were given to encourage schools which produced pupils who would pass on to a Training School and undertake to exercise the profession of teacher. In 1846 grants-in-aid were given directly in aid of pupil-teachers and monitors, and the remuneration of schoolmasters and mistresses, the conditions and amounts being laid down in extreme detail. Over the administration of these, in each particular case, the Inspectors watched. In 1853 and 1856 annual grants per head, called capitation grants, were established to encourage, by rewarding, regular attendance.

The Inspectors rendered valuable service to Parliament when they inspected for efficiency, and to the Schools, whom they advised upon policy, method, apparatus and organization. But greater than these, perhaps, was the accumulation of knowledge in vivid detail about the actual quality, extent and utility of the system, such as it was, and its relation to local circumstances and the civilization of the age.

We are fortunate in having a convenient publication of the Reports on Schools between 1852 and 1882, made by no less illustrious an Inspector than Matthew Arnold.[1] He reports, for example, the difficulty of adequate inspection with over 100 schools in his jurisdiction. He analyses the effects upon teaching and discipline of payment of fees by the pupils (the same undesirable effects, apparently, as usually result when any commodities, for example, bread and meat, are sold, not in proportion to need or virtue or social utility, but in proportion to whether and how much the purchaser can afford to pay). He discusses the relationship between knowledge and culture. He speculates upon why people desire to promote education. He selects an attractive school for special description and commendation. He offers sapient recommendations on school books. In the General Report for 1854 he is much concerned with the duty of an Inspector, and some passages from his Report are worth reiteration, as much to perpetuate their value, as to reveal the nature of inspection eighty years ago:

'His first duty is that of a simple and faithful reporter to your Lordships: the knowledge that imperfections in a school have been occasioned wholly or in part by peculiar local difficulties may very properly restrain him from recommending the refusal of grants to that school; but it ought not to restrain him from recording the imperfections. . . . It is true that the Inspector is sent into his district to encourage education in it: but in what manner to encourage education? By promoting the efficiency, through the offer of advice and of pecuniary and other helps, to the individual schools which he visits in it; not by seeking to maintain by undeserved praise, or to shelter by the suppression

[1] Board of Education, *Report on Elementary Schools*, 1852–1882; by Matthew Arnold.

of blame, the system, the state of things under which it is in the power of this or that local hindrance to render a school inefficient, and under which many schools are found inefficient accordingly.'

'The business of your Inspector is not to make out a case for that system, but to report on the condition of public education as it evolves itself under it, and to supply your Lordships and the nation at large with data for determining how far the system is successful. If, for fear of discouraging voluntary efforts, Inspectors are silent respecting the feeble support given to this school, the imperfect accommodations in another, the faulty discipline or instruction in a third, and the failure of all alike to embrace the poorest class of children—if everything is represented as hopeful and prosperous, lest a manager should be disappointed or a subscriber estranged—then a delusion is prolonged in the public mind as to the real character of the present state of things, a delusion which it is the very object of a system of public inspection, exercised by agents of the Government on behalf of the country at large, to dispel and remove. Inspection exists for the sake of finding out and reporting the truth, and for this above all.'

Inspection under the Revised Code. The revised system of grants of 1862 reposed upon two principles: (*a*) that it was not desirable to aid education out of State funds, but that (*b*) since such aid had been commenced, and since it seemed that the State was soon likely to be liable for a terrifying annual sum of about £2,000,000 (!), grants should only be given in strict relation to the progress of pupils individually examined and assessed. On the former subject the strong minority of the Commission said,[1]

'that in a country situated politically and socially as England is, Government has, ordinarily speaking, no educational duties, except towards those whom destitution, vagrancy, or crime casts upon its hands. . . . It appears to them that if the State proceeds farther in the present course, and adopts as definitive the system which has hitherto been provisional, it will be difficult hereafter to induce parental and social duty to undertake the burden which it might so bear, or to escape from the position, neither just in itself nor socially expedient, that large and ill-defined classes of people are entitled, without reference to individual need, or to natural claims which any of them may possess on the assistance of masters and employers, to have their education paid for, in part at least, out of the public taxes. Nor do they feel confident that Government will ever be able to control the growing expenditure and multiplying appointments of a department, the operations of which are regulated by the increasing and varying demands of philanthropists rather than by the definite requirements of the public service.'

In regard to examination for grants the Commission said:

'From the plan of an examination we anticipate the double advantage that while it will maintain the only sound principle upon which Schools ought to obtain additional aid, it will at once stimulate and improve the character of their teaching. On the first point we have spoken freely; with regard to the latter we need only repeat our belief that the present defects of teaching and inspection aggravate one another, and that, till something like a real examination is introduced into our day schools, good elementary teaching will never be given to half the children who attend them. At present the temptation of

[1] *Report*, Royal Commission on Popular Education, 1861, p. 298.

the teacher is to cram the elder classes, and the inspection is too cursory to check the practice, while there are no inducements to make them attend closely to the younger children. We have repeatedly recognized the value and the important functions of inspection, and entirely agree with the description of its objects given by Sir J. K. Shuttleworth but to assert that it is a real examination, and that an Inspector can examine 150 boys individually in less than two hours, is obviously absurd.'

On the basis of the recommendations made by the Commission, the Committee on Education established the so-called Revised Code of 1861, and then the final version of the Revised Code in 1862, the latter being necessary because the severity of the code of 1861 was resisted by the managers of the various educational societies. What were the main elements of the code thus established ? A large part of the grant to be given was directly related to the attainments of each individual pupil in each school. The grants were given in proportion to efficiency as measured by detailed standards laid down by the Committee. Grant-earning subjects were restricted to reading, writing and arithmetic, where examination was relatively easy to conduct, and the importance of which in an educational curriculum serving the nineteenth century was considered to be fundamental, especially in the lives of the poor.

The best characterization of the system was that made, in its defence, by Robert Lowe, Vice-President of the Committee on Education.[1]

'Another objection to the reports of the Inspectors as the test of the actual efficiency of the school is their use of abstract phrases in describing the efficiency of the school. It is like the error in Platonic philosophy; they deal with the abstract and not with the concrete. They give a general notion of the schools, but they treat the schools as something distinct from the scholars. They have examined a few children, and make a report, and, doubtless a very true report, as to the quality of the education given to them. Their reports are full of such phrases as "the average proficiency of the children", but they speak of no particular child. They speak of the "general efficiency", the "general impression on the whole", "the general review", etc. They deal in impalpable essences, such as "the moral atmosphere", "the tone", the "mental condition" not of the children, but as an abstract idea, of the school. Such information was valuable, but it did not afford such a test of the efficiency of the teaching as would justify us in setting up the reports of the Inspectors against the deliberate inquiry made by persons of so much authority as the Commissioners. The real truth is that what we had in the reports of the Inspectors is the quality of education, which depends on the mind and qualification of the masters. What we do not learn from their reports was the result of the labours of the teachers, and the amount of trouble and toil they bestowed on the children. Our inspection failed, as it always will fail, to ascertain that point. I am now investigating, as well as I can, which is right.'

How did this system work ? If we care to call a reduction in the amount of the State Grant a benefit, then the new system was

[1] House of Commons, Feb. 13, 1862, Vol. CXIV.

beneficial. Increased application to the three basic subjects of the curriculum was a gain. But regarded as a contribution to the improvement of education, it was positively vicious. It had deleterious effects upon pupils, upon teachers, upon Inspectors. It caused less attention to be spent upon the backward and mediocre pupils, since they, in any case, would hardly be able to qualify for a grant. It caused a concentration upon the grant-earning subjects to the exclusion of what may be termed cultural, but non-grant-earning subjects, such as history, geography, grammar, 'nature' study.

The teachers were necessarily harassed by the requirement to teach only the grant-earning subjects and to bring their pupils up to the required standard in that particular range. Whatever the natural capacity of the pupils, teachers would be judged strictly by the standards of attainment considered proper by the Committee. It was in vain that the Committee instructed their Inspectors to avoid these consequences of 'payment by results', by taking into consideration the religious, moral and intellectual merits of the school. Teachers and managers of schools appreciated the truth that pecuniary self-preservation is of prior importance to mental development.

The Inspectors had hitherto exercised a general judgement on the value of the work of the schools, satisfying themselves by sample examination conducted according to their own discretion. Now they were compelled to examine everybody, and their attention therefore, like that of the teachers, was concentrated upon detail within a narrow range of subjects. They now became the administrators of a routine system of examination and when it was found, as it soon was found, physically impossible to accomplish the enormous task imposed upon them, they were given assistants whose supervisors they became.[1]

The Effect of Grants on Administration. It should be evident that the policy of the central authority, when it relates grants-in-aid to specific performances by local authorities, must have a powerful effect upon their policy and administration, and, of course, both directly and indirectly upon the nature of inspection. This relationship ought never to be forgotten by either the Parliamentary authorities who decide the broad lines of policy, committees of experts who are in the position to make recommendations, and local authorities who are consulted in the establishment of Parliamentary and departmental policy.

Decline and Fall of Payment by Results. From 1869 onwards the policy we have been discussing was progressively modified.

[1] A commentary on this system is provided by a report of Matthew Arnold's report for 1863, and by the analysis of evidence given before the Royal Commission on Education, 1888, Part III, Chap. IV. See pp. 73–4, quoted later.

Gradually, inspection as it had prevailed up to 1861 was reintroduced by the insistence of the central authority that the Inspector should have regard to general rather than specific values. Further, examiners were appointed to take the brunt of routine examination from the shoulders of the Inspectors, leaving these free to make general surveys of the total efficiency and significance of education in the schools under their superintendence.

In 1871, a policy of State provision education through the ordinary local authorities, side by side with the ecclesiastical authorities, was established. Henceforth the Inspectors were no longer chosen from among the clergy. The general testimony to the value of Inspection was very high, and it was recognized that without the Inspectors there was no possible hope of implementing the policy of the central authority or raising the standard of education supplied by the new local authorities, the School Boards. Between 1859 and 1880, the number of Inspectors rapidly increased. In 1859 there were 59 Inspectors; in 1869, 98; in 1880, 244.

The Cross Commission of 1888 observed that the Code itself underwent change only after the political and permanent heads of the Department conferred with educational experts and after consideration of the Inspectors' annual reports. In fact, for this work the Department had established a Code Committee consisting of a certain number of the chief officers of the Department and of Inspectors. All suggestions were brought before this Committee and changes were made after discussions under the Chairmanship of the political chief.

Duties of Inspectors. No better description of the scope of duties of the Inspector can be given than that supplied by the Commission. It would be idle merely to summarize it.

'The duties of the Inspectors are numerous and varied. Under the Code they are not merely charged with the examination of the scholars in the various subjects for which grants are made, but they have to examine pupil-teachers and candidates for certificates; to assist the Inspectors of training colleges in testing the teaching power of the students; to report upon the practical skill of acting teachers who wish to be employed as assistants or in sole charge of small schools. They have each year to report upon the general efficiency of every school and teacher in their districts, and to pay visits without notice, for the purpose of observing and conferring with the managers and teachers on the general work and organization of the schools, on the timetables, and on the methods of instruction. *There are besides, many delicate questions in regard to the work and life of a school on which managers and teachers are glad to have the advice of an Inspector, but which they would not be likely to discuss with him, unless they met as friends and equals.* Under the Act, the Inspectors are the eyes and ears of the Department. They have to keep a constant watch over the school supply of their districts, and to make careful inquiries respecting it; they have to advise the managers of schools, school boards, and school attendance committees, not merely on the accommodation required, but on particulars of procedure, of law, and of the working of the Education Acts, as well as the numerous non-educational difficulties which arise in the management of schools.

They have also from time to time to report to the Department on questions of policy and administration, and as to the general feeling in their districts as to these questions. We are, however, of the opinion that it is neither fair nor wise to debar elementary teachers from rising to the rank of Inspectors, and it may be expected that the opening to elementary teachers of the highest office in connexion with elementary education would tend to elevate the tone and character of their important profession.

'The importance attached by the heads of the Department to the general influence of the Inspectors on the work of their districts and the appreciation shown by these authorities of the many ways and channels through which that influence might be excited, especially on the moral character of schools, are manifested by the long series of instructions, which have appeared from year to year in the Reports of Committee of Council.' [1]

Inspection by Districts. Early in the history of inspection the Department had established a principle of great importance to the efficiency of inspection. Inspectors were allocated to definite districts which they served continuously for many years. The value is that long connexion with the same district promotes a mutual understanding between the Inspector and the local administrators, and with at least the head teachers, if not the assistants. Without continuous inhabitancy of the area it is impossible for an Inspector to know, and therefore to allow for, the special conditions of the area. The standard of efficiency, and the standard and purpose of education, ought to vary with the special conditions of the area. In fact, whether the central authority desires it or not, it will so vary, through environmental conditions, like the urban or rural nature of the area, economic activities, whether shop-keeping or agriculture or manufacturing or mining, and with social conditions.

The continuous presence of the Inspector in a district must, as a rule, have a certain transforming influence upon him and those he inspects. There is, of course, the danger, sometimes experienced, that the idiosyncrasies of an Inspector might become a permanent affliction to a district. A change is occasionally necessary. However, the main principle is sound, and continues to apply.

Inspection from 1870 to the Present. From 1870 onwards schools have increased, scholars have increased, local and central expenditure have enormously increased, and the State has come to provide not only elementary education, but also continuation, secondary and technical education, each organized not as simply as the bare term would indicate, but with complex specializations. In 1902 this vast and complex system was delivered into the keeping of the Counties, the County Boroughs, and about 100 Municipal Boroughs, and Urban Districts. The increase in the provision of education and, therefore, in the activities for the superintendence of which the central authority was responsible, is best shown by the

[1] Report cited, pp. 73–4.

following figures: in 1872 there were 10,757 elementary schools inspected, and about 1½ million scholars; in 1931 there were 21,577 schools, with over 5½ million scholars. In 1872 there were no Secondary Schools; in 1931 there were 1,360 such schools.

The Inspectorate To-day. Corresponding with this development the central authority has undergone development. The Board of Education took the place in 1899 of the Privy Council Committee on Education and the Science and Art Department which was concerned with the supervision of secondary education.

The number of Inspectors shows a large increase over the 244 of 1880. In 1898 there were 348; in 1908 there were 387; in 1922 there were 393; to-day there are about 340. The country is now divided into nine Divisions[1]: over each Division there is a Divisional Inspector; he is responsible to the central authority for co-ordinating the work of the Inspectorate within the Division in relation to elementary, secondary, technical, and continuation schools, and domestic studies. He organizes inquiries, investigations and inspections involving the co-operation of Inspectors of two or more branches, scrutinizes the diaries of the Inspectors, exercises a disciplinary power over his Inspectors. Within those areas are a number of Districts, and within the Districts are Inspectors responsible for a special type of school, whether elementary (for which there are 72 Inspectors), secondary (for which there are 21 Inspectors), or technological (for which there are 26 Inspectors); and working beneath each of these District Inspectors is a group of assistants. Each District Inspector makes his arrangements for the inspection of the schools falling within his special category.

This indicates very broadly the territorial spread of the Inspectorate. It is linked to the central authority through the Senior Chief Inspector and the two Chief Inspectors. These three Chief Inspectors, together with a Chief Woman Inspector, form, as it were, the general supreme council for the direction and control of Inspection throughout the country. Each of the three men Inspectors is responsible respectively for the elementary, secondary and technological branch of education. The Chief Woman Inspector, besides being responsible for the general control of the work of all the women Inspectors, is specially responsible also under the Senior Chief Inspector for organizing and inspecting domestic teaching and for co-ordinating information on all questions concerning the education of women, girls and young children. Thus, there is a hierarchy of Inspectors which finds its summit in the Senior Chief Inspector. The Chief Inspector is responsible for one branch of education, and at the same time is

[1] The account now follows that in Selby-Bigge, *The Board of Education*; and Statement of H.M. Inspectors of Education before the Royal Commission on the Civil Service (1929–30).

commander-in-chief of all the other Inspectors, directly in relation to the Chief Inspectors, Staff Inspectors, and Divisional Inspectors, and indirectly to the Inspectors in the various Districts through their own immediate chiefs, the Divisional Inspectors. All the threads link the other 339 whoever and wherever they are to the first and chief of the 340.

The twelve Staff Inspectors, who are recognized experts in their particular field of study, for example, Classical Studies, are used as circumstances or the interests of the moment demand to inquire into and report upon particular subjects in the schools generally, and to carry on the work of the Department of Special Inquiries and Reports. One Staff Inspector is responsible for inspection of Training Colleges.

There are twelve Women Staff Inspectors, one for each Division, acting under the Divisional Inspector. One is specially responsible for Training Colleges. The rest organize such inspections and inquiries in the Divisions as affect the education of women, girls, and young children.

There are some Inspectors without District responsibility; about sixty-five Women Inspectors are employed in all branches of inspection, with occasional responsibility for particular aspects of the work in definite geographical areas; the Assistant Inspectors number eighty-seven.

Recruitment of the Inspectors. From what we have already had to say regarding the nature and magnitude of an Inspector's duties, it is a simple deduction that very much indeed depends upon their qualifications. Selby-Bigge observes that an Inspector needed 'the tact of a diplomatist, combined with the zeal of a missionary'. During the nineteenth century Inspectors were drawn from University graduates, while Assistant Inspectors were recruited from head teachers of elementary schools. The latter were not the ablest among their class, since salaries as Inspectors were lower than those obtainable as head masters. The Cross Commission recommended promotion from the lower to the higher grade and the appointment of women. Obviously not merely teaching expertness was required—nor could it be entirely dispensed with. Since 1888 the promotion policy has operated, and many former elementary school teachers have risen in the Inspectorial hierarchy.

To-day, Inspectors are recruited by the type of competition known as 'competitive interview'. There is no examination, but the vacancy is advertised, and then candidates are interviewed by a Selection Committee consisting of officers of the Board of Education, including Inspectors, and a representative of the Civil Service Commissioners. This system has been in operation since 1912, when the Royal Commission on the Civil Service recommended it.

Teaching experience is an important factor in the qualifications for the Inspectorate, though the Selection Committee does not by any means appoint solely from among teachers. The Association of Board of Education Inspectors themselves say [1]:

'The utmost freedom of selection is essential to enable the Inspectorate to face the variety of educational needs. Inspection of the Classical Sixth at Winchester does not call for the same qualities and knowledge as inspection of a nursery school. Inspectors should be recruited from any suitable source, at any suitable age, with any suitable qualifications, to fill any suitable posts. We are prepared to trust our chiefs. We regard the Inspectorate as a corps in which variation of qualification is essential, not as a platoon where uniformity of training produces a pleasing appearance of equality.'

At the present time, over 55 per cent of the Inspectorate have had ten or more years of actual teaching experience, and about 33 per cent have taught for fifteen years or more before appointment. Among the Inspectors of Technological Schools are many who have had responsible works experience, necessarily of various kinds, for the field of technological education includes subjects so far apart as building, engineering, dyeing, boot and shoe manufacture, textiles and printing. Those who were teachers had experience in the kind of schools they subsequently came to inspect: the technological branch had largely taught in colleges or universities.

Functions of the Inspectorate. The main functions of the Inspectorate are four: (1) inspection for the minimum of efficiency warranting the payment of the central authority's grants-in-aid; (2) the encouragement and stimulation of local authorities and teachers to improve education by the acceptance of the best contemporary educational theory and practice; (3) the making of comparative surveys of the teaching of subjects in schools throughout the country and abroad with the purpose of reforming both objectives and methods; and (4) administrative mediation between the central authority and the 317 local education authorities.

(1) The Code [2] and the Handbook of Suggestions [3] (regarding Elementary Schools) offer a large and detailed basis for the first function, the whole conception of the purpose of the School being stated and elaborated in its many ramifications in the latter. While not pretending to impose uniformity of curriculum or method, the Board of Education says, nevertheless (*Handbook*, Prefatory Note): 'The curriculum of a school will remain subject to the general approval of the Board. . . .' The Board not infrequently means the

[1] *Minutes of Evidence* cited, p. 502.

[2] The general regulations made by the Board of Education, governing the relations between the Board and the local authorities.

[3] *Handbook of Suggestions for Teachers*, 6th Impression, 1929, published by Board of Education 'for the consideration of Teachers and others concerned in the work of Public Elementary Schools.'

Inspectors on the spot. Curriculum, attendance, method, apparatus, organization, suitability of the building, staffing, all come in detail under the eye of the Inspectors. From 1898 the method of formal examination, begun in 1862, was fully and deliberately abandoned, except where the managers of the school needed to be convinced that any censure of teaching methods was justified. Since that time, even oral examination has been reduced to a minimum—the mark was overshot, indeed, by 1909. I myself have been the subject of inspection as a pupil and as a teacher. The inspections were conducted with tact, if with vigorous watchfulness; the pupils put at their ease with some anecdote; the teacher was observed in his lesson, the Inspectors sometimes intervening to ask the pupils a question; while an Inspector himself gave a fraction of a lesson, asking questions on its effect and on cognate subjects. It was a sufficiently probing process; and at the same time both didactic and admonitory to teacher and pupils.

Since 1907 Elementary Schools are reported upon fully only once in three years, but there are short visits to each school about once a year when no report is made. Secondary Schools have a full inspection once every eight or ten years, and this is considered by experienced Inspectors to be on the border-line of efficiency.[1] A 'full' inspection means an inspection by a corps of Inspectors lasting almost the whole of a school week. The Technological Schools are visited about once a year, the evening institutes once in two or three years. But the District Inspectors are always at work in their areas in close and continuous contact with the officials (the Local Education Authority's Director of Education) or the Education Committee, and the head masters, calling when necessary for help in the inspection of special subjects, reviewing the curriculum year by year, discussing the problems arising from time to time, often after school hours and over a pipe of tobacco. The Board of Education, in its Report for 1913–14, says that the work of the Inspector is easy or difficult according to the kind of relation he is able to establish with the local authority. 'He must neither be meddlesome nor stand aloof. He must not parade or exaggerate the authority of the Boards under which he acts nor allow it to be ignored.'

It seems plain that the Inspectorate is, in regard to numbers, on the margin of efficiency; that is, any decrease in the number would have a deleterious effect on their function, any increase in the work, with the number remaining constant, would have much the same effect. There is evidence of a large burden of work and the time and stress of travelling. There is, in the larger educational authority,

[1] On the nature and purposes of Secondary School inspection, see *Annual Report*, Board of Education, Cmd. 7934 (1913–14), published 1915, Chap. I, 'Inspection of Secondary Schools by the State.'

considerable progress in teaching standards, and personnel, and they provide their own body of Inspectors. These are the

'agents of the Authority for collecting specific information, carrying out particular inquiries, or investigating particular complaints. They also report on the staffing, supplies, equipment and premises of the schools and advise on questions of the promotion and increment of teachers, and in many cases carry out disciplinary and executive work.' [1]

Yet the outside Inspector is *independent* and *informed*, and remains indispensable. 'We all require inspection. Just as it is very good for me to be looked after, so I think the schools ought to be looked after; but they will always enjoy getting somebody from outside to give them advice and guidance.' The Board's Inspectors and the local authority's Inspectors supplement each other, and have an effective working agreement.

On all subjects of Inspection the Board may make recommendations for improvement; naturally, of course, where Regulations have been violated.

(2) and (3). From the commencement of inspection the purpose was the advancement of learning as well as the maintenance of the minimum conditions for the grant; and, in fact, since inspection is a relationship between human beings, the growth of such a purpose was inevitable. The Inspector has always been an adviser on education—because his experience and range of observation are wider than that of the head master and teachers of the school inspected. From inquisitorial to constructive intervention is not a long step; and it is pleasant. Inspectors are not infrequently engaged in inquiries into the teaching of individual subjects, History, Hygiene, English, Geography, etc., and obtain an exceptional comparative knowledge of difficulties and their solution. The knowledge obtained in these inquiries when once they are completed is disseminated, and becomes available to everybody.[2] Yet the spoken word has a special weight; the written report still leaves open many questions for discussion; and there always remains the problem of local application. These matters are the subject of immediate discussion with head masters and teachers, no less than of reports to the Local Education Authorities. Mr. Hankin (an Inspector of Secondary Schools) says:

'You are meeting people who are more or less on your own level, both from the point of view of academic qualifications, and of their knowledge of their school. They know their own school; we have a broader knowledge of schools as a whole. You meet the teacher or schoolmaster, and you discuss things with him absolutely frankly, pooling your knowledge. . . .' [3]

[1] Memorandum of Board of Education on Local Officers for Inspection, Cmd. 1878, 1923.

[2] Among others, eminently worth study, are *The Primary School*, *Education of the Adolescent*, *The Classics in Education*, *Education for Salesmanship*, *The Teaching of Modern Languages*.

[3] Evidence cited, Q. 8,714.

When asked: 'You mean the Inspector is becoming more and more the consultant?' Mr. Hankin replied: 'Yes, and I should say in the old days the attitude was rather more paternal. The change is very welcome. I think this is a fair way of putting it as regards secondary schools. You go to a public school and you meet a man who has had the same academic training; he has a close experience and you pool your knowledge.'

Furthermore, the Inspectors sometimes lecture at Summer Courses for teachers, and attend teachers' professional conferences.

(4) As administrative liaison officers the Inspectors serve a double function: they make the Board of Education acquainted with all that is done and thought locally, they give advice to local authorities on difficulties arising out of the interpretation and application of the Regulations. It is entirely unnecessary to discuss the nature of the first part of this function. Its significance is self-evident. The problem of judging such questions as the need and plans for new buildings, reorganization of the school, programmes of development, would be insuperable without such agents continuously in the neighbourhood. It is not, however, irrelevant to cite the views expressed by the Inspectorate on this relationship. They say[1]:

'If the number of Inspectors and the amount of inspection falls below a certain level, the local education authority will appoint its own Inspectors. Then the country might lose the priceless advantage of the combination of local administration and the central inspection, an advantage none the less valuable because it evolved from actual needs, and was not spun from the brain of a far-seeing administrator. But even though, necessarily, the duties of the Inspector are becoming administrative to an increased degree, he has no desire to become an administrator pure and simple, or to usurp the functions of the trained administrative officer. The latter, with the increasing complexity of modern civilization, is gaining increased power. The former must be trusted to provide both the "human touch" and the educational knowledge on which administrative policy must be based. It is vital, therefore, that at each and every stage he shall be in a position to make his influence felt, and that the Inspectorate shall be organized so that no grade shall feel in any way inferior to its "opposite number" in Whitehall, or in the local authorities' offices. . . . Our experience has been that the administrator is always ready to pay due attention to the views of the expert, provided that those views are put forward with due regard to practical possibilities.'

Again,

'It is very rarely an Inspector's opinion would be definitely rejected by one of our officials in Whitehall.'

'You have spoken of the Inspectorate as the machine which draws together the central and local authority. Is it not the case that the Inspectors are the only people serving under the Board who have firsthand knowledge of the schools?'

'Absolutely; it is almost impossible to imagine the Board functioning without the Inspectorate because it is that firsthand knowledge which is vital even on the question of grants.'

[1] Ibid., p. 502.

On the other hand, the Inspectors help the local authorities to obtain the sanction of the Board in the case of minor uncertainties in, and deviations from, the apparent letter of the Regulations. Since 1926 any minor alterations in buildings (with one or two exceptions) may be approved at once where the item costs up to £500 and no more—and this, cumulatively, is a considerable power, and furnishes an appreciable amount of work for the Inspectors.

In view of the characterization of the educational inspectorate already given, it is extremely interesting to notice the recommendations of the most recent official committee of enquiry into educational reforms, especially of the curriculum of the secondary school system. "The maintenance of the present spirit and professional competence of His Majesty's Inspectors and the generous increase in their numbers are regarded as essential to the success of the proposals made in the Report. The Committee believes that the inspectorate should be numerous enough to conduct at least once in every five years a full inspection of each school and to maintain a real contact during the intervening years. They should be, as far as possible, relieved of purely administrative work and, since they have become in fact partners from inside and not inspectors from outside in the work of national education, they should be known in future as H.M. Educational Advisory Service." [1]

[1] *Report of the Committee of the Secondary School Examinations Council*, Board of Education Report, July 26, 1943; known as the Norwood Committee. *The Times*, July 26, 1943. Cf. also F. H. Spencer: *An Inspector's Testament*, University of London Press, 1939.

CHAPTER XVI

INSPECTION OF THE POLICE FORCES

UNLIKE continental countries, England has no unified, national Police Force appointed and directed by the central authority. The English Police System is an assemblage of local police forces, each with its own peculiar history, founded upon the ancient idea that every citizen is bound to participate in the preservation of the peace and the suppression of disorder. Even the Report of the Desborough Committee on the Police Service (1919) says: 'In this country the whole power of the constable rests on the support, both moral and physical, of his fellow-citizens.' [1] It is to such notions as these that we may trace the non-existence of a single centralized police force, and the decentralization to local authorities of the obligations to recruit, equip, maintain, and direct police forces.

However, as soon as the problem arose of establishing police forces competent to undertake the work imposed by the urban and mobile civilization of the nineteenth century, it was obvious that some uniformity was indispensable. The problem was to find the satisfactory degree of compromise between complete local anarchy and nationalization. The Report of the 'Commissioners Appointed to Inquire as to the best means of Establishing an Efficient Constabulary Force in the Counties of England and Wales' of 1839, said:

'Without a general direction, there can be no enlarged or complete system of training, no local changes of force, no freedom from local connexion, no economical application of a very small but extensively movable force to produce the effects of a larger body of constables spread over the country, and no probable reduction in force simultaneously with any reduction of the demand for their services, no connexions of information between district and district, and no long-continued independence of the animosities of local parties. Be it as it may with other of the public services, *unity of action is as essential to the efficiency of a constabulary force as it is to an army or a navy, or to a postage system*,[2] and whatsoever abusive name may be applied to such management, the early constitutional principle of the administration of justice of the country is that of a central control, and we believe every departure from it has been accompanied by a diminution of advantage to the public.' [3]

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[1] *Report of the Committee on the Police Service of England, Wales and Scotland*, p. 4.

[2] Author's italics.

[3] Pp. 133 ff.

Suggestions were actually made before this Commission that a national unified force should be created, but this was evidently repugnant to the general opinion of the time; it was sufficiently difficult, indeed, for the Commissioners and statesmen to get anything done at all which involved an increase of local rates. Now, the Municipal Corporations Act of 1835 had already provided for police forces for the Boroughs. Other urban places, and many of the Boroughs, were provided for by local Acts and special trustees or commissioners—most frequently for *parts* of their area. *In these cases there was no central control at all.*

Then by the joint effect of the Police Acts of 1839 to 1859 the following arrangement was arrived at. It became the duty of every County to establish a sufficient police force and to declare the numbers and rates of pay to the Home Office, and to increase or diminish that number with the consent of the Home Office. The Home Office was also given power of approval of the grading, rank and pay, and the distribution of duties, of these County forces. Further, to secure a uniformity of the government, pay, clothing, equipment, and necessaries, power was vested in the Home Office to make rules binding on the local authorities.[1] It might, at the request of the local authority, amend and augment them so as to make them applicable to the special circumstances of each County, setting forth any special reasons for this procedure. In the case of the Counties, appointment to the office of Chief Constable of the County needed (as it still needs) the approval of the Home Office. It should be observed that these conditions of the establishment and management of the local police forces applied not to the Borough police forces, but only to the County police forces. The Borough police forces had been established by local Acts and the Municipal Corporations Act of 1835 prior to the full development of the new notions regarding central control. Having given the Boroughs an independence based only upon self-control by the local democracy, the resistance of the Boroughs to any qualification of that independence could not at once be overcome.

Yet in 1856 it was contrived by the County and Borough Police Act to introduce for the Boroughs as well as the Counties a new instrument of central control. The Commission of 1839 had recommended that the Treasury should pay to the local police authorities a grant of one-fourth their expenditure.[2] The Act of 1856 combined this suggestion with the institution (already tried in several fields of public administration, particularly in education) of Inspectors of Constabulary appointed by the Home Office. This was not accomplished without friction as the debates on the Act of 1856 in the House of Commons show.[3]

[1] Actually, the Statute says, 'binding on all persons whom they may concern.'
[2] P. 184. [3] Cf. Hansard, Vol. CXL, 1856, Cols. 232 ff.

'Section 6 was objected to, likewise Section 8, which directs the chief constable to make such reports to the Secretary of State as he may require. That would be little better than the continental spy system, which was so odious to the British people.' [1]

Again,

'In fact, if such regulations were permitted to become law, no respectable man would condescend to take a seat at council, and the usefulness and high character of municipal institutions would be destroyed. The aim should be to uphold local self-government, not to destroy it by centralization.' [2]

However, for *half* the expenditure opponents were prepared to soften their opposition.

The Act of 1856 provided for

'Three Inspectors, to visit and inquire into the state and efficiency of the police, appointed for every county and borough, and whether the provisions of the acts under which such police are appointed are duly observed and carried into effect, and also into the state of the Police Stations, Charge Rooms, cells, lock-ups or other premises occupied for the use of such police: and each of the Inspectors so appointed shall report generally upon such matters to a Principal Secretary of State who shall cause such reports to be laid before Parliament. . . .'

So far the Act had merely established the power and means of the central authority to visit, inquire, and report. It still remained necessary to provide some force which should ensure obedience to the wishes of the Home Office. Therefore, the payment of the grant was made dependent upon a certificate of the Home Office 'that the police of the county or borough had been maintained in a state of efficiency in point of numbers and discipline during the past year'. Such a certificate could be finally withheld (and the grant therefore not paid) only after the Inspector's report had been sent to the local authority which might address a statement relating to it to the Secretary of State. And a final safeguard was created by the requirement that in every case in which such a certificate is withheld an explanation by the Home Office of the grounds, and the statement of the local police authority, were to be laid before Parliament. Yet it should be observed that the Inspectors have no statutory power to make inquiries like that of the General Inspectors in relation to poor relief. At least one witness before the Desborough Committee of 1919 considered this to be a weakness of police inspection.[3]

Police Inspection at Work. It is now interesting to observe the actual application and development of the powers of the Home Office, and, fortunately, this is possible because we have an unbroken series of Annual Reports of His Majesty's Inspectors of Constabulary since 1856.

In 1856 two Inspectors were appointed: but even in the circumstances of those early days they found that they needed assistance,

[1] Ibid., 13 Feb. 1856, Col. 690. [2] Ibid., Col. 694. [3] Qs. 10,240-2.

and a third was at once added. Following upon the already existing practice in Education and Poor Law Inspection, each Inspector was allocated to a particular area.[1] In 1857 one Inspector was appointed for Scotland. The Metropolitan Police, of course, comes under a special relationship with the Home Office, and this is described later.[2] Since 1901 only two Inspectors have been employed (the Districts being simply North and South) and there is little doubt that with the increase of the numbers of police and the range, scope and urgency of police problems, the number is entirely inadequate.

Let us make a sketch of the Inspector's activities and interests —without ascription of date—from 1856 to our own day.[3] The Inspectors toured their District, visiting every force once a year. They reviewed the numbers and discipline, their general demeanour, the state of their clothing, the condition of the cells and stations. They arrived at conclusions regarding the intelligence of the police. Direct evidence was supplemented by consultation with the local authorities, by the receipt and investigation of letters from members of the forces, magistrates, and other persons. Assizes and Quarter Sessions were visited for the purpose of observing the conduct and efficiency of the police while giving evidence.

From the beginning, and thence continuously, the Inspectors concentrated their attention on securing a sufficient number of police in proportion to the size of each area. Trouble was encountered less in the case of the big Boroughs, which might have been expected to resent outside interference, than in small Boroughs of under 5,000 population. By tactful persistence and friendly advice, by the publication of the fact of inefficiency and the consequent shaming, improvement was produced. In the early years the task of the Inspectors was indeed difficult. The problem was to persuade people actually to subtract money from their own private expenditure and contribute it to a public authority for a social service. As all experience of human nature shows, to be successful in such a task requires remarkable qualities. The really difficult problem in government is not to restrain extravagance, but to persuade people to spend. Admonition followed admonition. The consolidation of the small inefficient Borough forces with their Counties was stimulated. Within twenty years the task of consolidation of the worst cases was accomplished.

The Inspectors were confronted, of course, with the original difficulty: to overcome local jealousy, in order that co-operation between neighbouring forces should be assured in face of the necessity

[1] (1) The Eastern Counties, Midland and North Wales District; (2) The Northern District; (3) The Southern and South Wales District.

[2] Chap. *infra*, 'London.'

[3] For this account I have read the Annual Reports since 1857.

of acting in unison to prevent crime and apprehend criminals. In order to achieve this it was not enough to preach a gospel of unity: the Inspectors attempted to secure certain concrete preliminaries to uniformity in the matter of clothing, recruitment, discipline, and the grading of duties. They made appeals to the local authorities; they encouraged conferences and agreements between the police forces under the leadership of the Chief Constables, aided by the more energetic councillors; they prompted the Home Secretary to make regulations and legislation.

Naturally, the Inspectors speculate upon the general problems of police administration. They see and urge the need for an increase of detective forces. They are much concerned by the extra duties performed by the police, such side lines being sometimes beneficial, but more often destructive of concentration on their main work. They insist upon the advisability of equal pay in neighbouring areas, to avoid too large a turnover of employment in different forces and competition between contiguous areas for recruits. They urge the importance of superannuation funds and of a rational system of promotion with sufficient incentive to energetic and lifelong service by the provision of places in the upper grades. They induce the establishment of periodical examinations in knowledge useful to policemen, such as ambulance instruction. At their suggestion reserves are provided from which recruits can be drawn at need. There are occasional general sociological judgements regarding the causes of crime and the problem of its deterrence: drunkenness and vagrancy give them much to think about. As new apparatus comes into general use, they insist on its importance for the police: telephones, motor-cycles, motor-cars, traffic signals—and they are concerned with the efficiency of fire-brigades. One Inspector acquires an undying enthusiasm for the issue to constables of 'noiseless boots for night duty'.

In the early period of central control and, indeed, of a police force itself, the Inspectors were pioneers in the real sense of the word. At one pole, were local authorities who were just beginning their work, some very unwillingly; at the other, was a central authority with insufficient accumulated experience to provide the Inspectors with standards of judgement. The Inspectors themselves were usually ex-Army officers, and it has been the regular custom to appoint such men and occasionally a former Chief Constable of a large and important force. It cannot be said that the certificates of efficiency were frequently withheld, and, therefore, grants withdrawn. This happened in a few cases in the smallest forces of all, where the conditions were really intolerable. The better policy was to threaten withdrawal of a grant, and to hold the threat over the head of the local authority until improvement was achieved. However, such a process consumed

years to achieve an efficient system. Gradually the Home Office accumulated a great deal of police science, and by about 1900 one observes that it has acquired a really large authority over the police forces.

Would it be unfair to suggest that by 1918 police inspection tended towards a certain superficiality, relieved by a profundity of observation and thought in certain narrow and restricted fields? At any rate, two Inspectors could hardly achieve any serious and significant investigation into about 190 separate police forces. With the rapidity of modern transport, it is, of course, possible for the Inspectors to get round to every police force in the course of the year. It is, however, open to serious doubt whether once a year is enough, whether there is sufficient time for a thorough exploration of the adequacy of the force to the amount and kind of crime in the neighbourhood, the morale of the force itself, and of the various conditions within the force which may affect the morale. To say this is not to depreciate the value of the existing system: it is only to measure it by a rather severer standard. With a small number of Inspectors compared with the work to be done, there must necessarily be large gaps between a few peaks of exceptional interest.

Reports in recent years are concerned with a few subjects of conspicuous importance. There is the question of tips to policemen. It is linked with the problem of the conditions affecting the flow of good recruits into the service, and comic caricatures of the police in the Press. Attention is given to the training of the police; the utility and functions of policewomen; the relationship between numbers of police and specific local needs; mechanical transportation; the effective training and use of police at headquarters, especially in the recording and interpreting of messages; and always there is the insistence that local efficiency is an indispensable element in a competent *national* service. Nor is it the least important use of inspection that it gives the opportunity to every policeman in England to ventilate a grievance.

Of course, the mere fact that an inspection is due results in a kind of internal review of conscience. As one of the Inspectors has said, "I cannot tell you how good a thing it is for police forces to have the inspections. Days before the Inspector comes round everything is smartened up and there is a general tightening up of the whole thing. They look forward to it, and it is the one thing that tends to a uniform police system in the whole of England.' And yet an experienced police officer asserts that not all the men are seen once a year, but only the Chief Constable and a few men. A characterization of an inspection was given before the Desborough Committee.[1]

[1] Captain W. H. Tomasson, *Evidence*, Qs. 9,711 and 9,712.

'You just see the men on parade; you inspect them in the ordinary way; you see that they have an ample supply of clothing in good order; you see every man in the smaller forces, you talk to nearly every man. One you ask one question, and another another: "What is your boot allowance?" "What rent do you pay?" "What sort of house have you got?" You go right down the ranks and look at them. They do a certain amount of drill; you see from their books that they do their ordinary beat duty properly; and eventually you ask them if they have any complaints to make. Then the men go. After that you go round the district; you look at the books and do the inspection thoroughly. Then we ought—unfortunately we have not been able to do it of late years—to go to all the different out-stations, see what condition the cells are in, see if there is a proper police station to look after the women prisoners, see whether the arrangements in respect of the women prisoners are right, that is, that they are properly isolated and there can be no people but the proper persons get in the cells, and see what the premises are like generally; in fact, make a thorough inspection of the whole force. . . .'

'You think that could all be carried out in England and Wales by these inspectors in the course of a year?'—'Easily. You have some funny work to do. At Bolton the other day, the town had claimed that the premises occupied by the police were of a rateable value of £2,000. The Home Office asked me to certify that the premises were of this value in which case the Treasury would have paid half. I declined to certify. You have all sorts of things to do. You have also to make inquiries in cases of discipline here, there, and everywhere.'

In 1919, as a consequence of police strikes, general unrest and a belief that the police service was too disintegrated, the Desborough Committee thoroughly investigated the Police Service. The purpose of the Committee was to attempt to discover and recommend the conditions of greater uniformity of administration. Inevitably the question of the complete nationalization of the police service arose. The idea was, as inevitably, rejected; and it is interesting to see what the Committee had to say against this proposal.

'The adoption of direct central control of the Police would be foreign to the constitutional principle to which we have referred in paragraph 6, by which the preservation of law and order in this country is primarily the function of the proper local authorities; it would alter the whole basis of the police system, and in particular would prejudice the intimate relations between the Police and the localities where they serve which many experienced witnesses have regarded as one of the most desirable characteristics of the present system and to which they attribute in great measure the happy relations which have existed between the Police and the general public in this country.'

It is, indeed, vital to emphasize that in a state of society where the police are called upon, not merely to apprehend criminals, but to preserve order in recurrent industrial strife, local recruitment, manners and accent are safeguards against police tyranny and the violent resentment of the neighbourhood. It is not pleasant to think of London appointed police in Merthyr or Rochdale. Moreover, to nationalize the service was to deprive the local authorities of power,

and this they were bound to resist. Indeed, any increase of the Inspector's power in relation to discipline was vigorously resisted.

If the Committee rejected nationalization it was obliged to suggest an acceptable alternative. It recommended a large number of important measures to secure the co-ordination of the work of the local police authorities and an increase in the power of regulation of the Home Office. These things were carried out by the Police Act of 1919. The effect of that Act, in our context, was twofold: it enormously increased the power of the central authority and, therefore, the obligations of the Inspectors; and secondly, it still maintained the fundamental principle of the British Police System that the police service is a local service. This implied that inspection must remain as the crucial element in the connexion between central and local authorities, but that the powers and obligations of the Inspectors must be enormously increased.

There is no doubt that if those obligations were to be adequately fulfilled, and if the Home Office really sought, not merely formal control, but a thoroughly pervasive effect upon the internal springs of local efficiency (and certain police scandals in the last few years make this seem more than ever desirable), inspection would have to be much more intensive than ever before. The Committee itself (p. 3) recommended that the number of Inspectors should be increased to three at least, 'in order to enable them to carry out the requisite inspection work and to have time to consult with and advise the Home Office on current questions of police administration'. Certainly, this, at the minimum, would seem desirable: but so far it has not been done.[1]

As we have already pointed out on a previous page, the scope and detail of Home Office control was enormously increased by the Police Act of 1919, and the regulations made under it. It is hoped that it will result in a beneficial substitution of diplomatic scouting for the Sergeant-Majorship which has occasionally been too evident. Before we conclude, it is interesting to read the remarks of one of the Inspectors, representing his philosophical consideration of the effect of the new centralization upon the position of Inspector. In the Report dated 1920 he says:

'The Common Law powers of a constable are, in their primary elements at all events, those of the citizens, or as Sir James Stephens puts it, "With a few exceptions, a policeman is a person paid to perform, as a matter of duty, acts which, if he be so minded, he might have done voluntarily."[2] These powers existed long before police authorities were created with power to regulate their

[1] In 1920 the Select Committee on the Employment of Women on Police Duties recommended (*Report*, Para. 42) the appointment of a woman as H.M. Assistant Inspector of Constabulary to inspect and make recommendations with regard to the efficiency of policewomen.

[2] *A History of Criminal Law*, Vol. I, Chap. 14.

exercise, and again, the powers of those authorities were granted on their creation with no contemplation of close control by a central authority. The problem in both cases is to apply central control in such a measure as will avoid destroying individual powers of discretion and breeding timidity of action and lack of initiative, which are the dangers of too close central control.

'The organization of a police force must not stand still, the two processes of centralization and decentralization must be continually applied to each detail of police work with a view to securing uniformity of action in circumstances which can be anticipated and defined by instruction, along with intelligence and boldness of individual action in circumstances novel or unexpected.

'The axioms by which the application of the opposing processes must be guided may be stated:

'Decentralize as far as you can, centralize as far as you must.

'Decentralize for action, centralize for instruction, criticism and record.

'The same principles would seem to apply to the control of the individual police authority, and each of the items now brought under regulation by the Police Act, 1919, calls for separate and considered treatment.

'The word "Government" covers all matters of internal economy, from organization and discipline to record keeping. Of these, discipline is the most important, embracing as it does all questions which affect the personal conduct of the individual and his relations with other members of the force, reward, promotion, offences and punishment. A central authority may well define the different ranks and their responsibilities, the methods of reward, the principles on which fitness for promotion is to be measured, the commissions and omissions which are to be regarded as offences against discipline, the procedure in disciplinary inquiries and the nature and extent of punishment; but it should not attempt to choose this man or that for reward or promotion, or to say that this or that style or amount of punishment should be inflicted upon a particular offender. Among other subjects which seem to come within the term "Government" are strength, distribution and rank, and it is highly desirable that, as recommended by the Committee, there should be some method by which the different ranks are assigned to the varying amounts of responsibility entailed by the performance of particular duties.'

What is the general value of police inspection? There is, first of all, the specific service rendered when the Inspector reports upon the practice in particular matters, as, for example, the taking of messages at police stations, or the problem of traffic control. The spread of that kind of knowledge is of immense value. There is, secondly, the contact with the work of the local branches of the Police Federation which gradually constructs a code of ethics for the police force. The Inspector discriminates and emphasizes the value of such a code. There is, thirdly, the contact of the Inspector with the various conferences of Chief Constables.

Yet these three things stand only on the periphery of his essential task, that is, regular or surprise visits which make the local authority accountable to Whitehall. The value of the incursion of an outsider lies not so much in the fact that he will criticize, censure or praise, but rather in the fact that the local authority is made responsible to a person outside and independent of that locality, a person who represents a body of knowledge, acquired by wide experience, and

the enlightened conscience and requirements of the *national* community. He not infrequently saves the locality from its worst self, for in police matters experience amply shows that when the masters of the force are a body of ordinary citizens—of 'average sensual men', in the famous phrase, their servants, the police, are sometimes likely to turn a blind eye to their misdemeanours. The local police are the better for compulsion from the outside, encouragement, moral support, and security from victimization. This the Inspector supplies. His reprimands and exhortations are supported by a grant-in-aid of local expenditure which from 1856 to 1872 was one-quarter of the cost of pay and clothing of the police, from 1872 was half, and since 1919 has been one-half of the total cost of local police expenditure. Only one thing remains to be said: it is surely the unwisest form of public economy to increase expenditure locally, to make substantial grants towards that expenditure, and then not to supply an Inspectorate sufficiently numerous to see that the service is thoroughly sound from top to bottom.

PART V

THE FINANCE OF LOCAL GOVERNMENT

CHAPTER XVII

LOCAL EXPENDITURE AND INCOME

I

SOME GENERAL QUESTIONS

LOCAL authorities yearly spend very large sums of money, and manage a vast amount of capital. It is neither improper nor useless to ask, why should they be allowed to spend at all? Why, indeed, should not all this money, which must come out of private pockets, remain there, to be spent as its producers and owners severally decide? Of course, the question resolves itself into nothing other than what are the grounds of governmental expenditure? Several reasons can be unravelled from the great tangle of political history. In the first place, some human needs, like *safety of life*, and order, can only be secured by associated effort. Individual effort is too weak, ignorant, or unsteady and intermittent to be entrusted with the provision of police, roads, health protection. An association of resources is indispensable. It could, of course, be produced by private effort, and not through the State. Experience has shown, however, that private associations could not be relied on to keep together continuously or act forcibly enough. Enforcement by the sovereign authority, whether King, Baron or Majority, was needed. Their representatives, in our case the locally elected authorities, therefore naturally administer the associated resources.

Secondly, apart from the vital urgency of those services, *economies* are obtainable by associated and quasi-monopolistic activity. So in education, where overhead charges rapidly decrease *per capita* as the number participating increases; thus, also, in the so-called reproductive or trading services, where the local area is an area of natural monopoly, and may be made so legally.

Thirdly, there are considerations of *charity*: they have operated in the development of poor relief, education and public health. These services were once provided by the great embodiment of charity, the

Church and private philanthropy. The Church has been swallowed up by the State (which is a kind of Church), while private benevolence is too fitful to be relied upon. Hence local organization.

Finally, an element of compulsion enters through the exercise of their political power by the most numerous section of society, the poor and comparatively poor. Here the general motive of *equalizing* material welfare and social opportunity causes the establishment of services—free education, scholarships, free libraries, low tramway fares, and so forth, paid for out of local taxation and central grants.

These forces rarely operate separately; they are usually in combination. A quarrel with the aggregate expenditure is necessarily a quarrel with one or all of these reasons for expenditure; and it is legitimate to ask the opponent which of these reasons he considers undesirable, and why, in each particular case. But one other question arises; whether the reasons and the taxes being conceded, the funds are utilized without waste—and that we discuss later.

Repugnance to Payment of Rates. Many commissions of inquiry have in their own expert way revealed a truth intuitively familiar to the man in the street: people are not passionately anxious to contribute to the rates; they prefer the world to forget them. At all times, indeed, a great force has been needed to overcome their repugnance to being taxed, and only alarming disorder and crime, panics caused by plagues and dangers bruited abroad by propagandists, shameful results of popular ignorance, have overcome it. The result is that local authorities have always had to be urged forward forcibly, either from outside, or by some of the more convinced or interested of local citizens. The rate-payers then attempt to transfer the burden to the central authority, or, by getting relief, to other groups of rate-payers. But the repugnance to self-taxation has one very useful result: it animates local interest in local administration. Generally, the main body of rate-payers are as apathetic about the rates as they are about administration. There are, however, some very vigilant societies which organize watchfulness and criticism, sometimes too virulently, and almost insanely. If it is the propensity of human nature in politics to go always beyond the mark, it is, nevertheless, beneficial, not to say remarkable, that men ever act at all. An implication of the connexion between local rates and local administration is that though the central authority is sometimes tempted to support the local authority by grants-in-aid, it is always careful to leave the local burden sufficiently considerable to spur the local rate-payers to check extravagance.

Then, as a corollary of repugnance to rate-paying, there is much litigation regarding assessments, and the law allows ample means of appeals against assessments.

Economy in the Public Services. The word economy and the

phrase 'economy in the public services' have been so shamelessly abused that one despairs of enlightenment and sincerity in public life. Since the terms are used in political controversy, they are employed not in a scientific detached sense, but to move people to praise or blame. Some use 'economy' to add unmerited lustre to parsimony and miserliness, the callous unwillingness to spend upon public objects at once desirable and urgent. Others use it as an argument to secure the increase of public expenditure upon objects considered to be so wonder-working that there ought to be no limit to the amount demanded from rate-payers. Now its pure and original meaning is simply 'good management', and, as such, it may be applied in either of two ways. First, the least wasteful utilization of available resources. The funds being there, economy consists in reducing all the waste (undesirable results) which may arise in the organization, choice of men and apparatus, planning—the adaptation of the instruments to an accepted policy. It is, indeed, eminently proper that this object of economy should be supervised, and transgressions visited with proper severity. Waste of material resources is a crime against civilization: it reduces man's equipment to control his environment and himself.

The second aspect of economy is sometimes improperly confused with the first, but is quite distinct. The question always arises (especially in an industrial and commercial depression) whether the resources of society would not yield, on the whole, greater welfare, if less were spent for public services and more left in the hands of private industry for current consumption or capital investment. This is a double question; the first of alternative uses; and, then, again, the alternative of private or public administration. If 'economy' is used in this sense, it is obvious that there may be occasions when long-term wisdom dictates less consumption and more capital preservation, or less consumption in some directions and more in others. But economy in this sense is equally consistent, *not with less, but with more, expenditure by public authorities.* The ultimate questions are the respective values of the ends to be pursued, and the relative efficiency of the organization and incentives of private and public enterprise. They involve subtle analysis and delicate weighings, and they are not to be settled, though they may be prejudiced, by impassioned bellowing in the market-place.[1]

The Measurement of Economical Service. Now control over expenditure is impossible without measurement. But the measurement of the economy of State and municipal services is extremely difficult. We need a mature and continuous review of

[1] The reader ought not to fail to study the investigation—its principles of analysis and economy—of *The Committee on the Expenditure of Local Authorities*, Cmd. 4200, 1932.

every sub-item to appreciate the intensity of the want for it. Then we must ask whether the amount supplied is worth what we pay for it. There are certain factors in municipal administration making analysis of purpose and costs especially necessary. Not all local councillors are experts—they require detailed instruction. Councillors and officials are not responsible in their own pockets for profit and loss; that stimulus is lacking; and the fear of losing votes and sheer devotion to public duties do not yet supply an adequate alternative. Further, the citizens are not yet enlightened enough to balance what they are getting against what they must pay. Finally, the nature of the social services is such as to make quantitative expression in £ *s.* *d.* of the good done or the amount spent difficult, and sometimes impossible.[1]

This difficulty has, in fact, retarded the development of adequate cost accounting. What unit of measurement can be discovered for Health, Education, Police, Roads? They serve such general purposes in human life that, when all the measuring is done, whether value has been obtained depends upon individual intuitions of values, not upon money tests. Even leaving this difficulty out of account, there is the problem of finding a unit of measurement sufficiently constant to be used in comparisons with other years, and more important as a control, with other places. The conditions vary so much. For example, the Committee on Local Expenditure observes: 'We have examined a considerable number of costing and other returns relating to the various services, but without detailed knowledge of local conditions it is impossible to make precise comparisons between Local Authorities' (p. 81).

The difficulty should be a spur to invent methods of measurement, not an encouragement to complacency. In this matter we have a good deal to learn from America,[2] whose experience and research teach that what is now required is this: (1) accurate and detailed records; (2) analyses of cost and performance; (3) the provision of standards, e.g. lowest practical cost or average cost for each phase of operations, the quality of the operation also being stated as a constant; (4) the collection and publication of equivalent figures from other places, for purposes of comparison. From such measurements not everything can be expected, for exceptional local conditions and the great variations in what may be called the 'municipal standard of living' will always create doubt. But there is everything to be said for measuring what can be measured, and then publishing it: the doubts and questions which follow are the salutary beginnings of improvement.

[1] Cf. for the further treatment of the subject my *Theory and Practice of Modern Government*, II, 1174–1182, and 1345–1373.

[2] Cf. *The Measurement and Control of Municipal Sanitation* (International Association of Street Sanitation Officials, Chicago, 1931); and for other literature apply to the Public Administration Clearing House, 58th Street and Drexel Avenue, Chicago —that is sponsoring much pioneer work.

Authority to Rate. Local authorities have no general authority to raise rates like the full sovereign power of Parliament to raise taxes. Like all their powers, local authorities have only a power to rate when that is specifically granted, and they cannot raise a rate except for the purposes, in the measure, and by the process, prescribed by statute. Hence, the various statutes on public health, on police, on education, on highways, and others, somewhere grant the right to meet expenses, where the funds from other sources do not suffice, out of a rate.[1]

The Magnitude of the Expenditure. In the financial year ending 31 March 1937, all the local authorities in England and Wales together spent just under £485,000,000 in current administration and loan charges (interest and sinking funds).[2] They spent also

ENGLAND AND WALES

REVENUE OF ALL LOCAL AUTHORITIES FROM VARIOUS SOURCES AND EXPENDITURE OUT OF LOANS, IN MILLIONS OF POUNDS

	Year ending	Exchequer Grants	Fees, Tolls, Rents, Other Receipts not being Grants	Balance of Expenditure falling on Rates	(*a*) Totals (excluding Loans)	Loans expended during the Year
(*b*) 1	1873–4	1·0	4·6	19·6	29·2	8·2
2	1878–9	2·9	5·2	25·4	35·0	(*e*)
3	1883–4	3·4	13·3	24·9	43·2	8·8
4	1888–9	4·8	14·5	27·4	47·9	7·0
5	1893–4	8·9	15·9	32·2	58·4	13·9
6	1898–9	11·8	21·8	38·6	72·2	19·7
7	1903–4	15·6	33·8 (*d*)	52·9	102·4	31·3
8	1908–9	21·4	39·3	61·2	122·0	20·0
(*c*) 9	1913–14	22·6	46·4	71·3	148·3	(*e*)
10	1918–19	26·6	76·6	90·3	103·5	4·6
11	1923–4	73·5	122·8	146·9	340·3	50·0
12	1928–9	85·9	158·3	170·6	414·7	90·5

(*a*) The totals include, in some cases, some minor receipts not accounted for in the table.

(*b*) The totals for lines 1 and 2 are approximate.

(*c*) The figures in lines 1–9 inclusive are taken from the *Annual Reports of the Local Government Board* for the particular years. Those in the last lines from the *Ministry of Health Reports*.

(*d*) This figure does not include all receipts of School Boards which are not available owing to the changes in organization caused by the Education Act, 1902—see *Report, L.G. Board*, 1911.

(*e*) Not available.

[1] E.g. Public Health Act, 1875, Sect. 210, 'For the purpose of defraying any expense chargeable on the district fund which that fund is insufficient to meet, the urban authority shall from time to time, as occasion may require, make . . . and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "general district rates".'

[2] Figures are regularly obtainable from the *Annual Report, Ministry of Health*; and the *Statistical Abstract for Great Britain*.

about £125,000,000 on capital expenditure. From the standpoint of an appreciation of the range of their responsibilities and the amount of resources managed by public authorities, it is unnecessary to divide these amounts between what may be called Reproductive or Trading Services and the rest, the Non-Trading Services. From the standpoint, however, of the extent to which services are mainly provided as public gifts or compulsions (as when money is spent on compelling the demolition of an insanitary house), and whether or not services are mainly sold at a price, a standpoint useful in relation to methods of accounting and of distinguishing pure and rate-borne expenditure from the rest, the distinction may be made. The expenditure of £484,600,000 would then fall into £361,500,000 for Non-Trading and £133,000,000 for Trading Services. The former are offset by Rates, Grants-in-Aid, Fees and Tolls; the latter by charges to consumers.

Expenditure in 1936–7 on the Trading Services fell into the following main classes:

Markets, Tolls, etc.	£2,535,214
Harbours and Docks	£13,241,900
Water Undertakings	£21,829,354
Gas	£17,253,879
Electricity	£48,451,706
Transport	£23,220,319

This amount of £484,600,000 compares with about £900,000,000 per annum spent by the central authority (a figure including about £135,000,000 of grants-in-aid to the local authority), that is, it is about one-half of the central Exchequer's expenditure.[1] In 1842–3 the local authorities together spent £11,626,000.[2] In 1842–3 the central authority spent £50,819,000. To-day, the annual expenditure of the local and central authorities together amounts to about £1,400,000,000; and this is equal to one-third of the total national income per year.[3] Thus, one pound out of every three produced annually by the gainful effort, and interest on investments, is spent—or to put it in a more reasonable way—is managed by the central and local authorities. It is not unfair to put this fact in another way: the country's welfare depends to the extent of one-third of its annual productive capacity on the administrative efficiency of the State, and upon the local authorities alone to the extent of about one-eighth. One pound out of every eight produced passes from private pockets and the choice

[1] Cf. App. I, Committee on National Expenditure, Cmd. 3,920; 1931.

[2] According to Sir Edward Hamilton in *Memoranda on the Classification and Incidence of Imperial and Local Taxes*, Royal Commission on Local Taxation, Cmd. 9,528, 1899, partly based on Mr. Goschen's Return of 1893, No. 201. Further figures given there were, Expenditure for 1852–3, £13·4 million; 1872–3, £24·1 million.

[3] Cf. Bowley and Stamp, *The National Income* (1924); Coates, *The Citizens' Purse*, Nov. 1931, *Journal Manchester Statistical Society*; and Colin Clark, *The National Income*, 1932. Clark's estimate for 1935 was a little over £3,909,000,000.

of private consumers into the authority and stewardship of local councillors and officials. These are large sums, and it is exceedingly doubtful whether such a proportion of private income could ever have been made available for public purposes in a despotism; this is a great tribute to democratic government.

Both in tabular form and upon a graph (see next page), we show the rise in expenditure since 1875.

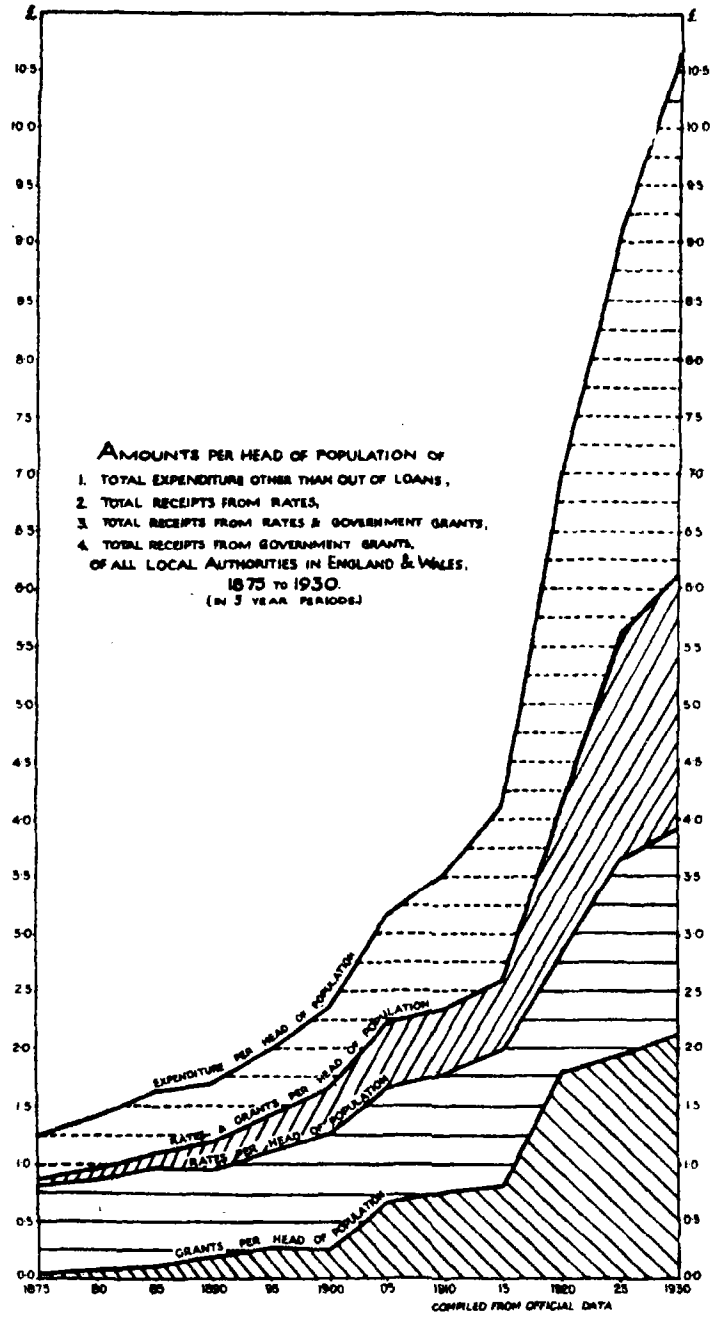
Year	Total Expenditure	Expenditure per Head of Population	Total Rates	Rates per Head of Population	Total Rates and Grants	Rates and Grants per Head of Population	Total Grants	Grants per Head of Population
	£000,000	£	£000,000	£	£000,000	£	£000,000	£
1875	28·8	1·26	19·4	·81	21·1	·87	1·7	·04
1880	36·3	1·46	22·5	·87	25·2	·96	2·7	·07
1885	44·1	1·62	26·3	·97	29·9	1·08	3·6	·10
1890	48·2	1·68	27·7	·96	34·2	1·19	6·5	·19
1895	59·7	1·96	33·9	1·11	42·9	1·41	9·0	·27
1900	76·0	2·36	40·7	1·26	53·0	1·64	12·3	·26
1905	107·7	3·17	56·0	1·65	75·6	2·22	19·6	·67
1910	125·8	3·52	63·3	1·77	84·2	2·35	20·9	·75
1915	153·3	4·11	73·7	1·98	96·9	2·60	23·2	·82
1920	265·5	7·07	105·6	2·82	153·6	4·09	48·0	1·79
1925	354·9	9·12	141·98	3·65	218·1	5·61	76·1	1·95
1930	425·1	10·68	156·3	3·92	243·4	6·12	87·1	2·14
1937	484·6	11·8	172·8	4·2	307·7	7·5	134·9	3·3

It will be seen that the expenditure per head is about £1 5*s*. in 1875, in 1900 it is £2 7*s*., and in 1937 it is £11 16*s*. It is an enormously sharp rise. In the first twenty-five years it nearly doubles; within fifty years it is multiplied by nine. The rise is particularly steep since 1918. The curve would be steeper still if we took no account of the increase of the population. Nor must we forget the great rise in national income since 1875.

Allowances must be Made. Some of those who contemplate the graph showing the rise of expenditure and revenue of the local authority may feel appalled by its swiftness and steepness, and may be inclined to worry about 'economy'. To those some scientific warning has already been given, and some further observations will not be amiss. A considerable allowance must be made for the rise in prices since July 1914. This is measured by the Ministry of Labour Cost of Living Index, which rises and falls as follows:

March 1920–June 1920	130
March 1921—August 1921	165
March 1922–August 1922	105
September 1922–August 1930 . . .	85 to 70, fluctuatingly.
September 1930–August 1931 . . .	65 down to 55

Year 1937 on the basis of 1929 index being 100 was 94.


£
10·5
10·0
9·5
9·0
8·5
8·0
7·5
7·0
6·5
6·0
5·5
5·0
4·5
4·0
3·5
3·0
2·5
2·0
1·5
1·0
0·5
0·0
AMOUNTS PER HEAD OF POPULATION OF
1. TOTAL EXPENDITURE OTHER THAN OUT OF LOANS,
2. TOTAL RECEIPTS FROM RATES,
3. TOTAL RECEIPTS FROM RATES & GOVERNMENT GRANTS,
4. TOTAL RECEIPTS FROM GOVERNMENT GRANTS,
OF ALL LOCAL AUTHORITIES IN ENGLAND & WALES,
1875 TO 1930.
(IN 5 YEAR PERIODS)
EXPENDITURE PER HEAD OF POPULATION
RATES & GRANTS PER HEAD OF POPULATION
RATES PER HEAD OF POPULATION
GRANTS PER HEAD OF POPULATION
1875
80
85
1890
95
1900
05
1910
15
1920
25
1930
COMPILED FROM OFFICIAL DATA

Hence, where salaries and labour costs play a large direct part in expenditure, or in governing the costs of material, allowance must be made on the crude figures in order to measure the real representation of services.[1]

What we Obtain for the Money. Secondly, against the rise in expenditure must be accounted all the amenities of civilization obtained as its direct result. Without wishing to pretend that a direct correlation is possible or intended, some salient features may be noticed. Fourteen millions more people than in 1875 are provided with the rudimentary bases of civilized existence. Mortality has decreased from a rate of 21·1 per 1000 in 1841–70 to about 11·5 per 1,000[2]; longevity has increased by about eleven years compared with fifty years ago; sickness has decreased, the death-rate from tuberculosis having been halved, and other diseases almost stamped out[3]; sights and smells are less repulsive; the streets are paved, lighted and cleaned; from 1919 to 1937 over one million new houses have been built for those who could not get them through private enterprise. About five and a half millions of children are educated from the age of about 4 to 14 in elementary schools, and 400,000 to the age of 16 in secondary schools. In a world where but a tiny fraction of the population possesses the largest part of all existing wealth, and since the War more than ever inclined to violence, the amount of crime is, when one considers the temptations, extraordinarily small, and people go their way with the comfortable assurance that criminals are so rare that they are sensational news. The country has been covered with a splendid network of roads without which all the economies and comforts of motor transport could not be of benefit. Over one million people are, day by day throughout the year, saved from starvation and misery, and countless acts of charity and assistance alleviate, in the specially appropriate way, the mentally and physically unfortunate.[4] Let those who would care to surrender the nation to disease, crime, destitution and disordered industry, cast stones at the necessary expense! Statistical analysis is, indeed, able to show that a reduction in rates directly means an increase of death and debility.

The Sources of Revenue. Local authorities obtain their revenue from four main sources: from Grants-in-Aid from the central authority: Fees, Tolls and Rents; Trading charges; from Rates.

[1] Cf. the analysis in 'Memorandum on the Increase in the Amount of Local Rates', Cmd. 1,116; 1920, Ministry of Health.

[2] Newsholme, *Health Problems in Organized Society*, 1927.

[3] We do not lose sight of the fact that to an extent which cannot be measured, but must be great, improvement in health has been produced by the general growth in wealth and education—better clothes, houses, diet and domestic hygiene.

[4] Cf. Secton in *Ministry of Health Annual Report*, 'Administration of the Poor Law, etc.'

REVENUE OF ALL LOCAL AUTHORITIES IN ENGLAND AND WALES FROM VARIOUS SOURCES AND EXPENDITURE OUT OF LOANS

£ Millions

Year ending	(*b*) 1 1873–4	2 1878–9	3 1883–4	4 1888–9	5 1893–4	6 1898–9
Exchequer Grants . . .	1·0	2·9	3·4	4·8	8·9	11·8
Fees, Tolls, Rents and other Receipts not being Grants	4·6	5·2	13·3	14·5	15·9	21·8
Balance of Expenditure falling on Rates	19·6	25·7	24·9	27·4	32·2	38·6
(*a*) Totals (excluding Loans)	29·2	35·0	43·2	47·9	58·4	72·2
Loans Expended during the Year	8·2	—	8·8	7·0	13·9	19·7

Year ending	7 1903–4	8 1908–9	(*c*) 9 1913–14	10 1918–19	11 1923–4	12 1927–8	13 1936–7
Exchequer Grants . . .	15.6	21·4	22·6	26·6	73·5	85·9	134·9
Fees, Tolls, Rents and other Receipts not being Grants	33·8(*d*)	39·3	46·4	76·6	122·8	158·3	64·3
Trading	—	—	—	—	—	—	131·0
Balance of Expenditure falling on Rates	52·9	61·2	71·3	90·3	146·9	170·6	172·8
(*a*) Totals (excluding Loans)	102·4	122·0	148·3	193·5	343·3	414·7	503·0
Loans Expended during the Year	31·3	20·0	—	4·6	50·0	90·5	113·7

(*a*) The totals include, in some cases, some minor receipts not accounted for in the table.

(*b*) The totals for columns 1 and 2 are approximate.

(*c*) The figures in columns 1–9 inclusive are taken from the *Annual Reports of the Local Government Board* for the particular years. Those in the last columns from the *Ministry of Health Reports*.

(*d*) This figure does not include all receipts of School Boards; they are not available owing to the changes in organization caused by the Education Act, 1902—see *Report of the L.G. Board*, 1911.

The Grants in 1936–7 constituted about 27 per cent of the entire revenue; Fees, Tolls, Rents, 12.8 per cent; and Rates 34 per cent; Trading charges 26 per cent. Grants have risen mainly as the result of Parliamentary force brought to bear on the local authorities for the institution of new services considered essential by the community, and the need felt by the central authority to persuade, coax and aid the poorer authorities to keep up to the necessary standard. This is explained at length in the following chapters.

Fees and Tolls. The Fees, Tolls and Rents are obtained from services and amenities and the various kinds of property owned by the local authorities. In fees for secondary education where they exist, in housing estates, in baths and wash houses, in playing fields, etc.,

the local authorities do not seek to make a profit; in some cases only a small amount of revenue compared with expenditure as in education; in some cases like housing, there is clear subsidization; in some cases not. As for the Trading Services, with the exception of water, which is for general health reasons supplied considerably below cost, the policy is to recover the full cost of production plus a slight profit in order to meet unprofitable years and frequently to return a small excess which may benefit the General Rate Fund.[1]

Rateable Value. As we explain in a later chapter, the Rates are paid by occupiers of fixed property in proportion to the annual rental value of the property. Certain deductions (for repairs, insurance and maintenance) are made from the *gross* value in order to produce *the net value*, which in the case of most properties *is the Rateable Value*. In certain cases, however, such as industrial hereditaments and freight transport hereditaments, a further deduction is made from the net annual value, thus producing their Rateable Value. The Rateable Value is the *index* of the financial capacity to bear rates, but it is not the same thing as financial capacity. Later we discuss in some detail why. Here we need merely say that the *rental value of fixed property only* is (*a*) not the financial capacity of the rate-payers; their financial capacity is their *total* wealth, and (*b*) it is not an accurate index of *all* property, but only a somewhat inaccurate measure of *real* property. Naturally, the nation's Rateable Value[2] has increased tremendously since the middle of last century:

	£ millions	
1842–3	62·5[3]	It is doubtful whether an allowance has been made for exemptions from rates in respect of certain kinds of property. For assessable value these figures should be lower.
1852–3	69·8	
1872–3	112·4	
1875–6	119·1	
1885–6	147·4	
1891–2	155·9	
1894	161·1	
1904	182·8[4]	From 1908–9 to 1913–14 an increase of about 5·3 per cent.
1910	203·5	
1915	214·3	'Assessable Value affected both by the War-time cessation of house-building and the imposition of restrictions on rents tended to become stationary (a total increase of only 3·8 per cent in five years).'
1919	219·6	

[1] The subject as relates to the Trading Services is thoroughly discussed in Finer *Municipal Trading*, p. 299 et seq.

[2] Until the passing of the Rating and Valuation Act, 1925, the term *Assessable* Value was in frequent use. Its relation to Rateable Value was this. From the Rateable Value, as defined in the text, were deducted certain exemptions, such as reliefs on unoccupied property, charities, etc., so that the Rateable Value of an area, and of the whole country, was higher than the value upon which rates were already assessed.

[3] Hamilton, *Memorandum* cited, pp. 31–3, for figures from 1842–94.

[4] *Memorandum on Increase in Amount of Local Rates*, etc., cited, p. 5.

	£ millions	
1920	220·7 [1]	On April 1st, 1930, began the Rating Relief of all rates on land used for agricultural purposes; and rates on three-quarters the rateable value of industrial and freight transport hereditaments.
1925	242·0	
1929	267·6	
1930	255·3	
1939	310·8	

Loans. The loans of local authorities are composed of sums which they borrow in order to buy equipment, such as land, buildings, machinery, apparatus, trams, 'buses, electricity works and plant. In private industry this is called capital, and ranks as something which gives a firm prestige. Like private companies, local authorities borrow money in order to obtain assets the utility of which lasts for years, and sometimes generations, and when it would be a grossly uneconomical and unjust charge on the revenue of any single year. All this is perfectly simple and unobjectionable. But opponents of public enterprise mislead the more ignorant of their fellows by pretending that there is something vicious in borrowing, regardless of the fact that the whole apparatus of the Banks and the Stock Exchange exist largely to facilitate it. Local authorities' loans are represented by assets quite as much as those of private enterprise.[2] Let it be remembered that local authorities in 1937 were supplying 65 per cent of the electricity (manufacturing a great proportion), manufacturing and supplying one-third the gas and two-thirds the water consumed by the nation; and providing for 20 times more tram and 7 times more trolley passenger-journeys than private companies and 40 per cent of bus passengers. This is not to belittle the fact that the stewardship of the large amount of outstanding loans constitutes a most important trust. Amount, rapidity of increase, and purpose of loans, together with the kind of asset they represent can be seen from the following tables:

TOTAL OUTSTANDING LOAN DEBT OF ALL LOCAL AUTHORITIES

Years	Amount £ millions	
1875	92·8	These figures are of gross debts. Figures for *net* debts are not available for these years.
1880	136·9	
1885	173·2	
1890	194·7	
1895	229·2	
1900	282·1	
1905	447·8	
1910	515·5	

Years	Amount £ millions
1915	533·2
1920	495·3
1925	536·0
1930	1,224·7
1937	1,481·0

Debt figures include debt of the Metropolitan Water Board for first time in 1905 (total £45·9 millions) and of the Port of London Authority for first time in 1910 (total £23·2 millions).

[1] Cf. Statements on Amount of Local Rates and Assessable Values, Ministry of Health, Cmd. 1,155 (1921); Cmd. 1,633 (1922); and thenceforward annually in statements of similar title.

[2] Cf. Shaw, *Common Sense of Municipal Trading*, 1906; Suthers, *Mind Your Own Business*, 1930.

GROSS OUTSTANDING LOAN DEBT OF ALL LOCAL AUTHORITIES—£ MILLIONS

Items	1889–90 Gross Loan Debt	1909–10 Loan Debt	1929–30 Loan Debt	1936–7 Loan Debt
1. Elementary Education	18·2	40·8	39·9	51·2
2. Higher Education		5·3	16·8	23·3
3. Public Libraries and Museums	·5	—	1·1	2·0
4. Public Health :				
(1) Sewers and Sewerage Disposal	19·4	41·8	59·3	79·3
(ii) Collection and Disposal of Refuse	—	—	3·0	2·5
(iii) Hospitals, etc.	·6	6·1	5·8	11·6
(iv) Prevention of Disease	—	—	·04	·06
(v) Maternity and Child Welfare	—	—	·7	1·40
(vi) Baths, Washhouses, etc.	·9	3·2	4·0	7·73
(vii) Parks, Pleasure Grounds, etc.	3·7	8·5	16·0	20·28
(viii) Public Conveniences	—	—	1·1	1·49
(ix) Welfare of the Blind	—	—	·1	·24
(x) Other Health Services	—	—	2·2	2·92
5. Mental Hospitals and Patients therein	3·6	10·9	7·4	8·64
6. Mental Deficiency	—	—	·7	4·0
7. Housing	3·8	10·8	395·8	578·9
8. Small Dwellings Acquisition	—	—	48·9	
9. Town Planning	—	—	·005	·002
10. Relief of the Poor	7·0	12·5	8·9	5·4
11. Agriculture and Fisheries :				
(i) Allotments and Small Holdings	·008	1·1	20·5	21·4
(ii) Land Drainage and River Conservancy	3·1	—	5·2	10·0
12. Highways and Bridges	28·8	59·6	103·0	102·1
13. Private Street Works	·9	1·5	1·9	2·5
14. Public Lighting	·05	·2	·4	·6
15. Fire Brigades	·5	1·9	2·7	3·2
16. Police and Police Stations	1·0	1·9	2·1	3·5
17. Administration of Justice	—	·9	·9	1·0
18. Administrative Expenses	—	—	10·9	15·2
19. Legal and Parliamentary Expenses	—	—	·3	·13
20. Public Buildings Miscellaneous	4·2	—	—	15·8
20a Loan Account, unallocated	—	—	—	21·8
21. Water Supply	37·7	127·0	163·3	171·7
22. Gas Supply	14·9	23·2	27·9	24·5
23. Electricity Supply	—	29·5	106·5	148·7
24. Transport	1·3	36·0	38·5	26·9
25. Ferries	4·1	—	1·5	1·2
26. Markets	5·4	7·4	8·2	8·5
27. Cemeteries	2·5	3·0	2·6	2·9
28. Harbours, etc.	31·1	72·3	97·2	96·6
29. Miscellaneous	—	—	—	3·6
30. Estates	—	—	—	8·1
Totals	198·7	536·0	1,224·7	1,481·02

Inequality of Rateable Value and Necessitous Areas. We explained in the second chapter of this book that one of the inevitable consequences of a system of government in which the administration of certain services is distributed among a number of small local

authorities is to cause a disparity between the urgency of the need for the service and the financial capacity of the area. There is no way in which one can assure that the amount of wealth in any given area of local administration shall be exactly proportionate to the necessary cost of the service. Areas are either too wealthy or too poor, and of course it is the areas which are too poor which raise all the difficulties. The capacity of a local authority to pay for the services it requires depends upon two factors, the amount of wealth per head of its ratepayers, and their number. We cannot take the amount of wealth per head by itself as an index of financial capacity, because services can be provided more cheaply *per capita* if a large number of people contribute and make possible the economies of a large-scale organization. Therefore, the second factor, the size of the population, has to be included. However, for all practical purposes, an approximate, although not a perfect, index of comparative ability, is furnished by the amount of wealth per head. Even this cannot be obtained exactly and we have again to fall back on the crude measure of rateable value per head. We have ample statistics to show the extreme inequality in financial capacity of English local governing authorities, and we give a few of the more extreme examples of rateable value.

Diversity of Rates.[1] From place to place, there is a remarkable variation in the amount of rates in the pound. (See Table on opposite page.)

Diversity of poundage, as it is called, is not the result of political perversity, as so many ignorant or dishonest controversialists have from time to time alleged. It is not the result of simple administrative stupidity, or of negligent or deliberate extravagance; it is not the result of 'Poplarism'[2] as the term goes in political conflict: the Poplars of England are, in so far as high rates are concerned, victims, not wrongdoers. It is the ambition of every council, Socialist or otherwise, to keep the rates as low as possible—compatible with the maintenance of vital services. These ingredients enter into the cause of high rates, but they are not the main, or even an appreciable, cause. Rates vary from place to place owing to a combination of factors. The *poundage*, as it is called, depends upon two variables, (*a*) the total municipal expenditure falling on the rates, and (*b*) the total rateable value. The lower the rateable value—the measure of

[1] The Table is taken from *Statement on Rates and Rateable Values, England and Wales*, 1930–1 and 1931–2, Ministry of Health, 1932, and 1938–9.

[2] 'Poplarism' was a term of abuse applied between the years 1919 and 1929 by political opponents to those local authorities which raised high rates, both in amount and poundage. The term was intended to convey that the councillors were wastrels, the amount spent being a practical demonstration thereof. Poplar, being inhabited by exceedingly poor people, had both a high demand for municipal services and a low rateable value. The term 'Poplarism' was never intended to convey that the people of Poplar were unfortunate, but only that they were extravagant. No one ever talked of 'Poplarism' in relation to Kensington or Bournemouth.

Poundage Rate in 1931–2 In italics poundage rate for 1938–9	Number of Areas in which the Poundage was within the limits indicated in Col. 1									
	All Local Rates levied in									
	Metropolitan Boroughs		County Boroughs		Other Boroughs and other Urban Districts		All Urban Areas (totals of Cols. 2, 3, and 4)		General Rate leviable in Rural Districts	
1	2		3		4		5		6	
Under 6*s.* . . .	—	—	—	—	1	—	1	—	11	*1*
6*s.* and less than 8*s.*	—	—	4	*1*	11	*1*	15	*2*	95	*17*
8*s.* ,, ,, 10*s.*	7	—	6	*6*	148	*47*	161	*53*	285	*121*
10*s.* ,, ,, 12*s.*	13	*10*	20	*16*	351	*250*	384	*276*	153	*189*
12*s.* ,, ,, 14*s.*	6	*12*	21	*18*	273	*299*	300	*329*	53	*85*
14*s.* ,, ,, 16*s.*	1	*4*	18	*18*	154	*138*	173	*160*	37	*35*
16*s.* ,, ,, 18*s.*	2	*2*	12	*14*	55	*67*	69	*83*	8	*15*
18*s.* ,, ,, 20*s.*	—	*1*	1	*8*	24	*34*	25	*43*	—	*10*
20*s.* and over . .	—	—	1	*2*	19	*45*	20	*47*	1	*5*
Number of areas in each group . .	29	*29*	83	*83*	1,036	*881*	1,148	*993*	643	*477*

' In the majority of urban areas the amount in the pound of the local rates levied in the year 1931–2 was between 10*s.* and 14*s.*, and in the majority of rural districts the general rate leviable for the purposes indicated in the footnote to column 3 on page 34 was between 8*s.* and 12*s.* The extreme range of the amounts in the pound for the year 1931–2, was, in urban areas, from 5*s.* in Roxby-cum-Risby (in Lincoln, Parts of Lindsey), to 26*s.* in Abertillery (in Monmouth) and, in rural parishes, from 1*s.* 4*d.* in a parish in the county of Nottingham to 28*s.* 3*d.* in a parish in Glamorgan.' The extreme range of the rate poundages levied in the year 1938–9 was, in urban areas, from 7*s.* 10*d.* to 27*s.* 6*d.*; and in rural districts from 5*s.* 2*d.* to 27*s.* 11*d.*'

capacity—the higher must the poundage be, because the poundage is nothing other than the total expenditure divided by the rateable value; the higher the rateable value, the lower the poundage. If the two factors were the same all through the country, or if they were increased or decreased in the same proportion, there would be an equal poundage; if either factor varies there is an unequal poundage. What causes their variation? The rateable value varies from certain rather uncontrollable factors: poorer or richer people live in the district because industries are located there or there is a healthy and beautiful residential area. This often depends on unalterable geographical and climatic factors. It sometimes depends upon the administrative boundary. The factor of rate-borne *expenditure* varies with five things: (*a*) The civic enterprise and liberality of the local Council, for the local authorities have widely different conceptions

of the desirable ambit of their use of permissive powers in such fields, for example, as education, libraries, art galleries, parks, street cleaning and lighting, health services, and so on; (*b*) the varying burden due to expenditure upon duties imposed by the State—as especially in public assistance, where the variation is a direct result of the amount of distress; (*c*) the quality of local administration which may be, in various degrees, long-sighted and wise as to ends and means, or not so, and which may be affected appreciably by the size of the area, population and *total* wealth available for associated purposes; (*d*) central government grants paid to the different classes of local authorities and the individual members of them [1]; and (*e*) the profits or losses arising out of the Trading Services, if and as they are used to relieve or charge the rates; and the rents and fees obtained from Corporation estates.

Criticism of a reasonable and responsible kind may be properly applied to all these factors, and its pressure may serve to stimulate councillors to mend inefficient organization and methods and defend the purposes they seek to achieve by municipal expenditure. But the steady dominating factor on any large scale in the variation of poundage is the variation in rateable value. That should be genuinely discounted first.

[1] The institution of the Block Grant in 1929 was designed to make a special contribution to meet the inequality of rateable value of the heavier needs of the poorer areas: to an important extent the object succeeded. Compare pp. 471 following.

CHAPTER XVIII

PRINCIPLES AND MACHINERY OF LOCAL RATES

I.

THE STANDARD OF CONTRIBUTION

A PART of the total revenue of the local authorities, about £172,800,000 per year, or about an average of £4 4*s*. per head of the total population, is raised by means of a peculiar system of local taxation called Rates. We now turn to an analysis of the principles and machinery by which this amount of money is raised, and to a discussion of their significance and justice. This is not an easy matter, because the law relating to Rates is an intricate compound of statutes and a large number of legal decisions descending down three centuries and more to our own day.[1] If one is to see the wood for the trees it is unavoidable that from this vast mass of legal detail there shall be extracted and accentuated only the controlling principles. This means that many things important in themselves must, because of their relative unimportance, be left to the reader's own researches.

The local rating system is at present mainly governed by the Rating and Valuation Act, 1925, the Rating and Valuation (Apportionment) Act, 1928, the Local Government Act, 1929, and the Rating and Valuation (Railways) Act, 1930. These Acts have produced a veritable revolution in the machinery of rating, have to some extent affected its principles, but have left the essential core of principles much as they evolved between 1601 and 1925. Therefore, in the ensuing analysis, we pursue the method of stating the main principles as embodied in the present law, and then of describing the history leading to them. The problems of government involved in both the history and the present principles will, then, we hope, become clear.

The Main Principles of Rating. If we leave aside detail, the main principles which can be discerned in the local rating system are four:

[1] The chief works on the subject, containing the complete list of Statutes and cases, are; Ryde, *Law and Practice of Rating* (1925); Konstam, *The Modern Law of Rating; Rating Relief Acts, 1928–9; The Rating and Valuation (Apportionment Act), 1928.* A convenient textbook is Crew, *Rates and Rating* (1933).

I. The standard of a person's ability to pay rates is deemed to be the rental value of the real property, lands, buildings, occupied.

II. The liability to pay rates falls normally upon the *occupier* of the real property.

III. All the claims of the various local authorities are consolidated into one rate and one collective demand upon the ratepayer.

IV. The area of assessment has become increasingly large in order to achieve uniformity in the principles and methods of valuation.

We take each of these principles in turn and subject it to analysis.

Ability to Pay. Rates are compulsory contributions levied by local authorities on the people who occupy real property in their area for the provision of local services supplied by the local authority. Upon what principle ought that contribution to be exacted from each occupier? How ought the total burden to be shared among the citizens?

One might require each person to pay in proportion to the *benefit* he obtains from the service rendered. He might be asked to pay a price for local government services in the same way that he is asked to pay a price for the bread and milk and meat supplied by tradesmen. But two almost insuperable difficulties arise. The first is to measure the benefit. This seems to be possible in the case of some services, for example, the amount of hours of education, the amount of water used, the amount of street cleansing and lighting. In fact, in some services, for example, Secondary Education, Tramways, Motor Buses, Electricity, Gas, Pleasure Boats in Municipal Parks, prices are arranged in accordance with the quantity and quality of the commodity or service required. But in other cases, for example, the preservation of order and a sense of security provided by a Police Force, the general health and low mortality rate provided by the vast complex of public health services, the well-being produced by the orderly management of the roads, the relief of the destitute, it is impossible to allocate or measure the individual benefits to particular citizens. Nor is that all. The benefit which one feels one obtains from common services at common prices is not necessarily in proportion to the ability of the person to pay for them; some people need municipal services very much and will benefit from them intensely. It is they, indeed, who usually cannot afford to pay for them. Some people can well afford to pay out of their private pockets for almost everything the municipality supplies and, therefore, while very often despising the benefits they can obtain from the municipality, have wealth far in excess of what they have to pay in local

taxation, or municipal fees and charges. Yet there are services like those of police and health and highways, which, because their existence itself depends upon the associated activity and submission to common rules of national life, could not be bought by the private means of private people, however wealthy.

In other words, the principle of benefit received is necessarily impossible as the main basis of taxation.[1] The benefit cannot always be measured and allocated, it is not desired by the very wealthy, and those whose means fall below the millionaire's can only receive the benefit if it is, in fact, given them at less than cost price and often even for nothing. Even apart from conscious and comprehensive plans for the equalization of economics and social opportunity, which can be, and are, pursued by methods of taxation, whether central or local, the public administrator is obliged to fall back, in the main, on another principle altogether. That principle is the principle of contribution according to one's ability. The English local rating system has, from the beginning, founded itself mainly upon the principle of ability to pay, although extreme differences between benefit received and the amounts paid have always been mitigated by special reliefs and differential rating.[2]

The Measurement of Ability. The question now is, how will you measure that ability? In the original use and meaning of the term, how will you *rate* that ability? Here is a known annual common burden to be borne by a community. How will you distribute the burden of contributing to it?

Now there are various alternatives. The first is that the local authority shall attempt to assess the general wealth of each person by valuing his *total* property, for example, his house, office, factory, clothes, machines, tools, furniture, jewels, money and securities at home, at work, and in the bank. This is a General Property Tax; and it has been attempted in some of the American States. But its difficulties, as one may divine them by the imagination, have been only too well borne out in American practice; the *general* property tax involves a large and skilled staff of inquisitors, and a remarkable honesty and confessional readiness on the part of the tax-payer. When one considers how easy it is to hide *movable* property which may be of small bulk but high value, one may realize why such a system has broken down.[3] In fact, the English local rating system began, as we shall show in a moment, with the same idea, but the

[1] Bastable, *Public Finance*; Dalton, *Public Finance*.

[2] The history of the system is described in Cannan, *History of Local Rates in England*; Sir Edward Hamilton's *Memorandum* in the *Memoranda* presented to the Royal Commission on Local Taxation, 1899: Cmd. 9,528. The subject of valuation is brilliantly described in *First Report of Royal Commission on Local Taxation*, Cmd. 9,141, 1899.

[3] Hence the tax officials have been compelled to restrict their attention to practically *fixed* property only.

administrative difficulties experienced resulted in its abandonment, and the valuation of real visible property only. Thus, this alternative does not operate in the English system of local rating.

There are still alternatives. One is to tax people by *several* other evidences of ability. For example, the local authorities in Prussia raise their money by a number of taxes.[1] By variety and number it is sought to mitigate any flaw which, in a single and unique basis of taxation, would vitiate the whole system. An attempt is made to compensate the disadvantage and unfairness of one local tax by some advantage inherent in another tax. This system also lends itself to secondary purposes. One may encourage one thing by not taxing it. One may discourage another thing, for example public-houses, by heavy taxation. Neither is this alternative method pursued in English local rating.

There is a third alternative: to rate people in proportion to their total income. This is practised in the British income tax system for the revenues of the central government. This is an equitable standard, capable of fairly easy measurement, remarkably elastic since it can be easily raised or lowered, and various reliefs can be easily computed. But it is like the General Property Tax, liable to evasion, and it therefore requires a vast body of highly-skilled officials and a gigantic apparatus of collectors, forms, appeals, control by the Law Courts, and penalties. Nor, finally, does this method prevail in the English local rating system.

The Net Annual Rental is the Measure. The process of evolution has resulted in local rates being raised from occupiers in proportion to the value of the real or fixed property occupied alone. This is the essential and unique basis and measure of one's contributions to the funds of the local authorities. Nothing else is taken into account: not your income, not your fortune, not your profits, not your losses, nothing that your house contains, nothing that your office contains, and only certain machinery which a factory contains. No abatement or relief is allowed from your ability to pay as indicated by the rental value of the buildings or lands occupied.[2] The net annual rental value of fixed property occupied is the sole and single test of your obligation to contribute to the rate fund of the local authorities in the area in which you occupy property.

How did this principle evolve? And why?

The early statutes which provided for the levy of rates, in par-

[1] For example, apart from a fixed share in certain taxes collected by the Federal Government, they raise revenue by taxes on advertisements, beer, other beverages, the sale of land, and increased value of land, domestic servants, dogs, public-house licenses, entertainments, luxurious residences, real property, industrial undertakings, travelling salesmen, and a poll tax. Cf. Moll-Kreuter, *Die preuszischen Kommunalabgabengesetze*, 1930.

[2] With certain statutory exceptions to be noticed later.

ticular the Poor Laws, were silent on the test of ability. Professor Cannan shows, by his careful researches and the reproduction of ample evidence from the statutes, that 'there can scarcely be any reasonable doubt that down to the Act of 1572 the poor rate was intended to be assessed upon the inhabitants in proportion to their real ability to contribute and not according to their ability as measured by the standards in use for other rates.'[1] In the case of other rates also there had grown up a practice of taking the rental value as a guide to the ability to pay. The poor were probably too poor to pay out of their wages; very few people earned what we now call salaries, and the judges, in fact, suppressed any liability to pay rates on the basis of salaries, a matter in which they were personally affected. 'In modern phrase, the poor rate was intended to be a local income tax upon the inhabitants of the parishes.'

However, the administrative difficulties involved in such a conception of rates were insurmountable in a day when the local officers, the Churchwardens and Overseers, were unpaid, unskilled, usually illiterate, and unwillingly elected for an onerous office, the tenure of which was legally one year, but frequently subject to curtailment. In a community dependent for its livelihood mainly on agricultural land and buildings, it was not seriously unjust to rate people according to the value of those things. For, both rental and capital value would, in the course of time, come to correspond roughly, as between different people in the same neighbourhood, with the income obtained from the land and buildings, and expenditure was restricted to services for the neighbourhood. Moreover, in the parishes, which were comparatively small areas, insistence upon *visible* estate made the task of the rating officials feasible, whereas, if rents, salaries or profits derived from the ownership of movable property had been taken into account it could not possibly have been executed. Nevertheless, there was a great variety of practice all over the country, and the Law Courts themselves from time to time handed down conflicting judgements in the matter. In some parts of the country the stock-in-trade of the local tradesmen and craftsmen was included. In other places not, and cases were taken to the Courts, either by aggrieved citizens or by Overseers.

The Courts, in their opinions, showed the extreme difficulty involved in taxing personal property or stock-in-trade. Lord Chief Justice Hale said: 'Tradesmen, whose estates lie principally in their stocks, will not endure them to be searched into to make them contribute to raise any considerable stock for the poor, or indeed, so much according to the ordinary contributions.'[2] Another Justice thought that rating stock-in-trade involved great difficulty and much guesswork, as it was scarcely possible to ascertain the true quantum

[1] Op cit., p. 67.

[2] Cannan, p. 88.

of either. But a hard fight was waged to secure the inclusion of *stock* in 'ability'.

In 1770, Lord Mansfield, who was obstinately opposed to rating stock-in-trade, objected to giving a decision to determine 'so vague and general a question as whether stock-in-trade be rateable. Without any distinctions or enumeration of particulars it would sow the seeds of dissension all over the kingdom'.[1] In 1775 Lord Mansfield gave judgement against the inclusion of the stock-in-trade of certain brewers, saying:

'In general, I believe neither here nor in any other part of the kingdom is personal property taxed to the poor. . . . I think the Justices would not have done very wrong if they had acquiesced in the practice which has obtained ever since the Stat. 43 Eliz. of not rating this species of property. . . . If the Justices had considered, they would have found out the sense of not rating at all, especially when it appears that mankind has, as it were, with one universal consent refrained from rating it; the difficulties attending it are great, and so the Justices would have found them. As to the authorities which have been cited, they are very loose indeed; and even if they were less so, one would not pay them very much deference, especially as they differ; *and the rules they lay down have not been carried into execution for upwards of a hundred years.* They talk of *visible* property? I confess I do not know what is meant by visible property. If every possible thing should be termed to come under that description, in that case a lease for years, a watch in a man's pocket, would be rateable. Visible property is something local in the place where a man inhabits. But that does not decide what a man's personal property is. Consider how many tradesmen depend upon *ostensible* property only. . . . Some artificers have a considerable stock-in-trade; some have only a little; others none at all. Shall the tools of a carpenter be called his stock-in-trade, and as such be rated? A tailor has no stock-in-trade; a butcher has none; a shoemaker has a great deal. Shall the tailor, whose profit is considerably greater than that of the shoemaker, be untaxed and the shoemaker taxed?'

In another case, in 1776, Lord Mansfield was confronted by evidence showing that all the authorities conclusively held that the standard of contribution was *ability*, from whatever source arising. He then said, 'If the *usage* should be to take in stock-in-trade, there would be very good right to support it.' Then, in 1778, Lord Mansfield held that a rate raised upon a man's stock in the clothing trade, *where that had been the usage in the parish*, was legal. This case seems to have settled the matter, not only in regard to places where rating stock-in-trade was of long usage, but everywhere; but, in fact, practice continued to vary. The last important case in the eighteenth century was *Rex v. White* (1792), in which it was established that personal property was rateable, and, it was held, that ships were rateable to the poor in the parish to which they belonged; so was stock-in-trade. Nevertheless, practice varied from place to place, the mair thing being that stock-in-trade was *not* usually rated, and rates were

[1] Cannan, p. 92.

levied from each occupier only in the measure of the rent of real property occupied.

The Act of 1840. In 1838, the Poor Law Commissioners, with perhaps excessive energy, answered inquiries on the matter by a memorandum unfavourable to the rating of stock-in-trade. They pointed out, incidentally, that such practice prevailed mainly in the old manufacturing districts of the South and West of England. They also observed that the Parochial Assessments Act, which had been passed in 1836 to regulate the process of assessment, had not included stock-in-trade. It had not in fact mentioned it at all, and, therefore, in some measure discountenanced the liability of stock-in-trade. But the law, of course, was still as it had been stated in *Rex v. White*. In 1839, in *Regina v. Lumsdaine*, liability of stock-in-trade was reiterated.[1] Thereupon, the Poor Law Commissioners, with unabated energy, quickly informed the Overseers that profits of stock-in-trade must be rated.

At this point Parliament intervened. The Government said that it had been found utterly impossible to model a rate on stock-in-trade free from legal objection. It was necessary for a statute to make that law which was hitherto simply usage. The result was the Poor Rate Exemption Act, 1840, Section 1 of which provides: 'It shall not be lawful for the Overseers of any parish, township, or village to tax any inhabitant thereof, as such inhabitants, in respect of his ability derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor.' The Poor Rate Exemption Act, 1840, was a temporary measure only. It was intended as a stop-gap until the Government had maturely considered the subject. The stop-gap Act continued to be revived annually down to 1932 by the Expiring Laws Continuance Acts, and then it was made permanent.

The result of 250 years of evolution of local rates in England, then, had been to fix *the basis of contribution to the local rate fund on the single and unique basis of the rental value of fixed, or immovable, property*, sometimes called *immobilia*, and to exclude any other evidence of ability to pay. This evolution had been determined by the crude justice of comparisons between land-occupying neighbours, when the main industry and source of wealth was agricultural, and when local expenditure was comparatively small, and for rural services. This evolution was also, in part, determined by administrative convenience, in an age when there was no professional body of skilled rate-officials, and when the Englishman was far more sensitive than he is, or can be, to-day, to invasions of his home and business by tax inquisitors.

What is Fixed Property? What we now have to ask is, what

[1] Cf. *First Report, Local Taxation*, Cmd. 9,141, 1899, p. 12.

the law included in fixed property; whether distinctions are made between different types of property; whether there are exemptions of any kinds of fixed property?

The effect of the Poor Relief Act of 1601, as affected by subsequent statutes, and, in particular, the Rating and Valuation Act of 1925, is that 'rates shall be raised from every inhabitant, parson, vicar and other, and every occupier of lands, houses, tithes, and coal-mines'. This is, indeed, a comprehensive list. The two terms 'lands' and 'houses' alone are, in practice, better replaced by

'all kinds of lands and things growing on them, and mined from them, and all kinds of buildings, including railways, tramways, factories, shops, theatres, advertising stations and hoardings, police-stations, docks, harbours, race-courses, golf-courses, bathing stations, hangars, waterworks, gas-works, and electrical undertakings, piers, canals, navigable rivers, public telegraphs and telephones, and petrol service stations, public-houses held on all kinds of tenure "tied" to breweries which exact a very small rent, or fully free, as well as all residential property.'

This list is only illustrative, not exhaustive. All values and rights arising out of the occupation of fixed property are rateable. The main, and the fascinating problem, resides in the practice and the theory of applying the fundamental principle of valuation to the peculiar nature of each type of property.[1]

Though powerfully tempting, it is yet impossible within the limits of this work to discuss, even briefly, the methods of valuation adopted, ingenious and subtle and liable to abundant legal disputation as they are. All we can do is to state the essential principle involved. This was first laid down with exactness in the Parochial Assessments Act, 1836. That Act said that all rates were to be made on the *net annual value* of rateable hereditaments,[2] that is

'the rent at which the same might reasonably be expected to be let from year to year free of all usual tenant's rates and taxes, and from tithe commutation, rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain them in a state to command such rent.'

In plain words, and omitting encumbrances of detail, in order to discover the rateable value of a particular place one would find its *gross annual rental* and deduct from that extraneous charges which *might* be included in the rent, and deduct again the amount of expenses necessary to secure the integrity of the place against damage or destruction, and depreciation by wear and tear.

One other thing ought to be remembered, that the law provided that the rate was based not upon the *actual* rent paid (which might, of course, be the subject of dishonest collusion; and, where the owner

[1] Upon this one may consult Witton Booth, *Valuations for Rating*, 1932.
[2] Sect. 1.

was also occupier there would be no rent at all) but the rent *reasonably to be expected*. All the difficulties and the equities and inequities of assessment for rates reside in the problems of the application of this bald definition to a vast range and variety of property. There are, literally, hundreds upon hundreds of legal decisions issuing from disputes regarding these problems, and the law to-day is the product of the statute, and this vast body of Case Law; while the practice is based upon the law, upon customary and accepted rules, and upon agreement between various interests and the assessing authorities. Obviously justice here depends upon the skill and honesty of rating officials, upon the Assessment Committees and the Law Courts.[1] The final statutory form of the ascertainment of net annual value is to be found in Section 22 of the Rating and Valuation Act of 1925.

The Special Cases of Machinery, Railways and Agricultural Land. By 1840, then, both the scope of the property included in the basis of rating, and the principles of its valuation had been settled: fixed property and annual rental value. In the ensuing decades, partly through the growth of new utilities and forms of wealth, and partly through economic vicissitudes, three special cases came into great prominence: machinery, railways, and agricultural land. We trace the fate of each of these.

Machinery. The rating of stock-in-trade had been ultimately excluded by statute because it had caused great dissatisfaction amongst the commercial and manufacturing classes. In the eighteenth century these classes formed a comparatively small proportion of the population: in the nineteenth, their forms of wealth became the principal element in the national well-being. Much of this consisted of machinery, and the question arose after the Act of 1840, whether machinery were rateable? If it were not, then a greater burden would have to be borne by those who occupied property containing no machinery, and they could argue, as they very vociferously did argue, that the rating system was unjust, particularly as all the new local government services benefited the towns rather than the country. If machinery were rateable, then the question arose whether all machinery, or only some parts; and, if some parts, which?

Overseers proceeded to take into account certain kinds of machinery in valuing buildings. But practice varied all over the country. This variation was serious for two reasons. In the first place, since there might be several rating authorities within a single industrial town, people across the street or a few streets away from each other, might have legitimate cause of complaint since, competing with each other,

[1] Cf. *Public Administration*, Oct. 1923, paper on 'Local Rating' by Arthur Collins, and subsequent discussion, pp. 298 ff.

they were yet subject to different rate charges. Secondly, where there was no statutory definition there was both uncertainty and litigation.

Judicial and Statutory Definition. The Law Courts were obliged to provide the definition of the kind of machinery which was to be taken into consideration. Various cases contributed to define the law on the question. In 1866 (*Regina v. Lee*) it was held that 'The premises to be rated are to be taken as they are with all their fittings and appliances by which the owner has adapted them to a particular use, and which would pass as part of the premises by a demise of them to a tenant.' In 1886, *The Tyne Boiler Works Company v. The Overseers of the Parish of Longbenton and the Assessment Committee of the Tynemouth Union* furnished a more certain definition. Here it was held that

'personal property such as machinery, is *per se* not rateable, but, if attached so as to be either a landlord's fixture, or a tenant's fixture, or a trade fixture, it is equally clear that it is rateable as increasing value of the premises, and the rent which a tenant from year to year would give for them. But then there are things, which, though they may not be physically attached, or may be removable without damage to themselves or the freehold, are so placed on the premises, and so essential to their use for the purpose for which they are used, and so much intended to be used with them for that purpose, that they have practically become, for the time being, part of the premises. . . . I am of the opinion that they must be so taken into account. A long series of cases seems to me to establish this conclusion. . . .'

Lord Esher agreed that the argument of '*essential to the use of the premises*' was the deciding factor. Then, in 1892, in *Giffard, Fox and Co. v. The Chard Union*, it was held that even if certain machines (in this case bobbin-net machines) were capable of being taken down and removed without any injury to the machines or structural damage to the hereditaments, yet they must be taken into account in estimating the rateable value because they were 'things on the premises necessary to the use of the premises for the purpose for which they are used, and which are not intended to be removed so long as the premises are used for their present purpose'.

These judgements could not possibly be conclusive and satisfying in a world where there are many varieties of machine, from furnaces down to knife-blades, and where new machinery is always being invented. Of course, many arbitrary distinctions were made. The truth is that the judicial method only settles particular cases, and no one can be quite sure whether his special difficulty is sufficiently similar to come under a previously declared principle. What is thought to be a good precedent may not be applicable to your particular case. The Final Report of the Royal Commission on Local Taxation of 1901 said that the result of this uncertainty was 'that a great divergence of practice exists among the authorities in

different places, and a large amount of dissatisfaction prevails among manufacturers in regard to this matter—a matter which deeply affects the interests of some of the most important industries of the country '.[1]

The way out of such uncertainty is definition by statute. Yet it should be understood that even definition in an Act of Parliament has its own uncertainties, for a statute is after all only a form of words, and every word is challengeable in a Law Court, and where money is involved every word of a statute is an active inducement to its challenge. Yet the drafting of a statute may be more careful: it may follow upon a larger range of deliberation and expert advice, and as a result of conferences and compromise between the parties affected. Judgements in the Law Courts are not made by such a process. An Act of Parliament can, after all, proceed by detailed schedule, and can arrange for convenient methods of amending that schedule. Accordingly, several attempts were made between 1887 and 1923 to settle the matter by enactment. But Parliament was otherwise too busy, and the interests concerned rather too conflicting, for a settlement of the matter. By that time two more decisions[2] in the Courts had caused the inclusion of much machinery in valuation. In *Kirby v. Hunslet Union Assessment Committee* ((1906) A.C. 43) the House of Lords held:

'Tenants' machinery placed in a factory, and used therewith for the business of the factory, whether it be affixed to the freehold or not, may be taken into consideration so as to increase the amount in assessing the factory to the Poor Rate. The law and practice to this effect have been too long established to be now overruled.'

Lord Halsbury said:

'It seems to me we have nothing to do with the idea which prevailed in the mind of the learned counsel—to speculate upon what particular sort of contracts of tenancy would be likely to be made between the landlord and the tenant, still less with what contracts are actually made between the landlord and the tenant. The overseer has a comparatively simple problem to solve, although it is difficult enough sometimes; he sees the place being conducted as a brewery, or an iron foundry, or what not; he looks at the premises, he looks at the furniture which is necessary for carrying on the business as a brewery or foundry; he does not in his own mind analyse, and to my mind he ought not to analyse, what would be likely to be the initial arrangements between the intended brewer and the owner of the freehold, to see who should provide this or that engine, or what not, but he looks at the premises as they are, as they are being occupied, and as they are being used. . . .'

But the Hunslet decision contained no direction as to the way in which machinery and plant should be 'taken into consideration',

[1] P. 55.

[2] Cf. pp. 5 and 6 of *Report of the Interdepartmental Committee on the Rating of Machinery*, Cmd. 2340, 1925.

or 'taken into account', and those phrases gave rise to ambiguity, some overseers adding a trifle for machinery, some regarding them as fully equal in value to the buildings.

This ambiguity was *in theory* cleared up by the decision in *S. Smith and Sons (Motor Accessories), Limited v. Willesden Union Assessment Committee* ((1919) 89 L.J.K.B. 137), where it was held that

> 'The rateable value of premises used as a factory, which is equipped with machinery for use in connexion with the hereditament, is measured by the rent which a hypothetical tenant would be willing to give, and a hypothetical landlord be willing to take, for the right to occupy the building and to use the machinery, it being assumed that the hypothetical landlord provided both building and the machinery.'

The effect of the decision seemed to be to abolish any distinction between 'rating' machinery and 'taking it into account', and to lay down that the full annual value of all the machinery and plant upon the premises must be ascertained as if it were the property of the landlord and actually part of the hereditament.

In 1923 the Inter-Departmental Committee on the Rating of Machinery[1] was established. It observed the ambiguity of the law, and its injustices: lack of uniformity in the application of the law with differential burdens on competitors; and a burden of rates out of proportion to 'ability to pay' or 'benefits received'. The latter point we discuss again later. In regard to the first difficulty it recommended that all machinery be divided into three classes: (*a*) Loose Tools, worked by hand or foot, not to be rated at all; (*b*) Structural Machinery, such as motor power, lighting, heating, electrical apparatus, elevators, railways, tram tracks, etc.—*to be fully rated*; (*c*) Process Machinery, between the first two classes mentioned, to be rateable at 25 per cent its value. The Rating and Valuation Act of 1925 dealt with this in Section 24.

The Minister in charge of the Bill explained that it was his intention to exclude from rating not only loose tools worked by hand or foot, in accordance with the recommendation of the Committee, but also everything but structural machinery. His grounds were that to include process machinery and structural machinery at different rates, would cause litigation at the two lines of demarcation, one between structural and process machinery, and another between process machinery and loose tools. The Act therefore includes only structural machinery, machinery which is physically part of the structure of the building. The Act does not actually use these terms, but proceeds by the enumeration of a number of classes in the Third Schedule, and says that outside the specified classes no account may be taken of the value of any plant or machinery

[1] *Report* cited, *supra*.

in or on the hereditament. We reproduce the schedule in a footnote.[1]

For the purpose of precisely informing all persons concerned as to what machinery and plant actually falls within the classes specified the Minister must constitute a committee of five, which prepares a statement setting out the items in detail.[2] This statement the Minister confirms by an Order which must be laid before both Houses of Parliament, and either House may within the next subsequent twenty days present an address against (and thereby invalidate) the whole or any part of the Order. Revision of the list proceeds at intervals directed by the Minister by the same process as the making of the original list. A panel of referees is constituted to determine objections or proposals or appeals in which a question is raised whether any particular plant or machinery falls within any of the specified classes or descriptions. With the consent of the parties such questions may be referred to a referee by an Assessment Committee or Court. Thus, there has been grafted on to the ordinary legal procedure an extra arrangement designed to secure the application of special talent to the decision of the question. The panel is appointed by the Lord Chief Justice of England. Referees may inspect the object of controversy before making their awards, which are final and conclusive.

Hence, in so far as rates are levied upon machinery and plant, a distinction exists between those broadly defined in the Rating and

[1] THIRD SCHEDULE

(Sect. 24)

CLASSES OF MACHINERY AND PLANT TO BE DEEMED TO BE PART OF THE HEREDITAMENT

[and therefore rateable in full; all other machinery is to be entirely disregarded in valuing the hereditament (Sect. 24 (1)).]

1. Machinery and plant (together with the shafting, pipes, cables, wires, and other appliances and structures accessory thereto) which is used or intended to be used, mainly or exclusively in connexion with any of the following purposes, that is to say—

(*a*) The generation, storage, primary transformation or main transmission of power in or on the hereditament; or

(*b*) The heating, cooling, ventilating, lighting, draining, or supplying of water to the land or buildings of which the hereditament consists, or the protecting of the hereditament from fire:

Provided that, in the case of machinery or plant which is in or on the hereditament for the purpose of manufacturing operations or trade processes, the fact that it is used in connexion with those operations or processes for the purpose of heating, cooling, ventilating, lighting, supplying water, or protecting from fire shall not cause it to be treated as falling within the classes of machinery or plant specified in this Schedule.

2. Lifts and elevators mainly or usually used for passengers.

[This excludes lifts, etc., used for goods.]

3. Railway and tramway lines and tracks.

[i.e. within the buildings or works.]

4. Such part of any plant or any combination of plant and machinery, including gas holders, blast furnaces, coke ovens, tar distilling plant, cupolas, water towers with tanks, as is, or is in the nature of, a building or structure.

[2] Cf. Plant and Machinery (Valuation for Rating) Order, 1927.

Valuation Act of 1925 and those excluded from its operation. It should be remembered that when the reliefs allowed on industrial hereditaments and freight-transport hereditaments were later made by the Local Government Act of 1929, the valuations of the hereditaments still, of course, included machinery.

Railways. Railways were, until the Railways (Valuation for Rating) Act of 1930, rated on the net annual value of each part of a railway falling within each Parish. The same railway line, passing through many parishes, would, as it emerged into each different parish, be subject to different rating officials, and therefore, to some variety in the principles of calculation.

Since railways are not let by owners to tenants, the ground of assessment has to be discovered in some other way than rent. Now a railway is a rather peculiar type of property; it certainly cannot be valued by comparisons. Therefore, the 'profits principle' was adopted. It was assumed that a tenant would give as rent a sum equal to the receipts from the property *minus* the expenses of earning them, and again *minus* the ordinary profit which a tenant would expect. Such a calculation involved a number of unmeasurable quantities. For example, what was the value to be attributed to the virtual monopoly character of the railways? And further, how could one estimate what a tenant would pay for the fraction of the railway within any given parish? We need not enter into the maze of intricacies involved in these problems. They perplexed the Courts of Law for nearly a century. In 1867, the Royal Commission on Railways recommended that railways should be assessed as complete systems by a central authority, and that the amount then should be divided among the various Parishes or Unions according to an equitable principle. The sound common sense of this recommendation seems to have repelled statesmen from making it effective, although this method had been successfully applied in Scotland and Ireland; and a generation later the Royal Commission on Local Taxation of 1901 [1] recommended that their system should be followed. It would save expenditure on valuation and on appeals by Railway Companies and local authorities, and secure uniformity. Nothing was done until 1930.

The Railways (Valuation for Rating) Act, 1930, was based upon negotiations between representatives of Railway Companies and local authorities, and enacts the principle of valuation *in cumulo*. Included in railway hereditaments, are undertakings in addition to the Company's principal undertaking; for example, any canal, dock, or harbour undertaking, any subsidiary or ancillary undertaking, excluding road transport, sea transport, or air transport. But premises like dwelling-houses, hotels, or places of public refreshment,

[1] *Final Report*, pp. 56–60.

or so let out as to be capable of separate assessment, are not included in the railway hereditament, and are assessed in the ordinary way by the local authorities. The assessment is carried out by the Railway Assessment Authority which consists of a paid Chairman who must be an experienced lawyer, appointed by the Lord Chancellor, and nine other members appointed by the Minister. Six of these are appointed on the recommendation of the London County Council, the County Councils Association, the Association of Municipal Corporations, the Metropolitan Boroughs Standing Joint Committee, the Urban District Councils Association, and the Rural District Councils Association, and three others at the Minister's discretion.[1] This Assessment Authority determines the principle of total valuation, values and divides the total among the various local authorities, as also the expenses incurred, which are shared by the Counties and County Boroughs. Ample opportunity is given to both the rating authorities and the rate-payers' authorities to make representations regarding assessment.

It should be noticed, that from the Public Health Act of 1848, and up to 1929, land used as a railway *line* [2] or towing-paths of canals, and land covered with water, and allotments, etc., were not rated at full annual value. For General District Rates in urban districts and special expenses rates in rural districts these hereditaments paid on *one-fourth part only* of their rateable value. These reliefs were given as a concession to the principle of benefit received—since local services did not benefit railway property much, it was considered equitable to relieve it of the full burden.[3] The ultimate fate of this concession will be seen later.

Agricultural Land. Since the early part of the nineteenth century, and particularly since the middle of the century, when protective duties on corn were given up, agricultural land constituted a serious and chronic problem. In the first place, as we have pointed out, the Poor Rate Exemption Act of 1840 exempted from liability from local rates all property other than immovable property. This meant that agricultural land-owners would not be relieved by contributions to local revenues made by people whose wealth lay in other commodities or titles to income. The Act of 1840 was, as we have said, temporary, and it was intended that the whole matter should be reviewed and put upon a just and proper basis. Nothing was done. Meanwhile, expenditure on local services increased, and they

[1] For the composition of the Authority upon its establishment, cf. *Annual Report* for July 1930—March 1931, published by the Railway Assessment Authority.

[2] Railway *lines*, not railway *stations*.

[3] Cf. *Final Report, Royal Commission on Imperial and Local Taxation*, p. 5: 'When modern sanitary expenditure began on a large scale, it was considered that some properties got very little benefit from it, and the charge on these properties was accordingly reduced.'

were services which benefited the town more than the country. Further, in 1846, the duties on corn were reduced, and their abandonment was soon to follow. In other words, farmers were faced with increased liabilities, higher expenditure, and less prosperity. There was, indeed, a great deal to be said in favour of relief of rates if the principle of benefit were applied. For the countryside shared less in the amenities of urban civilization provided out of the rates.

Until 1896 (the end of a twenty-year depression in agriculture which sadly reduced the ability of those on the land to contribute to rates) there continued an unrelenting clamour for relief from rates either by means of grants-in-aid from the central authority or in any other way. The result was a series of laws partially relieving agricultural land from liability for rates. By 1896, when the Agricultural Rates Act was passed, agricultural land was assessed (by the effect of that Act) only on one-half of the rateable value where the Poor Rate was concerned, and only on one-quarter for the General District Rate, the special expenses of Rural District Councils, the Water Rate, and, in respect of the Lighting and Public Library Rates, an amount lower than that paid by ordinary property. We have already observed that railway lines, canals (and land covered with water, tithes, and tithe rent charges), received the same treatment as agricultural land, with some slight exceptions. This relief was considered by the Royal Commission of 1901 as equitable, and 'a measure of justice which had been too long delayed'. In 1923, by the Agricultural Rates Act, the landed interest was able again to secure an abatement of its liability to contribute to the poor rate: there was a reduction to one-quarter of the net annual value. As we show presently, agricultural land was derated entirely in 1928.

Some Exemptions. Certain classes of property, apart from what we have already indicated, are not rateable. These are places of (1) religious worship and certain schools in connexion with them; non-provided schools; land and buildings belonging to scientific, literary and artistic societies not conducted for profit; lighthouses; tithe rent charges below a certain amount. The object of the exemption is charitable. Then (2) property occupied by or for the Crown is not rated, but in lieu of rates the Crown makes an *ex gratia* contribution to the rates equivalent to what would otherwise be leviable; and there is exemption of militia storehouses and premises held by County Associations exclusively for the purposes of the Territorial Force.

The Derating of Industrial, Freight-Transport Hereditaments and Agricultural Land

By 1925, the basis of liability for rates was all fixed property with the exceptions, and on the conditions, above noted: that is, agricultural land and railways paid less than other kinds of property,

and only structural machinery counted for rates. No further distinction was then made between property used for residential, manufacturing or commercial purposes. For years there had been a great deal of controversy regarding the justice of treating all varieties of property in the same way, and we have something to say on the general question of equity and economy presently. It must be admitted, however, in view of what is to be said, that controversy did not very much concern the rates paid by industrial as distinct from other premises; and, perhaps, in a time of business prosperity, with rising profits, the fairly fixed charge of rates is not much noticed. It is probable that nothing would have been done for many years were it not for the catastrophic disturbance of English industry caused by the War.

In 1928, statesmen reviewed the problem of the rates from the standpoint of the capacity of British industry to compete with foreign industry in foreign markets.[1] The moment the question was raised, two factors came into prominence: first, the constancy of the burden of the rates regardless of the level of profits and loss, and secondly, the unfairness of a full liability for rates upon factories and freight-transport considering the comparatively small extent to which they benefited from municipal services. A calculation made in 1928[2] showed that factories and workshops (excluding breweries and public utility undertakings) contributed about 9 per cent of the total rates; and that other transport property contributed 7 per cent; mines and quarries 2 per cent; public utility undertakings about 5 per cent; agricultural land about 2½ per cent; and dwelling-houses, shops, and offices something over 70 per cent. Altogether, factories and workshops and mines and transport property contributed about £30,000,000 a year.

This was a heavy burden at any time, but it was a serious handicap when industry was distressed. It was argued that it was quite unfair for the same burden to be placed upon property used for productive purposes as upon property used for residential purposes, since the size of the factory or other buildings and their rental had no such proportionate relationship to the occupier's income and general ability as compared with the rental and the ability of the ordinary resident. There was a real, if unintended, discrimination against business requiring large premises and expensive plant. Again, while residents enjoyed the whole scope of local government services, factories and other productive undertakings paid in full, but benefited only from police protection, lighting and paving of the streets, and

[1] 'Britain's Industrial Future', *Report of the Liberal Industrial Inquiry*, 1928, pp. 433 ff.; and speeches in *Hansard*, 24 April 1928, and following days.

[2] In an article contributed by Mr. Jules Menken to the 'Local Government Supplement' to *Highway*, March 1930, journal of the Workers' Educational Association.

some portion of the general sanitary administration. Further, if there is one principle of taxation which does command universal acceptance it is that *taxation should do as little damage as possible.* But the rating system was liable to do damage in that it exacted from industry an amount per year not in relation to the annual profit or loss and the general soundness of the business, but in relation to the rental of the premises required for production, premises which could not be promptly dismantled or evacuated when bad years were encountered. Finally, until 1929, Poor Relief (to mention no other services) was administered in small areas—the Poor Law Unions. This meant that the charge for Relief was concentrated in small areas, the areas less afflicted with unemployment and incidental destitution not coming to the help of those with crushing burdens.

On all these grounds, but principally to lighten the total charge on industrial property, the Budget proposals of 1928, and two subsequent statutes reduce the rating of industrial, railway and transport property, and agricultural land. As the Chancellor of the Exchequer said :

'The burden of rates on industry is cumulative. Coal (rated) is converted into coke (rated again), and used with iron ore (rated) and limestone (rated) to make pig-iron (rated again), and this, with more coal (rated) and other rated products, is used to make steel (rated again). I am told that the average burden on steel from the rates is over 4*s.* a ton. That is the average burden, but in many cases, where in the districts the rates are very high, in districts where there is distress, the rate is far greater. Upon this darkening scene, another set of evils arrive. All these commodities that I have mentioned need to be transported, usually by rail or water, and at each stage more rate burden is added. The railways pay over £7,000,000 in rates. They are sheltered from foreign competition, but inside this island the railways are confronted with the strong competition of motor vehicles. This limits their powers to pass on the burden so far as the passenger or light goods traffic is concerned, but the heavy traffic of the basic industries, which have no alternative means of transport, remains inevitably at their disposal. I am not blaming the railways; I am stating the facts. . . .

'Thus, at every stage in the progress of basic products till they finally reach the ship for export, or reach the home consumer, the rates add to the price, and they add to the price irregularly, unequally, and injuriously. A clear distinction can be drawn between productive industry and the distributing trades. Productive industry is exposed, in the main, to world-wide competition. It cannot recoup itself from the consumer. Productive industry employs three-fourths of the weekly wage-earners and accounts for not far short of nine-tenths of the 1,000,000 unemployed. The distributing trades, according to every test which the Inland Revenue can apply, have not suffered, but, on the whole, have prospered in the last 10 years, and the revenue raised upon their profits has not diminished.'[1]

The derating of the various kinds of 'productive' property was carried out in the Rating and Valuation (Apportionment) Act, 1928, and Part V of the Local Government Act, 1929. The Rating and Valuation (Apportionment) Act of 1928 provides that in every valua-

[1] 24 April 1928, *Debates*, Cols. 846–8.

tion list there shall be distinguished from each other and from all other hereditaments these classes: (*a*) 'agricultural hereditaments'; (*b*) 'industrial hereditaments', and (*c*) 'freight-transport hereditaments'. The Act then proceeds to define each class. Since those definitions were made hundreds of cases have been brought before the Law Courts to test their applicability. Agricultural hereditaments have produced, comparatively speaking, little litigation; freight-transport not much; but 'industrial hereditaments' have proved a godsend to the legal profession.

In advocating the derating of 'industrial hereditaments' the Chancellor of the Exchequer used the term 'productive industry', but in the statute 'industrial hereditament' is defined as a hereditament occupied and used as a mine or mineral railway or 'as a factory or workshop'. To this latter class the Act makes certain exceptions: the expression 'industrial hereditament' does not include a hereditament occupied and used as a factory or workshop

'if it is primarily occupied and used for the following purposes or for the combination of such purposes (*a*) the purposes of a dwelling-house; (*b*) the purposes of a retail shop; (*c*) the purposes of distributive wholesale business; (*d*) the purposes of storage; (*e*) the purposes of a public supply undertaking; (*f*) any other purposes, whether or not similar to any of the foregoing which are not those of a factory or workshop.'[1]

Many cases have revolved around the question how far the premises are chiefly used for the primary manufacture of commodities (when the premises are considered to be industrial hereditaments and, therefore, derateable) and how far the premises are used for selling, or storing, or repairing articles (when there is no relief of rates). There has been a most remarkable conflict of judgement in the different Courts on the same subject-matter, and the decisions, so far as they are final to-day, show a subtlety of distinction which cannot always be appreciated by laymen.

In the first place, the term 'factory or workshop' was included in the Act because the Factory and Workshop Acts, 1901–20, already defined factory and workshop and a large amount of case law settled disputed points. However, there are still border-line cases. Secondly, the question arises, What proportion, in point of fact, of the premises in question are factories, and what proportion are used for non-factory purposes? For example, in some garages odd spare parts are made, yet the primary purpose of the garage is not for manufacture, but for repairs ('repairs' are not included in 'industrial hereditaments'), and the sale of petrol, oil, accessories, and new and second-hand cars. Similarly, with boot and shoe repair depots, tailoring, printing in premises used as a stationer's shop, furniture and upholstery warehouses and shops, bakers' and confectioners' bakehouses

[1] Act of 1928, Sect. 3.

and shops. It is interesting to glance at some of the premises which at one time or another have been considered *derateable*: a slaughter-house; premises for grinding, blending and roasting coffee; a warehouse for cleansing and preparing seeds for sale; a store in which beer was matured, carbonated, filtered and bottled; a warehouse in which rags were graded, blended and sorted; a creamery; a factory for blending oil; a scrap dealer's store where the scrap was built into second-hand cars. Against these, we find the following held *not derateable*: a cold storage warehouse [1]; a painter's workshop; a refuse destructor; the yard and store of public works contractors; an estate saw-mill; a warehouse in which glass was cut to specified sizes [2]; a shop and studio occupied by a photographer; premises occupied by boot and shoe repairers; premises of cement merchants; a jeweller's workshop. There are very many more cases than this in the rated and derated categories, but the student must turn to the standard works fully to fathom the subject.

The freight-transport hereditaments have not given much difficulty. The Act [3] defines them as a 'hereditament occupied and used wholly or partly for railway transport purposes, as part of a railway undertaking, carried on by a railway company coming under the provisions of the Railways Act of 1921'; a 'light railway undertaking carried on by a light railway company'; 'premises used wholly or partly for canal transport purposes'; and 'docks'. But premises used as offices for the management of such undertakings are excluded.

The Reliefs. The Act of 1928, having produced a distinction between (1) agricultural land, (2) industrial property, (3) freight-transport property, and (4) all the rest of fixed property, the Local Government Act of 1929 proceeds to make certain exemptions in favour of the first three classes. First, agricultural land and buildings are totally exempted from liability to pay rates. This does not, of course, exclude the occupation of the premises lived in by either owner or occupier.[4] We shall discuss the general justice of this exemption presently. Secondly, the rateable value of industrial hereditaments 'shall be taken to be . . . one-quarter of the net annual value thereof'. Thirdly, freight-transport hereditaments 'shall have . . . a rateable value of one-quarter of their net annual value'. In this case, a statutory duty falls upon the occupiers correspondingly to reduce the charges to users of freight transport hereditaments.[5]

[1] Compare this with the decision in the slaughter-house case—it is a factory or workshop where animals are killed, presumably for purposes of human consumption, but where premises are used for keeping the carcasses in a consumable condition they are not a factory or workshop.

[2] Compare this with the derating of premises where rags are sorted.

[3] Sect. 5.

[4] Local Government Act, 1929, Sects. 67 and 72. Cf. notes on this by Jennings, *Officials and Councillors Guide to Local Government Act*, 1929, pp. 89 and 95.

[5] Sect. 136.

The rateable values on the valuation list in force in April 1938 were as follows:

No. of separately rated hereditaments	Industrial Hereditaments		Freight Transport		Other Hereditaments		
	Industrial Purposes	Non-Industrial Purposes	Transport Purposes	Non-Transport Purposes	Tithes: Railway, Canal, Land, etc.	All other Rateable Hereditaments	Total Rateable Value
	£	£	£	£	£	£	£
12,606,048	7,888,878	1,188,843	1,682,954	250,571	1,401,792	294,027,474	310,781,944

The Equity and Economy of Rates. The rating reforms of 1925–9 produce this result: local taxation is levied upon occupiers of real property in proportion to the rental value of that property, *but* agricultural land and buildings are not rated at all, industrial property and freight-transport property are rated on one-fourth of their net annual value, while all other property is rated on the full net annual value.

Is this system just?

The relief of agricultural land and buildings is just, but not total exemption. On grounds of ability to pay, of course, the rating of the occupiers of the dwelling-house of those concerned in agriculture, is a sufficient test—*if* we decide that it is in itself just. Further, when all agricultural holdings are derated, a bigger amount must be obtained either from the remainder of the property, or from some other source. If it is from all *residential* and commercial property, then the agricultural resident must pay more, since the poundage on his rateable value must rise. If it is—as since 1929 it is—paid from a central grant—then he pays partly through ordinary taxes. If, regardless of this, we still accept the test of payment for benefit received, there is still a legitimate call for relief, but not for total exemption—for agricultural land and buildings derive benefit from the roads, police, and general services of local government. Exactly how much should be paid is a matter difficult to assess. However, Parliament has itself provided a further good excuse for not rating agricultural land at all, for it has imposed burdens on agriculture by establishing statutory minimum wages for agricultural labourers. The sentimental regard for agriculture *per se*, and the hovering idea that food production must be provided to win the next war, contribute to its exemption from rates.

As for industrial and freight-transport property, these are basic productive factors; upon them rest our economic well-being. Any damage done here is a damage which has far-reaching and cumulative effects. Especially important is this when we remember that Britain still owes her high prosperity per head of such a large population to her export of manufactures. It is not good

public finance to make people smart with a sense of injustice or be hopelessly oppressed at unreasonable methods. It is even worse to place a burden on, and so discourage, the extension of buildings and equipment. It is crassly improper to establish a burden which has no proportionate relationship to rising or falling prosperity. The system of local rates before 1929 offended against all these canons. Moreover, the owners and occupiers of these properties were made to pay quite conveniently in respect of their places of residence. To derate ' productive ' property was to relieve it of a damaging infliction ; but *not necessarily* to shift the burden to other people altogether, for it was possible to take rates from the same people, but in respect only of their places of residence. In fact, of course, the law has put the burden on the general tax-payer, as we shall show in detail later.

Extending the Area of Charge. Two other things must be said about the change. The Act of 1929, as explained in previous chapters, produced a redistribution of Poor Relief, Highways, and Public Health functions.

Firstly, the areas of administration and *charge* were very much widened. In other words, small factory areas with a rather poor population grouped round them would be aided by the rateable value of neighbouring districts because the charge for services more or less henceforth vested in the County Councils and County Boroughs would be spread over the entire population. We show later how such an equalization of burdens was carried further, by the system of grants-in-aid established by the Act of 1929. Secondly, economy of administration was expected in the long run by the transfer of services to the larger authorities. These two reforms go far to eliminate a serious economic defect of differential local rates and efficiency of administration : interference with the otherwise normal location of industries where the conditions of production and distribution are most favourable. For, in the old conditions, manufacturers had to take into account that some places were much more heavily rated than others, adding to their rental, if they wished to instal their works there.

Effects of Derating. The immediate effect of derating is, of course, to give full relief to those occupiers who have long leases and to owners who occupy. Short-lease occupiers, when the lease is to be renewed, must be faced by a demand for more rent from the owner. In proportion as rates fall, the burden on taking a factory falls ; the landlord has a property with less encumbrances and can ask for more rent. Such demands have already been reported, even in the case of Municipalities and their tenants. Whether the landlord gets more rent depends on the availability of other land and buildings to satisfy the demand ; and that demand would tend to put up the rent (and, therefore, the rateable value) of other property. Ultimately, a balance will be restored in which owners will share with occupiers the benefits

of derating, and some of the burden of derating will be shifted to property which is at present non-derated property.

Finally, as the total rateable value of each area must be reduced by the total amount derated, the amount of the rates to be raised (even supposing it remains constant) will cause a higher poundage to be demanded. Therefore, although there are government grants to reduce the total local demand for rates, *derated property will not be relieved by the amount expected*; on each pound of its rateable value it will pay a little more than before.

The Equity and Economy of Rating on Non-derated Property. Over 70 per cent of the rates were paid by the great miscellaneous collection of property, other than agricultural land, industrial and freight-transport hereditaments. Is the principle of rental value just?

The principle may be convenient, but it is, in some degree, unjust. First, we cannot see the justice of derating industrial property, and not derating warehouses, business offices, and wholesale and retail shops. If one takes the avowed principle of the Rating Relief Acts, that is, that 'productive' industry should be disburdened—then are not insurance offices and banks, bill-discount houses, shipping offices, company-floating premises, warehouses, all contributing to production? Is the maker of ships productive and the organizer of shipping traffic not? Is the manufacturer of pots and pans, shirts and stockings, productive, and the bank which plans the foreign credit for their export and marketing not productive? Of this the statesmen might say that to derate them would involve terrifying administrative and judicial problems of definition—for instance, where places are occupied as both business and dwelling. It would be a forcible argument; but it would not extend to the justice of the case regarded either from the angle of the benefit the occupier or property receives or the principle of ability.

On this ground, it has been pointed out for decades that the rental value of business premises has no proportionate relationship to the profits made. A small office (a diamond broker's, for example), a little shop (a milliner's, for example), may make remarkable profits, with barely any rental. Other businesses require large premises—a grain warehouse, motor show-rooms, garages. On the merits of the rating system itself as a revenue-getter for local expenditure, one must admit that here there is a multitude of inequities.

We come, finally, to the problem of the equity of the rate as a levy on the value of ordinary residential property.[1] To be just, on the principle of taxation by ability, the rates would need to be in proportion to income. This would require that the rental value of dwellings should be in strict proportion to income in all classes of the

[1] Cf. discussion of this in *Final Report, Departmental Committee on Local Taxation*, Cmd. 7315, 1914, Chap. IV.

population. Of course, there is no such correspondence. No figures have actually been gathered to prove or disprove whether this is so. But common experience and observation goes to show that as the income falls, the proportion of it in rent rises. In plain words, the poorer a person is, the greater the proportion of rent to total income: the richer a person is, the smaller the proportion to total income. Rates are calculated at a uniform figure for each pound of rates, whether raised from poor or rich. Hence, the poorer a person the more per pound of his income he pays in rates; the richer, the less per pound of his income. The rates paid by the rich, of course, are higher than those paid by the poor; but in law they are regarded as being no higher in proportion to their total ability, the measure of the ability to pay being theoretically furnished by the rateable value of the property occupied by the rate-payer.

Progressive and Degressive Taxation. Now it has been considered just in taxation for central government purposes to draw a substantial income from income tax and death duties. In these cases not merely is the tax graded in proportion to the income—but it is *progressive*, that is *more* than in proportion: so that Mr. Y. with ten times the income of Mr. X. pays not ten, but fifteen, or twenty, times Mr. X.'s tax.[1]

Why? Taxation is made progressive because it is properly held that, *assuming that men and women are not remarkably different in the sum total of their needs*, the value of each additional pound falls ever more rapidly as the total income of an individual increases; or rises ever with accelerating rapidity as the total income of the individual decreases. Taxation, then, would do less damage all round if each pound in the large incomes is taxed ever more heavily and the small incomes, each pound of which means so much, are spared or treated lightly.[2]

The Degressiveness of Local Taxation. This principle does not apply to the rating system. On the contrary, it is not unfair to say that instead of following it the rating system follows the exact opposite: instead of being *progressive* it is *degressive*; instead of hitting the large incomes ever more heavily, it hits the small incomes ever more heavily.

Nor is that all. The central government's income-tax system

[1] Cf. Dalton, op. cit.

[2] An interesting and acceptable estimate of the distribution of the burden of rates on dwelling houses and business buildings among income classes about 1936 is as follows: *

Income Group £	Dwelling Houses and Businesses: Percentage of Income paid in Rates	Dwelling Houses: Percentage of Incomes for Rent	Percentage of Rates to Income on Dwelling Houses
Up to £250	4·9	14	3·3
£250–£500	3·8	9	2·0
£500–£1,000	3·3	7	1·7
£1,000–£2,000	2·8	5½	1·3
£2,000–£10,000	2·4	5	1·03
Over £10,000	1·9	4	0·87

* Cf. H. R. Bowen: *English Grants in Aid*, University of Iowa, 1939, pp. 53, 57.

provides exemptions and reliefs, in order that the pounds required for the most urgent needs of life may be spared. This seems to us proper. But the rating system gives hardly any exemption or relief at all: with the slightest exception, rates are paid from the first shilling of rent upward, however small the income.[1]

This system is commonly justified by the principle of benefit. It is argued that the benefit received by the poor from municipal services is enormous in comparison with that received (or, indeed, wanted) by the better-off. We suppose that the dividing line would come somewhere between those with incomes up to £350 a year and those above it. Those below the line require a fuller use or fuller application of municipal education, libraries, housing, baths and wash-houses, parks and recreation grounds, and other elements of Public Health Administration, and poor relief; while tram fares are kept as cheap as possible, sometimes with a burden on the rates, for their sake. This is true. Yet, at the least, there is, for those above the dividing-line, a large offset of benefit of inestimable value in the police forces who keep the peace and safeguard property. It cannot, however, be denied that it is the poor who obtain the major benefits from municipal services. It seems a paradox to say so; but they cannot help it!

Nevertheless, the rating system is *degressive* and presses most heavily upon those who can least afford to pay. The ultimate question of reform lies in these combined questions: (1) Ought differential rating be introduced to avoid *degressiveness* and to instal *progressiveness*? (2) Ought there to be exemption and reliefs on the income-tax model? (3) Ought the principle of benefit to be invoked at all to counter the principle of ability while so large a proportion of the population is only on the margin of subsistence and definitely below the margin of civilized amenities and social opportunity? The answers to these questions may well be left to the reader and his own political sympathies.

Inequity remedied by Grants-in-aid. It must further be remembered that even within each section of the population, poor, lower-middle, upper-middle, and rich, the rates press with a varying incidence: for there are individual variations of income, and rentals are affected by such considerations as proximity to one's work, and the number of children. If, as we show later, there is much to be said for retaining the rating system because it is so convenient administratively, its inequities as between different classes of property, and between rich and poor in the case of residential property, may be alleviated by grants-in-aid from the central authority. For, on the whole, the revenue of the central authority is based progressively upon ability. In proportion as it is used to relieve the burden of local

[1] Yet it is only fair to say that the scale of allowances under Sect. 22 of the Rating and Valuation Act of 1925, Second Schedule, is graduated to favour the properties of smaller values. Cf. explanation by Carson Roberts, *Local Administration—Finance and Accounts* (1930).

rating it makes the inherent inequities of less and less importance. Indeed, one of the great impulses leading to the growth of grants-in-aid has been exactly this consideration. But this cannot be taken too far without the destruction of local independence. For when the central authority pays the piper, it quite properly demands not only to inspect the score and the pipe, but even to write the score, guide the fingers, and see that the piper takes proper exercise for the preservation of his wind.

Alternatives: Local Income Tax. Are there any eligible alternatives to the system of rates, apart from reliefs suggested by the previous discussion? Or is it better to leave the system alone, simply modified by wisely distributed grants-in-aid?

The alternative of several local taxes, as in Germany and France, should be rejected on the grounds of the vexatiousness of many taxes, their doubtful equity, and the costs of administration.

There is the principle of the Land Values Duty, namely, the taxing at such and such a percentage of the 'betterment' of the value of land and buildings. These rise in value with the development of a community, largely through the common expenditure and municipal improvements, and occasionally by the relaxation of municipal prohibitions on building. There is no reason against asking a special contribution to local expenditure; there is good reason for the community to enjoy what the community has created. This is not an alternative, but an addition to the present liability.[1]

Finally, there is the great alternative of a local income tax: that is, rates would be raised in proportion not to rental value, but to income discovered by the full statements we are so familiar with. What is to be said for and against this? In its favour is to be urged its superiority as an exact measure of ability to the crude standard of rental value of fixed property. Now a local income tax has, in public controversy, meant one of two things, either some of the proceeds of the central income tax assigned to local authorities, or a tax on income levied and collected by the local authorities themselves. The former could, of course, altogether replace rates, and come, partially, as a grant-in-aid. If it is simply a grant-in-aid it has no virtues above and beyond the system normally practised (and fully discussed in the next chapter) of subvention from the central Exchequer. If it is entirely in lieu of rates, it raises the more vital question, who shall distribute the proceeds of the tax raised by the central authority, what principles will determine the share of the local authorities, and what conditions will be attached by the central authority to their receipt? Experience shows how difficult to answer are all these questions even when central subventions are only *part* of local revenues. The crux of the whole matter is the fundamental question of the extent of central

[1] Cf. the discussion of this question in *Report of the Local Taxation Committee of 1914*, Chap. X.

control and of local economy were all local revenue raised not by the local authorities themselves, but for them by the central authority.

The real alternative to local rates is not a centrally-collected income tax distributed among the local authorities, but the raising of local revenues by the local authorities on the basis of the income of the occupier in that area. Is this feasible ? It is : if one is prepared to pay the cost ! It would necessarily involve a body of taxing officials certainly as large as that which copes with the central income tax, and they would need to be as skilled as the Inspector of Taxes. This would involve a very great addition to the expenditure on the present rating and valuation officials. Quite a new kind of inquisition, like that carried out by forms and interview by the Inland Revenue Authority, would need to be established. Moreover, the cost of collection would be tremendous, and the prospects of evasion would be serious, if attempts were made to collect directly from each person liable. The British Income Tax already costs millions to assess and collect ; even then 60 per cent of it is collected in the easiest and least costly way, at source, before the income ever reaches the persons entitled to it.[1]

This additional cost itself might cause a loss of so much money that the burden would outweigh the alleviation of the present iniquity. On the other hand, if the central authority's taxation arrangements were used—how would the pooled amount from the source be divided among the different authorities ? On what principle ? Supposing a firm makes its income from a number of places, in some making a profit, in others a loss, how will its total income be divided among the different places—when the local authority will be spending money on services beneficial to the property therein, profit or no profit ? Experts of goodwill [2] have pointed out that even to get the system to work would require two conditions : (1) assessment and collection of the local tax at a maximum rate, with subsequent repayments of the difference between that and the actual rate imposed by the area in which they reside ; and (2) allocation of the total proceeds to the place of residence of the recipients of the income. But the first condition is vexatious, and the second would produce enormous inequalities between residential and industrial districts.

On the whole, then, the system of rating by reference to rental value ought to stay at the centre of the local financial system. It is a convenient, if not an absolutely just, method of raising revenue. Its former defects have been considerably remedied by the relief of agricultural land, industrial and freight transport hereditaments. It could be further improved by a system of graded abatements on control and of local economy were all local revenue raised not by

[1] Cf. *Report*, Royal Commission on Income Tax, 1920. Tranter, *Evasion of Taxation*.

[2] *Report, Local Taxation*, 1914, Chap. XI ; and Appendix XXI to the *Report*, by Braithwaite and Minnis, on the Prussian Local Income Tax System.

substantial amount of grants-in-aid from the central authority, properly distributed to give especially large sums to the poorer authorities, tends both to equity and economy. We shall see in a later chapter how the system of grants-in-aid grew up out of such considerations and to what extent and on what principles they are remedial.

CHAPTER XIX

PRINCIPLES AND MACHINERY OF LOCAL RATES
(Continued)

II

THE LIABILITY TO PAY RATES

DISCUSSION of the justice of local rating has been much confused owing to the idea that rates are paid by property. The true conception is, of course, that rates are paid by persons, though it may be that they are paid in respect of property or some other evidence of capacity to pay. Let it then be understood at the outset that rates are a burden upon people, and these, like all who bear a burden, attempt to shift it on to others.

The Occupier is Liable. The law places the liability to pay rates normally upon the occupier and not upon the owner of fixed property. We say normally, because there are some exceptions, but the main principle is that the occupier is liable. Now there are, of course, possible alternatives to this. It would be possible to rate owners whether they were in occupation or not. It would be possible, although exceedingly difficult, to divide the liability in some proportion between owner and tenant. It would be possible to fix the liability only upon the actual residents. Or, as in the very early days of English rating, the term 'inhabitant' might be used, and this might include, since it is rather indefinite, people who will live part of their time in one place and part in another. When the rating system was first established, the term used in the law was 'inhabitants', and sometimes 'parishioners'. In early law cases the Courts were much plagued by the problem of whether to rate people who had property in a parish but lived outside it, and the matter had somehow to be settled. It was settled by the Act of 1597 which commanded that rates for the relief of the poor should be raised, 'by taxation of every inhabitant and every occupier of land in the said parish'. The Act of 1601 repeated this injunction but in place of land added 'houses, tythes, impropriate or propriations of tythes, coal-mines or saleable underwoods'. The question is, how and why the term 'inhabitant' was dropped. It was dropped because the Overseers of any particular parish could not discover (in the unskilled and illiterate condition of

their time) wealth, in income or property, of an 'inhabitant' who lived outside the parish. And so they came to restrict their inquiries to the actual lands and houses occupied in their parish. In the famous case of Sir Anthony Earby in 1633 it was settled that

'assessments ought to be made according to the visible estate of the inhabitants there, both real and personal, and that no inhabitant there is to be taxed by them (the Overseers) to contribute to the relief of the poor, in regard of any estate he hath elsewhere, in any other town or place, but only in regard of the visible estate he hath in the town where he doth dwell, and not for any other land which he hath in any other place or town.' [1]

In other words, the liability was imposed by reference to two things, visible estate, and the place actually dwelt in. Thus the force of the term 'inhabitant' was restricted to dweller. The Court went further and said:

'That by the words and meaning of the statute of 43 Eliz. c. 2 (the Act of 1601) they are to assess the occupiers of the land and not the lessor who received the rents, the occupier of the land being by law only to pay the assessment, unless it be specially provided for as to this payment between him and his lessor and so by this to be discharged of his payment of such assessments.'

The net effect is to place the liability upon the occupier of fixed property. Of course, the owner is often in personal occupation, and, therefore, the terms owner and occupier may happen actually to be synonymous. But this does not occur except in a small proportion of all the cases; and therefore the fact that the primary liability is upon the occupier has caused a century-long dispute as to who pays the actual burden **ultimately**, and whether the ultimate result is just. This question has concerned Committee after Committee and Government after Government during the last 100 years. We do not intend to discuss this question exhaustively, but some considerations arising out of this problem may well be briefly touched upon.

The Difference between the Payment and the Burden. The primary (the legal) liability is upon the occupier with certain legal exceptions which we shall discuss later. The symbol of that primary liability is, according to Section 4 of the Rating and Valuation Act of 1925, this, that where the name of any person liable to be rated is not known to the rating authority it shall be sufficient to assess him to the rate simply by the description of the 'occupier' of the premises, without further name or description. In other words, it is the occupier who makes the payment. But does he bear the burden? As a matter of fact, he shifts some of the burden, and sometimes all of it, on the owner of the property. It is a well-known fact that the immediate liability to pay tax is no indication of its ultimate incidence.[2] When there is a tax on beer paid by the brewers they

[1] 1633, 2 Bulst. 354.

[2] Cf. Bastable, *Public Finance*, and Cannan's brilliant analysis of the subject in the final chapters of his *History of Local Rates*.

attempt to pass on the tax to the consumer of beer by raising the price. Whether they can do so, and in what measure, depends upon the urgency of the demand for beer, the relationship between the income and the other obligations of the beer-drinkers, alternative beverages of a stimulating kind, and so on. So also with every other tax. Where the burden ultimately falls depends upon all the conditions of demand and supply involved in the relationship between the payer of the tax and the people with whom he has economic relations. So also with regard to the ultimate burden of rates.

A rate upon a house is a charge upon it and makes it less desirable, just as the house would be less desirable if it were in a bad state of repair and needed expenditure upon it; and the analogy would be closer if that charge came regularly every year and were primarily placed upon the occupier. The result that reasonable men might expect would be a demand by the tenant or the prospective tenant for a reduction of rent. The bigger the burden the less desirable the house or land, and the greater the reduction in rent demanded. It is theoretically conceivable, even, that rates could be so high as to prevent anybody from wishing to dwell in the town, with the result that property would be worth nothing. Now the landlord resists the attempt to shift the burden on to him. What then determines the ultimate location of the charge? Obviously, it is on the one hand the alternatives available to the tenant, as to the actual place in which he wishes to dwell, or carry on his business, and the special suitability of the land and buildings in question. If the landlord has a monopoly of these things, and in proportion to the intensity of the tenant's demand for them, the rate burden will fall on the tenant. Even then, the landlord would have received in rent the full monopoly-value less the rates. Now often, there are acceptable alternatives open to intending tenants, and whether they will choose to occupy premises in this place or in that depends upon the differential burden of the rates. But that is not all, for in one place the rates may be high and the management of the town exceedingly good, in comparison with the relationship between rates and civic administration in other places. The higher the rates and the worse the administration, the bigger the margin of burden on the tenant, and therefore the greater his pressure to go elsewhere, and therefore the greater the pressure on the landlord to lower the rent. The smaller the rates in proportion to the excellence of civic administration, the more desirable is it to occupy premises in the area, and the greater the ultimate rent he is willing to pay to the landlord. The reader himself can, with these few hints, pursue the analysis of the situation further. But enough has been said to dispose of the fallacy that because the tenant is liable to pay rates in the first place, he therefore necessarily shoulders the full burden ultimately.

Compounding. We now turn to a short discussion of the main exception to the rule that the liability for the rates is on the occupier. In the case of properties of small value, or where the rent is payable at frequent intervals, the owner may be rated instead of the occupier. This is the system known popularly as compounding, for here the tenant pays a rent which in fact includes the rate.[1] The practice of compounding is now regulated by the Rating and Valuation Act of 1925, but it goes back to the Poor Rate Assessment and Collection Act of 1869, the Municipal Corporations Act of 1842, the Public Health Act of 1875, and various local Acts promoted by certain Boroughs. By 1925, the general effect of the law was briefly this, that in the case of the Poor Rate compounding applied to houses or tenements with a rateable value not exceeding £20 in London and £8 in the rest of the country, while in regard to the General District Rate, it applied, at the option of the Borough or Urban District Council, to houses or tenements not over £10 in rateable value or let to weekly or monthly tenants or let in separate apartments.

It is not difficult to surmise the reasons for the system of compounding. It is clear that there are serious practical difficulties in collecting and enforcing payment from the large numbers of the poorest classes who frequently move from one tenement to another. Now if the owners are made liable, our present notions of civilization require that they shall receive some reward. And so until 1925 the arrangement was this, that in regard to the Poor Rate, where the owner pays (whether the premises are occupied or not) he was allowed up to 25 per cent off the rates; where the owner was compulsorily rated, he received an allowance only of 15 per cent, and then he was entitled to a further 15 per cent abatement if he undertook to pay rates, whether the premises were occupied or not. In regard to the District Rate, the allowance was not less than 20 per cent and not more than 33⅓ per cent in the discretion of the Council, but if the landlord agreed to the payment of rates whether the premises were occupied or not, then the total allowance could be as high as 50 per cent.

Objections to Compounding. Three objections were for long urged against the system of compounding. The first was that it was anomalous that people who had the right to elect and be elected to local government offices should not know what it was to pay rates; it consequently obscured the realities of local government and slackened interest in its operation. The second: since the tenant did not know except by the landlord's report the amount of the rates, the landlord could drive an unfair bargain. The third was that the maximum allowances all tended to be given, with the result that the income was

[1] Cf. *Final Report of Royal Commission on Local Taxation*, Cmd. 638, 1901, Chap. XII; *Report, Departmental Committee on Local Taxation*, 1914, Chap. XIII.

seriously reduced. Proposals were made from time to time to deal with these objections. The first and second objections were dealt with, in so far as it is possible for the law at all to deal with such a matter, by the Statement of Rates Act, 1919, which provides that every demand for receipt for rent which includes rates shall state either the annual half-yearly, quarterly, monthly, or weekly amount of such rates in accordance with the last rate demand received by the owner at the time of making his demand for rent or giving his receipt for it. The third difficulty has been met by the Rating and Valuation Act of 1925.[1] This Act provides that the rating authority may direct that certain owners shall be rated instead of the occupier. The properties referred to must be those where the rateable value does not exceed £13, in other words five shillings per week. A second possibility is where the rental interval is less than quarterly. Under these arrangements the rating authority makes an allowance of 10 per cent (increased temporarily to not exceeding 15 per cent by the Rating and Valuation Acts of 1928 and 1932). Subsection 2 of Section 11 of the Act can be applied irrespective of rateable value to hereditaments the rent of which is payable at intervals shorter than quarterly. In this case, which might be flats or apartments or houses of high value but where the rent is paid by the week or month, the local authority cannot compel the owner into a compounding arrangement: he has the right to enter into an agreement only if he wants to. He may pay the rates whether the place is occupied or not, and in that case the local authority may make him an allowance, the maximum being 15 per cent; he may agree to pay the rates only so long as the property is occupied, and then the maximum allowance is 7½ per cent; he may merely agree to collect the rates from the occupier on behalf of the rating authority, and in that case he receives a commission of 5 per cent.

We have no statistics centrally collected to enable us to say what proportion of the total rateable value of the entire country comes within the purview of compounding. In default of such figures it is of interest to give those from certain places only. In Coventry about 22 per cent of the total general rate is recovered from owners under the compounding system; in Birmingham about 20 per cent. The amount is considerable, and the allowances to landlords are therefore a considerable loss to the community. It must be remembered, however, that various devices have been attempted, for example, the collection of rates by means of weekly stamps, but there is no wholesale satisfactory means of overcoming the difficulties ultimately cheaper to the rating authority than compounding. The owner is virtually converted into a casual rate-collector on behalf of the rating authority.

[1] Sect. 11.

Before leaving this section let us once more reiterate its main substance. Rates are levied upon the occupier of fixed property with certain exceptions, the main one of which is compounding. But the legal location of the primary liability for rates is no indication of the ultimate incidence of the charge. Therefore, discussions regarding the final burden of the rates must be undertaken in terms of (*a*) who, not what, pays the rates, and (*b*) the conditions of supply and demand for particular properties in particular places affecting the nature of the bargain between landlord and tenant. When the discussion is governed in this way it will be found not so easy to surrender to the arguments of those who have pretended in the past that the rating of real property only is unjust to the extent they have alleged. We shall meet this question by another road, and see it from another angle, in the following chapter on grants-in-aid.

III

AREAS AND UNIFORMITY OF VALUATION

Whatever the standard of one's contribution to rates, it is important that methods of valuation should be uniform. There may be something to be said for local authorities having each their own rating valuers, but there is everything to be said against each authority settling for itself and without consulting its neighbours how it shall assess the rateable value of the diverse types of real property. Local government in this sense exhibits all its vices and none of its virtues. Now the levy of rates began with the parochial officers, the Overseers, when Poor Relief was commenced in the sixteenth century. There were 15,000 independent valuation authorities. Only the statutes, with their very broad and vague definitions of rateability, produced a basic and marginal uniformity; beyond that some uniformity was introduced when the Law Courts gave decisions in disputed cases —e.g. the liability to rates of non-occupying 'inhabitants', of stock-in-trade, the amount of deductions for expenses—and these sooner or later percolated through to Quarter Sessions and to the Overseers. But this meant that as between the occupiers of a single parish, and, of more serious import, as between occupiers of different parishes, there could be many a difference in the actual measurement of their rateability, until a law-suit decided a case, and even after, for the judicial method of settling disputes is expensive and vexatious.

Uniformity *within* parishes was provided for by the Parochial Assessments Act of 1836, which defined rateable value, and the Act of 1840 exempting stock-in-trade. But there were still 15,000 separate valuation authorities unregulated except through the Law Courts, and we have already seen the variegated effect of this in the special

case of rating machinery. Until the beginning of the nineteenth century, in fact, it had mattered only that valuation within parishes should be uniform. Little money had to be found for county charges. All that was necessary was fairness *within* the parish. By the time the Act of 1836 was passed an era had commenced when mere parochial services ceased to be of real importance. More and more administrative services came to be conducted either by the County or Boroughs or Boards of Guardians, Highway Districts, Sanitary Districts. The question now arose of securing that Overseers should not unfairly reduce the *total* valuation of their parish. By doing so they could be perfectly fair as between parishioners (if all the valuations were reduced in the same proportion), but when the Guardians, or the County or the Districts, had to apportion their expenditure among the various parishes according to the total rateable value of each the burden could be unfairly shifted by the parish whose valuation was unduly low. It simply pretended that its ability to pay was smaller than, in fact, it was.[1] As regards County Rates some slight amelioration was introduced by the County Rates Act, 1852, which gave the Justices (a County Rate Committee) power to fix the basis or standard for determining the contribution of each parish for county purposes. This Basis contained the assessable value of each parish as a whole, not of the several hereditaments. If the Committee made an independent valuation (and they did not do so often) it affected not the bulk of the hereditaments but only the parish as a unit for *county* purposes.

Some more definite arrangement to secure uniformity was necessary, and in 1862 the law had to step in. The Union Assessment Committee Act of 1862 provided that in regard to the Poor Rate (which very soon actually *included 70 per cent of all the rates actually levied*) valuations for each parish should be conducted by a Committee of the Board of Guardians for the Union in which the Parish is situated. This Assessment Committee acting alone, or through the Overseers, had the power of approval of the Valuation List which the law compelled the Parish Overseers to submit. Ample notice was given for the making of the Valuation List and objections could be lodged by any person or parish or Overseers *within the Union*. The Assessment Committee heard and determined the objections. This tended to produce uniformity of valuation. Further, the Committee itself might

[1] The Poor Law Commissioners (*Report*, 1843, No. 486, Part I, p. 31) said that from the year 1739 when it was settled that the County Rate might be assessed by County Justices on parishes in proportion to the total value of the rateable property in each parish respectively a strong motive was given for the under-valuation of parish property so that 'while the proportions between the several contributors to the Poor Rate within the parish should be undisturbed, the proportion of the whole parish as compared with all other parishes in the county should be as much as possible diminished'.

alter the Valuation List and order revaluation of any property of the whole parish or union. Finally, the Committee approved and signed the list. Against the Committee's decisions in the matter of objections brought by persons, parishes or Overseers, parishes and Overseers could appeal to Quarter Sessions. Persons were only allowed to appeal when a rate was actually levied on a valuation which had been disputed but not relieved as desired by the Assessment Committee. This system made for uniformity of valuation within about 640 areas: it reduced the possibility of diversity from 15,000 to 640, a most considerable gain. The law had, in another way, also provided for equity as between parishes in the meeting of common burdens. The powers under the Act of 1852 were by the Local Government Act of 1888 transferred to the County Councils, and made exerciseable by their County Rate Committee. Provisions were made for circulation of the County Rate Basis and objections and appeals by parish councils or Overseers. But as for revaluations, by no means all the County Rate Committees properly intervened. For purposes of the Borough rate the Borough Councils had the power to make independent valuations, but in fact, with rare exceptions, the Poor Rate valuation was accepted.

In 1899 greater uniformity was recommended. The Royal Commission on Local Taxation proposed that there should be only one Valuation Authority in each Administrative County and County Borough; and even that by agreement among these authorities the Geographical County might be taken as a single valuation authority.[1] In 1914, the Committee of Local Taxation made more far-reaching recommendations.[2] By that time some, though only a few, of the Counties were for County Rate purposes taking the central authority's Schedule Assessments as the basis of their valuation, and the Finance Act of 1910 had provided for a Government Valuation Department for the Land Values Duties. Moreover, some Counties employed professional valuers to settle the more difficult problems. The Committee, accordingly, recommended the making of all valuations by the Government Land Valuation Staff. To meet the demand for local government and the impact of local knowledge, objections would still be heard by Local Assessment Committees acting as assessors 'to any fears of unfair treatment'. This was too drastic a reform in the face of vested professional and local patriotic interests. Then the War intervened. Until 1925, the judgement of the Committee of 1914 held good:

'But as regards the poor rate valuation, which is the basis for the assessment of individual ratepayers, the improvement in recent years has, we understand, been much less. It is quite true that under the existing system any aggrieved

[1] *First Report*, Cmd. 9141, 1899. [2] Pp. 83-90.

party has the right of objection or appeal, but in practice this provides little security against under-assessment. Even where a man is convinced that his neighbour is under-assessed, it requires a strong sense of public duty to make him undertake the invidious task of objecting, while, as regards any but the simplest properties, the average layman is quite incapable of forming an opinion as to the proper assessment. The general result, therefore, is that the only guarantee against under-assessment is the power of the Assessment Committee to increase any valuation even when no objection is raised, but in practice this power, we understand, is seldom exercised.

'Moreover, there is a strong tendency for objections to be met by giving a reduction of the assessment of the objectors rather than by increasing the assessment of the properties which they quote in comparison with their own. Again, the risk of appeals is no small deterrent to a Committee against bringing the valuation of their area up to the mark. Yet, in spite of these contrary tendencies, some unions do maintain a fairly correct valuation list by the employment of a professional valuer from time to time.'

Valuation Areas since 1925. The Rating and Valuation Act of 1925 altered all this. In place of the old assessment authorities, the Overseers and the Assessment Committees, it established new assessment areas consisting of (*a*) County Boroughs, and (*b*) within the Counties areas constituted by special schemes. In the County Boroughs, the Assessment Committee is appointed by the Borough Council and consists of such a number of persons as they determine. The Act, however, requires that not less than one-third of the members of the Committee shall be persons who are not members of the Council. The members of Assessment Committees retain their seats for a term of five years although ceasing to hold office as councillors. The assessment areas (other than the County Boroughs) must consist of one or more rating areas. And County Councils and County Boroughs may submit joint schemes for the constitution of assessment areas. The procedure is that County Councils after consultation with the authorities in the rating areas in the County make and submit a scheme to the Minister. All authorities of rating areas affected thereby are notified; there is extensive advertisement of the scheme; objections are heard and determined by the Minister, who makes an order 'with or without modifications.' There may be only one assessment area in a County, but the whole of every rating area must be within one assessment area. In these composite assessment areas the assessment committee consists of persons appointed by rating authorities and by the County Council. The work of assessment committees is to supervise, approve, and revise valuation lists. The schemes made for the establishment of such assessment areas show that the 640 assessment committees of the Poor Law Unions which were formerly the areas of effective uniformity in valuation have been replaced by about 340 Assessment Committees.

County Valuation Committees. In order to secure more uniformity than even this provides, each County Council is obliged

to establish a committee called the County Valuation Committee, consisting of members of the County Council and one representative for each of the assessment areas within the County. The duty of the County Valuation Committees is to take such steps as they think fit to promote uniformity in the principles and practice of valuation and to assist rating authorities in their duties regarding valuation. For the purpose of executing this duty the committees have the power alone or in conjunction with other County Valuation Committees to hold conferences with representatives of assessment committees including those for County Boroughs, and to bring to the notice of any rating authorities or assessment committees their conclusions or recommendations. Alone, or in conjunction with any rating authority, assessment committee, or other County Valuation Committee, they may appear as a party to objections or appeals regarding valuation.

The Central Valuation Committee. In order to promote uniformity in valuation even beyond the point where it can be attained by the new assessment authorities and the County Valuation Committees, there is established a central valuation committee, consisting of members of rating authorities, County Valuation Committees, assessment committees, and of certain other persons.[1] It is the business of the Central Valuation Committee to watch the operation of the Rating and Valuation Act, to give the Minister such information and to make such representations as they may consider desirable for promoting uniformity and removing inequalities in the system of valuation. For those purposes, conferences or other methods of consultation may be employed. This body is advisory only. It makes representations on the more difficult problems of valuation, those in fact where diversity of practice is likely to arise.

The Central Valuation Committee is actually composed of 32 members, 24 having been nominated by the Associations of Local Authorities and by the Minister of Health. Those nominated by the Minister of Health consist of old experienced members in the former machinery of assessment, some experienced from the local government officials, and statistical officers of the central authority. The various classes of local authorities are well represented. The committee itself in its First Series of Representations says that 'the committee—essentially a body of representatives of local authorities—regards itself as having been appointed primarily in order that local authorities may be enabled, of their own initiative, to take action to promote throughout England and Wales necessary uniformity of valuation for local rates.' It attempts to apply accepted principles to the cases which are likely to cause most difficulty. It has issued several series of Representations [2] and regular annual reports.

[1] Sect. 57. [2] Published by His Majesty's Stationery Office.

Frequency of Valuation. Until 1925, excepting in the Metropolis, there was no minimum term fixed by statute within which the valuation list was to be revised. It was left to the assessment committee to order a revaluation. The result of this lack of a fixed minimum was what may have been expected, that many places were satisfied with the maintenance of antiquated valuation lists with only occasional additions by reason of new rateable property or the demolition of other hereditaments. By reason of this alone there were many injustices owing to the variation in rents and the price of property. In the Metropolis since 1869 there was a compulsory quinquennial revaluation. By the Act of 1925 quinquennial revaluation was made compulsory all over the country.*

IV

THE CONSOLIDATION AND THE COLLECTION OF RATES[1]

There may be many authorities performing services for which they levy rates, but it is possible and eminently desirable that all the demands should be consolidated into a single rate appearing on a single demand note. The ratepayer ought not to be confronted by a number of separate demands for rates from different authorities, and this can be avoided by a little ingenious administration. English development shows a slow progress towards the consolidation of rates and their collection by the minimum number of different authorities. Up to 1925, the chief rates raised were the Poor Rate and the General District Rate. The Poor Rate was, in fact, a consolidation of a number of different rates. It included (1) the expenses of Boards of Guardians; that is to say, rates raised for poor relief; it further included (2) the expenses of County Councils; that is, on Education, Main Roads, Police, Lunacy, Health Services, etc.; it included (3) the expenses of Rural District Councils, that is, on minor Roads and Health Administration; it included (4) the expenses of Parish Councils, Parish Meetings and Overseers, and it included (5) the expenses of Borough Councils other than those under the Public Health Acts, also (6) the Education expenses of Urban District Councils. Altogether, the total amount raised in 1924–5 in Poor Rates in England and Wales, excluding London, was approximately 70 per cent of the total rates. The General District Rate was levied chiefly to meet the expenses of Borough Councils and Urban District Councils for Public Health purposes, and in the year mentioned they amounted to about 20 per cent of the total rates. From this calculation we exclude certain special rates which we shall discuss in a moment. The Poor Rate, as described, was the result of a gradual

[1] Cf. Reports of 1899 and 1914 previously referred to.

* See Additional Notes, p. 523, at Chap. XIX, p. 431.

accumulation of claims arising out of the growth of new local government services, and the perception that the valuation and machinery of collection were already conveniently existent.

Their Collection. How were these rates collected? The Poor Rate was collected by the spending authorities who served a precept for the amount they required on the Overseers demanding the money needed, but County Councils precepted, not the Overseers of the individual Parishes, but the Boards of Guardians who then precepted the Overseers of the Parishes within their Union. The actual collection was conducted by paid officials called Assistant Overseers, appointed in rural parishes by the Parish Council or Meeting, and in urban parishes by the Justices of the Peace on the nomination of the Vestry. It was open to Boards of Guardians when empowered by Order of the central authority to appoint Collectors for a parish or a group of parishes and these replaced the Assistant Overseers. The General District Rates were collected separately by officials appointed by the Borough or Urban District Councils. This meant that in urban areas separate officials might collect the Poor Rates and the General District Rates from the same ratepayers. It was permissible for the Borough or Urban District Council to obtain an Order authorizing them to appoint the Assistant Overseer, and then they could arrange that the same person should be collector of both Poor Rate and General District Rate, but partly through inertia and partly through the resistance of existing officials consolidation could not be achieved. Of course, Local Acts could provide for consolidation within Boroughs, and occasionally did. The Ministry of Health could, by Provisional Order, consolidate General District and Borough Rates but not the Poor Rate, but once consolidated they could be collected by officials appointed either by the Borough Councils or by these in combination with the Poor Rate. Many of the larger Boroughs had so arranged. It might be added that all rates in London were consolidated under the general statutes into one General Rate.

The Act of 1925. Now it was inconvenient, and in some cases permanently useless, to wait for any further voluntary consolidation, and the Rating and Valuation Act of 1925 changed the whole system. The rating authorities are the County Borough Councils, the Borough Councils and the Urban and Rural District Councils. The Overseers of the Poor ceased to exist in relation to the making, levying and collection of rates. All these powers are exercisable by the rating authorities we have just mentioned, and the powers may be exercised by the Councils through the committee organization which we have already described in a previous chapter. In the case of a rural rating area, the parish council of every parish or group of parishes, or the parish meeting, is entitled to appoint two persons (local government electors) to be members of the Rating Authority or of any

committee appointed by that authority, so far as regards their powers and activities in connexion with property in that parish or group of parishes. For that purpose, exclusively, these persons are deemed to be members of the Rating Authority or Committee. Instead of the Poor Rate and other rates which they have power to make, the urban rating authorities levy a consolidated rate termed The General Rate. In the rural districts the rating authority instead of making a Poor Rate for each parish makes and levies a General Rate for the whole of the district. The County Councils raise their expenses by a precept upon the rating authorities within their area, stating, in this demand for payment, *an equal rate in the pound* [1] to be raised by each rating area and the date when such payments must be made. In other words, the rate-levying authorities are the County Borough Councils for themselves; the Municipal Boroughs, the Urban Districts and the Rural Districts for themselves and for the County where they enjoy County Council services; the Rural Districts for themselves and the County Councils and for parochial expenditure. The Parishes for their own individual expenditure obtain their money from the rate levied by the Rural District. The County Councils obtain their funds by demands made upon the minor authorities in their area excepting the Parishes.

It is arranged that the Demand Note for rates shall include certain information.[2] Apart from certain formal information to identify the property, the Demand Note must show the rateable value, and the net annual value if it differs from the rateable value; the amount in the pound at which the rate is charged; the period in respect of which the rate is made; the amounts in the pound which are being levied for the purposes respectively of the rating authority and precepting authorities; the amount, if any, in the pound which is being levied as an additional item of the rate; the amounts in the pound which are being levied for such of the principal services administered respectively by the rating authorities and the precepting authorities.[3]

Thus, the Act of 1925 swept away a great complexity of rates and administration, produced by centuries of rather haphazard and piecemeal legislation. In the place of thousands of collecting authorities, it substituted hundreds, producing at the same time a consider-

[1] This introduces a new principle. Before 1925 the County demands were divided out among the parishes according to the total assessable value of each. Then it was an internal affair of the parish to divide out the sum required into so much in the pound for each occupier. If some places were, in fact, unoccupied the extra burden fell upon the occupiers. Now an equal rate in the pound is demanded, and the payment will be made equally, everywhere in the County, according to the rateable value of occupied places.

[2] Sect. 58: in Statutory Rules and Orders, 1930, No. 540 and 542, the Ministry of Health has prescribed the Form of Demand Note.

[3] Specimens of Demand Notes can usually be obtained from the local Treasurers.

able diminution in the number of assessment authorities and an enlargement of the area of uniformity, and producing for almost all the purposes of local government one General Rate.[1]

[1] There are, however, still a few rates which stand outside the general system. There were Highway Rates levied by Borough Councils or Urban District Councils for the repair of highways in the Borough or District where there were no rates for paving, sewerage and water-supply; Lighting Rates levied in rural parishes which needed more expenditure on these matters than their neighbours. So also with Parish Councils which provided public libraries, museums, and art galleries. There were Watch Rates or separate Police Rates levied in a Municipal Borough or part of a Borough where, at the commencement of the Municipal Corporations Act of 1882, such a rate might be levied. There were Water Rates and Private Improvement Rates. All these were levied on the basis of the Poor Rate, but they were additions to the normal services supplied generally by the local authorities.

CHAPTER XX

GRANTS-IN-AID

FOR the financial year 1936–37 the central authority made subsidies to local annual expenditure amounting to £135,000,000. This sum was equal to about three-eighths of all local government expenditure, excluding that from loans and the outlay on Trading Services. Thus £3 out of every eight spent by the local authorities on current and non-trading services was subscribed by the central government. The Government contributed to the Counties a little over 30 per cent of their Net expenditure on Rate Fund Services[1]; to the County Boroughs about 21 per cent; to the Municipal Boroughs about 20 per cent; to the Urban Districts about 19 per cent; to the Rural Districts about 21 per cent; while the London County Council received nearly 18 per cent, and the Metropolitan Borough Councils just about 2½ per cent. Among the grants to specific services are elementary and secondary education, about 50 per cent; highways 20 per cent: Police 50 per cent; housing 37 per cent; poor relief 11 per cent. Besides such grants there is the Block Grant amounting in 1936–7 to over £45,000,000 divided among the authorities as later explained.

Character of the Grants System. What was the purpose of these contributions? By what historical stages did the vast sum accumulate? Upon what principles is the total now distributed: how did they evolve; are they wise? The brief and provisional answers are these:

(1) Grants are paid to reduce the amount to be found locally, and so compensate for the inequity of the rating system; they provide the force behind the central control of local efficiency and central insistence upon a universal minimum of local endeavour; they assist necessitous areas to reach at least the minimum level of civilized administration.

(2) The history of grants-in-aid is mainly a history of extortion

[1] That is, the amount spent by councils in respect of services maintained by them —it excludes rates raised for other authorities, for example, rates raised by non-county boroughs for the benefit of county councils. Cf. Table, Distribution of Expenditure, etc., pages 35-39 above.

met by Parliamentary resistance and unwilling concessions. But in recent years, when the true nature of the services administered by the local authorities became better understood, the history flows into channels indicated in (1).

(3) The grants are, to-day, allocated on a complicated mixture of principles, financial and administrative, their essence being to assist localities in proportion to the heaviness of their obligations and the poverty of their resources, and in such a way also as to secure a fairly strict control over the standards of administration of the grant-aided services.

In 1832 there were no grants at all: in 1937 grants amount to £135,000,000 a year. The century shows an incessant struggle between interests—agriculture, manufactures, and commerce—for relief from rates. The State muddles slowly along from simple reactions to a sophisticated and complex arrangement to secure justice to the aggrieved interests and efficiency in government. During that century all that we know of grants-in-aid was created: their amounts, their purpose, their principles, and the mechanism of distribution. We proceed to outline the history of the grants, stopping from time to time to emphasize the significance of its crises of principle. Readers will remember that we have already dealt with the grants and their relationship to central control through inspection in a previous chapter.

When the grants were first given it was not as a considered system: there was no conception of the grant-in-aid as an instrument of central control. In 1835, there was as yet no perception that the relationship between the central and local authorities was organic, and that both central and local authorities were partners in common purposes. As we have seen, the local authorities grew up without comprehensive planning. Only from 1835 onwards did central control and the new local authorities become in any way organized, and not until after 1888 was it that what we have called the 'organic' or 'integrated' conception of local government was consciously accepted. There were, here and there, isolated people like Bentham, Chadwick, and their friends, and occasional witnesses before Commissions of Inquiry who had learned by bitter experience, who considered local government as simply one element in the great machine of government (some had, indeed, suggested centralization in Poor Law and Police). These were few and powerless, and were certainly not in tune with the thought of the time. By hypothesis, therefore, there could be neither theory nor arrangement of the grant-in-aid as an instrument of central control.

Until 1888, the view of grants as part of the machinery of central control was put forward by men like Chadwick, Kay-Shuttleworth, Sir Robert Peel and Robert Lowe (Viscount Sherbrooke). They were predominantly interested in the improvement of certain local services.

Another line of men, Sir Massey Lopes, Disraeli, Sir Stafford Northcote and Viscount Goschen, were mainly concerned with grants as a financial measure, as a means of relieving real property from the burden of local expenditure. The problem was, and is, to fuse these two tendencies; at once to alleviate the burden and inequity of local rates, and to perfect the guarantees of efficiency and progress.

First Period: 1835-46.[1] Grants-in-aid originated in the desire to help the agricultural interest upon which the new expenses of urban civilization began to weigh too heavily. The case of the agricultural interest was that local taxation, based upon the single test of value of real property, was unjust to them. It could urge that though other forms of wealth were increasing with the industrialization and commercialization of the country, and the new benefits were being obtained by the urban parishes, the main burden of the rates was shouldered by the rural inhabitants. This criticism was heard for a century, from 1835 to 1929. This was the basic and primary reason why the central authority was pressed to contribute towards local burdens: the decline of agriculture, and an unjust local taxation system. What an interesting connexion—improvement in the food resources of the world and the rise of grants-in-aid in England! Small effects have great causes!

The growth in county rates occurred in such services as Crime and Highways. Consequently, in 1834, a Parliamentary Committee was appointed to inquire into the equity of the rating system.[2] This committee thought that if the system of valuation was improved, and 'if chattel property could be made to contribute its fair proportion to the expense of administering criminal justice, no objection could, perhaps, be fairly urged' against that expense being borne on local funds. Till then they were of opinion that 'some portion, at least, of the present charges entailed by improvements in our criminal jurisprudence may justly be placed upon those funds to which the general mass of property throughout the country contributes more equably than it does to the county rate'. The Government, accordingly, gave £30,000 for the removal of prisoners to the place of trial, and half the cost of prosecution at Assizes and Quarter Sessions, amounting to £80,000. This £110,000 was a subsidy in respect of services which might justly be called 'national' (in the words of the Committee, 'of national importance and general utility') since they benefited the whole country, and not merely the district in which the arrest or trial took place. Thus began the attempt to define and

[1] The history of grants-in-aid is treated in Grice, *National and Local Finance* (1910); Webb, *Grants-in-Aid* (1920); Cannan, *History of Local Rates*; Memorandum of Sir Edward Hamilton before Royal Commission on Local Taxation, 1899. My account is based initially upon these, with fresh attention to the Evidence and Reports of Commissions and Committees concerned with the problem

[2] *Report*, H.C., No. 542, 1834.

distinguish services of 'local' and those of 'national' advantage, an attempt which was continued all through the nineteenth century and down to our own day. Where a locally administered service yielded a national benefit it was proper to ask a subsidy from the central government.

Annuality of Grants. One other point is worth noticing. The grant was voted annually: and the practice of an annual vote was continued down to the Goschen reforms of 1888. It gave Parliament always the incentive and the opportunity to review both the amount and the application of the grant. Initiative and control were in the hands of the central authority. With grants which are made upon a formula reviewable only after a term of years as after 1888 and again since 1929, there is some loss of parliamentary control.

Another stage of development was occurring in Education. In 1833 the Government made a grant of £20,000 to certain religious societies, without condition, for the furtherance of the education of the poor. In 1839 this was raised to £30,000 and put on a regular and permanent footing. The money was not, of course, distributed to local authorities, but to schools maintained by the various Churches. Commenced as a payment in aid of voluntary effort, the grants increased in amount, and were then used by the Education Department to stimulate progress in selected items—school buildings and apparatus, attendance, the training of teachers, the general 'merit' of the school, and, later, especially, the provision of schools in poor rural areas. Here, as we have shown in a previous chapter, was a carefully reticulated arrangement of grants to secure definite ends. The spirit of the arrangement, put years later in a rather harsh form, is well expressed by Robert Lowe:

'The true principle is not to lower your standard to meet cases which are at present below it, but to do what you can to induce them to amend themselves, and if they will not amend themselves, to leave them to the unaided support of voluntary efforts, but not to degrade the whole system for their sake. I think there is no reason, therefore, for this apprehension with regard to loss. We know that there will be a loss where the teaching is inefficient. That is our principle, that where the teaching is inefficient the schools should lose. I cannot promise the House that this system will be an efficient one or a cheap one, but I can promise that it shall be either one or the other. If it is not cheap it shall be efficient; if it is not efficient it shall be cheap. The present is neither one nor the other. If the schools do not give instruction the public money will not be demanded, but if instruction is given the public money will be demanded—I cannot say to what amount, but the public will get value for its money.'[1]

In 1839, the Commission on the Police System which reported on the establishment of police forces in Counties, recommended that a quarter of the cost of each force ought to be borne by the national

[1] Hansard, Col. 229, 1862.

funds. Between those dates it was realized that nothing would be done if a voluntary initiative were left to the Justices of the Peace to establish adequate forces. But gradually people came round to the view that they were willing to have sufficient police forces forced on them provided *one-half* the cost were paid by the central government. Nothing, however, was done until 1856.

Sir Robert Peel. In 1845, came the second great practical step, taken, originally, to relieve the agricultural interest. The question of securing efficient local government by means of central control was soon raised. English statesmen were at the parting of the ways: whether to further the development of manufactures and commerce, or to continue the protection of agriculture. Peel attempted to ease his difficult road by offering a grant-in-aid to relieve the rates. If the farmer's profits were to be decreased, his burdens should also be decreased. However, Peel conceived the problem as also concerning the quality of local government. Consider, for example, his comment upon the administration of medical relief given by Poor Law Authorities [1]:

'There is no part of the administration of the Poor Law which I think has given greater dissatisfaction than the administration of medical relief. There seems to have been great unwillingness on the part of the Guardians of the Poor to afford relief, under the impression that their immediate concern was with the relief of absolute distress, and giving sustenance to those who were in danger of starvation. I am sorry to say there have been, frequently, just grounds of complaint in respect of the administration of medical relief, and for the purpose of meeting the view of those who object to the present system and for the purpose of giving the Executive government a greater degree of control over it and gradually introducing an amended system, we propose to take one-half of the charge of the payment of Medical Officers upon the Treasury. Thus we shall be enabled to meet the objections of those who demur to the exercise of government control and to the expense by offering on the part of the public to contribute one half.'

Again, as regards education given by the Poor Law authorities:

'We require qualifications, we require a right of dismissal and the right of inspection but we are ready at the public charge to provide a competent and decent salary for those who are to have charge of the education of the poor.'

Peel also attempted by the offer of a grant to secure the creation of Highway Districts to supersede the multitude of parishes in roads administration: but in vain. His doctrine has a distinctly modern ring.

The vote of money in aid of prosecutions was raised from one-half to the whole of the cost. Additional funds were provided for the maintenance of certain classes of prisoners in the County and Borough Gaols at 4*s*. per week per head; for one-half of the salary of the medical officers of Poor Law Unions: salaries of teachers and industrial trainers in the schools and workhouses; and for the fees

[1] Hansard, Series 3, Vol. 83, 264 ff.

of an auditor of Poor Law accounts. This concluded the first stage in the development of the Grant-in-Aid.

Second Period: 1846-88. The second period goes from 1846 to 1888. This was a time of rapidly growing local government. Police forces were everywhere established. With the end of the turnpike arrangements in 1862, roads came entirely under the control of the local authorities. From 1848, a policy of public health administration was pursued with increasing vigour. In 1871 elementary education was started, and in 1876 it was provided free of charge. Money had to be found for all these things. The constant cry of the agricultural interest was that it was contributed less by the town than the country, while the benefit, on the contrary, accrued less to the farmer than to the town dweller. The agricultural interest pressed its claims through the Conservative Party, their spokesmen being Sir Massey Lopes and Disraeli.

The state of theory in 1850 is interesting. In 1850, the agrarians secured an investigation by a Committee of the House of Lords into the assessment of rates.[1] The most interesting evidence given at that Committee, for our purpose, was by Sir George Cornewall Lewis, politician, philosopher, and, from 1839 to 1846, one of the Poor Law Commissioners. He proposed that the presumption in regard to any governmental service should always be that it was a national charge. Those who thought the charge should be local must prove why it is an exception to the general rule. Whether it is an exception is to be decided by (1) whether it is expedient to have local management, and (2) what is the existing usage. For example, in the case of poor relief, if the destitute were relieved out of central funds, while the administration were left in the hands of the locality, there would arise a competition between Boards of Guardians, each demanding more money than its neighbours. *If the money came from the central authority there would be no pecuniary interest in the parish to diminish its expenditure:* there would be no immediate self-interest to economize. Where the tax is local the interest in its spending is keen: if spent unwisely the locality must find higher rates, and this quickly teaches its own sharp lessons. That is the vast qualification upon Lewis's general idea that the national Exchequer should pay. He argues similarly in regard to the police: where in some places they now have one constable for 2,000 inhabitants, they would soon begin to demand one for 500, if the money were supplied by the national Exchequer!

However, there was something grimmer behind this philosophy which began, in general, with *carte blanche* for the local authorities, and then ended, in particular, with scanty grants. A fear powerfully affected English political theory until recent years, and was particularly disturbing until 1888. It was the fear of a central bureau-

[1] House of Lords Committee on Parochial Assessments, 1850; H.L., No. 150.

cracy, which it was thought must inevitably follow on grants by the central authority. Lewis and others argued that central inspection, and prescription of the terms of appointment and dismissal of local officials, were inevitable consequences of central subventions. Parliament could never consent to pay without control. What followed? Centralization would be established, and continental history showed how grave a social danger this could be. Where, as in England, the central authority is limited in power, there is small reason why it should become unpopular. Local power might mean local maladministration, but it would mean a local remedy. Centralize power, you centralize maladministration, and discontent can only be relieved by revolution! Such a fear may seem to us fantastic, but in 1848 Europe had a nightmare of revolution, and in England the Chartist movement had made alarming demonstrations. Therefore, avoid centralization, and, therefore, avoid grants-in-aid!

Nothing came of this Committee, but with time there was a substantial relief given to local authorities, side by side with an increase in their expenditure. In 1856, the Police Act compelled the establishment of Police Forces in the Counties and provided for a grant of one-quarter of the cost of pay and clothing of both County and Borough police when certified by the Home Office to be efficient. In the first year the grants amounted to £140,000; by 1872, not so very long afterwards, they had nearly doubled to something like over a quarter of a million pounds. From 1868, hardly a year goes by without a Resolution being put in the House by Sir Massey Lopes, or his agricultural friends.

Goschen. About the same time there entered into politics Mr. G. J. G. (afterwards Viscount) Goschen, who was destined, in the course of time, radically to reform the whole system of grants-in-aid. His views on government and finance very definitely affected the nature of reforms in 1888.[1]

One of the methods suggested at this time to relieve the agricultural interest was made by Goschen, as Vice-President of the Board of Trade in 1867. He proposed that the central authority could once and for all escape the persistence of the local authorities by assigning selected sources of revenue to them. Expanding taxes would increase *pari passu* with the needs of the local authorities. Such taxes should be derived from *personal* property to offset the burden of *real* property. At one time he thought a desirable solution was the grant of an extra penny on the Income Tax, earmarked for local government purposes.

Thenceforward, Goschen plays a large part in local finance. But it is observable from the nature of his proposals that he was little concerned with the quality of local government, or the character of

[1] Cf. *Life* by A. D. Elliott (1911); *Reports and Speeches on Local Taxation.*

the relationship between central and local authorities. Rather, he sought a financial arrangement which should relieve the agricultural interest of onerous expenditure, and the central authority of incessant pestering. As President of the Poor Law Board he came into closer contact with local government. In 1870, a Committee was appointed to inquire into the 'progressive increase of local taxation', with Goschen as Chairman. There was no attempt on its part to inquire into the system of local government. Its chief concern was the relative advantages which different classes of rate-payers obtained from local government. All this was reduced to figures, without question of the implications for the functioning of local government, though some attention was given to this theme in a draft Report made by Goschen but not accepted by the Committee.[1] But the Committee did agree that between 1840 and 1870 there had been an increase in the rates from £8,000,000 to £16,000,000, and that three-quarters of that increase was spent mainly in urban areas on health, housing, police, the building and cleansing of streets, and so on. The benefit was being obtained by the towns; the agriculturists, it was argued, were paying for that benefit.

In 1874, a Conservative Government, in which Lopes was a minor member, increased the grants: 4*s*. weekly per head on account of pauper lunatics[2]; half, instead of one quarter, the cost of the pay and clothing of police; and a contribution in respect of rates on Government property. They amounted to about £1,250,000. In 1877, the Prisons Act transferred prisons entirely to State expenditure. That relieved the Counties and Boroughs of approximately another half-million pounds. But the rates increased.

Year	£ Million
1842–3	8·8
1852–3	9·9
1872–3	18·6
1875–6	22·5
1885–6	26·2

Agriculture entered upon a long and disastrous decline; demand for more grants grew fiercely insistent. In 1882, Gladstone gave about £250,000 per year to the Highway Districts; by 1887 the grant was doubled.

Local Government Reform. From now another current of opinion set in. The question of the wholesale reorganization of local government was discussed. Again and again there were debates in the House of Commons on the question of areas and authorities. Both the Conservative and the Liberal Parties were anxious to secure

[1] H.C., No. 353, 1870.

[2] As an illustration of the effect of grants of money upon administration, it may be remarked that the grant of 4*s*. per head encouraged some Guardians to get their Wards pronounced and treated as lunatics!

democratic councils in the Counties. The cry on the Government side was always, 'Wait until we have reorganized the areas; and then we will reorganize the grants.' For local government was then a chaos of areas, a chaos of authorities, and a chaos of rates. Useless to attempt to reform the financial system unless there were a proper basis of well-organized and well-articulated areas. About the year 1880 parliamentary opinion respecting rates and grants-in-aid could be thus formulated: (1) That *personal* as well as *real* property must be made to contribute to local revenues; (2) that local government expenditure ought as little as possible to complicate national finance —the national accounts must not be statistically ambiguous; (3) that centralization must be avoided; (4) that economy in local administration must be promoted by wise arrangements of the grants; (5) that the Parish ought to be revived as a 'unit of government'; there should be a reorganized system of local government in which each area should rationally fit in with the rest, the Parish forming the smallest member therein.

The Goschen System: 1888. The Local Government Act of 1888, which created the Administrative County and the County Boroughs, and related the Urban and the Rural Districts to the new Counties, furnished the awaited opportunity. Sections 20–7 reorganized the grants-in-aid. Goschen, as Chancellor of the Exchequer, was their author, and he attempted the realization of two ideas. The first was the discontinuance of the old annual grants. Mr. Ritchie, President of the Local Government Board, who shouldered the general responsibility of the Act of 1888, held that annuality of grants had promoted efficiency in local government. But Goschen maintained that, if Parliament voted the money, it appeared in the national accounts, and then upon the allocation to the local authorities it appeared a second time, with the consequence that any attempt to calculate the country's expenditure would fail owing to this duplication of reckoning. It was better to keep the national accounts clear. Goschen was still haunted by the desire to be rid of the local authorities.

Goschen's second principle was the assignment of expansible sources of financial assistance to the local authorities. Some years later there was controversy whether Goschen meant that his scheme could be final. He did seek for finality. The fallacy in his calculation was that while expansible revenues could be discovered and assigned, nobody could arrange that the volume of local expenditure and of the assigned revenues should rise at the same rate, or at the least that the revenue should mount faster than local demands.

There were two main sources of relief: (1) Certain Excise Licences: on beer, wine, and tobacco, carriages, dogs, male servants, game-shooting, pawnbrokers, auctioneers, etc. These were deemed to be of local origin, and it was intended to collect them locally. (Event-

ually, the central authority collected most of them.) The intention was that in raising these receipts people should conceive that the locality was paying for itself. Further, the demand for such licences was evidence of wealth other than real property. (2) For England and Wales, 40 per cent of the Probate Duty, whatever the amount was from year to year, would be paid to the account of the local authorities. The theory was that the Probate Duty [1] drew money from personal property, and was, therefore, redressing the balance of local burdens in favour of the agricultural interest and others who paid rates on real property. It was expected that both these classes of revenue would automatically increase with the growth, year by year, of the national wealth.

The proceeds of these revenues flowed into a special account at the Bank of England called the Local Taxation Account; they did not appear in the national accounts. That was the Goschen simplification. The money was to flow out to the local authorities entitled to it, and the regulator of that flow was the Local Government Board, since 1919 the Ministry of Health. Where was that money to go to? The local authorities were to receive it, but not all directly. The Counties and the County Boroughs were to create in their books an account, called the Exchequer Contribution Account, and the money flowing from the Local Taxation Account would, according to certain regulations, go to the credit of these Exchequer Contribution Accounts. The Counties and County Boroughs would then disburse it to the minor authorities, the Municipal Boroughs, the Urban Districts, the Rural Districts, and the Poor Law Unions, and finally to themselves for main roads, police, and unallocated purposes.

What was the nature of this change? Previously all grants had passed directly from the Government to the authority concerned, i.e. directly to the Poor Law authorities, to the Municipal Boroughs, the Urban and Rural Districts and the Poor Law Unions. Between the spending authorities and Whitehall there was an obvious nexus, of great psychological advantage to the controlling authority. Further, expenditure was reviewable by Parliament yearly. It was not beneficial to relieve Parliament of control without putting any other authority in as strong a position. The new system interposed the Counties between Whitehall and the smaller local authorities without giving the Counties any right of inspection or control for economy and efficiency.

How was the total fund to be divided between the Counties and County Boroughs? The Probate Duty was to be divided between the fifty-two English Counties (the historical Counties) in the same proportion as the total sum each had been receiving from the now discontinued grants. This was extremely unfair to Counties where

[1] Afterwards transformed into the Estate Duty, or Death Duties.

urban development was likely. A stereotyped proportion was advantageous for the rural County, but the County with many growing towns in it could never be in a better proportionate position than in 1887. Had that system remained in existence till the present without amendment the great redistribution of population since 1888 would have rendered it seriously unjust.

The money allocated to the Counties was then divided between the new governing bodies, the Administrative Counties, and the County Boroughs. Each of these new authorities was to be in no worse position than in 1887. So it was laid down that they were to get sums equal to their old grants, now discontinued, plus a sum equal to the cost of certain services administered by the smaller authorities in their midst to whom the grants would be passed on. Any surplus was to be divided between the Administrative County and the County Boroughs in proportion to their rateable values. Thus the richer you were the more you were given, and the poorer the less you received. This principle of distribution sinned against the modern principle that the area which is poorer should get more grants than that which is richer. Such was the settlement of 1888. In that year the licences equalled about £3,000,000, and the share of Probate Duty equalled £2,000,000, so that the grant-in-aid for 1889 was £5,000,000.

Consider for a moment one or two other details. The County Boroughs and the Administrative Counties were obliged to pay certain stipulated sums out of their Exchequer Contribution Accounts. First, to the Poor Law Authorities in their area, (*a*) 4*s*. a week for each pauper lunatic. The principle of this payment was *per unit*, regardless of cost. Then, (*b*), one-half the salaries of doctors in Poor Law Institutions, Public Vaccinators and Registrars of Births and Deaths, and an amount equal to the salaries and allowances of Union Officials and half the cost of Drugs and Medical Appliances, all fixed on their amount in 1887–8, whether there was a subsequent increase or a decrease. Secondly, the Administrative Counties had to pay to the Urban Districts and the Municipal Boroughs and the Rural Districts one-half the salaries of Medical Officers of Health, and Inspectors of Nuisances, where the conditions of appointment were approved upon submission to the Local Government Board. (This grant was on the basis of expenditure, and is sometimes called a Percentage Grant.) Thirdly, the Non-County Boroughs which had police forces (henceforward not all of them were to have police forces) could get half the cost of pay and clothing, while the Counties and the County Boroughs transferred a similar sum to themselves.

Lastly, any money left was to be used by the County Councils for main roads, and by County Borough Councils in general relief of their rates.

Now, whatever Goschen may have hoped about the finality of

this arrangement, it was upset within two years. Already, in 1890, the demand for police pensions and for technical and secondary education was so urgent that money had to be found for these purposes. Yet more Assigned Revenues were found: a surtax on beer and spirits, 3*d*. on a barrel of beer and 6*d*. per gallon of spirits. In 1896 the Agricultural Rates Act gave a further relief to agricultural land by making such land liable only to assessment at 50 per cent its full value. The amount thus remitted, always on the 1896 basis, was payable as a grant by the central authority to the local authorities concerned, through the Local Taxation Account.

Third Period: 1888–1929. We turn to a consideration of the most recent period. It is necessary to give a parallel account of theory and practical development; the matter is so intricate that I beg readers for their indulgence. The period is of great importance as the breeding-ground of the problems which we anxiously face to-day.

From 1896 there began a controversy whether the Local Taxation Account and the Assigned Revenue System should continue to exist. In 1899 there was set up the Royal Commission on Imperial and Local Taxation to inquire into the whole system. That Commission reported in 1901,[1] with little immediate practical result from its recommendations which we discuss presently. Between 1901 and 1914 various social and legal developments occurred producing important changes in the nature of the problem faced in 1901. This resulted in the establishment in 1911 of a Committee on Local Taxation. It reported in 1914 [2] and its recommendations were a vast improvement on those of 1901.

Then, after the War, as a result of the Economy Campaign of 1921, there was established the Select Committee on the National Expenditure. That committee explored the subject not from the standpoint of setting up a proper relationship between the central and local authorities, but simply from that of economy.

Meanwhile, the grants-in-aid in this period were increasing rapidly. Taken in decades they were:

1890	£6,500,000
1900	£12,300,000
1910	£20,900,000

The Report of 1901. Like all Royal Commissions, that of 1899–1901 divided into Majority and Minority. The Minority in this case consisted of Lord Balfour of Burleigh, very ably seconded by two of the most distinguished Civil Servants of the nineteenth century, Sir Edward Hamilton and Sir George Murray.

The whole Commission argued that a distinction ought to be made between services which were 'onerous', and those which were 'local

[1] *Final Report*, Cmd. 638, 1901. [2] Cmd. 7315, 1914.

and beneficial'. Such attempts at distinction had been made by all reformers since 1835. The Commissioners wanted a more conscious and definite division.

'In dealing with these difficulties, we believe that the only method which can secure fair play all round is consistent adherence to a principle which has often been put forward in discussion, but to which insufficient regard has frequently been paid in practice. That principle is the distinction between services which are preponderantly national in character and generally onerous to the ratepayers and services which are preponderantly local in character and confer upon ratepayers a direct and peculiar benefit more or less commensurate with the burden. The distinction cannot, it is true, be drawn with absolute logical precision. In many cases it is plain enough, e.g. just as water rates are held to be payments for services rendered rather than taxes, so also it is clear that drainage works are a local benefit of a similar kind. But in other cases the two elements are combined in different degrees, since almost all useful local expenditure is indirectly advantageous to the country at large. But a service may be called properly local when a preponderant share of the benefit can be directly traced to persons interested in the locality. On the other hand, universality and uniformity of administration is generally a mark of a national service, because such administration does not confer special benefit on special places. Again, the presumption is that a service is national when the State insists on its being carried out, and on a certain standard of efficiency being reached.' [1]

Now they classified (though they said it was difficult to find a logical scheme) the following services as national:

1. Poor Relief;
2. Police, and Criminal Prosecutions;
3. Education;
4. The Main Roads.

Should these four great services be *wholly* paid for out of the national funds? At this point the Commission hesitated. If all the funds were paid from the national centre the result must naturally be centralization of the administrative system. This was impracticable:

'If so, local self-government carries with it, in bare common sense, the consequence of local self-taxation. Thus there is no possibility of a complete solution of the financial problem on these lines.'

A grant-in-aid was necessary: it could not be the complete payment of the expenditure, which must be borne partly by rates, partly by a subvention. The question was, how to pay the money from the central authority to the local authorities in order to achieve a sound result?

The Majority was overpowered by the feeling that the rating system was seriously inequitable. In the year 1899–1900 local revenue was obtained 88·9 per cent from real property and only 11·1 per cent otherwise. It supported the Goschen system of Assigned Revenues, but objected only that the revenues assigned were insufficient, and that more should be added. If necessary, some part of the central

[1] *Final Report*, pp. 11 and 12.

income tax should be added to that fund. There is evident, however, all through their report a vein of doubt about the efficiency of their idea. They suggested a general all-round increase of the existing grants which had been stereotyped on the 1887 basis. The Poor Law officers' grant ought to be brought up to date; the police grant should be brought up to half the net total cost of the service from merely half the cost of pay and clothing; more money should be paid for the keeping of pauper lunatics; and then, very importantly, the new developments of transport required that a central authority should be established to decide which roads were main roads, and distribute the grants, and one half the cost of main roads should be paid by the central authority. Education was left out of this report altogether by the Majority and Minority Commissioners, for it was not until 1902 that the education authorities were neatly set into the County and County Borough framework. This afterwards proved to be quite a hole in the Royal Commission's scheme, because education is by far the largest amount spent by the local authorities and subscribed by the central authority.

What was to be the method of payment of these grants? There must certainly be guarantees of efficiency in the grant-aided services.

'We consider that it is essential, in the interests of good administration, that, if the assistance of the State in the collection and appropriation of revenue in aid of the resources of Local Authorities is invoked, the grant of that assistance should be made dependent on compliance with conditions designed to secure efficiency and to prevent extravagance, and although the existing guarantees in this direction are not unsatisfactory they may in some cases be still further strengthened with advantage.'[1]

Grants should be given direct to the local authorities. The Goschen system had simply caused complicated local accounts beyond understanding. The Local Taxation Account and the Assigned Revenues might be retained, but the Exchequer Contribution Accounts should be abolished. There ought to be readjustments of the distribution between Counties and County Boroughs. They recommended against a Block Grant System, that is to say a grant given without detailed specification of the items aided. Their reason was that if a general grant were given, based on rateable value, population and expenditure (this especially in regard to Poor Relief), the extravagant and remiss authorities would get improper encouragement. They recommended the 'substantive' or 'allocated' grant, where money is paid in aid of each particular permitted item of expenditure. (How the amount is calculated is a question different from the conditions attached to the grants.)

In contrast to the patchwork of the Majority Report a definite theory and policy of local government informs the work of the Minority.

[1] Ibid., p. 23.

While the Majority Commissioners looked upon their task as one of relieving those who paid a disproportionate amount of rates on the basis of real property, the Minority Commissioners looked at the question of grants-in-aid also as one of central and local administrative efficiency.

The Minority recommended the entire abolition of the Local Taxation Account and the Exchequer Contribution Accounts system. The separation of local and central accounts had been rendered unintelligible. The Assigned Revenues narrowed the basis and flexibility of national taxation. The principles of allocation among the authorities were confused.

What then was to be put into the place of the Goschen system? First, certainly not a complete transfer of local services to the State.

'The fact is, the services in question are of such a nature as to make local management almost indispensable, because there must be investigation and minute supervision on the spot, and there ought to be personal knowledge of individuals and circumstances. In the absence of such precautions, there would be grave risks of abuse, especially in connexion with the Relief of the Poor. Then again, the transfer of administrative duties from the Local Authorities to the State would be a reversal of the policy deliberately adopted for many years past by successive Parliaments, which is a policy of extending and encouraging local government. But more important still is the fact that those who have had most experience of the administration of public affairs are of opinion that there is too great a tendency already towards centralization—that the State has duties to perform, and more than enough of employees to manage; and that any additional strain on the official machinery might involve the risk of a breakdown.' [1]

Secondly, there ought to be some cautiously devised connexion between the authority which taxed (the central authority) and the authority which spent (the local authorities). Thirdly, central taxes could not be transferred, for collection and use by the local authorities. This is too inconvenient for central financial arrangements. One must proceed upon a principle of discrimination between 'national' and 'local' services.

'It can hardly, for example, be disputed that there is a very material difference in character between such services as the relief of the poor on the one hand, and the construction of sewers or the lighting and cleansing of streets on the other.

'Between these two extremes there will be a number of cases which cannot be definitely assigned to one class or the other, because the precise point at which the line of demarcation should be drawn may vary according to the circumstances, not only of the locality, but of the individual ratepayer.

'We believe, however, that it will not be difficult to indicate the main features on which the distinction in question is based.

'The chief characteristics of the class of services which we have described as national or quasi-national appear to be these:

[1] Ibid., p. 121.

'(*a*) The locality is *required* by the State to undertake them; and uniform principles for their administration have been laid down by the central authority.

'(*b*) Though undertaken by the locality for purposes of administrative convenience, they are really services which, to a very large extent, are performed *in the interest of the community at large.*

'(*c*) Like the other national services which are administered by the central authority, they do not as a rule confer any direct benefit upon the individual rate-payer or tax-payer.

'The services which fall into the second category are, on the other hand, to a large extent:

'(*a*) *Optional*—that is to say, the locality has a wide discretion as to the extent to which, and the manner in which, the services shall be performed,

'(*b*) *Directly beneficial*, either to the individual rate-payer or to his immediate neighbourhood.

'On the whole, we are disposed to think that the best and simplest test which can be applied in order to determine the cases to which any particular service belongs is the degree to which the rate-payer or the owner of rateable property derives direct or immediate benefit from it. From the expenditure on the relief of the poor—for example—the direct benefit to the individual rate-payer is probably *nil*. But the provision of sewerage, the lighting of streets, or the removal of house refuse, constitutes services which not only benefit him directly, but are even provided at less cost than if he had to supply them from his own resources.' [1]

Now, 'beneficial' expenditure was properly met entirely from the rating system, especially since the system permitted reliefs to agricultural land and railway lines, and similar property. But as regards 'onerous' expenditure, the principle of 'ability to pay' was inadequately observed.[2] Therefore, grants were necessary, but not to the extent of the total of local expenditure. The local authorities must find a proportion: 'the responsibility for the raising of funds cannot be wholly divorced from those who administer the services . . .'

The central authority should fix a sum of one-half the total expenditure on 'national' services, not revisable for ten years. This sum should be distributed to each local service in a proportion most appropriate to its nature.

'We attach great importance to making the State provision for local services a fixed sum for a given number of years. It is a great advantage to the Exchequer and to the Local Authorities to know how they stand *vis-à-vis*. Moreover, next to an arrangement whereby those who are charged with the expenditure of money are saddled with the responsibility for raising it, the arrangement best calculated to bring home responsibility, and to ensure economy, is one which obliges those who administer services to raise, at their own cost, every pound in excess of a fixed sum, and thus gives them a direct interest in economical administration.'

The distribution of the sum available (it would have been about £10,000,000 per annum, excluding elementary education), ought to occur on certain principles. The first was that grants must be made

[1] *Final Report*, p. 123

[2] P. 124. 'Except', say the Commissioners, 'when the property rated is a residential house.'

direct to the authorities administering the prescribed services. This was the best means of enforcing a most important principle: 'That the State grants should be given only on condition that the proper Department of the Central Government shall have certified that the service to which the grant is applied has been in all respects efficiently performed.' Secondly, when the proportion of the grant to be given for each service was settled, the question arose by what method to divide it among the different localities. Localities should share in the local grant available according to their 'necessity' and 'ability'. 'Necessity' is properly determined by *expenditure* combined with *population*: 'ability' to meet requirements is tested by *assessable* value. Then *expenditure* falls into (*a*) *necessary* or *standard* expenditure, expenditure which is the minimum sum per head of population for which the service can under the most favourable conditions be performed; (*b*) *excess expenditure*, the amount by which the actual expenditure exceeds this. The State ought to contribute towards the standard expenditure; but not in proportion to this amount only; the contribution should be varied by considerations of the assessable value of the area. It being assumed that such and such an expenditure is necessary, the local authority would receive a proportion of it according to the produce of a standard rate which represents the measure of ability. The lower the product of the standard rate, the higher the State's contribution; the greater the product of the standard rate, the smaller the State's contribution. Then, the rest of the available grant would be divided among the local authorities in some fixed proportion to the *excess expenditure*. The Commissioners proceeded to apply their principles to the various national or onerous services they had selected. Only elementary education was omitted, mainly on the grounds that the principles upon which the grant was then distributed—the number of school children in attendance and the rateable value of the district—was broadly sound.

From 1901 to 1914. We now turn to the actual march of events between 1901 and 1914. None of the recommendations of the Commission of 1901 was carried out, except that in 1909 the Roads Board was established, and from 1902, upon the transfer of education to the County and County Boroughs, a system of grants was worked out, one of the principles of which was to allow for the relative necessity of different areas. But great changes took place in other directions.

From 1907, important changes occurred in the Goschen system. Henceforth, the amount of Assigned Revenues which flowed into the Local Taxation Fund would go first into the Treasury, and from this the Chancellor of the Exchequer would pass on the amounts due to the Local Taxation Account. The Finance Act of 1910 introduced a system whereby only *fixed* amounts, instead of increasing or decreasing amounts, were year by year allowed to flow into the Local Taxation

Account, and the Revenue Act of 1911 went further in this direction. The Account thus became simply a formal arrangement for the receipt of certain fixed sums. The only revenue allowed still to fluctuate was the Estate Duty and some only of the Licence Duties. Of all Licence Duties assigned in 1888, the following were stereotyped at the amounts raised in 1908–9 : the Beer and Spirit Duties, the Carriage (including Motor-Car) Licence Duties and the Liquor Licence Duties —in other words, the most substantial and expansible of duties. The central authority had taken this step not out of any consideration for the efficiency of local government, but because the Liberal majority, returned in 1906, being anxious to carry through certain important social reforms, needed all the sources of revenue upon which they could lay their hands. Here was money which could easily be obtained. The lesson is that funds which are assigned for particular objects of government are not sacred, and when the emergency arises, the central authority will take them back. At any rate, one of the chief virtues of the Goschen system was gone ; its expansibility had been abolished ; but the system lived on until the great reform of 1929. In 1929, when the total of central government grants given was over £80,000,000, the amount which then passed through the local taxation account was only £14,000,000. In other words, between 1888 and 1929 there grew up outside the Goschen system other grants totalling about £70,000,000.

A Changing Society. There were other developments between 1901 and 1914 which had a powerful effect upon the development of grants. In the first place, owing to the improvement in railway transport, and the coming of the motor-car, the gulf between the residential districts of the rich, the residential districts of the poor, and the industrial and commercial districts widened. In other words, the disparity between the financial capacity of various local areas and their respective need for municipal services became even more marked than it had been in 1901. The problem of necessitous areas was very much aggravated, and the need to deal with it became ever more critically urgent. The areas of local government were small, and therefore the economic soundness or viciousness of their individual administration and circumstances caused undesirable effects upon the location of industry.

Nor was that all. The idea of the national importance of various local services had by this time become common. Since the transfer of educational administration to the larger local authorities in 1902, and the development of secondary education, aided, stimulated, and closely controlled by the Board of Education, no one could any longer pretend that education was a local affair. The days of education by individual and local charity had passed away, and the conscious use of education as a means to national and imperial unity and

industrial and commercial success made it perfectly clear that the local authorities were merely collaborators with the State, and by no means independent authorities working on their own behalf. Again, the investigations of the Royal Commission on the Poor Laws which reported in 1909 showed only too well the national causes of destitution and the national remedies. Further, in the realm of public health administration, the deeper the knowledge of disease, the acuter the realization that though causes might be local they might also have been imported into the locality, and that, in any case, effects might very easily be national. Finally, with the development of motor transport arose the problem of improving the main roads and treating the whole country as a single unit for planning.

Meanwhile, local expenditure was increasing and with it the grants. Rates and Grants together, Poor Relief, Lunatics and Lunatic Asylums, Police, Criminal Prosecution and Conveyance and Maintenance of Prisoners, Main Roads in Administrative Counties outside London, Salaries of Sanitary Officials, and Education (other than in Poor Law Schools and Reformatories) rose in cost thus:

	£ Million
1889–90	18·0
1893–4	23·5
1899–1900	29·4
1905–6	47·0
1911–12	54·9

The Report of 1914. In view of these developments and the current criticisms of the rating system, there was established the Departmental Committee on Local Taxation to inquire into the changes which had taken place in the relations between Imperial and Local Taxation since 1901 and to make recommendations on the subject. The Committee reported in 1914,[1] and legislation to give effect to its recommendations was prepared, but owing to the outbreak of the War was postponed. However, the discussion of the problem by the Committee is a landmark in the history of the theory of grants-in-aid, and its recommendations also in some degree affected subsequent practice. Let it be said at once that the Committee did not regard its problem as a financial problem pure and simple, but as one involving the adjustment of relations between the local and central authorities. The various developments which led up to the establishment of the Committee were fully recognized and expressed by it.

The Committee thought that the classification of local services into 'national or onerous' and 'local or beneficial' was liable to produce unjust expectations by those who wished for relief from local rates. For people forgot that the classification was a rough one, and assumed that every service which possessed some national

[1] Previously cited.

characteristic and was onerous to some classes of the community, ought to be paid for entirely out of national funds. The Committee preferred to classify services into the entirely *national* (for example, the army, the navy, management of the currency), and the entirely *local*; and then to recognize in between these a third class, the *semi-national*, and these were the services which, in fact, had been aided by subventions from the central authority. In regard to these, the principal basis of the grants-in-aid must be collaboration or partnership between central and local government, and it implied that some part of the charge should be borne by each. But there was no single objective test of what that proportion should be.

They recommended the abolition of the Local Taxation Account, the futility of which they convincingly described; and recommended that grants should be direct to the local authorities administering the services and not through the County and County Boroughs. At the same time, central control of semi-national services must be effective: its carefully worded views on this we have already reproduced.[1]

Types of Grants. Now in public controversy grants have acquired various special names, designed to indicate their nature. We hear of 'allocated' or 'substantive' grants, 'block' grants, 'percentage' grants. These terms have rather ambiguous meanings owing to their discussion in the Press and in Parliament. It is important at this stage to state the meanings these have acquired in political controversy, and then the meanings they have when they are used in the course of scientific discussions of public finance by experts. Politicians usually fix upon the distinction between block and percentage grants. To them a block grant is a sum of money, no matter how calculated, given to a local authority, not revisable annually but only at the end of a term of years, of which five seems to be the magic number. This is contrasted with the percentage system in which, according to the politicians, the central authority annually makes grants directly proportionate to the amount of money spent by the local authorities. Now, in terms of the crude black-and-white values of public discussion having for its object only one thing, namely, economy, there is something to be said for this contrast. For, in that context, the block grant merely means that you give to the local authorities a fixed sum of money (preferably small) and then are done with them. But, in the case of percentage grants, the local authorities are encouraged to spend by the knowledge that they are to receive proportionate assistance, and the commitments of the central authority are at the mercy of local initiative.

We, however, cannot accept this crude differentiation between grants, for there are other considerations of importance which enter into their definition and comparison. There is one contrast between

[1] P. 285 ff.

block grants and *allocated or substantive* grants; there is another between *percentage* grants, *unit* grants, and what we shall name *formula* grants. The contrast between the first pair is a contrast based upon the *conditions* upon which the grant is made. The contrast between the second pair is a contrast based upon the *method of calculation* of the sum to be granted. Now let us consider these grants in the terms of the discussion of the Departmental Committee on Local Taxation.

The Allocated or Substantive Grant. The allocated grant consists in making grants towards specified branches of a service. For example, the grant which the central authority made towards Poor Relief was not a single grant, but was composed of a number of grants, each one allocated to a particular branch of the service: the salaries of union officers, the maintenance of pauper lunatics, the education of pauper children, the salaries of teachers in Poor Law Schools. So also the elementary education grant consisted of grants for certain special subjects like cookery and handicrafts, for special schools for blind, deaf and defective children, and so many shillings per child in the area, and payments in aid of the school medical service. The advantages of the system are that the central authority has the power to encourage or discourage, in some detail, the development of the various parts of the service. But it has disadvantages. The central authority must carefully define the items to which it will attach a grant. The local authority must provide carefully-kept accounts to show that expenditure has been exactly within the lines required. The central authority must burden its staff with the calculation of each several item. The local authority is deprived of discretion in the application not only of governmental subventions but also of its own money which, to earn the grant, must be spent in the services required by the central authority.

The Block Grant. The essential characteristic of the block grant is that it is given in respect of a generally named service only, without itemized specification of the objects to which it is to be applied. For example, one may give for the service of police in general a quarter or a half or threequarters of the *total* expenditure, without specifying how much thereof is in respect of and to be spent upon, say, uniforms, motor-bicycles, police stations, or subsidies for the rent of policemen's dwellings. This generality of grant, however calculated, has the advantage, in the words of the Committee on Local Taxation, of being 'more suited to the complex and ever-changing character of present-day administration and to the varied circumstances of local authorities.' If the local authorities are by this method permitted a discretion as to the relative amounts of money which shall be spent out of the total grants on each particular item of their service, the central authority is equally free of providing officials and arrangements and principles

for the enforcement of its own policy. It necessarily weakens the control of the central authority; and though Parliament may vote such a system, it is bound in the long run, to wake up and find that the money it has granted, is, as like as not, being spent in ways of which it cannot approve.

Now both these systems of paying the grants are perfectly and equally capable of being combined with any of the available methods of *calculating* grants. The methods of calculating grants are shown by the history of the English experience to be three. There is (1) the percentage system, (2) the unit system, and (3) the formula system.

Percentage Grants. Percentage grants are simply grants which bear a definite proportion to the expenditure of a service or some item of it. The merits of this method of calculation are ease and flexibility. Then, whether one calls it a merit or a demerit, it has the characteristic of inducing the local authorities to spend, because they know that they will not bear the full burden of each additional pound or shilling of expenditure. It is a subtle but powerful stimulus; yet only, we think, when the percentage offered is high. It has another characteristic, that of making the central authority's commitments depend upon the energy and progress (as well as any extravagance either of purpose or means) of the local authorities. A Government Department's natural response to this system is to lay down standards of local government expenditure in order to restrain local initiative which might prove expensive to it, and to audit local expenditure with extreme care.[1] All this is amply borne out by our experience of grants between 1901 and 1929. There has always been a large amount of percentage grants in the English system, and, as we show later, between 1914 and 1929 they very much increased.

Unit Grants. Here the grant is calculated by reference to units of service; for example, per mile of road, per child in attendance at school, per pauper lunatic, per policeman. The great advantage claimed is, that should a local authority be extravagant in its views of what should be spent, or spend more heavily per unit than necessary because of its lack of skill and wisdom, the local community and not the Government will suffer by the need to find the excessive expenditure. The expenditure is easily calculated and reviewed. On the other hand, there are difficulties in the administration of such a system. Suitable units cannot be found in every case. But even more serious is the fact that the expenditure per unit varies not merely with the extravagance or wisdom of a local authority, but upon other factors entirely; for example, in public health according to the natural surroundings of the authority; in education according to the size of the area to be administered and the civic tradition of the authority, and in regard to police, the general criminality of a particular area

[1] Cf. Memorandum on Grant System of Board of Education, 1926.

or region. Administrative charges per unit of service vary according to the size of the area and number of people in the locality. Even then one has taken no account of the density or sparsity of population, its financial capacity, and the propriety of providing more or fewer of the units. Hence, as the Committee of 1914 said, 'an average is of very little use, and would be as much too large in one case as too small in others; while a series of units, as has been suggested, applicable to different sets of localities, would involve endless difficulties of inquiry and classification, would probably in the end produce rather an appearance than a reality of fairness.' However, as we observed in a previous chapter, less research than it deserves has been applied to this subject. A thorough research is required, so that the limits of applicability of unit calculations may be more accurately known. In fact, of course, with the rise of the condition that grants are given for 'approved' expenditure, the central Departments scrutinize estimates for expenditure very closely, and do, in fact, apply something of a 'unit' standard.

A Formula Grant. By formula grant, a term which we have coined because for the moment there is no better, we mean a grant calculated by reference to a number of factors including the necessity for the service and an allowance for the wealth or poverty of the area. This method, as we shall see later, was adopted in 1929; but, as we have already seen, it was suggested by the Royal Commission of 1901 and actually carried out in the Education Grant. The great advantage of this method of calculation is that it provides a sum for each authority directly related to its own particular necessities. It overcomes the great difficulty which issues from the existence of small areas of local administration whose needs and capacities do not correspond, and cannot otherwise be equalized, because of the extreme width of the variations. The disadvantage of the system is that it is extremely difficult to discover *all* the factors of need and ability which will produce a really just combination; it involves the central authority in arduous calculations; and, therefore, the calculation once having been accomplished almost compels that it shall not be revised for a considerable period. The local authorities also wish either an extreme flexibility, as in the percentage system; or, once the formula calculation has been made, to be left alone for a considerable time to adjust themselves and the amount to be found in rates to their administrative obligations. This, of course, may have the effect of being unjust to those authorities whose circumstances change considerably within, let us say, a five-yearly period. Nor can the possibility be left out of sight that by calculating assistance in proportion to need and ability, the local authorities are given every inducement to exaggerate their needs and minimize their ability. There is no stimulus to spend on the improvement of local services

since the income from the central authority is constant and is not calculated according to expenditure. When this method of calculating a grant is used the central authority must, as we have seen to be true of the changes of 1929, lay down stringent and external conditions to secure efficiency and progress.

It is clear that to attain a sound system of grants it is necessary to have recourse to the various principles of calculation combined, and, then, again, to combine them with the terms upon which they are granted. The principles are well stated in a Memorandum of the Board of Education [1]:

'A grant system is criticized (*a*) if the grant represents a very much smaller percentage of the expenditure in some areas than in others, or (*b*) if it leaves a very much greater rate burden to be borne in some areas than in others, or (*c*) if, while making allowances for differences in necessary cost of expenditure and differences in ability to bear the expenditure, it does not, at the same time, safeguard economy by leaving the Local Authority to control or to initiate: and (*d*) lastly (and this criticism is perhaps the hardest of all to meet), if it does not secure for all children in England and Wales something like "equality of opportunity" of enjoying the advantages of a sound system of education".

It should never be forgotten that when a grant is made, however calculated, and whether allocated or block, the central authority is compelled, in one way or another, to safeguard its own resources by one or the other of the methods of control we have already discussed in the chapters on the central-local relationship.

The Recommendations of the Committee of 1914. In regard to elementary education, the Committee recommended the block grant combined partly with calculation by the unit system and an allowance in respect of assessable value. For Poor Relief the Committee was so beset with the claims made by the witnesses who appeared before it, and the unsettled state of affairs in regard to Poor Relief, that they were content to suggest merely amendments of the existing allocated system, and its varied basis of calculation, partly on the unit system, and partly on the percentage system. The Police grants were simply to be a block grant consisting of 50 per cent of the total net expenditure. It is noteworthy that in making this recommendation the Committee realized how free it was leaving the local police authorities by not specifying the items of expenditure and by leaving the demands for money to be made by the local authority, for it recommended simultaneously a stricter control by the Home Office.

'We recommend that the numbers, organization, and scale of pay and pensions of each police force should be subject to the sanction of the Secretary of State, and that he should be empowered to make rules, subject to the provisions of the Rules Publications Act, defining what are proper items of expenditure on the police service.

'We also recommend that the Imperial share of the expenditure on any

[1] Memorandum on the Grant System, 1926, Cmd. 2571, p. 4.

force should only be paid on the Home Secretary being satisfied that the police service is fully and properly performed by the responsible local authority, and in determining this question regard should be had to the arrangements made with other police forces for mutual assistance. In case of default on the part of the local authority in carrying on the service, such portion of the grant should be withheld, wholly or temporarily, as the Secretary of State may consider proper under the circumstances.'

Roads should be classified by the Roads Board into (*a*) main roads, (*b*) country roads, (*c*) district roads, in the Counties, and in the County Boroughs into (*a*) main roads, (*b*) streets. Main roads should be aided by a grant of 50 per cent of the cost of maintenance and minor works of improvement. County roads should receive a grant of one-quarter of the cost of maintenance. Other roads and streets would receive no grants at all.

In order to assist Public Health services the Committee beat about for a principle, but thought that the one suggested by the minority of the Royal Commission on the Poor Laws of providing primary grants in aid of a minimum standard of expenditure, and secondary grants for expenditure in excess of the minimum, was extremely complicated and must involve an excessive degree of interference with local administration. The way out was to make a grant at the rate of 6*d*. per head of population to the urban and 9*d*. to the rural local health authorities. Once again, it is interesting to see how the making of the grant had its implications in terms of central control. For example [1]:

'A further argument in favour of some additional assistance from national funds for this group of services is to be found in the use of Government grants as a lever for improving local administration. As regards both sanitary and housing reform there can be little doubt that encouragement in this way is likely to be more effective than the somewhat cumbersome method of default and mandamus. . . . The Board should also have the power of reducing or withholding the grant if the local authority had seriously neglected its duties in some matter of sanitary importance which it could be compelled by legal process to carry out. This would enable the Department to put effective pressure on backward authorities.'

There was also to be a grant of 50 per cent of the net expenditure on mental deficiency, and certain other grants on less considerable services.

Altogether the Committee looked to and deliberately planned for a rise in the grants-in-aid and this, partly, because the existing grants were either distributed on wrong principles or were inadequate to the proper development of the services. It will be noticed that the Committee had recommended a percentage grant system combined, in the main, with the principle of a block grant. The natural accompaniment of this was the recommendation of strict central control.

[1] *Report*, pp. 48, 49.

The Latest Period: 1914–29. Between 1914 and 1929 there was a great rise of expenditure, the percentage-cum-block grant rapidly made its way, and the effects of the recommendations of the Committee of 1914 affected the whole development. The increase in the amount of grants occurred briefly as follows: in 1915 Maternity and Child Welfare schemes were introduced by the Notification of Births (Extension) Act, the central authority making a 50 per cent grant in aid of the cost; in 1916, Counties and County Boroughs were granted 75 per cent of their expenditure on services for the prevention and treatment of venereal diseases; the grant for mental deficiency which had hitherto been a fixed lump sum voted annually under the Mental Deficiency Act of 1913, was converted into a grant of 50 per cent of the approved net expenditure. Until 1918, the Government had been paying through the Local Taxation Account one-half of the cost of pay and clothing of police; thenceforward, owing to the rise in general costs of police administration and the increased scales of pay introduced by the Government itself, the Treasury made an annual supplement to bring the old contribution up to 50 per cent of the total net expenditure on the police services, including pensions. In 1916, the President of the Board of Education, Mr. Fisher, began to apply the principles of the Committee of 1914 to education. By the Acts of 1918–21, the separate grants for elementary education were abolished, and in their place an annual grant was made calculated for each authority by reference to a number of factors including the assessable value of the area. But both in this case and in that of secondary education, the minimum total grant was to be 50 per cent of the net approved expenditure. From 1920 the Ministry of Transport took the place of the Road Board and began a most active policy of stimulating the activities of the roads authorities, and from 1923 50 per cent of the expenditure upon Class I Roads and Bridges and 25 per cent in respect of Class II Roads was paid.

But this was not all. In every service the standard of administration of the local authorities rapidly rose under the stimulus of the War-engendered wish for reconstruction and the encouragement of the central authorities, three of which, the Board of Education, the Ministry of Health, and the Ministry of Transport had either been set up or reorganized towards the end of the War, or immediately after, for the express purpose of reconstructing the services under their control. The grants grew rapidly (although one must make allowances for the depreciated value of money). (See Table on opposite page.)

The storm of criticism burst in 1921. Naturally, the percentage system of calculating grants came under the severest criticism on the grounds that it caused both central and local authorities to be extravagant. The result was the appointment of the Committee on National

	£ Millions
1915	23·2
1918	26·3
1919	28·9
1920	45·6
1921	60·6
1922	74·1
1923	72·7
1924	73·5
1925	76·1
1926	78·9
1927	81·1
1928	76·0
1929	85·9

Expenditure in 1922. It issued two Reports[1] covering the entire field of national expenditure. Its attitude towards the grants-in-aid was perfectly simple, being determined by its terms of reference—' to make recommendations for effecting forthwith all possible reductions in the National Expenditure '. We need not therefore deal with these recommendations in detail. Their general principle is the same in every case : replace the percentage grant by a block grant (by which they obviously mean a *fixed sum*), the amount to be as little as possible compared with that at present given, and maintain that amount at least while the period of financial stringency lasts, and then raise the matter again ! They looked for salvation to grants calculated not on the percentage system, but on the *unit system*. Find out how much should be spent per unit of service in each case, and assist the local authorities in relation to those fixed sums ! But the Committee did not consider the difficulties involved in the discovery and calculation of the unit.

As a matter of fact, very little could be done considering the urgent importance of the services and the commitments of the local authorities. The Ministry of Health sought to persuade the local authorities to reduce their expenditure, but nothing was accomplished apart from certain small and, on the whole, unimportant economies. Nor did the Board of Education in a long battle between 1924 and 1926 make any considerable headway in its campaign for economy even though it secured a very stringent control over local estimates by the Economy (Miscellaneous Provisions) Act of 1926, and the Board was driven to set up a Committee for the thorough exploration of the method of making grants.[2] The Board's particular difficulty, of course, was that about two-thirds of the total educational expenditure was upon teachers' salaries, and it was here that the increase in expenditure had been greatest and was least reducible.

Surveying the *chief* grants by the central authority as they stood before the 1929 reforms we have this picture :

[1] Cmd. 1581 and 1592. [2] Memorandum cited.

ENGLAND AND WALES

CERTAIN GOVERNMENT GRANTS TO LOCAL AUTHORITIES

1927

Subject	Government Department	Grants		Basis of Computation
		By Votes	Local Taxation Accounts or Exchequer Contribution Accounts	
		£	£	
EDUCATION				
Elementary Education	Board of Education	31,865,000	—	Based mainly on expenditure but account is taken also of average attendance and rateable value. The *minimum* grant is 50 per cent, and the *average* grant 55 per cent, of approved expenditure. (*See note below.*)
Higher Education . .	Ministry of Health	—	807,000	The sum of £807,000 paid through the Local Taxation Account is a fixed grant out of assigned revenues distributed in proportion to the amounts received in 1886–7 in respect of the Exchequer Grants discontinued by the Local Government Act, 1888, subject to adjustments (e.g. in respect of alterations of areas); the voted balance of £5,137,000 is the estimated amount required to make up 50 per cent of approved expenditure. In addition, grants estimated at £1,732,000 (exclusive of University Grants) were made in respect of Higher Education to bodies other than local education authorities.
	Board of Education	5,137,000	—	

HOUSING				
England and Wales				
Housing, Town Planning, etc., Act, 1919	Ministry of Health	6,765,000	—	Grant determined on basis of amount by which annual deficit on scheme under the Act exceeds the produce of 1*d.* rate, except in the case of County Councils in connexion with the housing of persons in their employment, where the grant represents 40 per cent of annual loan charges.
Housing, etc., Act, 1923	Do.	1,509,000	—	Grant paid on basis of £6 a house per annum for 20 years (£4 for houses completed after 30 September 1927); except in the case of slum clearance schemes, where the grant represents 50 per cent of the annual loan charges.
Housing (Financial Provisions) Act, 1924	Do.	1,089,000	—	Grant paid on basis of £9, or in agricultural districts £12 10*s.*, a house per annum for 40 years; reduced to £7 10*s.* and £11 respectively for houses completed after 30 September 1927.
Housing (Rural Workers) Act, 1926	Do.	5,000	—	Grant represents one-half estimated loan charges which would have to be borne by the authority if 20-year loans were raised.
POLICE, ETC.				
Police	Ministry of Health	—	3,025,000	The sum of £3,025,000 paid through the Local Taxation Account is made up of grants out of assigned revenues as follows:—
	Home Office	6,980,000	—	£1,100,000, a variable grant in respect of pay and clothing of the Metropolitan Police, equal approximately to the produce of a 4*d.* rate.
				£1,625,000, in respect of the pay and clothing of other police, stereotyped at one-half of the approved expenditure in 1913–14.
				£300,000, a fixed grant in respect of police superannuation, £150,000 going to the Metropolitan Police and £150,000 to the other police, in proportion to their approved expenditure in 1913–14.
				The voted balance makes up 50 per cent of approved police expenditure.

ENGLAND AND WALES—CERTAIN GOVERNMENT GRANTS TO LOCAL AUTHORITIES, 1927 (*contd.*)

Subject	Government Department	Grants		Basis of Computation
		By Votes	Local Taxation Accounts or Exchequer Contribution Accounts	
		£	£	
POLICE, ETC. (*contd.*)				
Metropolitan Police .	Home Office	100,000	—	Fixed additional contribution towards general expenses of Metropolitan Police in respect of imperial and national services. In addition the salaries of the Commissioner, two Assistant Commissioners and Receiver of Metropolitan Police are borne finally on the Police Vote.
POOR LAW	Ministry of Health	—	2,160,000	Grants out of assigned revenues mainly in respect of — (*a*) the maintenance of pauper lunatics, at maximum rate of 4*s.* per lunatic per week; grants being at present stereotyped at the amounts payable in respect of 1914–15 in London and 1915–16 outside London, and (*b*) the salaries, etc., of officers of extra-metropolitan unions—stereotyped grants based on expenditure of 1887–8.
PUBLIC HEALTH				
Maternity and Child Welfare	Ministry of Health	793,000	—	50 per cent.
Tuberculosis (Treatment)	Do.	1,710,000	—	Grants represent, for the most part, 50 per cent of approved expenditure, but include also fixed annual grants in lieu of income formerly derived from Insurance Funds.

PUBLIC HEALTH (*contd.*)				
Tuberculosis (Provision of Sanatoria)	Do.	37,000	—	Capital grants towards cost of providing sanatoria are paid on basis of £180 a bed subject to a maximum of three-fifths of total capital cost.
Treatment of Venereal Diseases	Do.	302,000	—	75 per cent.
Welfare of the Blind .	Do.	4,000	—	Grants are made partly on basis of 50 per cent of loan charges on capital cost of new accommodation and partly by way of capitation grants per teacher and per blind person employed in workshops, etc. In addition, grants estimated at £114,000 in England and Wales were made to voluntary agencies.
Port Sanitary Administration	Do.	42,000	—	Grants represent for the most part 50 per cent of approved expenditure but include reimbursement of whole cost of medical inspection of aliens at certain ports.
Public Vaccinators .	Do.	—	10,000	Grants out of assigned revenues, the amounts being governed by the number of vaccinations successfully performed.
Expenses of Sanitary Authorities in respect of certain Health Officers	Do.	—	400,000	Grants out of assigned revenues representing 50 per cent of the salaries of Medical Officers of Health and Sanitary Inspectors whose appointments have been approved by Ministry of Health.
ROADS, BRIDGES, ETC.				
Maintenance and Construction, etc.	Ministry of Transport	18,786,000		Grants varying from 25 per cent to 75 per cent of approved expenditure by local authorities according to the type of work or road.
Licensing and registration of motor vehicles	Do.	430,000		100 per cent.

Calculation of Grant—Elementary Education.—The following calculation shows the application of the grant formula (Elementary Education) to the figures of average attendance, assessable value, and expenditure, until the operation of the National Economy Act, 1931, which introduced certain changes. The figures do not exactly tally with the totals given in the preceding tables, as they were taken from a different financial year.

	£	£	£
36*s.* per unit of average attendance assumed at 5,020,000			9,036,000
60 per cent. of salaries of teachers assumed at £41,270,000			26,762,000
50 per cent. of Special Services, etc., assumed at £3,200,000			1,600,000
20 per cent. of Remaining Net Expenditure assumed at £13,990,000			2,798,000
Loan Charges		2,972,000	
Administration	2,640,000		
Other	8,378,000		
		11,018,000	
		£13,990,000	38,196,000
Less—			
Produce of a sevenpenny rate assumed at			6,909,000
			31,287,000
Add—			
in respect of Article 5 (to bring the grant in certain Areas up to 50 per cent.)			802,120
Add—			
in respect of Article 6 (additional grant in highly rated Areas)			200,000
Total Grant for the Year			£32,289,120

Calculation of Grant—Higher Education.—The following calculation shows the application of the grant regulations to the assumed expenditure on Higher Education.

The estimated grant for the year is £5,075,000. A grant for the year of this amount would suffice to meet an expenditure by L.E.A.s of £12,500,000, of which £750,000 is non-recognizable expenditure in respect of duplicate grants to aided schools. The calculation is as follows:

	£
L.E.A. expenditure	12,500,000
Deduct non-recognizable	750,000
Recognizable expenditure	11,750,000
One half of £11,750,000	5,875,000
Residue grant	807,000
Board's Grant	5,068,000
Add extra grants for social and physical training, etc.	7,000
Grant for the Year	£5,075,000

The Reforms of 1929. About 1928, a situation had developed highly favourable for far-reaching local government reforms. First, English industry, especially in relation to foreign competitors, was in a parlous condition. An enormous burden of unemployment required the disbursement of large funds by the central government and weighed heavily upon the local Poor Law authorities; it weighed heaviest, indeed, in those very areas where industry was most stricken. The problem of necessitous areas, always serious, now became intolerable. It was seen that whatever the merits and demerits of the percentage grant system it had one grave disadvantage, it did not give assistance to the authorities in proportion to their necessity, but in proportion to their expenditure only. The plight of industry increased dissatisfaction with the smallness of the local areas: in a day when economies were sought by the large-scale organization of industry and commerce the claims of small authorities to be left unreformed were not likely to be heeded. Moreover, since 1923, the Royal Commission on Local Government had issued volume upon volume of evidence and reports which showed, though rather reluctantly, that both the excellence and the economy of local government services were considerably below the standard attainable with more extensive areas of administration and charge. All these things together resulted in proposals to redistribute the powers regarding Poor Relief, Public Health Administration, and Roads. They also required the redistribution of the grants in such a way as to give help where help was most needed. Finally, and probably in the minds of politicians most urgent of all, was the problem of derating certain forms of fixed property.

All this compelled reconsideration of the grants-in-aid; and by the Local Government Act of 1929 a great break was made with the existing system. Let it be at once understood that the Local Government Act of 1929 left untouched the Police grants, the Education grants, the Housing grants and part of the Road grants. In these cases it was thought that either the arrangement was sound, as in the case of the Education grant, or that as in the case of the Police, an arrangement satisfactory for the time being to both central and local authorities had been discovered, or that a special selective interest must continue to be taken in housing and roads, and the various Departments resisted pressure to include their grants in the scheme prepared by the Ministry of Health.[1] The Local Government

[1] Road grants were affected as follows (the account is taken verbatim from pp. 69–70 of the *Report of the Committee on Local Expenditure*, 1932):

'The Road Fund (instituted in its earliest form by the Development and Road Improvement Funds Act, 1909), is administered by the Ministry of Transport, and is an important factor in the highway finance of Local Authorities. The costs of maintenance and the minor improvement of Classified Roads in County areas are met from the Fund to the extent of 60 per cent for Class I roads and 50 per cent

Act of 1929 deals only with grants other than these. In 1928, the amounts of grants in aid of education and police was about £40,000,000, and therefore the principles and methods of calculation relating to that remain, as before the Act of 1929, untouched.

The New Principles and System. The problem that now faced the Government was to provide a fund of money in such a way as to compensate the local authorities for their losses from derating, and to make alternative arrangements regarding the percentage grants, excluding the police and education. One element in the scheme, of course, was to widen the area of administration and charge in regard to Poor Relief, Roads and certain public health functions. The next thing was discontinuance of the Assigned Revenue system, discontinuance of the percentage grants in aid of the health services, and certain road grants. These would henceforth be assisted through a lump sum distributed to each local authority according to entirely new principles.

The General Principles. The Government's general principles were : (*a*) that a fair contribution should be made from the Exchequer towards the cost of local services ; (*b*) that local authorities should have complete financial interest in their administration ; (*c*) that grants should be adapted in their working to the needs of the area ; (*d*) that grants should permit the greatest freedom of local administration and initiative ; (*e*) that grants should provide for sufficient general control and advice from the central Departments to ensure a reasonable standard of performance.[1] The Government then proposed to lump together a sum amounting to the rates on the rateable value lost under the derating scheme and the grants mentioned above which were to be discontinued. Each local authority would then receive annually a certain portion of this fund fixed for five years, and revised at the end of every five years. In the distribution of the money among the various authorities account would be taken of population and certain other evidences of need. Since this method of distribution would differ very much from the one it was to replace (which was not based upon differences of need) a very great disturb-

for Class II roads ; *while a sum of about* £6½ *million is retained each year from the Fund and paid towards the General Exchequer Contribution to Local Government expenses* (*instituted by the Local Government Act of* 1929 and the Local Government (Scotland) Act, 1929). This contribution is in aid of, inter alia, the expenditure incurred on the maintenance and minor improvement of Classified Roads in London and the County Boroughs of England and Wales and in the large Burghs of Scotland, and on the maintenance of Unclassified Roads in all County Areas. Capital grants of varying percentage between 50 per cent and 85 per cent, or in exceptional cases more, have been made from the Fund towards the cost of most of the important works of improvement and new construction in Great Britain. Under Section 17 (2) of the Ministry of Transport Act, 1919, grants of 50 per cent are made towards the salaries and travelling expenses of engineers and surveyors to Highway Authorities in Great Britain.'

[1] Cf. Financial Memorandum to Local Government Bill (No. 3).

ance in local finance was to be anticipated. Therefore, the proposed system would not operate in full at once. Over a period of fifteen years there would be a gradual progression from payment of a large part according to the amounts hitherto received, and a proportion only according to the new principles, until at the end of the fifteen years, all the grants would be distributed entirely on the new formula. This would then determine the distribution of the total grant fund among the Counties and County Boroughs. Within the Counties there would then have to be a distribution of the amount to which they were entitled between the County Council, the Municipal Boroughs and District Councils. The principles of distribution within the County were thus explained in the Government's Proposals :

'Out of a total amount allotted to each administrative county, a grant will be made to each non-county borough and urban district council at a uniform figure per head of actual population, and to each rural district council at one-fifth of that uniform figure per head of actual population. The uniform figure will be one-half the amount ascertained by dividing the total grant allotted to all administrative counties outside London by the aggregate actual population of the counties. The aggregate of the grants to the borough, urban and rural district councils will then be deducted from the grant appropriate to the administrative county as a whole, and the balance will be the grant payable to the county council in aid of the general county rate.

'These proposals in regard to the distribution of grant within each administrative county have been framed with special reference to the very considerable changes in the incidence of rates within the county involved in the transfer of poor law and certain highways to the county councils. In the great majority of cases rural districts would, on balance, obtain a large measure of relief from this widening of the area of charge at the expense of boroughs and urban district councils who would not only be required to bear their ratcable share of the heavy expenditure on rural roads transferred to the county, but would also remain responsible for their own unclassified streets. In addition, urban authorities will be responsible for carrying on other services not ordinarily provided in rural districts. The distribution of the grant to borough and district councils on an actual population basis and the calculation of grant to the rural districts at one-fifth only of the amount per head applicable to urban districts are considered to provide an adequate differentiation between urban districts and a reasonable and equitable balance between urban and rural interests. The grant payable to borough and district councils under the distribution will ordinarily be in excess of the actual loss of district rates due to derating, and will be applied by them in aid of the total rates required to be levied in their areas.'

Grants-in-Aid under the Act of 1929. Let us now consider how these principles were actually put into operation by the Act of 1929. The new grants are Block-cum-Formula grants ; that is to say, the local authorities receive a sum of money without detailed specification of the items which the grant is to be used for, and the amount is calculated not according to a percentage of the expenditure or any standard unit, but according to a combination of principles designed to show the extent of need.

Parliament will annually provide a General Exchequer Contribution to local government expenses. The total amount is to be revised, not as the Government originally proposed at five yearly intervals, but at periods of three years, then four years, and thenceforward five years. This alternative to the original proposals was adopted because the local authorities feared the disturbance which was to result from the new system, and wished for earlier opportunities of revision.

This General Exchequer Contribution is composed thus [1]:

1. An amount equal to the losses on accounts of rates of all Counties and County Boroughs in the standard year 1928–9. This was estimated to amount to £22,340,000.
2. An amount equal to the losses on account of the 'discontinued' grants of all Counties and County Boroughs, as payable in the standard year, 1928–9. This was taken to amount to £16,270,000.[2]

   These two items amount to £38,610,000 and remain fixed for all time, unless, of course, any subsequent Government cares to ask for legislation to increase or decrease them. There is yet a third item, 'an additional amount' to be added, and this is variable.
3. For each year in the first fixed grant period an additional sum of £5,000,000 is added. This may be varied at the revision of the grants but it *may never be reduced* to a point where the proportion which the General Exchequer Contribution bears to the total amount of rate and grant-borne expenditure in the last year but one of the grant-period would be below the proportion between the General Exchequer Contribution and the rate and grant-borne expenditure in the first year of the period. So that with aggregate increasing expenditure out of rates the local authorities would be entitled to an increase in the amount of the 'additional' money.

Thus, there is a General Exchequer Contribution of about £44,000,000 per year to be distributed from 1930–3; thereafter there will be revisions in 1933–7, 1937–42, and 1942–7 and so on by quinquennia. This fixation of central obligations and local government receipts follows, it will be remembered, many a recommendation of previous students of the grant-in-aid system, and the desires of the economizers.

How is this sum to be distributed? There is a first distribution among the Counties and County Boroughs. That is, about 145 authorities are to share (for the first grant-period) this £44,000,000. On what principle? There is the ultimate principle which will be in full operation when the first four grant-periods have elapsed, that

[1] Sect. 86. [2] Sect. 85.

is in seventeen years (3 and 4 and 5 and 5), in 1947, and which until then operates only as to a part of the grant. Then there is the transitional arrangement until 1947 : in 1930–3 and 1933–7, three-quarters of their respective actual losses on account of rates and grants of Counties and County Boroughs ; and the rest according to the ' weighted ' population ; in 1937–42, the proportion in lieu of actual losses sinks to one-half ; in 1942–7 the proportion in lieu of actual losses sinks to one-quarter. Thereafter the ' weighted population ' alone determines the amount receivable by Counties and County Boroughs.

This gradual descent was forced by the local authorities to avoid the tremendous changes it must have produced in their financial situation. The day of complete application of the principles was put off for seventeen years.

The ' Weighted Population '.[1] How is the ' weighted population ' determined ? The estimated population for 1928 is taken for the first fixed grant-period, and subsequently the estimated population in the last year of the expiring grant-period. This population is increased by reference to four factors :

(*a*) The estimated population is first increased by the extent to which ' the estimated number of children under five years of age per thousand of the estimated population exceeds fifty, by the percentage represented by the proportion which that excess bears to fifty '. Fifty was adopted as representing, with few exceptions, the minimum proportion of children found in any area.

(*b*) The estimated population is next increased by a ' weight ' for rateable value ; ' if . . . the rateable value per head of the estimated population of the County or County Borough is less than £10, by the percentage represented by the proportion which the deficiency bears to £10 '. £10 was adopted as being near the top limit of the range and so providing the loading in the great majority of cases.

These two factors together were assumed to provide an index of general needs and relative wealth and poverty. Each *operates separately* on the population : one factor, and then the original figure (not the original *plus* the addition for children), is increased by the second factor.

(*c*) Thirdly, there is a ' weight ' for excessive unemployment, the figure taken as the average for the whole country. The proportion which the average number of unemployed insured men increased by 10 per cent of the number of unemployed insured women bears to the average population is found ; and, where this exceeds 1½ per cent there is a cumulative loading of the *results* of operations (*a*) and (*b*). The loading is not only the percentage of the excess to the given figure, but a number of times the excess. This number of

[1] Fourth Schedule, Part III, ' Rules for determining Weighted Population '.

times the excess is in the first fixed grant-term 10, but it is to be reduced as the amount of the grant to be distributed entirely according to 'weighted' population increases with time.

This factor operates *cumulatively* on the results of (*a*) and (*b*) together. The increase of grant should not only be in proportion to the unemployed, but in even greater proportion where the area is poorer.

(*d*) Upon the figure provided by the factors already mentioned a fourth 'weight' is added *cumulatively, for Counties only*, in respect of the density or sparseness of population. This is a just provision, because the denser the population, the smaller the administrative expenses per head, as a rule, and the sparser the population the higher the administrative expenses per head. The arrangement made by the statute is that the figure shall be increased (1) where the population per mile is less than one hundred, by the percentage represented by the proportion which the difference between the population per mile and 200 bears to 200; and (2) where the population per mile is over 100 by the percentage which fifty bears to the population per mile. Thus Counties are treated differently according as the proportion is more or less than 100 people per mile of road. If this were not so, as the number of population per County mile increased, there would be a rapid decrease until the figure of 200 were reached, and then there would be no loading at all.

Three examples are given to show approximately the operation of the 'weighted' population formula:

ADMINISTRATIVE COUNTY OF NORTHUMBERLAND

FIRST FIXED GRAND PERIOD—1 APRIL 1930 TO 31 MARCH 1933

I. *Estimate of Weighted Population of County.* (Part III of Fourth Schedule to the Act.)

(*a*) Estimated Population in 1928	407,300
(*b*) Number added for children under 5 years of age	342,132
(*c*) Number added for low rateable value	222,752
(*d*) Number added for unemployment	191,423
(*e*) Number added for sparsity of population	373,917
(*f*) Total, being weighted population	1,537,524

II. *Estimate of Losses on Account of Rates and Grants of the County.* (Parts I and II of Fourth Schedule to the Act.)

	£
(*a*) Estimated losses on account of rates	295,586
(*b*) Estimated losses on account of grants	216,742
(*c*) Total losses on account of rates and grants	512,328

III. *Estimate of the County Apportionment.* (Section 88 of the Act.)

	£
(*a*) 75 per cent of losses on account of rates and grants of the County	384,246
(*b*) Amount apportioned to the County on the basis of weighted population	222,200
(*c*) County Apportionment, being the total of III(*a*) and III(*b*)	£606,446

IV. *Grant to County Council.* (Section 89 of the Act.)

	£
(i) County Apportionment as estimated above	606,446
(ii) Total of the sums set aside out of the County Apportionment under Sections 91, 92 and 93 of the Act for payment by the Minister of Health to the Councils of County Districts in the County	208,195
(iii) Difference between (i) and (ii) being the amount of the General Exchequer Grant payable to the County Council	£398,251

COUNTY BOROUGHS OF MERTHYR AND BOURNEMOUTH

I. *Estimate of Weighted Population of County Borough.* (Part III of Fourth Schedule to the Act.)

	Merthyr.	*Bournemouth.*[1]
(*a*) Estimated Population in 1928	79,500	96,580
(*b*) Number added for children under 5 years of age	55,650	13,521
(*c*) Number added for low rateable value	56,278	Nil
(*d*) Number added for unemployment	140,508	Nil
(*e*) Total, being weighted population	331,936	110,101

II. *Estimate of Losses on Account of Rates and Grants of County Borough.* (Parts I and II of Fourth Schedule to the Act.)

	£	£
(*a*) Estimated losses on account of rates	64,830	4,189
(*b*) Estimated losses on account of grants	14,233	21,143
(*c*) Total losses on account of rates and grants	£79,063	£25,332

III. *Estimate of the County Borough Apportionment.* (Section 88 of the Act.)

	£	£
(*a*) 75 per cent of losses on account of rates and grants of the County Borough	59,297	18,999
(*b*) Amount apportioned to the County Borough on the basis of weighted population	47,971	15,912
(*c*) County Borough Apportionment (and General Exchequer Grant), being the total of III(*a*) and III(*b*)	£107,268	£34,911

[1] As it existed on 1 April 1930.

The figures ultimately arrived at in this way for all Counties and County Boroughs provide the ratio in which they share in the total sum available in each successive grant term from the General Exchequer Contribution. Now, the County Boroughs at once receive the whole of their 'General Exchequer Grant' as it is called, without obligation of disbursement to other authorities. The County Councils do not receive the whole of the sum then calculated, for they have obligations. To these and the effect of them we will return in a moment.

We have now arrived at the following general result: that the General Exchequer Contribution is apportioned according to (*a*) rates and grants lost; and (*b*) to the 'weighted' population. But the local authorities urged the unwisdom of too violent and sudden a change. Hence, both Counties and County Boroughs further receive moneys *in addition to, and outside, this apportionment.* Each County was guaranteed its losses on rates and grants plus a shilling per head. Where the apportionment as settled by the above method falls below such a sum, the deficiency is paid by the Government. This is an Additional Exchequer Grant. There are minor modifications, and an easing of the Exchequer burden after the first grant-period.

In the case of the County Boroughs the guaranteed annual grant is also the standard sum of losses increased by a shilling per head of population. Most County Boroughs (but not Counties), however, stand to lose by being severed from a Poor Law Union of which they formerly were part, and otherwise also. Hence their 'losses' are more complicated than those of the Counties. 'Additional' grants are therefore given. Further, to adjust any increase or decrease of poundage as between separately rated areas in a County Borough (which may happen although the Borough as a whole may be benefited) a Supplementary Exchequer Grant is given on behalf of that area, if the Additional Grant is *less* than one-half of the aggregate amount of losses, and then it will be enough to pay the Additional Grant up to one-half the aggregate amount of the losses. After five years this Supplementary Grant begins to diminish by one-fourteenth each year.

Thus, County Boroughs obtain (*a*) an 'apportionment' from the General Exchequer Contribution, called the General Exchequer Grant; outside this (*b*) Additional Exchequer Grants, and (*c*) Supplementary Exchequer Grants. County Councils receive (*a*) County Apportionment, and outside this (*b*) Additional Exchequer Grants.

The Smaller Authorities. But the amount due to each County does not go to it, for within the County are Municipal Boroughs, Urban and Rural Districts. These must be provided for out of the County apportionment. After the required sums are set aside, the residue is the General Exchequer Grant of the County Council. Out

of the County Apportionment there are set aside sums for the Municipal Boroughs and Urban and Rural Districts (classed together as 'County Districts'). (1) One-half of the County Apportionment in pence is divided by the population of the County. This gives the amount per head of population in the County. Urban Districts (which means Municipal Boroughs and Urban Districts) receive the number of pence thus multiplied by their population. The Rural Districts get *one-fifth* the number of pence multiplied by their population. The difference of treatment of Urban and Rural Districts is due to the far larger burden regarding highways and public health functions of the former. *These grants are paid directly by the central authority.* But this does not entirely fix the General Exchequer Grant of the Districts. If, in a rural district, there is a loss relating to a special or parish rate, the amount is to be made up to the extent out of the County Apportionment for the first and second fixed grant-periods, and thereafter by a sum in the discretion of the County Council. The Minister of Health prescribes how this money may be used.

While the reform of the grants-in-aid was under discussion many people became anxious lest the services of Maternity and Child Welfare should suffer. Another charge was, therefore, placed upon the County Apportionment. The Minister of Health, at the beginning of each grant-period, after consultation with the County District Councils concerned, makes a scheme determining the sum to be set aside for the District; the amount is in the discretion of the Minister. Finally, Districts will, for the first five years, receive from the Exchequer a Supplementary Grant sufficient to save them from loss; thereafter there is a decrease of the Supplementary Grant until by 1949 nothing is given. The Local Government Act of 1929 provides for investigation, before seven years elapse, into the operation of the Formula, and the distribution of the County Apportionment within the County. The investigation is to be undertaken by the Minister in consultation with the local authorities.

Concluding Observations. Thus the trend of grant-in-aid development has resulted in (*a*) a block-cum-formula grant of £45,000,000 per year, (*b*) a block-cum-percentage grant of 50 per cent for the Police; (*c*) an allocated-cum-formula grant of at least 50 per cent of the approved expenditure for education; (*d*) a block-cum-percentage grant for certain Roads, the percentage varying according to the class of road; and Housing grants which are block-cum-unit grants of so much per house, and block-cum-percentage grants of a percentage of loan charges.

All the grants carry with them certain conditions of efficiency, some special combination of the methods described in previous chapters. In all cases the grant is given in respect of 'approved' expenditure,

a term which has crept in during the last twenty years or so, and the accounts of the authorities receiving the grants are for those services subject to audit by the central authority. The present economic depression is causing people to urge the abolition of all percentage calculation for grants, and their substitution by lump sums, called block grants, within which limits the local authorities will have to remain satisfied for some years to come. We do not yet know whether when the account is fully rendered Parliament will be satisfied with the use the local authorities have made of the lump sums handed to them by the Act of 1929. We have yet to see. At any rate history teaches the strict duty of Parliament to control in considerable detail the policy and action of spending authorities, whether in Whitehall or in the localities.

Seven Years' Experience of the Block Grant. From 1930 to 1933 the General Exchequer Contribution was about £43,500,000 a year. From 1933 to 1937 it was nearly £44,000,000, equal to about 23 per cent of the "rate and grant borne expenditure" in the year 1931–2, the minimum proportion of Exchequer money to expenditure at each revision stipulated in the Act. In the third grant period commencing April 1, 1937, to run until 1942, a minimum addition of £4,427,000 of "new money" was required to comply with this rule, making the minimum amount of General Exchequer Contribution some £48,349,000. However, (*a*) the local authorities since 1934 were paying to the Exchequer £2,187,000 a year, representing 60 per cent of what they had formerly paid for the assistance of the able-bodied unemployed, the rest having been assumed by the Government. The amount was now merged in the G.E.C. system by the reduction of the total amount otherwise lodged therein. (*b*) Local authorities were relieved in 1937 of the cost of certain trunk roads [1]: 23 per cent of the cost representing the grant annually attracted would be borne by the local authorities by reducing the G.E.C. to that extent (£133,000). The licences on male servants, amounting to £115,000, were abolished: the loss was to be made up by adding the amount to the G.E.C. Altogether then, the G.E.C. would be reduced by £2,205,000—this would leave £46,144,000. To round the sum the Government provided £46,172,000.

The stipulations of the Act of 1929 regarding the proportion of the Block Grants to be distributed according to "weighted" population were carried out. In the third grant period it would be £26,886,000 out of the total in G.E.C.

Some changes in the formula were made to allow for certain changes in national income conditions: for the increase in population and the general fall in the number of children under five—working adversely for the needier areas. The Ministry of Health and the representatives of local authorities collaborated in an investigation of the operation

[1] Cf. page 142 above.

of the formula as prescribed by Section 110 of the Act of 1929.[1] As a result the following changes were accepted : (*a*) the multiplier for the unemployment factor which in the first and second grant periods had been 10 was continued at 10 and a "super-weighting" was introduced where the percentage of unemployed exceeded 5 per cent. (*b*) An increase in the weighting for unemployment was to be accompanied by an increase in the weighting for sparsity as a special help to the counties—the sparsity factor was changed from 200 to the standard of 300 ; and moreover, it was applied to the population weighted for children, rateable value and unemployment instead of to the population weighted for children and rateable value only.

Under the new formula * then, the weighted population for England and Wales (based on the 1935 estimates of population) was :

Estimated Population	Children under 5	Low Rateable Values	Unemployment	Sparsities	Total Weighted Population
40,645,000	16,013,719	13,486,129	18,208,055	15,008,588	103,363,190

The ratio of weighted population was, for London, 1·5 ; the counties, 2·78 ; the county boroughs, 2·47. The value of the various "weights" were, for Population 40 per cent, Children 15¾ per cent, Rateable Value 13¼ per cent, Unemployment 18 per cent, Sparsity 14.75 per cent.

Some examples of gains are worth recording for illustration's sake. The criterion is the amount of grant in terms of the amount per £ of rateable value of each place is mentioned :

	From 1937 In third grant period	Addition to amount of second grant	Actual Rates in 1936–7
	s. *d.*	*s.* *d.*	*s.* *d.*
Cumberland	11 6	2 0	11 3
Monmouth	10 6	3 2	15 10
Gateshead	8 3	3 0	15 6
Liverpool	4 11	1 6	16 5
Merthyr Tydfil . . .	16 0	5 0	29 0
Bournemouth . . .	– 6½	– 1·1	7 8
Southend	– 11	– 4	10 8

The extreme span of the "weighted" to the "unweighted" population is in the case of counties : Cumberland 5·44, to Surrey 1·29 ; in the county boroughs, Merthyr Tydfil 5·81, to Southend 1·09.

Thus, to some places the formula grant has brought considerable relief. But there is still a large volume of criticism that the method does not go far enough. There are still scores of authorities with extremely heavy burdens as the table on page 391 bears out. Industrial

[1] Cf. *Report on Result of Investigation under Section* 110, Local Government Act, 1929 ; No. 42, 1937.

* The formula in mathematical form is reproduced in Additional Notes at Chap. XX, p. 468.

areas which levied a considerable amount on industrial property, (since 1929 de-rated) are still hard hit. Is there an efficient connection between the " under five " factor and the " need " of local authorities in terms of welfare, health and housing services ? Some critics argue that the £10 rateable value standard is too low as an appropriate line by which to weigh the poorer areas. There is still a serious inequality as between urban districts and municipal boroughs caused by distributing to them a part of the county grant receivables on a flat rate per capita basis—for though the differentiation between county and county means that more is available for distribution in the poorer than the richer counties and their districts and boroughs, the latter vary in need, in ability and expenditure markedly among themselves. There are complaints also about the fluctuating conditions in a five-year term—with consequent fluctuations in grant. (Indeed, in 1937 it was agreed that fluctuations of 2½ per cent should be ignored as services would still remain pretty constant.) Finally, it is alleged that some recipient local authorites are tempted to assess their rateable value too low in order to qualify for more grant !

* * * * * * *

Thus a century ago the grants amounted to nothing, and now they total about £135 million. A century ago central administrative control did not exist, now the central government encourages the local authorities to spend, obliges them to rate themselves, and controls the standards of administration and costs. One hundred years ago there were no reliefs from rates on certain classes of fixed property ; to-day, industrial, freight-transport and agricultural property are partly or wholly relieved. A century ago the country was divided into a multitude of small areas bearing their own burdens out of rates and applying the principles of valuation in their own way ; to-day, the area of administration and charge is much more widely spread and a large measure of uniformity in valuation has been achieved, while the Elizabethan Overseers have gone to make place for the larger local authorities. A century ago no help was available for necessitous areas ; to-day, they receive assistance from the resources of the whole country, and the question is whether any more can be done without destroying local government and local economy.[1]

[1] In particular, the industrial depression since the War has created problems of peculiar gravity. Cf. the resolution of the Conference on Public Assistance, 14 March 1933, and especially its doctrine of State aid :

' The unequal incidence of the poor rates, which is beyond dispute, is such that in many of the more industrially depressed areas the financial burden has not only become intolerable in itself, but it seriously prejudices the other necessary services. This conference, therefore, is of opinion that immediate steps must be taken to distribute the burden more equally throughout the country, and considers that this can best be attained by the State assuming full responsibility for the payment of relief to all able-bodied persons.'

CHAPTER XXI

LONDON

I

HISTORY AND GENERALITIES

IT is not the purpose of this chapter to provide a complete picture of the government of London: that would require a book to itself. But, often, during the course of the preceding chapters, we have realized that it would be desirable to gather together the main features which distinguish London and present them as a body. Here, like a great intricate thick web, dominating the South-East of England, is a vast aggregation of people, the financial, artistic, social and political centre of an Empire. It has nearly four and a half million inhabitants. Its annual budget is larger than that of Switzerland; more money is spent on the government of London than on Wales. What, then, are the outstanding features of London as a municipality?

Like every institution of English local government, the government of London is a recent creation, the claims of modern utility continually remodelling the expedients of an almost medieval past. In the early decades of the nineteenth century London was no more than a vague geographical expression. Before the Metropolis Management Act, 1855, the Metropolis was governed by many small bodies, deriving their power from numerous local Acts of Parliament in addition to the general Acts.[1] No link between these bodies existed, and corporate life, even such as we know to-day, was lacking. Outside the City Corporation—the one square mile which had meant so much in the history of England—local government was still of an Elizabethan order. It was a congeries of independent parishes, each governed by the inhabitants in general assembly, though in some parishes, usually the wealthier ones, select vestries were elected under the provisions of the Vestries Act, 1831. Some were hotbeds of

[1] In 1855 these local Acts numbered about 250, administered by not less than 300 different bodies in no way responsible to the rate-payers. Only two bodies had a jurisdiction extending over the whole Metropolis (excluding the City of London) i.e. the officials appointed under the Metropolitan Building Act of 1844 and the Commissioners of Sewers appointed under the Commissioners of Sewers Act of 1848. Neither body was responsible to the rate-payers.

corruption.[1] The 'open' vestry meeting was a thoroughly incompetent form of government; but the 'select' vestry, confining the rights of attending the parish meeting to a few, produced an even more appalling corruption.

The environmental and philosophical development that led to Poor Law Reform and Municipal Reform elsewhere, soon affected London. London was expressly excluded from the scope of the Municipal Corporations Act, 1835, chiefly on account of the obstinate opposition of the City of London, ever anxious to retain its ancient independence and privileges. After the Municipal Corporations Act was passed, the Royal Commission on Municipal Corporations investigated the problems of London, but was unable, owing to this opposition—of the Livery Companies in particular—to report until 1837.[2] Yet it was not until another Royal Commission, appointed in 1853 to inquire into the affairs of the Corporation of the City of London, had reported, that Parliament took action. The Commissioners recommended the immediate setting up of a unifying central administration in London,[3] excluding the Parliamentary Boroughs created in 1832 from the area; the Commission deplored the fact that London was ill-governed by thousands of *ad hoc* committees and commissioners, and that the City Corporation had taken no trouble whatever to apply the municipal reforms recommended in the Report of 1833.

Hence, in 1855, Parliament passed the Metropolis Management Act. This Act defined the boundaries of the present administrative County of London. It set up the Metropolitan Board of Works, with jurisdiction over the whole Metropolis—the first central administration in London. The larger parishes outside the City of London, numbering twenty-three, became vestries, the rate-payers electing the members. The smaller parishes were grouped together into fourteen districts, managed by district boards of works. The members of the Metropolitan Board of Works were elected by the Common Council [4]

[1] Cf. Webb, *The Parish and the County*.

[2] The Commissioners recognized that the London 'suburbs' of those days were like no other suburbs in the country; 'so much so, indeed, that the word suburb can no longer be applied with its usual signification to the vast extent of uninterrupted town which forms the Metropolis of the British Empire'. Quoted on p. 53, *Report of the Royal Commission on London Government*, 1923.

[3] The Commissioners emphasized the impossibility of applying simply to the case of London the principles of the Municipal Corporations Act, 1835. 'London taken in its full extent is (as it has with literal truth been called) a province covered with houses; its diameter from north to south and from east to west is so great that persons living at its farthest extremities have few interests in common; its area is so large that each inhabitant is in general acquainted only with his own quarter and has no minute knowledge of other parts of the town. Hence the two first conditions for municipal government, minute local knowledge and community of interest, would be wanting if the whole of London were, by an extension of the present boundaries of the City, placed under a single Municipal Corporation' (Quoted in *Report of Royal Commission on London Government*, 1923, p. 54).

[4] See p. 477, below.

of the City of London, the vestries and the district boards. The Metropolitan Board of Works was empowered to supervise the vestries and district boards and undertook complete control over main drainage and the Building Acts. As London grew and new services were required, they were invariably entrusted to the central authority (e.g. the fire brigade in 1865, the provision of open spaces in 1866, tramways in 1870).

Though it did some extremely useful work, the Metropolitan Board of Works became discredited; the system of election was indirect, and accusations of corruption increased in number and force. In the 1870's the movement for municipal reform grew apace, and a League of Municipal Reform was formed in 1875 under the chairmanship of Mr. J. F. B. Firth, M.P., afterwards the first Deputy-Chairman of the London County Council (1888). In 1884 Sir William Harcourt introduced a Bill drastically to reform London government. It met with the most determined opposition from the City of London and was defeated.[1] But the movement for reform could no longer be obstructed, particularly when serious charges of corruption were levelled against the Metropolitan Board of Works in 1885. Public investigation became inevitable, and a Royal Commission was set up. Many charges levelled against the Board were shown to be well-founded, particularly the corrupt practices of important officials.

In 1888, the Local Government Act established the present County Council system of local government, and created the London County Council, the body which is the central authority for local government in London to-day.[2] The City of London was left to govern itself, since this was the only means of securing municipal reform in London. A system of local government for London had to be built round the City, which has since remained a county within a county.[3] The City Corporation believed that if it conceded even one privilege, it would have to give way all along the line.

[1] Harcourt's London Government Bill planned to set up a single municipality for the whole of London, based on a reformed City Corporation with an extended area. The City of London obdurately opposed the Bill, and its methods were reminiscent of Tammany Hall in New York City. The Lord Mayor exercised his right to sit in the House, and took a leading part in the agitation against the Bill. Thousands of pounds were spent by the City authorities on hoardings and advertisements in the newspapers, and bullies were hired to break up reform meetings in all parts of London. Mr. Firth, in his brilliant speech (Hansard, 3 July 1884, Cols. 1961–86) described how the City Corporation had successfully impeded every measure of reform since 1855, and how the various Ministries had permitted themselves, in spite of the obvious necessity for reform, to be persuaded by the City to ignore the demands for reform, such as John Stuart Mill's among others.

[2] The area now comprised in the County of London proper formed, before the Local Government Act, 1888, part of the counties of Middlesex, Surrey and Kent. Section 40 severed these parts from the counties and constituted a separate county for all non-administrative (in the main judicial) purposes. *R.C. on London Government: Minutes*, Part I, p. 3.

[3] Harris, *London and its Government*, p. 40.

But this Act was only the beginning. The vestries were not yet touched,[1] and continued to carry out the duties conferred upon them in 1855. Another Royal Commission on London Government was appointed in 1894, and reported in 1895. It recommended that the government of London should be entrusted to one body, and that the historic City of London should be abolished, the new 'City of London' (County of London) taking over its title. It recommended also that the local authorities within the County of London should be strengthened, and entrusted with every duty they could conveniently discharge. Naturally, the City of London opposed these recommendations tooth and nail, endeavouring to persuade Parliament to divide London into a number of separate municipalities.

In 1897, the parishes of Kensington and Westminster, the two wealthiest parishes in London, thoroughly dissatisfied with their form of local government, petitioned to be created Boroughs under the Municipal Corporation Acts. But in 1899, Mr. Balfour introduced his London Government Bill, establishing the twenty-eight Metropolitan Boroughs.[2] By this Act the elective vestries and district boards created by the Metropolis Management Act, 1855, ceased to exist, and their powers and duties were transferred to the Council of the Borough comprising the area within which those powers were exercised. We shall discuss the powers and duties of these Boroughs later on. The Acts of 1888 and 1899 gave London the three local government authorities which function to-day—the London County Council, the City of London Corporation, and the Metropolitan Borough Councils.

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London—Its Several Meanings. The name London has several meanings. In everyday talk it is used rather vaguely to include an area far greater than the London of the Act of 1888. Hence, to obtain a proper idea of London in the administrative sense, we must investigate and explain its various connotations.

The administrative County of London consists of two parts, the City of London and the County of London proper.[3] The County of London is governed by the London County Council and the City of London by the City Corporation, and each of these areas is a separate county for local government purposes. The London County Council, however, has powers extending over the whole administrative County

[1] The corrupt Commissioners of Sewers were reformed in 1848, by the Commissioner of Sewers Act.

[2] Some of these Boroughs are quite as big, and certainly well populated, as many of the biggest towns in England. Wandsworth and Islington have populations of over 300,000; Hackney, Lambeth, Stepney, Lewisham, and Camberwell, have over 200,000.

[3] *R.C. on London Government: Minutes*, Part I, p. 2.

of London, though, as regards the City of London, for certain limited purposes only.

The City of London is roughly an area of one square mile in the centre of the County of London, under the shadow of St. Paul's Cathedral, with a day population of only about 11,000. The Metropolis Management Act, 1855 (Sect. 250), defines the City as comprising all parts formerly within the jurisdiction of the Commissioners of Sewers.[1] By the City of London Sewers Act, 1897, the powers and duties of the Commissioners of Sewers were vested in the Court of Common Council. Section 22 of the London Government Act, 1899, places the Inner Temple and the Middle Temple within the City of London. Certain adjustments of the boundary in the vicinity of Smithfield Market have been made by Orders in Council under powers given by the latter Act.[2]

London proper consists of the well-defined 28 Metropolitan Boroughs (excluding the City of London), roughly 117 square miles in area, with a population of nearly 4½ millions.

There is yet a third London, a great social congregation which includes a wide ring of suburbs and villages. This area is known as 'Greater London', extending approximately to a radius of 15 miles from Charing Cross.[3] It thus includes the whole of Middlesex and large parts of Surrey, Kent, Essex and Hertfordshire—in all, an area of some 691 square miles, with a population of approximately 7½ millions. These suburban areas, except for police and certain other

[1] Sect. 262 of the Commissioners of Sewers Act, 1848. defined the City.

[2] *R.C. on London Government: Minutes*, Part I, p. 3.

[3] *Report of the Royal Commission on London Government*, Cmd. 1830, 1923, pp. 15–23. 'Greater London' is not an area defined by statute or at present used for any administrative purpose. It was an expression first adopted by the Registrar-General in 1875 for the purposes of his weekly return of births and deaths, and it was then stated to mean the area of the Metropolitan Police District, including the City Police District. The expression 'Greater London' originally implied, and has continued to imply, that Inner London (London proper) and Outer London (that part of Greater London outside the administrative county), have some interests in common. Even in 1875 it was noted that the merchant, the professional man and others having offices in the 'City' lived with their families in the outer ring. The link that used to be observed between the City and the suburbs in the eighteenth century is now transferred to London proper and *its* suburbs. Greater London experiences a huge movement of population day by day. This movement 'may be summarized as a process of concentration within Inner London in the early hours of every day and of dispersal through Outer London in the late afternoon and evening. The working population are carried to the centre by means of transport which connect the centre with their homes. Their places of business lie within Inner London; their work is conducted in that area, they depend for their livelihood upon the business which is carried on there, and during their working hours the local government authorities of Inner London must provide them with the local government services which they require. In the evening of every day this working population is dispersed from Inner London into Outer London. There they have made their homes, there they find their recreation and their society, there they take part in local government, if they do so at all, and the local government authorities of these areas must provide the necessary local government services for the whole family of which one or more members may work in London every day.'

services,[1] are almost wholly under the jurisdiction of the County authorities mentioned above.[2]

Finally, there is the London of the police authorities. The Metropolitan Police District is almost but not quite coterminous with Greater London. It comprises the County of London (excluding the City of London), Middlesex, the County Boroughs of Croydon, East Ham and West Ham, and all parts of Surrey, Kent, Herts, and Essex within a radius of 15 miles from Charing Cross as the King by Order in Council may include. The District was first constituted by the Metropolitan Police Act, 1839.[3] It is policed by the Commissioner of Police from his headquarters at New Scotland Yard. The control of the force is vested directly in the Home Secretary, who is represented in most matters of finance and administration by the Receiver of the Metropolitan Police. In other words there is no police force for London managed by the elected authorities. Because London is the political capital and the home of the Government, its police constitute a force administered by the central and not the local government. The force was established by Sir Robert Peel in 1829 in place of the incompetent watchmen; the Metropolitan Police Act, 1829, sought to improve 'the police in or near the Metropolis'. The force now numbers about 20,000. They are maintained partly by rates levied on the Metropolitan Police District, and partly by the State. The annual cost is usually in the neighbourhood of £8 million, about two-fifths falling on the rates. The police do the practical controlling of the heavy London traffic, which, indeed, is wellnigh the most important of their duties.

Nor do the foregoing exhaust the meaning of 'London'. In the map attached to the Report of the Royal Commission on London Government,[4] London extends with regard to some service or other as far out as 25 miles from Charing Cross. The electricity supply

[1] *Royal Commission on London Government: Minutes*, Part I, p. 5: 'The growth of London has rendered it desirable to include districts outside the administrative County within the London main drainage system, and several areas have been brought into the system under powers conferred by local Acts and by arrangement with the Council. . . . The Council have works at Barking and Crossness outside the County in connexion with the outfall of their main sewers.' The present County Council area is the same as that for which the original main drainage area was formed; the first expansion took place in 1871, the second in 1873, and to-day there are no fewer than thirteen out-country districts draining wholly or partly into the system. (Ibid., p. 25.)

[2] In the Outer Ring, known officially as Extra-London, there are 5 County Councils, 3 County Boroughs, 12 Municipal Borough Councils, 59 Urban District Councils, 9 Rural District Councils, and 27 Parish Councils, and a large number of minor authorities.

[3] Under Sect. 2 of the Metropolitan Police Act, 1839, any place which is part of the Central Criminal Court district (except the City of London) and any part of any parish, township, precinct, or place within 15 miles of Charing Cross in a straight line may be added to and form part of the Metropolitan Police District by Order in Council. An Order in Council of 1840 defined the area included in the District under these provisions (*Royal Commission: Minutes*, Part I, p. 15).

[4] Cmd. 1830, 1923.

of this vast area is managed by the London and Home Counties Joint Electricity Authority.[1] The larger problems of road traffic, increasing in importance every day, are handled by the London and Home Counties Traffic Advisory Committee, set up under the London Traffic Act, 1924. The main purpose of this important body is to advise the Minister of Transport and the local authorities how to relieve the motor traffic congestion, which so handicaps the passage of 'through' traffic, in the Central London area. Under its guidance, broad motor ('arterial') roads have recently been constructed, reaching from the outer parts of London to the great trunk roads; moreover, excellent 'by-passes' have also been built, enabling motor traffic wishing to avoid London to do so. These 'by-passes' now form a complete ring round the outer part of London and connect up all the arterial and main roads which radiate from the centre of London.[2] The Committee consists of representatives of the County Councils and County Boroughs within the Greater London area, as well as the private transport companies and railways operating within the area.

But is London really confined to the area as designated in Acts of Parliament? The general as opposed to the immediate influence of London certainly extends far beyond Greater London; the toll telephone presses out thirty and forty miles; by 9 p.m. the evening papers are being sold as far as the Northern Midlands.

* * * * * * *

London's Population. The Census of 1931 produced many useful facts about the population of Greater London. It comes almost as a shock to realize that the population of London proper has been declining since 1901 but the balance is more than restored by the tremendous increase in the population of extra-London. The following tables speak for themselves[3]:

MOVEMENT OF POPULATION IN GREATER LONDON, 1861-1931

TABLE I

In Thousands

	1861	1871	1881	1891	1901	1911	1921	1931
London County . .	2,808	3,261	3,830	4,228	4,536	4,522	4,481	4,397
Outer Ring . . .	414	624	936	1,406	2,045	2,730	2,996	3,807
Total: Greater London	3,222	3,885	4,766	5,664	6,581	7,252	7,481	8,204

[1] Set up under the Electricity Supply Act, 1926, and is composed of representatives of the County Councils and the electricity undertakings, both private and municipal.

[2] Cf. Robert Donald, 'Story of London Transport', in *Public Administration*, Oct. 1931, and April 1932.

[3] These tables are taken from the *Census Report*, 1931 (County of London), p. viii.

TABLE II

Percentage Increase (+) or Decrease (−) over preceding Intercensal Period

	1861	1871	1881	1891	1901	1911	1921	1931
London County . .	—	+ 16·1	+ 17·4	+ 10·4	+ 7·3	− 0·3	− 0·8	− 2·0
Outer Ring . . .	—	+ 50·7	+ 50·0	+ 50·1	+ 45·3	+ 33·5	+ 9·7	+ 27·1
Total: Greater London	—	+ 20·6	+ 22·7	+ 18·2	+ 16·8	+ 10·2	+ 3·2	+ 9·7

In Table I, the astounding increase in the population of the Outer Ring is plainly shown. Though the momentum died down between 1911 and 1921, due mainly to the War, the increase since 1921 has again been striking.

The population of the City of London has declined in a remarkable fashion :

1801	128,269
1851	127,864
1901	26,923
1921	13,709
1931	10,999

The movement of population is visible among the Metropolitan Boroughs themselves. The population of the inner industrial and business boroughs (such as Holborn, Finsbury, Hackney, etc.) has declined, whereas that of the outer boroughs (Hammersmith, Lewisham, etc.), where environmental conditions approximate most closely to Outer London, has increased.

II

ADMINISTRATION

The government of the County of London is carried on by the London County Council, the City of London Corporation and the Metropolitan Borough Councils. The London County Council and the Metropolitan Borough Councils operate over the same area, and if not in the position of superior and subordinate authorities are yet partners, dividing powers between them. The City Corporation, owing to its successful opposition to reform, stands almost by itself. Let this obstacle to clarity be disposed of first.

The City. The local government authority in the City of London is the City Corporation, whose legal title is ' The Mayor and Commonalty and Citizens of the City of London '. The constitution of the Corporation is unique : its organs are the Court of Common Council, the Court of Aldermen, and the Court of Common Hall. The Court of Common Council is the chief governing body, performing

most of the executive and administrative duties. This council consists of 200 Common Councillors elected annually on a restricted franchise, based mainly on property qualifications, and twenty-six aldermen, including the Lord Mayor, who is Chairman of the Council as well as of the Court of Aldermen and the Court of Common Hall.[1] The Aldermen are elected for life by the twenty-six City wards, and form the Court of Aldermen.[2] They form the bench of Magistrates for the City; they are Justices of Oyer and Terminer and are named as such in the Commissions for holding the sessions at the Central Criminal Court.[3] The Aldermen, together with twenty-nine Common Councillors, form the Committee controlling the City Police; The Commissioner chosen by the Committee is directly responsible to it. The Court of Aldermen is a kind of municipal second chamber, the last of its kind in England.

The Court of Common Hall preserves medieval forms and functions. It consists of the Lord Mayor, the Aldermen, the Sheriffs and the Liverymen, members of the ancient City Companies, such as the Goldsmiths, the Vintners, the Merchant Taylors, originating in the medieval craft guilds.[4] The Court has only one function—to nominate the two final candidates for the office of Lord Mayor on Michaelmas Day each year, and these are by custom the two senior Aldermen.

[1] The Common Councillors are elected annually in different proportions in the 26 wards of the City by about 27,000 voters, chiefly members of the City Companies. The Council holds its sittings, and does its work, at the Guildhall.

[2] They are elected on the basis of the Parliamentary register in each ward, each elected candidate being subject to the approval of the Court of Aldermen.

[3] *Royal Commission: Minutes*, Part I, p. 18.

[4] Harris, *London and its Government*, pp. 13–16. Of the seventy-six Companies or Guilds that still survive, only nine continue to exercise a few of their original economic functions—e.g. the Fishmongers' Company, the Stationers' Company. Of their 10,000 odd members, not more than a few hundred know anything of the trade of the Company to which they belong. The Royal Commission on the affairs of the City Corporation, 1884, revealed the extent of the Livery Companies' enormous income and property. A large part of their income is spent upon banquets, the last remaining social justification for the independence of the City in the opinion of some who have enjoyed its *pâté de foie gras* and champagne. A considerable sum, however, is spent on education. For example, East London College, part of the University of London, is supported by the Drapers' Company; Merchant Taylors' School and Haberdashers' School are also supported by the Companies bearing these names. Sir Percy Harris maintains that the income of these Companies belongs, by origin, to the citizens of London, and not to the Liverymen, and that, therefore, its disbursement should be under more adequate control. Membership of a City Company can be acquired either by apprenticeship or patrimony. The number of members by apprenticeship is ridiculously small, and will in time vanish altogether. The son and daughter of a freeman are entitled by patrimony to be members of their parent's guild. In modern times the principal method of becoming a 'liveryman' is by buying the freedom of a Company. The governing body of a company is the Master and Wardens, and a Court of Assistants. The Master and Wardens are elected each year, but the latter are co-opted when vacancies occur and hold office for life. Membership is of three classes; ordinary freeman, liverymen (men who have paid for the ancient right to wear the 'livery' of the old guild), and members of the Court. Any freeman of a Livery Company has a place in the Court of Common Hall.

The nominations are then sent to the Court of Aldermen, who choose one as Lord Mayor.[1] The latter can only reach this position (for which he is re-eligible, though obviously after the lapse of several years) after having been elected an Alderman for one of the City Wards and having served as a sheriff. The Court of Common Hall also elects the Sheriffs, the City Chamberlain,[2] the Bridgemaster (of Tower Bridge, Blackfriars Bridge, London Bridge and Southwark Bridge), the City Auditors, and other corporation officers.

The meetings of the Common Council are generally held fortnightly, except during August and September, when the Council is in recess.

The City Corporation derives its power from its various charters and from a large number of Acts of Parliament.[3] It exercises in the City of London the general powers administered and duties performed by Metropolitan Borough Councils: paving, street maintenance, lighting, public health, local drainage, etc. It is the sole sanitary authority for the Port of London,[4] its duty being to inspect the passengers and crews of all vessels putting in at the Port of London, to discover cases of infectious disease, and to satisfy itself as to the sanitary condition of all vessels. The Corporation has certain other duties which, in the rest of the county, devolve on the London County Council; e.g. by the Shops Acts, the Weights and Measures Act, Mental Deficiency Acts, the Prevention of Cruelty to Children Acts, etc. It has often been urged that these powers would be far better administered as part of the general scheme of London government. A peculiar and archaic power which it possesses is that derived from a charter dating from Edward III,[5] over all markets within seven miles of its boundary. It has its own police force.[6] The City maintains certain open spaces outside its boundary. It looks after the City bridges. For educational purposes the City Corporation is subordinate to the London County Council, just like an ordinary Metropolitan Borough Council. It administers the large trust funds of the City. Though it resisted Poor Law reform, public opinion was on this occasion too strong for it,

[1] The Court of Common Hall has often used its discretion regarding the nomination of the final candidate for this office, and has chosen Aldermen who were not the senior members.

[2] He acts as the City Treasurer and is responsible for the annual budget.

[3] *R.C. on London Government: Minutes*, Part I, p. 4.

[4] Its authority extends over the whole part of the Thames administered by the Port of London Authority, established by the Port of London Act, 1908. The Port stretches from Teddington and Twickenham on the west to Warden Point in the Isle of Sheppey and Havengore Creek in Essex.

[5] It is said that the effect of the City Charters is that the Crown has no longer the right to grant a market franchise to any other person or body within seven miles of the City.—*R.C. on London Government: Minutes*, Part I, p. 9.

[6] The City Police are supervised by a special Commissioner, who is responsible to the Police Committee of the Corporation, consisting of the Lord Mayor, the Aldermen and twenty-nine Common Councillors. The Commissioner must be approved of by the Home Secretary. Their principal duty (at least during the week-day) is to regulate the very congested city motor traffic.

and by the Local Government Act of 1929 jurisdiction passed to the London County Council.[1]

The City Corporation is extraordinarily rich, possessing corporate property of great value. It obtains a large annual sum from rates, since it has a very high rateable value.[2] The annual expenses of the City are met by the rates, a large portion of the 'City's Cash', the City's income from corporate estates and grants from the central authority. The City contributes little to the Special County Rate levied by the London County Council, since it administers most of the relevant services itself.

The London County Council. The London County Council consists of two councillors from each of the sixty Parliamentary Divisions in London and four from the City of London,[3] holding office for three years. In addition, there are twenty Aldermen, who are elected by the Councillors and hold office for six years, half their number retiring every three years. The Aldermen need not be Councillors, but must be qualified for election as such.[4] The Council elects its Chairman, Vice-Chairman, and Deputy-Chairman annually.[5]

The Council, like all local authorities, works through Standing Committees, each dealing with a particular local government service, such as education, finance, housing, etc.[6] Matters of exceptional importance and principle are reserved for the decision of the Council. A very active member of the Council (Sir Percy Harris) says that, though the Council is a large body, the amount of work is so great that it is difficult to man the Committees. The minimum of time demanded by the work of the Committees is three half-days a week per member. In addition to the statutory duties enforced by the major Act of 1888 and subsequent enactments, the Council has to be represented on a number of outside committees, such as the Port of London Authority, the London and Home Counties Traffic Advisory Committee, the London and Home Counties Joint Electricity Authority, etc.

[1] It is now a part of the Public Assistance district comprising the City, Stepney, and Poplar.

[2] £8,368,000 in 1929–30. The penny rate brought in £33,800.

[3] Section 40 (4) of the Local Government Act, 1888, stated that the number of County Councillors was to be double that of the Members of Parliament for London; the number of Aldermen was not to exceed one-sixth of the whole number of Councillors. Up to 1918 there were only 59 M.P.s for London (with 2 for the City) so that there were 118 County Councillors and 19 Aldermen. The redistribution of seats in the Representation of the People Act, 1918, increased the number for London to 60, plus 2 for the City, so that we now have, following paragraph 5 of the Sixth Schedule to that Act, 120 Councillors and 20 Aldermen.

[4] The practice is for the various parties on the Council to nominate Aldermen in proportion to their elected members. The Aldermen are, as a rule, co-opted from outside the Council.

[5] Lord Rosebery was the first Chairman, with Sir John Lubbock (afterwards Lord Avebury) as Vice-Chairman, and Mr. Firth, M.P., as Deputy-Chairman.

[6] See below, p. 493.

The Council's Civil Service. The staff of the County Council, including those officials transferred from the old Poor Law administration and Metropolitan Asylums Board, consists of about 83,350. About 26,000 of these are concerned with the new public assistance administration. The administrative, clerical and technical staff comprises about 7,700 officials; teaching gives work to 20,275 men and women teachers, while 480 officials do the school medical and nursing work and 3,780 the schoolkeeping and cleansing work. The parks give employment to 1,300 parkkeepers and gardeners, the tramways to 13,000 motormen, conductors, mechanics, etc., the fire brigade to 1,900 uniformed men, main drainage to 2,000, housing estates to 1,414, mental hospitals to 5,300 doctors, nurses, etc., and inspection to 150. The practical public assistance work is done by a medical staff of 690, a nursing staff of 9,500, a domestic staff of 6,400, hospital porters numbering 1,340 and others numbering, in all grades, about 6,000.

There are seventeen departments in the Council: the Clerk of the Council, the Comptroller, Chief Engineer, Architect, Solicitor, Fire Brigade, Public Health, Valuation, Estates and Housing, Public Control, Parks, Tramways,[1] Education Officers, Supplies, Parliamentary, Mental Hospitals and Public Assistance. The professional departments, as a rule, carry out all the duties required of that profession throughout the Council's work; for example, the architectural work in housing, education, hospitals, public assistance institutions, etc., is performed by the Architect's Department. The co-ordination in staff matters is secured by the Clerk, who has to report to the Council's establishment Committees on all matters concerning appointments, dismissals, promotion, superannuation, salaries, etc.; he does not, however, have to report upon the appointment, etc., of teachers, instructors and examiners in the L.C.C. schools and institutes.

The number of the staff of each grade is fixed by the Council, and is reviewed annually, following upon the reports and recommendations of the heads of departments and the departmental committees appointed to make periodical examinations regarding organization and efficiency.

Broadly speaking, the Council's service is divided into three main categories: (*a*) the administrative and clerical staff, (*b*) the technical and professional staff, and (*c*) the operative staff.

The administrative and clerical staff is recruited mainly by examination. The general grade for routine and lower administrative work is recruited from boys and girls between 16 and 18 who sit for an examination of matriculation standard. Selection (by a Committee comprising the Clerk of the Council, the Chairman of the Establishment Committee and a head of a department) is made on the basis of the examination results; if a candidate merits a place by his position in the examination, it requires unanimity on the part of the Selection

[1] But see Note on p. 499.

Committee to refuse him the position. In this grade, the men start at 30*s*. per week and rise, by yearly increments, to a possible maximum of £6 per week; women commence at 24*s*. per week and rise to a possible maximum of £5 per week. The higher administrative staff is recruited by competitive examination from, principally, men and women of about 21 who have been about five years in the Council's service; the examination is of a slightly higher standard than the intermediate degree examination. A few university graduates can enter by examination; their ages vary between 21 and 24. External candidates can also sit for the ordinary examination. From this grade onwards, there is equal pay for equal work, irrespective of sex. First-class assistants, the lowest rank in this grade, commence at £160 (or more if they are already in the service and are earning more than that) and rise to a possible maximum of £500 per annum. Senior Assistants get from £500 to £650 per annum, and Principal Assistants from £650 to £850 per annum. University graduates commence work for the Council at £225 per annum. Of the other grades in this category, law clerks, recruited from men and women with at least five years' practical experience in practical conveyancing in London offices, obtain a minimum salary of £3 10*s*. per week and rise to a possible maximum of £500 a year. Typists, all girls, are recruited by examination, of first school examination standard.

The technical and professional staff is recruited from selected candidates, with proper qualifications, who apply as the result of advertisements. The staff is graded like the higher administrative division and paid accordingly.

The operative staff (i.e. the men and women doing the practical work—in the parks, tramways, schoolkeepers, etc.) are chosen from a continuous list of applicants for the different positions, kept in each department, as vacancies occur.

The conditions of service in the Council are very similar to those in the national Civil Service. Everybody appointed to the *personnel* of the Council is on a year's probation, after which he retains his position at the pleasure of the Council; dismissals are seldom made, except for gross incompetence or misbehaviour. Pensions are secured by the well-managed superannuation fund. Marriage puts an end, in the vast majority of cases, to a woman's contract of service. Throughout the service, except in the fire brigade's uniformed staff, promotions are based on merit, coupled with experience; seniority, with the one exception, has been abolished. Professional and technical men can be promoted without a minimum five years' service in any class. Thus, generally speaking, the Council's service offers a secure career for intelligent men and women. The Council and its Clerk, Sir Montagu Cox, have a well deserved reputation for an enlightened policy regarding their staff.

The Metropolitan Boroughs. The twenty-eight Metropolitan Borough Councils were constituted in 1899 by the London Government Act. The Councils consist of a Mayor, Aldermen and Councillors. The Councillors are elected triennially *en bloc*, and vary in number according to population, under the Act of 1899. The Aldermen number one-sixth of the number of Councillors, and are elected by the Councillors for six years from among themselves or from among persons qualified to be Aldermen or Councillors of the Boroughs. Half their number retire every three years. The Mayor is elected from the body of the Council or from among persons qualified to be Aldermen or Councillors of the Borough. Councils usually meet monthly, and operate very similarly to Municipal Boroughs generally. Their chief officers are the town clerk, accountant, treasurer (in some cases the latter two posts are joined together), surveyor, engineer, medical officer of health, public analyst, sanitary inspector, and librarian.

Distribution of Powers. Now the broad principle underlying the distribution of powers and duties between the London County Council and the Borough Councils is that all those powers and duties which require uniformity of action throughout the whole of London (e.g. education) are administered by the County Council and those which can be locally managed are vested in the direction of the Borough Councils.[1] The Local Government Act, 1888, transferred to the London County Council the administrative services previously carried out by the Justices in Quarter Sessions or out of Sessions and the powers and duties of the Metropolitan Board of Works.[2] The former included the making and levying of rates, the management of County buildings, works and property, the licensing of theatres for stage plays, music and dancing (subject, in certain specific areas, to the final sanction of the Lord Chamberlain),[3] the licensing of race-courses within the administrative county,[4] the provision of pauper lunatic asylums, the provision and maintenance of reformatories and industrial schools, bridges and roads reparable with bridges, the execution of the Acts relating to destructive insects, and weights and measures. The latter class of powers and duties comprise those relating to main drainage,

[1] The London Government Act, 1899, the Local Government Act, 1929, Sect. 64, and Transfer of Powers Order, 1933, enable the Minister of Health, on the application of the County Council and a majority of Borough Councils, to make a Provisional Order transferring to all the Borough Councils any power exercisable by the County Council and *vice versa*.

[2] *R.C. on London Government: Minutes*, Part I, p. 3.

[3] The Theatres Act, 1843, limits the jurisdiction of the Lord Chamberlain to the Cities of London and Westminster, the Borough of Finsbury and Marylebone, the Tower Hamlets, Lambeth and Southwark. Outside these areas, the L.C.C. has complete jurisdiction. The London County Council also licenses premises under the Cinematograph Act, 1909 (except as regards premises licensed by the Lord Chamberlain for the performance of stage plays), and under its General Powers Act, 1930, for public boxing.

[4] Alexandra Park, the sole "London" race-course, is in Middlesex, and is licensed by the Middlesex County Council.

new streets and street improvements (Metropolitan in character), buildings and building lines, Thames bridges, tunnels, and embankments, parks and open spaces,[1] tramways,[2] fire brigade, workmen's dwellings, public health and sanitation, contagious diseases of animals, and certain borrowing and lending powers. Unlike other County Councils, the London County Council has no control over main roads (although it can name them) or the police. Its medical officer is responsible for collating the reports of the Borough medical officers, and he reports on the health of the whole County. The County Council also enforces the provisions of the Employment of Children Act, Midwives Acts, 1902 to 1918, the Motor Car Act. It is responsible also for the clearance and improvement of insanitary areas where these are of sufficient general importance to the County; in other cases the Borough Councils exercise their powers under the Housing Acts. Education throughout the whole County is controlled directly by the London County Council, through a Statutory Committee of fifty members, to which all powers except the power of raising a rate or borrowing money stand referred.[3] The London County Council appoints representatives on a number of other bodies, including the Port of London Authority, the Metropolitan Water Board, the London and Home Counties Joint Electricity Authority, etc. Except in the City of London, as described above, the London County Council administers the following duties general to County Councils, such as gas examination, provision of mental hospitals, enforcement of the Shop Hours Acts, regulation of offensive trades, Explosives Acts, Petroleum Acts, weights and measures and appointment of coroners. The London County Council also, since the Local Government Act, 1929, is the Public Assistance authority for the whole of London.[4] Under the Municipal Corporations Act, the Council has the power to make bye-laws over a wide range of services for the good rule and government of the County of London.[5]

The powers and duties of the Metropolitan Borough Councils are

[1] 128 in number, comprising 5,426 acres.

[2] The London County Council regulates the speed of tramcars, subject to the powers of the Ministry of Transport under the London Traffic Act, 1924. The individual Borough Councils have power of preventing the construction of tram-lines on their streets. The Tramways Act, 1870, gives the London County Council complete authority over tramways, subject to the veto regarding the construction of new lines exercised by the Metropolitan Borough Councils.

[3] Education Act, 1921.

[4] A joint scheme relating to the diagnosis and treatment of venereal disease is operated within Greater London. The London County Council works in conjunction with the County Councils of Bucks, Essex, Herts, Middlesex, Surrey and Kent, and the County Borough Councils of East Ham, West Ham and Croydon, and under the scheme London hospitals specified in the scheme are utilized in common by all these authorities. (*Royal Commission: Minutes*, Part I, p. 34.)

[5] But the City of London makes its own bye-laws. Those made by the Metropolitan Borough Councils under the Municipal Corporations Act of 1882, must not conflict with any made by the County Council.

defined by the London Government Act, 1899, and subsequent amending Acts. The former Act transferred to them practically all the powers and duties of the old vestries and district boards.[1] It also granted them new powers, hitherto exercised by the London County Council.

The Metropolitan Borough Councils are responsible for local health and sanitation (under the Public Health (London) Act, 1891),[2] and consequently administer local sewerage and drainage,[3] sanitation of premises, including factories and bakehouses, the Sale of Food and Drug Acts, inspection of milk, the establishment of tuberculosis dispensaries, and the enforcement of their own and the L.C.C.'s bye-laws regarding health and sanitation. They exercise powers and duties under the Housing of the Working Classes Acts and under adoptive Acts such as those relating to baths and wash-houses and burial facilities; they administer the notification of births and maternity and child welfare clinics. Finally, they maintain, pave, water, and cleanse all streets, except County bridges and the Thames embankments, which are cared for by the London County Council. They remove refuse, enforce provisions regarding infectious diseases, abate nuisances,[4] and perform all the duties common to Municipal Boroughs outside London, such as the provision of public libraries, lighting, markets, etc.[5]

While, therefore, the Metropolitan Borough Councils share many powers and duties with the London County Council they occupy a generally subordinate relation to the latter body. Their bye-laws must not be inconsistent with those made by the London County Council.[6] The latter hears appeals from orders made by Metropolitan Borough Councils, under the Metropolis Management Acts and the Public Health (London) Act, 1891[7]; under Section 100 of the latter

[1] Powers and duties enforced by the Metropolis Management Acts, the Public Health Act, 1875, the Public Health (London) Act, 1891, the London Building Acts, and local Acts.

[2] The position with regard to the public health services in London is, broadly speaking, as follows. The London County Council is the principal public health authority in the whole of the administrative county, though its powers are rather restricted within the City of London. The London County Council exercises certain powers of supervision and control over the administration of the public health services of the Boroughs, and to a much smaller extent, of the City Corporation. (*R.C. on London Government: Minutes*, Part I, p. 4.)

[3] But the administration of this service is subject to the bye-laws made or approved by the London County Council.

[4] The London County Council has power to make bye-laws under Section 16 (2) of the Public Health (London) Act, 1891, with reference to the removal of offensive matter, or liquid, cesspools and privies. It may apply for a magistrate's order to abate nuisances caused by a Borough Council in the removal and disposal of refuse.

[5] Their powers in respect of markets are restricted by the monopoly possessed by the City Corporation within an area with a radius of seven miles from the City boundary.

[6] The Metropolitan Borough Councils make their bye-laws under Section 23, Municipal Corporations Act, 1882, as applied by Section 16, Local Government Act, 1888.

[7] E.g. appeals lie to the County Council against a notice or act of a sanitary authority, other than the sanitary authority of the City of London (Sect. 126, Public Health (London) Act, 1891).

Act, it can take action in place of a sanitary authority in default regarding the removal of nuisances, the institution of proceedings, or the enforcement of bye-laws. All loans required by the Borough Councils must be sanctioned by the London County Council, subject to the right of appeal to the Ministry of Health.[1]

Finance. The Borough Councils prepare the valuation lists for the assessment of local rates, and are also responsible for their collection.

The government of a city of four and a half million citizens costs a vast sum.

The London County Council obtains its income in the following way:

TABLE III

L.C.C. SOURCES OF INCOME, 1935–6[2]

Sources	Amount £	Amount £
1. Receipts from other local authorities		1,212,101
2. Payments for services, costs recovered, etc.		1,912,304
3. Interest on Sinking Fund, cash balances, etc.		596,281
4. Rents, etc.		3,336,765
5. Tramway receipts (gross)		— [3]
6. Local taxes, licences, etc.		130,686
7. Exchequer Grants:		
Education		4,848,187
Other rate services		40,341
Housing		702,312
Local taxation licence duties		95,615
Other services		65,709
General Exchequer Grants:—		
County Apportionment	3,941,542	
Additional Exchequer Grant	38,533	
Total	3,980,075	
Payable to City Corporation and M.B.C.s	1,481,563	
Residue to L.C.C.	2,498,512	
Additional Exchequer Grant	172,760	
		2,671,272
8. Rates: General County		20,827,552
Special County		678,391
Total Income		£36,958,411

[1] In regard to these loans subject to the sanction of the London County Council, if the County Council refuses sanction or does not within six months after application made give sanction, or attaches conditions to the sanction, an appeal can be made to the Minister of Health, whose decision is final. (Sect. 4 (1), London Government Act, 1899.)

[2] *L.C.C., Local Expenditure and Revenue, 1935–6.* The General Exchequer Grant (i.e. the 'block' grant) is provisional.

[3] Cf. note p. 509 below.

Item 1 includes main drainage contributions from extra-London authorities, allowances for the education of extra-London scholars and students, interest on advances, etc. Item 2 includes school and examination fees, park bands, maintenance of various types of patients at mental hospitals, road fund licences expenses (recoverable from the Ministry of Transport), repayment of housing advances, etc. Items 3, 4 and 5 are self-explanatory. Item 6 includes contributions from fire insurance offices and licence fees for gas-meter testing, weights and measures, employment agencies, etc. Items 7 and 8 explain themselves.

Grants-in-aid. The governing authorities of London fall under the same general principles regarding grants from the central authority as other local authorities.

Rates. All rates in London, whether Borough or County, are collected by the Metropolitan Borough Councils and, in the City, by the City Corporation. These latter bodies act as intermediaries for the rates levied by the authorities entitled to levy central rates in London.[1] Valuation is administered by the Boroughs and the City. We shall examine several representative demand notes of Borough Councils, and in explaining their details, we shall, at the same time, be explaining how the rates of the central authorities, particularly the London County Council, are levied and collected.

It should, however, be noted that the position of the central rating authorities was radically altered by the Local Government Act, 1929, which came into force on 1 April 1930. This Act abolished the Boards of Guardians, the Metropolitan Asylums Board and the Central (Unemployed) Body, and transferred their powers and duties to the London County Council. Their rates are now merged in the County rate levied by the latter body. The Metropolitan Common Poor Fund and the Equalization Fund (a full account of which is given later) were abolished as no longer necessary. Thus to-day only the London County Council, the Metropolitan Police Receiver and the Metropolitan Water Board may levy central rates.[2]

The expenditure of the London County Council 1935–36 is shown in Table IV on opposite page.

The net charge, after a credit balance of £627,849 was deducted, was met by £21,372,812 from the County rate and £2,594,127 from General Exchequer grants.

The explanation of the items of expenditure in Table II is this. The item ' Public Assistance ' explains itself. The item ' Rate services

[1] Up to 1 April 1930 these were: the London County Council, the Receiver of the Metropolitan Police, the Ministry of Health (Metropolitan Poor Fund), the Metropolitan Water Board, and the Central (Unemployed) Body.

[2] The Special County rate and the Metropolitan Police rate are not levied on the City of London. In place of the latter, a City Police rate is levied by the City Corporation as part of the City's General rate. The services charged outside the City on the Special County rate are administered in the City by the City Corporation.

TABLE IV

L.C.C. SUMMARY OF EXPENDITURE, 1935–6 [1]

Sources	Total Expenditure	Income Applicable to Service	Net Charge
	£	£	£
1. Public Assistance	6,702,884	852,179	5,850,705
2. Rate services (without public assistance and education)	10,370,013	970,332	9,399,681
3. Education—Elementary	9,634,391	3,628,755	6,005,636
Higher	3,244,953	1,682,452	1,562,501
4. Mental hospitals	393,149	256,309	136,840
5. Housing	4,196,601	3,745,484	451,117
6. Revenue producing services	(Tramways transferred to L.P.T.B. in 1930–1—revenue was £4,376,829)		
7. Consolidated Loans Fund (Income Account)	1,788,571	1,855,961	+ 67,390
Total Expenditure	£36,330,562	£12,991,472	£23,339,090

(without education),' consists of the various health services administered by the County Council, the public amenities (baths, museums, etc.), the regulative services (Shops Acts, building regulations, weights and measures, gas-testing, etc.), the protective services (justice, reformatory schools, fire brigade, ambulance service, etc.), the transit services (highways, traffic control, etc.), and general administration and relief of unemployment (general administration, Parliamentary expenses, and miscellaneous services, etc.). The income for these specific services (chiefly receipts in aid and Exchequer grants) was very much smaller than the total expenditure upon them, so that a large part of the money raised by the County rate went to make up the deficit. The item 'Education' shows that the income for the elementary and higher educational services (Exchequer grants, etc.) amounted to only half the total expenditure, the balance being paid for out of the County rate. Similarly, the Mental Hospitals Account, although, in this case, a small net surplus was realized. Until the transfer of the L.C.C. tramway system there was an annual revenue and expenditure of some £4·4 millions on revenue producing services.[2] Finally, the Consolidated Loans Fund (Income Account) shows that the income (derived principally from the interest on Sinking Fund investments, on cash balances, etc., rents, and grants from the Unemployment Grants Committee) was considerably larger than the total net disbursements. The County rate for 1935–6 was 7*s*. (divided into 6*s*. 9½*d*. for General County purposes and 2½*d*. for Special County purposes), which raised £21,372,812.

[1] Extracted from *L.C.C., Local Expenditure and Revenue, 1935–6*.

[2] Cf. Note at end of chapter.

The basis of valuation for rating purposes in London is different from that in the provinces. The Valuation (Metropolis) Act, 1869, governs London regarding the practice of assessment, as amended by later Acts; these are known collectively as the Rating and Valuation (Metropolis) Acts, 1869 to 1932.[1] The principal amendment to the 1869 system of valuation occurred in 1925, as the result of a Conference of Metropolitan Assessment Committees held early in the year, where it was urged that the Valuation (Metropolis) Act, 1869, required immediate amendment. The trouble was that the deductions made from the gross or assessable value of rateable hereditaments in order to determine the rateable value were regulated up to 1925 according to the provisions of Section 52 of and the Third Schedule to the Act of 1869, and were far from being fair to the owner of rateable property. The deductions contained in this Schedule were far more relevant to 1869 than to the twentieth century. The Valuation (Metropolis) Amendment Act, 1925, amended the method of estimating the rateable value of hereditaments in London. The Rating and Valuation Act, 1928 (Sect. 1), exempted from assessment in London those classes of machinery and plant which had already been exempted in the rest of the country by Section 24 of the Rating and Valuation Act, 1925. It also provided a new scale of statutory deductions regarding houses and buildings in London, for the duration of the quinquennial valuation lists which came into force on 6 April 1931, but not for subsequent valuations. The assessment committees prepare supplemental valuation lists each year between the quinquennial lists.

Analysis of Rates. Taking 1929–30 as our basis, this being the first year after most of the reforms of the Act of 1929 came into operation, it is interesting to survey London rates by reference to typical Metropolitan Boroughs.

The rates levied by the Borough Councils and the City of London Corporation are more or less similar, as a uniform form of demand note is prescribed for London by an Order of the Ministry of Health (March 1912). The items, taking 1929–30 as a typical post-Local Government Act, 1929, year, except as far as Public Assistance is concerned, are arranged as follows:

[1] The purpose of the Valuation (Metropolis) Act, 1869, was to secure uniformity as far as possible in the assessment of all rateable hereditaments in London. Until 1 April 1931, the gross value in the Valuation List was conclusive for the purpose of the assessment of income tax (Schedule A). This was peculiar to London, since assessments for income tax outside London were and are revised in pursuance of the Finance Act, 1922, and generally agree with the existing rents paid. Sect. 31, Finance Act, 1930, severed the connexion which had existed in London.

TABLE V

Rates of Representative Metropolitan Boroughs, 1929–30

Rates	Battersea	Kensington	Poplar	St. Marylebone
	d.	*d.*	*d.*	*d.*
County Council Expenses				
General County	16·27	16·14	17·34	15·91
Special County	3·15	3·12	3·36	3·68
Education—Elementary	21·18	21·02	22·59	21·36
Higher	5·79	5·76	6·18	5·85
Total L.C.C. Rates	46·39	46·04	49·47	46·80
Equalization Charge	—	1·44	—	3·22
Police	11·63	12·02	12·38	11·46
Guardians	31·87	35·10	61·06	32·56
Central Unemployed Body	—	—	—	—
Total—Authorities Outside Borough Council	89·89	94·60	122·91	94·04
Borough Council Expenses				
House Refuse, Street Cleansing, etc.	21·35	8·36	9·75	6·75
Lighting	4·33	2·24	5·23	2·00
Streets—Paving, etc.	11·61	7·08	32·30	4·25
Sewerage	6·79	0·60	3·51	0·56
Baths and Wash-Houses	5·07	0·46	6·42	0·38
Burial Acts	0·71	0·36	—	—
Public Libraries, etc.	4·30	1·00	2·82	0·43
Housing Acts	1·37	0·82	2·83	0·17
Sale of Food and Drugs Act	0·26	0·04	0·18	0·06
Other Expenses	9·54	4·86	34·80	5·36
Cost of Collection*	(1·11)	—	(1·98)	(0·77)
Totals are added in a note for 1936–7.[1]	65·33	26·40	97·34	19·96
Less Equalization Grant	5·22	—	8·25	—
Total Borough Council	60·11	26·40	89·09	19·96
Total General Rate	12*s.* 6*d.*	10*s.* 1*d.*	17*s.* 8*d.*	9*s.* 6*d.*

* Cost of collection, where bracketed, already included in other items.

1	Battersea	Kensington	Poplar	St. Marylebone
	s. *d.*	*s.* *d.*	*s.* *d.*	*s.* *d.*
Expenses Borough Council Net	4 1·95	1 11·98	7 10·91	1 3·73
Expenses L.C.C.	7 6·00	7 9·44	7 9·77	7 9·07
Police	11·31	11·74	11·79	11·70
Sect. 100 Local Govt. Act 1929	(—) 5·26	(—) 1·16	(+) 15·53	(—) 1·50
General Rate	12 2	10 8	18 0	9 11

These four Metropolitan Boroughs are a fair sample for London—Poplar for the purely working-class boroughs, Battersea for the semi-working, semi-middle class boroughs, and Kensington and St. Marylebone for the richer residential and business boroughs. The London County Council rates are clearly similar, the variations being due to different costs of collection, etc. These rates are determined centrally (on the basis of the total rateable value of London), each borough contributing its share according to its rateable value. Likewise with the Police rate. Two out of the four boroughs had to pay a net contribution to the Equalization Fund, explained more fully below, while the other two received a net grant. The wide disparity between the Poor Law rates, in spite of the Common Poor Fund,[1] demonstrates the inequality of the Poor Law burdens which existed in London before the Local Government Act of 1929 reformed the Administrative system, and, when the disparity of rateable value is allowed for, demonstrates that 'Poplarism' implied in reality that Poplar was sinned against, not, as has been so often and so falsely claimed, that Poplar sinned.

The rateable values of the Metropolitan Boroughs vary enormously,

TABLE VI †

Borough	Net Product per 1*d.* Rate	Rateable Value	Population *	Rates Levied
	£	£		*s.* *d.*
Poplar	3,441	867,400	155,090	17 8
Bermondsey . . .	4,434	1,102,020	111,540	16 0
Islington	8,901	2,139,760	321,790	10 6
Lambeth	9,329	2,242,000	296,150	10 6
City of London . .	32,961	8,368,600	10,999	9 4
Westminster . . .	40,625	9,612,210	129,580	8 11

* Population as at Census, 1931 (County of London Report).

† See Additional Notes, p. 524, at Chap. XXI, p. 500, Table VI.

[1] The Metropolitan Common Poor Fund was created by the Metropolitan Poor Act, 1867, and administered by the Ministry of Health, and before it, the Local Government Board and the Poor Law Board. Each Poor Law union in London was credited with grants in respect of its expenditure on certain services and was debited with its rateable value proportion of the total of the sums so credited. A balance was struck between these amounts in respect of each union and a net charge levied, or a net grant paid, as each case might require. The terrific increase in unemployment after the War, particularly in London boroughs like Poplar, Bethnal Green, etc., and industrial centres in the provinces, led to emergency measures being passed to enable the overburdened Poor Law authorities to continue operating. The Local Authorities (Financial Provisions) Act, 1921, the Local Authorities (Emergency Provisions) Act, 1923, and several succeeding Acts of a similar nature, considerably increased the amount of indoor and outdoor relief, making the expenditure in London chargeable on the Common Poor Fund until 1 April 1930. The Local Government Act, 1929, abolished the Common Poor Fund as from that date, and to-day the Poor Law services are all administered by the London County Council, being charged on the General County Account.

and this variation is reflected in the net product of the 1*d.* rate in each borough. The following table, if carefully examined, provides an adequate answer to those people who affect indignation regarding the alleged 'extravagance' of the poorer borough councils. The table shows the rateable values, the net product of the 1*d.* rate, the population, and the rates levied, in 1929–30 of the two boroughs with the highest poundage, two with the lowest, and two with the average poundage.

The disparity of riches and poverty is striking. The poorest boroughs are Poplar, Bermondsey, Bethnal Green, Deptford and Stepney; the richest are Westminster, the City of London, St. Marylebone, Holborn, and Kensington. A very poor borough like Poplar has to spend a very large part of its local rates on the health services —house refuse, street cleansing, paving, etc.—amounting to a considerable sum. Neither Kensington nor St. Marylebone spend anywhere near as much on their health services, in spite of their far larger rateable values. The reason is clear. Poplar has slums, overcrowding, poverty and sickness, requiring a far greater expenditure on essential services in proportion to rateable value than either of these two rich boroughs. 'Extravagance' is a relative term.[1]

Parliament early recognized this problem of poverty side by side with plenty in one civic unit, and established an Equalization of Rates Fund to ease the burden of the poorer boroughs. This Fund was created by the London (Equalization of Rates) Act, 1894. It operated as follows. The London County Council formed a fund every year equal to a rate of 6*d.* in the £ on the assessable value of London, including the City of London. Each parish had to contribute to this Fund in proportion to its assessable value. The grant due to each parish was determined by apportioning the Fund among the boroughs (or where there was more than one parish in a borough, among the parishes) in proportion to their population. Balances were then struck and a net charge levied on, or a net grant paid to, the borough council. The borough councils with more than one parish shared out the net charge or net grant among them on the basis of the assessable value as against the population of each parish. One parish might thus have a net grant, whilst another in the same borough might have to make a net contribution to the Fund.[2] The Equalization Fund was abolished by the Local Government Act, 1929, Sect. 98, and ceased to operate as from 1 April 1930. The reason given for its abolition was that the centralization of the Poor Law and its transfer to the London County Council has relieved the poorer boroughs

[1] The City of London Corporation spent £28,220 in 1930–1 on Mayoral expenses, banquets, etc., as much as Poplar spent on a large number of essential local services added together.

[2] Usually all the parishes in a single borough received a net grant or paid a net contribution.

of their inequitable burdens to a considerable extent. No borough, not even the very rich ones, with the exception of the City of London, had to provide a rate exceeding 5*d.* in 1929–30; on the other hand, very few boroughs received a rate-equivalent of more than 6*d.*, the exceptions being Poplar, Bethnal Green, Camberwell and Deptford.[1]

The incidence of the Equalization Fund was fairly even and was no real index to poverty; the Common Poor Fund on the other hand demonstrated the heavy burdens of the Poor Law in Poplar, Bethnal Green, Bermondsey, Stepney, Deptford and Southwark, to name the six poorest boroughs, and the relative freedom from poverty in the City of London, Westminster, Kensington, St. Marylebone, Holborn and Hampstead, to name the six boroughs with the highest equalizing Poor Law charges. In the last year of the Common Fund's operation, Poplar received a rate-equivalent of 9*s.* 4¼*d.*, Bethnal Green 6*s.* 6¾*d.*, and Bermondsey and Stepney a trifle under 4*s.* each; on the other hand, the City of London paid away 1*s.* 10½*d.* and Westminster 1*s.* 8*d.*, very large amounts having regard to their high rateable values. The Common Poor Fund was, to say the very least, a far more equitable compensatory fund than the Equalization Fund ever was, because it did take a real index like the Poor Law burden as its basis.

The income and expenditure of the City of London are of a large magnitude. Consider the following table showing a summary of the accounts of the City in 1930–1, the latest year for which full details are available:

TABLE VIII

1935–6

Income	£	Expenditure	£
Rates	949,479	Estate Management	171,831
General Exchequer Grants	54,877	Public Works	671,639
Specific Exchequer Grant	129,656	Justice	74,503
Local Taxes	173,220	Police	518,998
Receipts from Corporation property, trusts, etc.	1,150,565	County Services administered by City Corporation	100,523
		Local Services	363,245
		Special Services	234,417
		General Administration, etc.	301,515
		Surplus	21,126
	£2,457,797		£2,457,797

The item 'Public Works' includes bridges, street improvements, markets, parks and open spaces, etc. 'Justice' includes the costs of the Mayor's and City of London Courts, Magistracy, etc. 'County Services' comprise those services usually administered by the London County Council in the Metropolitan Boroughs and paid for by the Special County rate, namely, patients in mental hospitals, juvenile

[1] *London Statistics*, 1928–30, p. 433.

offenders, Shops Acts, dangerous structures, gas-meter testing, etc. 'Local Services' are self-explanatory. 'Special Services' include the cost of the Port of London Sanitary Authority (i.e. the City Corporation), education, expenditure for mayoralty, state, and civic purposes, ambulances, etc.

Operation of the London County Council.[1] The London County Council works through Committees. These are divided into Standing Committees, permanently supervising some public service or other, and Special Committees, appointed, usually for a limited period, to deal with special work.

The larger standing committees are split up into many different sub-committees, owing to the pressure and quantity of work to which they are subject. The statutory Education Committee, for example, doing probably the heaviest single block of work which has to be done by the Council, is divided up into many sub-committees, each dealing with a separate aspect of the service, such as elementary education, higher education, etc. The new Public Assistance Committee, set up by the Act of 1929, is a vast affair, directing the London Poor Law administration, the duties of the defunct Metropolitan Asylums Board,[2] and other work. This Committee is split up into four sub-committees, to which a large number of powers are delegated; the sub-committees are also empowered to set up sub-committees dealing with various aspects of the Poor Law system.

In addition to these big and important committees, there are the following:

Finance
General Purposes
Building Acts
Central Public Health
Housing
Local Government Records and Museums
Fire Brigade
Highways (including Tramways)
Main Drainage
Establishment (Staff Co-ordination)
Parliamentary
Public Control (weights and measures, shops, etc.)
Parks and Open Spaces

[1] See London County Council, *Standing Orders of the Council*, in operation as from 12 March 1931; also *Municipal Organization*, by Montague Cox (1922). A Special Committee has been appointed to examine the adequacy of the Council's procedure to its present tasks.

[2] Set up in 1867 to administer the London hospitals for the infectious sick. It maintained 14 large fever hospitals, 2 institutions for venereal diseases, 7 for tuberculosis, 5 mental hospitals, 2 training colonies for feeble-minded persons, one colony for sane epileptics, and a training-ship for boys. The Act of 1929 abolished it, passing its duties over to the new Public Assistance Committee.

Entertainments
Improvements
Stores and Contracts
Town Planning
Midwives Act
Appeal (under Metropolis Management and other Acts).
Asylums and Mental Deficiency.

Most Committees meet fortnightly. The sub-committees of the more important Committees also meet, generally, once a fortnight. But meetings are held every day, so that the time of the member who is on, say, three Committees with the appropriate number of sub-committees, and occasionally a Special Committee, is fully occupied. Many members of the Council with a large amount of leisure work on five days a week, but the average is three days a week.[1]

The Council itself meets every Tuesday at 2.30 p.m., except in the recesses. The Standing Orders provide that at 7.30 p.m., if it is still sitting, it should rise automatically. Unopposed business is taken after that time, but no opposed business is taken after 7.30 p.m. Before the War the Standing Order was often suspended owing to opposition to important business, but now business is quickly dealt with. Indeed, the Councillors frequently get away at 5 or 6 p.m. The Standing Orders are occasionally suspended before the recess in order to finish matters which may be of special importance and which cannot wait over. The recesses consist of the whole of August and September, broadly speaking, four weeks at Christmas, four weeks at Easter, and three weeks at Whitsuntide.[2]

Although the Council is very jealous of losing any of its powers,[3] delegation of powers to committees is unavoidable in an almost purely administrative body like the London County Council. Were the Council to attend to and make decisions regarding all matters coming under its jurisdiction, it would have to work day and night all the year round without getting through half of its work. There has thus been evolved a system of reporting decisions periodically from the Committees to the Council, but this, while apparently satisfying the fierce desire of the latter to retain all authority and power, does not prevent a very large practical delegation of powers to the Committees. Before the War, the protracted sittings of the Council, owing to its having to discuss and decide upon an endless variety of questions, many of which were not of any great importance, led to the appointment of a Special Committee of Procedure, under the chairmanship of Sir George Goldie, which reported in July 1913. The result of its

[1] *R.C. on London Government: Minutes*, Part II, p. 113 (Mr. Norman).
[2] Ibid., p. 107 (Mr. Norman). [3] Ibid., p. 108 (Mr. Norman).

inquiries was that the Council decided to delegate decisions on a large class of questions which did not appear to the Committee or the Council to be sufficiently important to bring before the Council itself: it reserved to itself only 'matters of principle' which it carefully defined by Standing Order No. 524; it reserved to itself any system of delegation of powers to sub-committees; and the number, appointment, pay and conditions, and discharge and dismissal of the fixed staff. As a consequence the reports of the Committee are divided into two classes; those which are always on the agenda of the Council for discussion at its sittings, referring to the work of those committees requiring the approval or sanction of the Council; and, secondly, those which submit Quarterly Reports, giving information about their delegated work.

The evidence submitted to the Royal Commission on London Government proved that the greater part by far of the matter on the agenda of the Council Meetings is customarily taken as read.[1] The point of principle on which the Council very firmly insists is debate in full Council upon tenders for public contracts, for it believes that delegation of the power of acceptance or refusal to the committees would undoubtedly make such matters private and therefore suspect.

The amount of delegated work done and the number of decisions made by the committee (and in the big committees, by the sub-committees) are tremendous. To take an example, the Education Committee submit Quarterly Reports on work done, which the Council very seldom troubles to question; at least, most of the educational matters put down in the Council's agenda, usually comprising many closely printed pages, are scarcely ever contested. Yet the Council is determined not to delegate so many powers to the Education Committee as to make it *the* Education Authority in reality.[2] What delegation really amounts to in the eyes of the Council is this: the committees are permitted to exercise real authority on almost all their work, and then their decisions are subject, in the final place, to a veto of the Council—*if their decisions are contested* by (*a*) members of the Council representing an electoral division specially affected, or (*b*) any ten members of the Council, or (*c*) any number of members of the committee present not being less than one-fourth of such number to require that the resolution shall be submitted as a recommendation to the Council at the next available meeting (S.O. 138). The delegation of powers is real; in almost every case the Council is a rubber stamp authority, and it could not be otherwise.

The present position, then, with regard to the delegation of powers is broadly this. The vast majority of the powers of the London County Council are explicitly delegated to the committees, these reporting on their work and decisions to the Councils at stated periods (only

[1] Ibid., pp. 107–9. [2] Ibid., p. 109.

occasionally for its approval, which is usually given without comment). But there are safeguards regarding matters of principle, sub-delegation, and staff, and guarantees for the dissenting minority; the London County Council gives its Committees the substance of real decision while retaining to itself the final authority in critical cases. The Council has a carefully planned series of Orders (271 to 304) designed to serve economy. It makes the Statutory Finance Committee (under the Act of 1888) the central organ to which must come the Estimates in the form it prescribes from the various Committees. These prepare the Estimates in consultation with the Comptroller, and under the general direction that they may only include expenditure 'for expenditure involved in principles approved by the Council'. The Finance Committee is directed 'to have regard to the maximum amount which in their opinion the Council should seek to spend in the year'. The Finance Committee then reports the Estimates to the Council.

The Area of London Government. It is in magnitude that the problems of the London County Council differ from other County and County Borough Councils; and outstanding among the problems is that of the area of government. Is the present area of the administrative County of London, including the City of London, the best possible from the point of view of efficiency and economy?[1] Is not the tangle of relations between the London County Council and the manifold local government authorities in extra-London so deleterious to the local government of Greater London as a whole that a centralized authority ought to be appointed for the whole area?

A Royal Commission was appointed in 1921 to '. . . inquire and report what, if any, alterations are needed in the local government of the administrative County of London and the surrounding districts, with a view to securing greater efficiency and economy in the administration of local government services and to reducing any inequalities which may exist in the distribution of local burdens as between different parts of the whole area'.

The London County Council demanded, briefly, that the area of its administration should be extended to one not smaller than the Metropolitan Police District and not larger than London and the Home Counties.[2] It maintained that the area under its jurisdiction was too restricted to enable certain powers which it already possessed to be efficiently exercised.[3] It also pointed out that the limits of the County had been disregarded, both by itself and by other authorities,

[1] The problem is succinctly stated thus: 'The area of the new Metropolis (i.e. the Metropolis created in 1855) was chosen simply because it happened to be an area which had been used for years by the Registrar-General for dealing with Metropolitan vital statistics.' *Minority Report* by Messrs. Donald and Walsh, Royal Commission on London Government, 1923, p. 147.

[2] *Report, Royal Commission on London Government*, 1923, p. 3.

[3] Ibid., pp. 7 and 151–2. For example, housing, public health, secondary and technical education, etc.

as well as by Parliament, for the purpose of administering particular local services.[1] In particular it encountered great difficulties in administering education, electricity supply, housing and transport.

The London County Council wanted to leave the determination of the extended area to compromise, but wanted an area big enough to satisfy, for example, its town-planning ambitions. It thought that the central authority of the extended area should control the water supply, wholesale markets, transport, roads, the Poor Law (for which service at that time the London County Council was not responsible) and, in addition, fire protection, town planning, housing, drainage, parks and open spaces, public health, education, and the administration of the Building Acts.[2] The local authorities within this area (the present 120 authorities or so would, of course, be considerably reduced in number) were to be entrusted with the most important powers possible, some powers being completely delegated, others subject to the supervision of the central authority.

Now, practically all the local authorities which appeared before the Royal Commission were unanimous in objecting to the proposals of the London County Council, particularly the County Councils in extra-London; their opposition was considerably influenced by the anticipated effect on their rates, many believing that, if they were to come under a central authority, an increase in their local rates would be bound to ensue.[3] Other authorities protested strongly against having to bear the cost of providing services for the people who came to live in the houses built by the London County Council within their areas.[4] The London County Council became exceedingly unpopular with the extra-London authorities.

Certain County authorities submitted an alternative scheme to the Royal Commission; this scheme proposed to entrust certain regional powers to a Joint Committee, consisting of representatives of the London County Council, the Metropolitan Borough Councils and the City Corporation, the County and County Borough Councils and the minor authorities within the area of the Joint Committee's jurisdiction.[5] The Joint Committee would deal mainly with town planning, garden city and housing schemes, and traffic problems.

The Majority Report recommended that the existing system should be retained, because the evidence submitted did not convince them that any greater efficiency or economy in the government of Greater London would be attained by any alteration of the existing system on the lines proposed by the London County Council.[6] It recom-

[1] Ibid., pp. 7–8. These services were: allotments and small-holdings, parks and open spaces, fire protection, housing, main drainage, public health, police, tramways and water supply. The London County Council owns, out of necessity, large housing estates at Dagenham, Becontree, Tottenham, etc.

[2] Ibid., p. 16. [3] Ibid., pp. 22–6. [4] Ibid., p. 34.

[5] Ibid., p. 38. The Herts and Middlesex County Councils supported this scheme.

[6] Ibid., p. 113.

mended, too, that the latter body, with the Metropolitan Borough Councils, and the City of London, should reconsider, under the powers which they possessed, the existing distribution of functions between them.[1] Its other important recommendation was to the effect that a small statutory advisory committee (the London and Home Counties Advisory Committee) should be set up to advise the appropriate Minister upon questions affecting London and extra-London in relation to transport, town planning, housing, and main drainage, within Greater London.[2]

The elaborate recommendations which it made regarding the equalization of rates in the London area have been rendered of no account by the reforms effected by the Local Government Act, 1929. The Poor Law system has been centralized, the Common Poor Fund and the Equalization Fund abolished (although there ought, on principle, to be an equalization of the burdens of the rates within London between the richer and poorer boroughs—to be attained only by centralizing many services now executed by the Metropolitan Boroughs) and a new system of Exchequer Grants instituted.

One recommendation of the Majority Report has borne fruit. The London and Home Counties Traffic Advisory Committee was appointed in 1924 to assist the Minister of Transport in connexion with the control of traffic, etc., within the area known as the London Traffic Area. This Committee has done very useful work in the few years that have passed since it was constituted.[3]

In addition to the Majority Report, there were two Minority Reports. The First Minority Report recommended that London should be split up into a number of County Boroughs, but that a central authority should administer some services, such as water supply, main drainage, tramways. It pointed out that 'if unnecessary multiplication of Authorities is to be avoided, and regard had to the principle of local government recognized in England generally . . . a body elected either directly or indirectly to deal with such matters, rather than separate Authorities to deal with each of them, would be expedient'.[4]

The Second Minority Report by the late Sir Robert Donald and Stephen Walsh, dealt with the problem in the most realistic manner of all. It energetically recommended the creation of a new central authority for Greater London, displacing all existing central bodies,

[1] Ibid., p. 114.

[2] *Report, Royal Commission on London Government*, 1923. On main drainage, it said (p. 64), '. . . it seems to us to be clear that in the districts surrounding London separate sewage disposal works have been established in many localities when greater efficiency and economy could have been secured in the first instance by combination between Local Authorities whose sewage would naturally have been taken by a single system. There are nearly fifty separate disposal works in the area with which we are concerned.'

[3] Donald, ibid.

[4] *Report*, pp. 138–9.

including the London County Council and the Metropolitan Asylums Board,[1] with a jurisdiction roughly equal to that suggested by the London County Council in its evidence before the Royal Commission.[2] But at the same time it urged that the minor local authorities should retain autonomy with regard to those functions which did not need a large-scale administration. In common with the London County Council, the Commissioners making the Second Minority Report felt that:

'We have had in view in all our recommendations the unity of London. We hold that Greater London is one and indivisible in all the essentials which constitute one great civic and urban community. It differs only from other large urban communities by its immensity. The problem of size as it effects local self-government is met by the dual municipal system, which does not differ in principle from certain phases of federalism in national government within the British Empire. Our scheme combines simplicity with respect for the dignity of local institutions. It should enable the citizen to take a keener interest in local affairs. He will more easily understand the system and conditions under which he is governed.'[3]

[1] Abolished by the Local Government Act, 1929.
[2] *Report*, pp. 204–7.
[3] Ibid., p. 207.

NOTE

By the London Passenger Transport Act, 1932, the tramways passed to the London Passenger Transport Board, which, as from 1 July 1933, assumed control over the underground, bus and tramway transport in Greater London. The governing body includes members appointed by trustees representing the L.C.C.

CONCLUDING OBSERVATIONS

IN what kind of a civilization does the system of Local Government operate? In face of the demands made by that civilization, what is the probable fate of the system?

Two outstanding qualities distinguish the modern world: it is economically acquisitive, and it is revolutionary. It is acquisitive in the sense that it regards it as an active purpose of supreme importance to screw up the amount of material wealth to the maximum while easing the conditions of work. The world is acquisitive for material riches in the intensest degree, far above all other goods. Then, secondly, the present generation is revolutionary in that it is extremely impatient for the goods it demands. Few people any longer accept a process of gradual evolution. Progress is no longer confided to the lucky operation of natural and social forces left to themselves. No! Life must be the subject of continual intensive propaganda from the Nursery School to the Newspapers, all must be controlled, purposively planned, and carried through swiftly—'in our own generation' is the now universal cry. Add these two together, that people want much and want it quickly, and the consequences for Local Government, as for all other aspects of liberty, may be easily guessed. It is interesting to analyse the consequences of each of these forces.

Acquisitiveness has brought with it, firstly, a disregard for liberty. We are all avid for liberty, for freedom from direction and control by other people. But liberty is not the *only* good—we often sacrifice it for other satisfactions. To-day most people are prepared to sell their liberty for material welfare; they may do it unconsciously, not realizing the ultimate consequences of their bargain; but they do it. Municipalities will surrender local liberty for a grant-in-aid. Indeed, already in 1845, Toulmin Smith, a redoubtable opponent of centralization, complained that local authorities were unable to resist the cry, 'Cheap! Cheap!' Authoritative definitions of liberty now identify it with economic welfare.

Secondly, it happens that for a high degree of material welfare, specialization and division of labour between industry, commerce, agriculture, finance, and the hundreds of crafts and sub-crafts into which these fall, are essential. But from this it directly follows that it is also essential to *integrate*, to plan regionally, nationally, and inter-

nationally, our economic and social enterprises. People are too numerous, too diverse, too aggressive, too short-sighted and self-seeking, to trust their fellows or be trusted by them to move in the harmony of purpose adequate to the maintenance of this great economic apparatus at its highest productivity. But integration means nothing else than a diminution of local liberty.

Nor is that all. The world is revolutionary, passionately impatient. If we were prepared to wait until all individuals and localities were consulted, and until they gave their consent, if we could afford to wait until the most ignorant and incompetent persons and authorities were in agreement with the best—we could persist in real local self-government. The days when this was possible have passed. History may be obliged to record that English local liberty, and all the doctrines and safeguards of individual freedom, were merely the fortunate results of the wealthiness of the nation, steadily increasing with the increase of wealth for three centuries, and then declining as the demand for wealth grew intense to the point of rapacity.

Tolerance has declined, and freedom of thought and speech may also be lost. The minority, the unwilling, the sceptical are necessarily coerced by the whole community acting centrally because it can act swiftly and uniformly.

Hence, it is possible that even apart from certain temporary maladjustments of currency and international trade relations, the world is possessed by certain desires and techniques which are incompatible with local government in any liberal sense. A day may come, if the present motives operate continuously and ever more strongly, when we shall be governed by a number of great central syndicates (guilds, if that word is preferred) each with its own separate purpose, organization, and areas throughout the country. It is possible that they may have local councils, nominated or elected. Whether that system is ever realized depends upon the nature of mankind's volitions. Let us make the questions quite personal. Does the reader think there should be local consultation? Does he think that it should be by elected councillors? Does he think there should be a sphere of locally-raised and freely-expended revenues? Ought there to be local authorities administering not one but several services in co-ordination? Will the reader weigh up the ultimate loss probable from the diminution of liberty against the economic gain which will come in the short run from centralized and bureaucratized administration? To-day there is forced upon us the choice between liberty and opulence. It is not an absolute choice in which one must entirely exclude the other—but neither can we have both completely: Nature permits us to have only a portion of each, and the more of the one the less of the other. The author cannot presume to make the choice for his readers; it is difficult enough to discover what he should choose for himself.

Yet some suggestions as to what is required to meet the claims of economic efficiency, and at the same time preserve local government, may be permitted. The suggestions fall into two broad classes, the Organization and the Human Element, but always with the realization that no clean-cut separation between them is possible.

THE ORGANIZATION. 1. First come all those demands summed up by the Committee on Local Expenditure as ' closer administration '. We may define it as a highly critical attention to the value of objectives and their cost. We have already observed the need for the co-ordination of departmental policies, for better statistics, for the measurement of economical service. We insist upon the continual, not merely the emergency, need for all measures which shall eliminate waste. The bigger the enterprise, and the municipalities are among our biggest, the greater the need for appropriate division of labour coupled with a firm unity of supervision and policy.

2. Secondly, and partly flowing from the first, more research is essential. There are too many things we do not know. There are insufficient surveys of problems, though it is readily admitted that splendid work is accomplished by Departmental Committees and Royal Commissions. But that is not enough: inquiries and comment are necessary also in the interval. At the present moment the regular agencies of research are the Government Departments, the Local Government Journals, the Local Government Associations, and the Universities.

So excellent has the work of the Government Departments been, so clever and zealous, and so obviously for the national good, that it requires only a little supplementing within the Departments and outside in order to be principally entrusted with the permanent work of caring for the future. The whole problem of Statistical Returns now made to the Government should now be thoroughly investigated with the view to their collection, analysis and public presentation in the most useful form devisable. Further, the Annual Reports, excellent and valuable as they are, might well be fuller both in information and comment.

It is well also that there should be independent criticism and assistance in the research and shaping of policy. These are already supplied by the various journals, for example, the *Municipal Journal* and the *Local Government Chronicle* among many others; by the Associations of Local Authorities and Local Officials; and by the Universities.

An examination of the existing journals in the field of English Local Government shows that they habitually contain excellent reports of events, legal decisions, and occasionally sound articles discussing policy. There is also a wealth of interesting and important material in the Papers which are reproduced after having been read before the

professional societies like the Treasurers, Town Clerks, and Surveyors. Yet there is lacking a central organ which could win the co-operation of all these bodies and their contributors, and which could act as a steady, independent commentator on matters not merely of weekly, but of general ultimate, importance. One Journal already occupies this field, the excellent and world-renowned *Public Administration*, the Journal of the Institute of Public Administration. But the magnificent efforts of its members are still hampered by lack of funds. With a comparatively small endowment this Journal could be a very potent instrument for good: its purposes are worth at least as much as many artistic masterpieces bought for the nation. Here is a splendid opportunity for a millionaire!

The Associations are powerfully helpful to the Departments and Parliament, and they are in a position to be more helpful still as the pioneers of good local government. They have the confidence of their members and an unrivalled fund of knowledge. Yet much of their energy is dissipated in defence of the privileges of their members against the 'encroachment' of the central Departments and rival local authorities. It should not be impossible to establish a permanent Committee of these associations and the associations of officials for purposes of research.

Finally, the Universities, with the exception of London, Manchester and Liverpool, have not attempted to be helpful to the progress of local government. We ought not to expect a University to spend its time on the lower techniques, but we can expect them to know that there is such a thing as Public Administration, and that, properly domesticated within the general field of Political or Social Science, the critical problems of local government ought to be studied.

The Universities can never have the information possessed by the other agencies. But they can obtain the information from them, and then apply the teachings of Political and Social Science, History and Economic Theory to the revelation of their significance. If the University has not the intensive knowledge, it has at once a penetrating critical talent and purpose, and an extensive view of the important relationships. The University may prepare research and encourage it—in its teaching it should always be the philosophical critic and prompter.

It is very doubtful whether England needs anything like the Municipal Research Bureaus to be found in America. America needed them because the knowledge and good faith of the State politicians and officials could not be trusted; America created them because it had a great deal of spare money. There is no similarity between English and American needs—in England we have an extremely capable and trustworthy set of officials at headquarters.

However, closer and more concerted attention to research in Public

Administration *outside* the Departments is desirable. It could well be left to the Universities provided they were endowed with enough money for staff, assistants to the principal teachers, for inquiries and publication. Between the Universities and the Associations there should be some permanent bond. And both should be associated in the conduct of a Journal, either *Public Administration* properly endowed, or a new Journal, say *Local Government Progress*, appearing every two or three months and containing (1) two major articles on policy, (2) the results of research or the analysis of existent information undertaken by the Universities or some local official, (3) law reports, (4) abstract of statistics, (5) bibliography, (6) a foreign section.

3. The central Departments and the local authorities must organize their Publicity better than they do to-day. They need to discover ways and means of stating their services and problems with simplicity and emphasis. There are three reasons for this. The consumers are entitled to every possible service which the machine is capable of rendering them; services are not rendered, as some councillors and officials are prone to think, *ex gratia*. There is, secondly, a margin in administration where the authorities can do no further good without the actual co-operation of the public; the most striking examples are in Health and Education. Finally, the citizens are our ultimate statesmen; they will make or mar our State; yet they are too ignorant and preoccupied to play a fruitful part in government without ample educational assistance. A much more deliberate and seriously planned educational arrangement through the Schools, and all pictorial methods of imparting facts and their significance, are required. There should be a general extension of the statutory powers which already exist in relation to education in Public Health.

4. Much more co-operation is required between the local authorities themselves. The alternative is compulsion or supervision by Parliament.

5. All Inspectors of the central authority, from whatever Department, should meet in semi-annual conference with Departmental Officials in attendance, to discuss problems.

6. Since the poll of electors for the promotion of private Bills has been subject to such abuse, and since, in its very nature, the Referendum is an inefficient institution, it should be abolished. Recent scandals of non-voting and destructiveness, exemplified in Manchester in January 1933, should never be permitted to recur.[1]

[1] Cf. *Manchester Guardian*, 10 and 12 January 1933. One-seventh of the electorate of 350,000 voted. This was considered to be an 'exceptionally heavy' poll. In the denial of power to the Council to acquire land, to provide trackless trams, to secure the compulsory pasteurization of milk, to abolish elective auditors, and several other items of first-rate civic importance, the non-voters showed themselves to be unworthy of their democratic privileges, and the destroyers misguided.

7. Acting in the same field as the local authorities are all kinds of voluntary agencies—charitable, sanitary, educational, commercial. An enormous amount of good is done by them, and their energy and spirit need not be destroyed to aggrandize the local authorities. But they can be enlisted in the service of the nation as a whole and of the particular areas by well-planned and well-executed schemes of co-operation.

THE HUMAN ELEMENT. All these questions of improved organization themselves turn upon the critical issue of the mind and spirit which men and women bring to the practice of local government. What we have to say is in no wise in derogation of the magnificent devotion and public spirit which already actuate the great body of councillors and officials. But our era is exigent. To win both liberty *and* wealth requires greater efforts than have been asked from us in other ages. We shall be obliged to learn that local government is not merely a casual, unskilled job. The day of the amateur is everywhere over. Local government is a highly skilled full-time occupation. It is useless to plead that the councillor need not be an expert, that he can always get advice. The knowledge exactly when and from whom to ask advice is not a simple gift of Nature, but the result of studying the situation. No less so are the functions of giving a direction to policy, and the rejection of unreasonable advice. All this implies that instruction is required in Economics and Public Administration, and for this the schools and the adult institutes are the proper centres. The alternative is plain—either be enlightened and govern yourself or submit to the dictation of the expert.

It is usually answered that the practical man does not need the help of theory. But is it correctly known what theory is? Theory is not doctrine; it does not lay down commandments regarding what *ought* to be done. Theory is neither more nor less than the quintessence of many generations of experience ranging over many areas and countries. Who will dare to refuse its modest aid? Our cities and districts cannot afford to let their governors learn by their own mistakes; it is far cheaper to learn by other people's. It is necessary to become aware of all the possibilities by assimilating a body of principles drawn from the story and analysis of innumerable experiences sifted out and compared with each other. This, however, will not make the councillor or the official infallible. Nor will it exempt him from the duty of observing and thinking for himself. For principles are reasonable, but not complete and flawless, predictions. Human nature always reveals something new. Further, principles are based on what happened in the past, not upon things that did not happen but might happen to-morrow. Finally, the councillor's business is *to act*; therefore he must combine, interweave, proportion and apply the principles. But this he cannot do unless

he knows them, and he cannot know them by simply breaking into his job without the requisite education.

Nor is it enough that councillors and officials should master scientific principles. There is still something to learn about the spirit in which they must be applied if local government is to be both efficient and free. An especially intense and conscious sense of responsibility is called for, and for two reasons. Public services are not operated for profit. Considerations of charity, order, and beauty, modify, and sometimes entirely exclude, the usual price-relationship between producer and consumer. The output of the service cannot be really measured in £ *s. d.*, and therefore the efficiency of the service cannot be *exactly* controlled. Further, there is no stimulus of individual profit and loss attached to the councillor's position; if the service improves he will not earn more, if it deteriorates he will not earn less. There is lacking that almost automatic intensity which operates in private industry. There must, therefore, be a conscious substitution of public spirit for private profit.

If it is necessary to possess a faith that will sustain in men and women a high level of devotion to public affairs, let them recall that some of the most vital and beautiful and felicitous things in our civilization, health and education, security, assistance to the unfortunate, communications, beauty of environment, can be provided only by public administration. In those things private effort crassly failed. If this is always re-evoked; if it is always remembered that the forces of vandalism and cruelty are ever ready to exploit or destroy what so many generations have painfully laboured to create; and, if it is never forgotten that as soon as we cease to govern ourselves competently the more brutal human types are only too ready to dictate to us, may we not expect people to bring a religious zeal into their service of the community? Every age has its symbol: the war-like ages had their castles, the Christian ages breathed their very life into mighty Cathedrals, the era of Liberalism created Parliaments—is that not a fine faith, which, in the twentieth century, is embodied in the Town Hall?

A NOTE ON BOOKS

THE following remarks are in on wise intended as a full Bibliography, since those who wish to read further can discover what they need in the footnotes to each chapter and also by help of the Index. We merely suggest some outstanding works to which a reader might turn should he wish to make a study of English Local Government for himself.

I. It would be well to read Redlich and Hirst, *English Local Government* (2 vols.), published in 1903. It deals with the evolution of the local authorities, their relationship with the central government, and their nature and functions. It is a good foundation, and its date is no drawback because there are now works and Government Reports which carry the story down to our own day. For those who wish to make a more detailed study of history, there is the magnificent series by Sidney and Beatrice Webb, *The Parish and the County*; *The Manor and the Borough*; *The Story of the King's Highway*; *Statutory Authorities for Special Purposes*; *English Prisons*; *The English Poor Law*; which trace developments from 1688 to 1835. Those who cannot find the time to read all of these might well read the later chapters of *Statutory Authorities* which succinctly describe the principles and institutions in operation up to 1835, and the volumes on the Poor Law.

Then, to bring the history down to our own day, the *First, Second and Final Reports of the Royal Commission on Local Government, 1923–9*, are indispensable; while Parts I and II of the *Minutes of Evidence*, offer a most revealing analysis of the system in the form of questions by the Commissioners and Memoranda and answers by representatives of the Government Departments.

II. One needs to master the general outlines of the law of local government. For this Jennings, *Principles of Local Government Law*, Wright and Hobhouse, *Local Government and Local Taxation*, are of service, and for reference there is Clarke's *Local Government of the United Kingdom*.

Besides these relatively short works, there are the leading authorities, like Arnold's *Municipal Corporations*; the *Encyclopædia of Local Government Law*, (published by Butterworth), which is kept up to date; Carter, *The Local Government Act, 1888*; Glen, *The Law of Public Health and Local Government*; and Lumley, *The Public Health Acts*. Then, to discover the effects of the great changes of 1929, there are the two short, but very informative, commentaries by Jennings, *Officials' and Councillors' Guide to the Act of 1929*, and *The Poor Law Code, 1930*. There are larger treatises by Eve, and Hill, and Oliver.

A special branch of the subject is treated in Robinson, *Public Authorities and Legal Liability*, and *The Report on Ministers' Powers, 1932*.

It is well to see our system in the background of constitutional law and institutions in general, and for this purpose we should recommend, apart from Dicey's classic, *The Law of the Constitution*, Wade and Phillips, *Constitutional Law*; Keith, *The British Constitution*; and Ramsay Muir, *How Britain is Governed*.

III. Considerations of space forbid a detailed description of the evolution of particular local services, but the subject makes fascinating reading. These works should prove useful.

Health: English Sanitary Institutions, by Sir John Simon [the first Chief Medical Officer to the Government], published 1897, written with exceptional knowledge and a fine enthusiasm; Sir Arthur Newsholme, *The Ministry of Health, Public Health and Insurance*, and *Health Problems in Organized Society*. For the critical period 1831–48, Hutchins, *The Public Health Agitation*, is very vivid; for the fifty years previous to that there is Buer, *Health and Population in the Industrial Revolution*. Bannington's *English Public Health Administration* is a very competent account of the history and modern problems and organization. In recent years various pamphlets by Sir George Newman, Chief Medical Adviser to H.M. Government, give an insight into recent problems and progress: *Outline of the Practice of Preventive Medicine, Public Education in Health, Public Opinion and Preventive Medicine*. Then there are the Annual Reports on *The Health of the Nation*, and *The Health of the School Child*.

Education: for the evolution Birchenough's *History of Elementary Education*, Frank Smith's *The Development of Elementary Education*, and Archer's *Secondary Education*, are good introductions. Sadler, *National Education and Social Ideals, Our Public Elementary Schools*, and *Progress in Education in England* are of great interest and importance. The threads can be picked up in the reports of the Consultative Committee, *The Education of the Adolescent* and *The Primary School*. Nor can we omit Tawney, *Secondary Education for All*, and *The Problem of Equality*.

The development of the *Poor Law* is best studied in the authoritative and fascinating volumes by the Webbs, while recent developments are registered in the Annual Reports of the Ministry of Health and the *Local Government and Poor Law Officers' Journal*. The evolution of Road Administration is recorded in Webb, *The Story of the King's Highway*.

The main stages in the history of Housing and Town Planning are traced in Bannington, *English Public Health Administration*; Clarke, *The Housing Problem* [1920]; and Reiss, *The New Housing Handbook*; E. D. Simon, *Problem of the Slums*; Barnes, *The Slum: Its Story and Solution*; and Glen, *Town Planning*. Further information and bibliography are obtainable from the National Housing and Town Planning Council.

For a study of *Finance* one must begin with the principles of public finance in general, and the two most serviceable books are Dalton's *Public Finance*, and Bastable's *Public Finance*. Then one should follow with Cannan, *History of Local Rates*; Roberts, *Local Administration—Finance and Accounts*, Part I, while a useful handbook is Crew and Creswell, *Rates and Rating* [1933], and a more considerable work is Ryde, *The Law and Practice of Rating*. It is rather unfortunate that Grice's *National and Local Finance*, which compares other countries with England, should have stopped at 1910, but more modern information can be obtained in the *Reports of the International Congress of Local Authorities*, held in 1926.

On *Municipal Enterprise*, the material is unfortunately rare, but something can be obtained from Knoop, *The Principles and Methods of Municipal Trading* [1912], Bernard Shaw, *The Common Sense of Municipal Trading* [1912], Warren, *Municipal Trading* [1923], and then the *Reports of the International Congress of Local Authorities* upon this subject in 1926. Beyond this, there are many interesting contributions on various aspects of the subject in *Public Administration*.

IV. Those who are anxious to know something about the men who created our system of Local Government might read Halévy, *The Growth of Philosophic Radicalism*; Marston, *Edwin Chadwick*; Smith, *The Life of James Kay-Shuttleworth*; John Stuart Mill's, *Essays on Liberty and Representative Government*; Hodder, *The Life of Lord Shaftesbury*; and Hammond, *The Rise of Modern England*.

V. There are several books which deal with the future of local govern-

ment: Webb, *A Constitution for the Socialist Commonwealth of Great Britain*; Cole, *The Future of Local Government:* and Robson, *The Development of Local Government.* There are few books which deal with the actual operation and immediate practical problems, but among them may be pointed out E. D. Simon's *A City Council from Within.* Some local authorities issue Handbooks or Yearbooks; so, for example, Croydon, Bournemouth, Birmingham, and others.

VI. Periodicals of outstanding importance are *Public Administration, The Municipal Journal, The Municipal Review, The Local Government Chronicle, The Local Government Journal and Officials' Gazette,* and *Justice of the Peace and Local Government Review.* Indispensable sources of current information are the Annual Reports of each Department of State, Local Taxation Returns, published by the Ministry of Health, and the surveys of statistics in the Statistical Abstract.

VII. To see the system of local government in perspective it is advisable to study the general principles of government, and this may be done in Laski's *Grammar of Politics,* and Finer's *Theory and Practice of Modern Government.*

VIII. It would be possible to give a long list of works in foreign languages on foreign systems, but this would prove of use to a very small number of people. The best suggestion, therefore, is that the student should read the latest edition of Montagu Harris's *Local Government in Many Lands,* and W. B. Munro's *Government of European Cities.*

MORE RECENT WORKS ON LOCAL GOVERNMENT.

On the legal foundations Hart and Hart, *An Introduction to the Law of Local Government and Administration,* 1934, is excellent. Jennings, *The Law Relating to Local Authorities, 1934,* and *The Law of Public Health, 1936,* are valuable commentaries on the main codes.

On the practice of local government the following works will repay attention: Laski, Jennings, Robson (eds.), *A Century of Municipal Progress*; Finer, *Municipal Trading*; Gibbon and Bell, *History of the London County Council, 1889–1939*; and Robson, *The Government and Misgovernment of London.*

ADDITIONAL NOTES

CHAPTER III, PAGE 52.

By Section 321 of the Public Health Act of 1936 the county councils may complain to the Ministry of Health regarding a default by non-county boroughs or district councils in the discharge of their health functions and thereupon the Minister must hold a local enquiry. By Section 322 of the same Act, where there is a default in sewerage or sewage disposal works or an adequate water supply or in any other function of public health, the Minister of Health may require a local enquiry, and thereafter may require the work to be done in a given time, and if not may transfer the service to the county council for a period or until the Minister otherwise directs. By Section 307 county councils may contribute to the expenditure (including the past expenditure) of a non-county borough or district to provide or maintain sewers, sewage works or water supply. By Section 320 non-county borough and district councils may by agreement relinquish to the county council any public health functions for a specified time or until rescinded or varied.

By Section 113 the Medical Officer of Health of non-county boroughs or districts must give the County Medical Officer of Health information which he is able to give and which the County Medical Officer may reasonably require for the purpose of his duties. By Section 111 the county council after consultation with the non-county boroughs and districts must formulate arrangements for securing (whether by a combination of such districts or otherwise) that every Medical Officer of Health subsequently appointed for a district shall be prohibited from engaging in private practice and by Section 109 the county councils pay half the salary of the local Medical Officers and Sanitary Inspectors.

Thus the county's status as a supervising authority with a power of giving financial assistance to the smaller health authorities is substantially increased; and the integration between the information-receiving authority of the county council and the power to make complaint and thus bring in the Ministry of Health is noteworthy.

CHAPTER V, Page 101.

See especially Ministry of Health Report 1936–37, page 120: "The reduction in the number of local authorities is an incident rather than the main objective of the Act of 1929. Throughout the country areas have been placed under the form of local government appropriate to their needs and status; boundaries have been delimited to provide the necessary room for development; awkward, anomalous and confusing boundaries have been rectified; detached parts of districts and parishes have been amalgamated with appropriate areas; and adjustments have been made to secure that county districts will in future be contained wholly in one administrative county. These changes must necessarily make for economy in the provision of services and tend to increase administrative efficiency." Yet the changes, says the Report, "are not in every case as comprehensive as could have been wished," but only "the best possible solution of local problems." The Ministry regards many of these changes as merely instalments on the way to what is really desirable.

CHAPTER V, PAGE 107.

On April 1, 1939, 365 Authorities were administering schemes of Maternity and Child Welfare; all County Councils other than London; all County Boroughs; all Metropolitan Boroughs; 153 non-County Boroughs; 51 Urban Districts and 3 Urban Districts. The services of two of the latter were about to be transferred.

CHAPTER V, PAGE 110.

Substantial readjustments occurred as a result of the Act of 1929 (later Section 185, Public Health Act 1936); and the Ministry of Health *Annual Report* for 1938–39, page 14, says: "Amongst the more important results of these schemes is that they have facilitated the establishment of isolation hospitals of sufficient size to constitute efficient and economical self-contained units." By March 31, 1939, the schemes of 45 out of 48 County Councils in England and 7 out of 13 County Councils in Wales had been approved by the Minister. For 133 county districts, the County Council provides; for 74 county districts, District Councils provide separately; for 812 county districts, provision is made by the joint action of two or more district councils grouped into 181 areas; for 43 districts provision is made by arrangement with neighbouring county boroughs. For smallpox hospitals provision for 550 districts is made by the County Councils; for 32 by 32 separate district councils; for 442 by two or more district councils acting jointly and for 38 by arrangement with neighbouring county boroughs.

CHAPTER XII, PAGE 314.

In fact, in May 1938, as the culmination of much public debate, the Minister of Health issued a circular to all local authorities asking them to survey their probable capital expenditure for the next five years and to submit a programme and estimates of costs of the capital works. The main purpose was to fit such capital expenditure into the general framework of national economic policy and to secure smooth progress of the operations of local authorities. If the programme were prepared it could be retarded or accelerated as circumstances might require. Consideration was also given to priorities. By the end of July 1939 almost all the large authorities had submitted schemes as well as the great majority of smaller local authorities. Altogether, capital expenditure of nearly £840,000,000 was proposed. It is of interest that this total represents an annual amount some 60 to 70 per cent higher than is usually borrowed by local authorities each year.

CHAPTER XIX, PAGE 431.

In 1938 the third new valuation lists should have commenced operation. The year before, the Central Valuation Committee issued a memorandum on re-valuation, especially regarding dwelling houses. There was a great outcry regarding the hardship which would have resulted from the proper application of the law uniformly. Uniformity had by no means been secured since 1929 for districts had an interest in keeping out of date valuations—they would pay less to the county fund; while counties with lax valuation, seemingly poorer than they actually were, could obtain thereby a larger claim on the Block Grant under the 1929 formula. But this was not all. There had been serious under-valuation of small houses compared with large, and post-1919 houses compared with older ones, since many of the new houses were in the owners' occupation, so that an actual rent was not being paid and the presumed rent was estimated according to rented houses subject to the Rent Restrictions Act of the war.[1]

[1] Cf. W. Randell, article: "Disparity between Rents and Gross Values in Dwelling Houses," 1939, 57th Annual Meeting, Institute of Assessment and Rating Valuation Officers.

The outcry caused Parliament to suggest an investigation of the predicted hardships and in order that such an investigation might be undertaken, an Act of 1938 postponed the operation of the lists until 1941. World War II postponed the matter further.

CHAPTER XXI, PAGE 500.

TABLE VI

Borough	Net Product of 1d. Rate	Rateable Value	Rates Levied
	£	£	s. d.
Poplar	3,030	772,120	18 0
Bermondsey	3,466	861,920	16 6
Islington	8,938	2,203,354	10 8
Lambeth	9,440	2,334,727	11 2
City of London	30,346	8,182,091	10 2
Westminster	40,370	10,515,220	9 10

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Printed by Jarrold & Sons, Ltd., The Empire Press, Norwich