
NATURAL RESOURCES JOURNAL

Volume 7
Issue 2 *Public Lands*

Spring 1967

The Executive

Denny O. Ingram Jr.

EDITOR'S NOTE: A forceful movement for revision of the New Mexico Constitution exists in the state today. Official action includes work of the Constitutional Revision Commission which has spent several years in sustained investigations and staff research. The Commission recently made formidable reports to the New Mexico Legislature; a report of the Commission, published in 1964, contains many specific recommendations. The following Article is the first of a series on revisions of the New Mexico Constitution; it discusses in detail the executive department as it now exists and as it would exist under the 1964 proposals of the Constitutional Revision Commission. Later articles will consider other constitutional provisions.

THE EXECUTIVE

DENNY O. INGRAM, JR.*

Great praise is due the proposed executive article and the concomitant provisions prepared by the Constitutional Revision Commission, for they express in brief and simple language the finest constitutional provisions of executive power and control that the fifty states have evolved among them. And, this is heartening indeed; for there lies perhaps the greatest need in New Mexico's state government as in many state governments. The prejudices against a strong state executive date to early state constitutions, and remedies therefore are unconscionably delinquent.

The proposed executive article instills considerable vigor in the executive in recognition of the axiom in American political thought that governmental power to act vigorously is indispensable to effective government. However, there need be no alarm at the executive's vigor, because the foregoing axiom has a companion axiom: governmental power should not be concentrated in one person or body of persons. This companion axiom is the synthesis of a congeries of doctrines and theories, the cardinal ones being separation of powers, checks and balances, the federal system, sovereignty of the people or government of laws, and republican form of government.

An analysis of the New Mexico proposals for the executive will be delayed to part II so that there may first be an analysis of the two asserted axioms and their components. Armed with this first analysis, the reader will be more appreciative of the basis for particular criticisms and laudations. For example, political writings abound with statements of abhorrence concerning the long ballot; but the writings point only to the superficial evils thereof and fail to demonstrate that the long ballot concurrently strikes at such fundamental principles as the need for governmental vigor, the doctrine

* Associate Professor of Law, University of New Mexico, Albuquerque.

of separation of powers, the theory of checks and balances, and other principles. Accordingly, a brief forbearance with an analysis of the two fundamental axioms hopefully will reward the reader several-fold in the reading of the subsequent detailed analysis of the New Mexico proposals for the executive.

Some early words of warning should be given to the reader and to the electorate who ultimately shall resolve the fate of the work of the New Mexico Constitutional Revision Commission. Obviously anything so drastic as change in substance, or even language, of any part of a constitution must be supported cogently by a thorough examination of underlying principles, a detailed examination of any proposed innovations, and a consideration of such factors as historical perspective and unusual attributes of the locale. Nevertheless, the suspicious eye toward the new should not be overdone. Consequently, there should be no weight accorded arguments for the *status quo* which find their footings in such matters as outlived historical reasons, local prejudices, and the unreasoning arguments produced preponderantly by pure sentiment, obstinacy, or fear. If credit is granted such arguments, the proposed constitutional article will not receive a valid assessment. The proposed article necessarily faces the monstrous task of overcoming voter apathy, the inertia always impeding change, and the ever present demagogues; further challenge by issue-clouding arguments could well contain all merit of the proposed article within a great cloud of ignorance or confusion. The voters should look to logic, to records of successful governments, and to the reasoning of acknowledged great leaders and thinkers. Furthermore, the voters must not expect perfection, an answer to all arguments, or a result coordinate with the thinking of a particular individual or group because the proposed article necessarily is a compromise among men.

I

AN ANALYSIS OF THE AXIOMS UNDERLYING THE PROGRAM TO IMPROVE THE EXECUTIVE

A. Governmental Power To Act Vigorously

The United States fought the Revolutionary War "almost to the Yorktown campaign with no federal constitution, only an informal union."[1] The war itself sufficiently united the states and the people. But, thereafter, the loose confederation proved intolerably

1. Morison, The Oxford History of the American People 277 (1965). See also Farrand, The Framing of the Constitution 1 (1913).

ill-suited to synthesizing the revolutionary movement into a permanent structure. Indispensible governmental vigor was continually asserted by George Washington in his pleas for energy in government.[2] Others pleaded likewise.[3] The paramount unanswered problems of the day—poor government finances and exasperating trade positions—were the cancers produced by lack of vigor in government, and these matters led to the Federal Convention in 1787[4] from which came a vigorous revolutionary nation which still survives after 190 years. It has been an epoch of national prosperity and growth marked by the almost inestimable detracting pressures of civil war, depression, racial strife, international conflicts, and other problems. In each era of adversity, the vigorous government has mustered the power to overcome the pains of the time; and during interludes of relative quietude, the Nation has added to its stature in almost all conceivable categories.

With its well-made power foundation and broad national needs, the national government has attained great and vigorous power. The state governments also have grown in power; for government programs at all levels have become the popular and generally the only answer to problems of an expanding economy and an increasingly urban population fraught with many new and broad social changes. However, relatively, the national growth has been vastly greater and has been accompanied by greater efficiency. Perhaps no other non-politically motivated criticism of state government is more recurrent than the criticism of lack of efficiency. This criticism permeates all realms of state activity; there is lack of efficiency in

2. *E.g.*, 26 U.S. George Washington Bicentennial Commission, The Writings of George Washington 495 (1938); 27 *id.* at 49; 28 *id.* at 502; 29 *id.* at 52.

3. Richard Henry Lee, President of the Congress, wrote on November 26, 1748, to James Madison that a convention was needed to enable Congress "to execute *with more energy, effect, and vigor* the powers assigned to it . . . ." Rufus King, Congressman from Massachusetts, wrote to Jonathan Jackson on September 3, 1786: "[L]et there be a Federal Government, with a *vigorous Executive*, wise Legislature, and independent Judicial." Stephen Higginson wrote to Nathan Dane on March 3, 1787:

> We must either brace up the powers of the Union to a degree capable of supporting and encouraging the affairs of the nation with *dignity and energy* . . . or we shall inevitably be thrown into general confusion and convulsions, which will result in one or more Governments, established with the loss of much blood, violent and despotic in its nature, and the effect of necessity and chance.

John Jay wrote to one Mr. Carmichael on January 4, 1787: "The *inefficiency* of the Federal Government becomes more and more manifest. . . ." The four quotations appear in Warren, The Making of the Constitution at pages 11, 47, 39, and 36, respectively (1928). (Emphasis added.)

4. See Farrand, *op. cit. supra* note 1, at 45.

recognizing needs, in acting upon needs, and in servicing programs satisfying needs. Inefficiency accompanies a lack of vigor.

The state power domain cannot retain or receive the responsibility for programs, or even assist well in intrastate aspects of national government programs, unless there are vigorous and efficient state governments.

B. Governmental Power Should Not Be Concentrated

1. The American Compromise in Political Philosophy

Absolute monarchy is the government best formulated to act vigorously. But absolute monarchy is also the form of government most susceptible to despotism and to error because of the concentrated power and the one-man decisional process. Thus, most peoples have modified or rejected this form of government. *Pure* democracy is the form of government conferring the widest base of participation in the decisional process and hence theoretically the best opportunity for each person's views to be felt. However, pure democracy portends mob rule or disintegration into anarchy and is totally unsuitable in many cases because of the practical problems generated by space and population. In fact, pure democracy is probably impossible at almost any level.[5] Therefore, this form of government likewise has been modified or rejected. The two extreme forms of government have their virtue—vigor in government and universal opportunity to participate directly in government. The search for a compromise between the extremes in political philosophy has most often produced aristocracies and oligarchies. Despite their Greek, Roman, and British heritages, national and state constitutions in the United States have been profound works that are truly the genesis for a newly designed, though complex, compromise.

What is that compromise?

A written constitution provides a federal system of a national government with great central power and fifty state governments with power over local matters; within each government, national and state, there is universal suffrage in a republican form of government which has its power fragmented among broad branches which check and balance one another.

The federal system thus places local matters closer to the governed; this is a recognition of a need for answers more oriented to the particularized needs of a state's inhabitants as a result of such reasons as geography, historical background, resources, or

5. See the argument of John Adams in *A Defence of the Constitutions of Government of the United States of America*, in The Works of John Adams 301 (1851).

other factors. Still, the federal system maintains a cohesive force and power on matters of generalized import such as war, personal freedom, and economics with the people being recognized through their elected representatives who are comparatively small in number—the President, the Vice-President, 435 House members, and 100 Senators—a total of 537. The national and state governments are divided into three broadly separated branches of executive, legislative, and judiciary to avoid concentration of power and to promote efficiency. To avoid further concentration of power and to discourage error, each branch of government is subjected to checks upon its action by the other two branches. The commonly denoted mixed government aspects of the governments rate comment. The executive has been characterized as the monarchial aspect, the Senate as the aristocratic aspect, and the House of Representatives as the democratic aspect. The office powers, terms, and other traits demonstrate the validity of the ancestry. Writers and statesmen have remarked on the matter since the inception of the American state and national governments.[6]

The above structure expresses a codification of the axioms initially set forth: this is a government of vigorous power that is not concentrated in one person or among a body of persons. Of course, there is a contradiction in placing vigorous power within a government but dividing it among governmental elements which in part control one another. But, this is a compromise; and it is neither aristocracy nor oligarchy.

2. The Components of the American Compromise

a. The Sovereignty of the People: Government Under Law

"*Sovereignty,* as applied to States, imports the supreme, absolute, uncontrollable power by which any State is governed."[7] American constitutions pose the sovereignty in the people[8] who exercise it in a democratic process recognizing virtual universal suffrage. The people's power is the elemental tier of our governmental structure. The written constitution is amendable only by the people. Hence, the government is one under law and not one merely under the caprices of men holding governmental power.

b. The Federal System

American federalism clearly helps prevent the concentration of

6. See Sharp, *The Classical American Doctrine of "The Separation of Powers,"* 2 U. Chi. L. Rev. 385 (1935), and quotations therein.

7. 1 Cooley, Constitutional Limitations 3 (8th ed. 1927).

8. *Id.* at 81.

governmental power. Of course, the avowed purposes of federalism are varied; but an admixture of those purposes produces support for the asserted broad axiom. Unfortunately, the recurrent difficulty in discussions of federalism is the clouded true reason for avowing or disavowing federalism's merits. National encroachment upon states' rights and state encroachment upon national jurisdiction have been argued often in interstate and intrastate situations depending upon the advantage of non-regulation, more favorable regulation, or better reasoned regulation to be found in the particular jurisdiction.

If there is no substantial cognizance of the federal structure and an eventually inordinate subordination of the states, there certainly will be a greater concentration of power in the national government than was originally, mediately, or to now, intended. Aside from a step toward concentration of all power within a body of persons, there also would be other deleterious effects such as some decreases in efficiency occasioned by communication and management problems in the more localized activities, elimination of the electorate's experience close at hand with the democratic process, and understanding by the responsible administrator of legitimate localized practices, habits, and even idiosyncracies. The salvation of the federal system inevitably involves a buttressing of state power in many areas and a release of some present power and avoidance of some future power accretions by the federal government.

c. Doctrine of Separation of Powers

The doctrine of separation of powers alone broadly precludes the concentration of governmental power. Of all the power control devices, it creates the greatest amount of discussion and centers in the largest volume of litigation. The field of administrative agencies is the legal and political battlefield for the doctrine. As with federalism, the real issue of a political debate or of a lawsuit has often been clouded. Quite likely in many cases the real issue has been the avoidance of the establishment or continuation of an administrative agency or its program with the weapon being the argument that the agency's powers violate or will violate the separation of powers doctrine.[9] This has brought forth two extreme positions. One position makes the arguments that the doctrine is dead, that it is a mere theory, that it must be eliminated because of necessity, and that it was originally the result of a misinterpreta-

9. See Swisher, The Growth of Constitutional Power in the United States 23, 32 (1946).

tion of political theory.[10] The other position makes the arguments that the doctrine is not to be abrogated in the slightest, that virtually total separation of the three branches has always been intended, and that violation of the doctrine in even the smallest administrative agency is a precursor to tyranny.[11]

Honest appraisal of the matter demonstrates that the doctrine of separation of powers involves the *broad* division of powers among the legislature, the executive, and the judiciary, but with no expectation of complete separation. There is, in fact, a blending of powers with no purity of any branch.[12]

This is the key to a proper placement of the doctrine in American law and political theory: consideration of the doctrine *singly* leads to its *misunderstanding*. Montesquieu,[13] Madison,[14] John Adams,[15] and many other writers[16] have considered the doctrine jointly with some other theory of doctrine, generally the theories of mixed government and checks and balances. These theories are allied, because they supplement the doctrine and the doctrine supplements them.

d. The Theory of Checks and Balances

The theory of checks and balances, unlike federalism and the doctrine of separation of powers, has not been used extensively in important American political debate and legal contests in recent years. Perhaps this results from the fact that the theory is expressed in the various constitutions by clear provisions covering specific situations, for example, the presidential and gubernatorial vetoes.

10. See 1 Davis, Administrative Law § 1.09 (1958).

11. *Ibid.*

12. Professor Malcolm Sharp succinctly states the matter:

> The fear of power concentrated in the hands of any single class or group has, among other things, influenced the doctrine of the separation of powers among the various organs of government. It is not that there is always a clear-cut distinction between the functions of legislation and administration, between the legislative, executive, and judicial 'powers.' Nor is it supposed that the functions of government can or should be distributed in any perfectly systematic way to different organs. Impeachment is a familiar power of legislative bodies; the veto and pardon belong to the executive. The interaction of the various departments is indeed relied on in part, to keep them independent.
>
> Rather, liberty is to be preserved and class domination checked by an organization which may delay the accomplishment by any group of its will, even at the expense of efficiency.

Sharp, *supra* note 6, at 385-86.

13. Montesquieu, The Spirit of Laws 69-75 (Great Books of the Western World ed. 1952).

14. The Federalist No. 47.

15. Adams; *Defense of the Constitutions of Government of the United States of America,* in The Works of John Adams 301 (1851).

16. *E.g.*, Jaffee, Judicial Control of Administration 29 (1965); 1 Davis, *op. cit. supra* note 10, at 68.

Since this doctrine is relatively unmarred by the technicalized and sometimes faulty refinements that result from numerous legal battle, over a great period of time, the typical and well-known descriptions thereof by non-lawyers are most appropriate; they need no repetition herein.

e. Republican Form of Government

Wistfully, one may desire in all major governmental decisions the spirit and participation of a New England town meeting, but the citizens of Albuquerque and Santa Fe will not so meet to settle state affairs and much less would the citizens of Farmington and Las Cruces so meet. One million people cannot counsel; they cannot even group. Even the population of Athens was only 150,000 during the time of Pericles when the virtually fabled direct democracy flourished.[17]

Finding direct participation in all major governmental decisions impossible in all states and the Nation, the answer has been a republican form of government. It is a constitutional requirement.[18]

The controlling attributes of a republican form of government are: the transaction of most governmental business through the direction of elected representatives, and the power in the electorate to seek redress at the polls for abuses or errors in the exercise of governmental power.

Hopefully, the elected representatives will serve with enough unselfish motives, intelligence, and compassion to warrant the continued support of the electorate. However, the electorate must be the ultimate judge of the matter and must approve or disapprove with the vote power at the polls. This power hopefully will be exercised by an educated, honest, and fair-minded electorate. Even that will not suffice; the constitutional structure must be such that a vote can be cast with knowledge and understanding of the person, party, or issue and with assurance that the vote power will strike the responsible official and party.

3. The Balance Between the Two Broad Axioms

The dangerous axiom of governmental power to act vigorously is diluted by the counterpoised axiom of a refusal to concentrate power. It is a crucial balance, but only a limited fear sufficient to

17. 2 Durant, The Story of Civilization: The Life of Greece 254 (1939); Bowra & The Editors of Time-Life Books, Classical Greece 105 (1965).

18. U.S. Const. art. IV, § 4. See also the discussion thereon in 2 Curtis, History of the Constitution of the United States 472 (1858).

instill vigilance seems justified thereby.[19] A tension-filled equipoise of some nature probably has marked every stable government that ever existed. Under such conditions the United States has achieved freedom perhaps unparalleled, the commercial leadership of the world, war victories, the quelling of secession, and a great cultural heritage;[20] from this a nation can gather no fear. The state of the matter was expressed long ago by Washington in his Farewell Address:

> This government, the offspring of our own choice uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support.[21]

4. The General Factors in State Government Which Undermine the Two Broad Axioms

Each element in the structure of state government can be evaluated for its contribution in effectuating the guiding axioms and their underlying doctrines and theories.

The vigor in state governments, including that of New Mexico, has been diluted through misapplication, underapplication, or overapplication of the doctrines underlying the axiom that power should not be concentrated in one person or body of persons. Furthermore, the New Mexico constitution does not contain sufficient positive provisions for vigor, notably with respect to the executive.

The desire for a government under laws and not the caprices of men has produced undue restrictions upon the people's representatives. Many matters requiring continual change through legislation or merely executive order have been relegated to constitutional status and the concurrent requirement of appeal to the sovereignty

19. "The ultimate safeguard of the constitutional system is watchfulness, understanding, and participation on the part of the American people. With the people properly on guard and properly active, the growth of constitutional power in the United States should be a matter of pride and not at all of anxious concern." Swisher, *op. cit. supra* note 9, at 252.

20. See similar remarks during a past era by William Howard Taft in 9 Great Debates in American History 1 (Miller ed. 1913); *cf.* 2 De Tocqueville, Democracy in America 126 (Colonial Press ed. 1900).

21. 35 U.S. George Washington Bicentennial Commission, *op. cit. supra* note 2, at 224 (1940). Correspondence in the same volume demonstrates that the address was the joint effort of the leaders of the time.

of the people in order to bring about additional or corrective action. The massive effort involved in obtaining constitutional amendments thus serves as a check upon governmental vigor in matters of minor rather than fundamental import. Hence, the overapplication of the doctrine of the sovereignty of the people or government under laws and not men is indictable as providing too much restriction upon the axiom that governmental power to act vigorously is indispensable to effective government. Furthermore, it takes little reasoning to appreciate the wisdom of the basic tenet of constitutional draftsmanship declaring that a constitution should cover fundamentals only and little reasoning to realize that the present New Mexico constitution deals with more than fundamentals.

The vitality of federalism has decreased to the obvious detriment of the state governments and the overloaded national government. Failure to avoid concentration of power in the national government has its remedy from two attack points. One, of course, is by a release of some power from the national government to the state governments coupled with more restraint in the assumption of power by the national government in the future. The other is the bolstering of the effectiveness of state government to the point that the needs of the people and the administration of both state and many national programs can be handled by the states. This latter statement is the equivalent of declaring that the states must rejuvenate themselves from within and then seek national recognition of the rejuvenation by the national government's use of that rejuvenated machinery in such a manner that the states are even further rejuvenated.

The doctrine of separation of powers typically has been well utilized in state government. However, in some instances it has been overapplied or too rigidly enforced. Perhaps the prime example is the limited legislative role accorded state governors as compared with the major legislative role of the national executive.

The balances portion of the doctrine of checks and balances has been badly misaligned. No branch of government theoretically can balance another branch or check its action if there is great discrepancy in the power possessed by the branches. Although it is sometimes difficult to judge the relative power of a branch of government, few would deny that the office of state governor is far from the vigorous office one might expect to array against the force of two legislative houses.

The republican form of government and its attendant redress

at the polls does not work as well in practice as its simple theory ordinarily indicates. This is because the identity of the responsible official or party is muddied by the multi-headed executive branch, by the lack of true party responsibility in legislative programs, by the lack of effective legislative power in the executive, and by similar reasons. When a voter votes, he may think that he is helping end the political life of a scoundrel who in fact had only a supposed power in the matter while the true scoundrel lies hidden. Such wrongly informed voting is worse than uninformed voting.

The axiom that governmental power to act vigorously is indispensable to effective government is not only violated by an overapplication of the axiom that governmental power should not be concentrated, but it is also violated by an initial failure to place vigorous power in government. Among other things, this results from ineffective organization of government from the standpoints of efficiency and control, from a diffusion of executive power among many elected officials and appointed officials with no effective chief, and from a refusal of the electorate to release powers to their delegates holding offices.

5. The Interdependency of the Recommendations for the Three Branches

The recommendations for the structure of the executive, legislature, and judiciary are interdependent. This is because the vigor sought within each branch is essential to an overall vigor in government and the failure to avoid concentration of power in one branch will cause imbalances of power and hence inefficiency or tendencies toward tyranny. This interdependency was the root of Woodrow Wilson's remark: "It is difficult to describe any single part of a great governmental system without describing the whole of it."[22]

Hence, an implied addition to the executive branch recommendations would be recommendations which would assure a strong legislature and a strong judiciary.

II

THE PROGRAM TO IMPROVE THE EXECUTIVE

A. Recommended Constitutional Provisions of Executive Power

The constitutional provisions for an excellent executive branch of state government are:

(1) a single executive; with the (2) special attributes of authori-

22. Wilson, Constitutional Government in the United States 54 (1908).

tative leadership of the executive branch, an organizational structure conducive to efficient management, a reasonable term of office, and a strong role in legislation; (3) a lieutenant executive who is principally attached to the executive rather than the legislative branch, who is of the same political party as the chief executive, and who is subject to a succession process answering traditional and modern problems; (4) an electoral process emphasizing state political issues; and (5) a system whereby the single executive and his party must account for their actions and respond for any defaults or ineptness.

B. Detail of the Recommended Executive

1. A Single Executive

Presently, New Mexico supports a multi-headed executive department with the seven major constitutionally created offices of governor, lieutenant governor, secretary of state, auditor, treasurer, attorney general, and commissioner of public lands.[23] All are popularly elected. In addition, there are subordinate executive offices and major boards which are not subservient to the governor, either because they are elected independently or are attached to other officials. *The proposed constitution* provides only for the elected executive offices of governor and lieutenant governor.[24] Other executive officers would be appointed by the governor and generally would serve at his pleasure.[25]

a. Vigorous Action

A single executive can act vigorously, that is, decisively and swiftly, whereas a plural executive cannot.

The ponderous, leaderless motion of committees should suffice for the indictment of multi-headed executive branches; vigorous committee action likely will result only at the impetus of the extraordinary. Executive vigor should be a recurring index of the office, even in normal circumstances because of the catalytic or leadership qualities the office must possess in order to assure rallying or commencement points in the resolution of the problems of society.

Traditionally, vigorous executives have been feared. In early American history[26] a strong governor offered too frightening a

23. N.M. Const. art. 5, § 1.

24. Proposed N.M. Const. art. 5, § 1. The proposed constitution cited herein and in succeeding notes refers to that contained in the 1964 Report of the Constitutional Revision Commission of New Mexico.

25. Proposed N.M. Const. art. 5, § 4.

26. See Graves, Major Problems in State Constitutional Revision 186 (1960).

parallel with colonial governors who served the king or even a parallel with the king himself and thence shades of tyrannical monarchy. In later years, the distrust of the honesty of politicians and the desire for popular election of officials in order to emphasize democracy brought forth the long ballot.[27]

The long ballot, such as that in New Mexico, creates leadership diffused among ill-defined and overlapping areas of activity so that there can never be vigorous or definitive action on most issues. Such a multi-headed executive department, though prevalent in the states, is the worst kind of plural executive; there is no provision for majority rule according to an ordered plan, for each executive has his own sphere and even that sphere is not readily, if ever, identifiable. Combined action of the diffused executive power elements is only a matter of coincidence or of coordinated action, as best it can be, on indisputable issues or on overridingly popular issues.

b. Dissension

Hamilton declared that the experience of other nations "teaches us not to be enamoured of plurality in the Executive." First buttressing his argument on historical episodes, he then derided plural executives because of the propensity for dissension and the resulting factions adhering to different leaders from among the executive group. Peering into the psychology of men, Hamilton contended that men often oppose matters because they were not consulted thereupon, but that an even greater opposition results if they are consulted and their counsel is not followed.[28] In similar language James Wilson remarked upon dissension and related faults which he deemed inherent in the plural executive.[29]

The single executive's advisors may dissent, but the unity of the office concludes authoritative dissent. This unity provides the probability of vigorous action which dissension might otherwise thwart. Unity likewise avoids the public denunciation of executive action by a disgruntled dissenter seeking personal acclaim or public pressure for a change in the view of the executive majority.

c. Secrecy

Many executive matters warrant extreme secrecy because of the inherent volatility or sensitivity of the matter, and the lack of understanding of the electorate because of insufficient experience

27. *Id.* at 187.

28. The Federalist No. 70, at 211 (Great Books of the Western World ed. 1952) (Hamilton).

29. 1 The Works of James Wilson 358 (Andrews ed. 1896).

or background. In fact, executive secrecy as a rule is supportable because continual publication of multi-executive discord would sap public confidence.

A single executive means that executive action can be prompt and vigorous without threat of divulgence of the deliberative process wherein positions, views, and votes might have changed or have been expressed poorly from time to time and be difficult to comprehend upon being reported. The legislature can be reserved as the public democratic arena; dispatch is seldom expected therefrom and public debate is a traditional adjunct thereof.

d. Concealment of Fault

Within a multi-headed executive department the responsibility for acts and omissions easily can be unplaced or misplaced. With our republican form of government, the correct placement of responsibility is essential for proper voting. Unlike the single executive where responsibility is inescapable, "the multiplication of the Executive adds to the difficulty of detection" and fault is "shifted from one to another with so much dexterity, and under such plausible appearances, that the public opinion is left in suspense about the real author."[30] Consequently, any censure falls uncertainly or is divided among many. Removal from office, by vote or otherwise, and punishment are thwarted. Ultimately, responsibility to the electorate diminishes to a meager level.

Of course, one could argue that a single strong executive could conceal fault by shifting responsibility among subordinated department heads. Nevertheless, the chief executive and his party are accountable; and this is indisputably true in most instances under the proposed New Mexico constitution because of the combined appointment and removal power of the governor.[31] However, fault also can be concealed by silence of the single executive or his subordinate department heads. If so, the remedies are the executive restraining the use of privacy[32] and the eye of the press ferreting out the hidden. The soundest answer to all objection against a single executive, however, is the powerful advantages thereof.

e. Safety

The plural executive results in part from the adages that there is safety in numbers and that two heads are better than one. Such safety is not worth the lost vigor. In general, vigor suffers from the

30. The Federalist No. 70, *supra* note 28, at 212.
31. Proposed N.M. Const. art. 5, § 4.
32. See Rourke, Secrecy and Publicity: Dilemmas of Democracy (1961).

lack of dispatch, secrecy, unison, and related matters. But, in New Mexico, the strongest answer is that dispersal of power among an uncoordinated group of executives results in little safety because there is no joint judgment on matters and because inordinate diffusion of power means that no executive can act with the full power needed in emergencies. Furthermore, "'the executive power is more easily confined when it is ONE.' "[33]

f. Expense

Multiple executives mean multiple salaries. However, since New Mexico's multiple executives serve different roles which must still be filled by appointment if not filled by election, the multiple salary argument bears little weight.

Nevertheless, executive salaries at the utmost could be only an iota of the true expense of multiple elected executives in whatever form they exist, that is as a board or as heads of portions of the executive branch. The true expense of multiple executives results from the delays, intrigues, duplications, violations of general principles of economical executive organization and operation, and election and campaigning costs. These latter costs are continual from election to election as each official paces his conduct, publicity, and demagoguery with re-election in mind. The total human effort exerted in debate, volunteer work in campaigns, holding of elections, and related matters resulting from added elective officials is almost immeasurable, particularly since statewide elections are involved. And, to what educative purpose is all this election effort devoted? With so many major statewide and local campaigns facing the voter, education in the necessary depth for all elections is impossible. Such wasted effort is not a justifiable expense of a republican system of government.

g. History

What can history teach about the single executive? Hamilton declares that the Achaeans found two Praetors working unsuccessfully; and the Romans found the Consuls dissenting continually, causing mishief to their republic.[34] What type of executive have the great governments of the past utilized? The Asian and African empires of Egypt, Persia, Assyria, India, China, Japan, and the later European empires such as Greece and Rome and the even later nations of France, England, Spain, Germany, and Russia have vacillated from time to time but in most periods of utter greatness

33. The Federalist No. 70, *supra* note 28, at 213 quoting DeLolme.
34. *Id.* at 211.

one finds single executives such as emperor, king, dictator, or similar title. Today, there is no great nation which utilizes a plural executive either in the form of a governing council or in the form of multi-heads of fragments of the executive branch.

h. Political Writers

Early American political writers whose views continually have prevailed adamantly supported a single executive.[35] Contemporary writers on the matter almost universally oppose the plural elected executive.[36]

i. Governors

State governors have been particularly critical of the long ballot of executive officers. "[D]ivided and scattered responsibility," disguise of official abuse, views of advisors differing from the governors advised, political scheming, added expense, and inefficiency have been set forth as results of plural executives.[37] In 1961, Governor Morrison of Nebraska declared:

> Finally, . . . it is recommended that the governor be empowered to appoint all officers of the executive department. . . . The appointment . . . would centralize responsibility and remove any possible excuse the governor might have for failure to fulfill the responsibility clearly his . . . . The system of checks and balances in state government protects the people from abuse by the governor's office . . . .[38]

Recently, former Governor Jack M. Campbell of New Mexico decried the status of the states, laying much of the blame upon the organizational structure of the states. He remarked that the executive power is held by " 'far too many executive officials. If a governor today makes any progress in his administration, he must achieve it through persuasion.' "[39]

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35. Examples include Washington, Hamilton, Madison, John Adams, and James Wilson.

36. A complete discussion of the contemporary writings against the plural executive, or even a listing of such writings, greedily would absorb space, but a partial listing of such writings should be instructive: National Municipal League, Model State Constitution (6th ed. 1963); National Municipal League, Salient Issues of Constitutional Revision (1961); Graves, Major Problems in State Constitutional Revision (1960); Abernathy, Some Presisting Questions Concerning The Constitutional State Executive (1960); Ransome, The Office of Governor in the United States (1956); The American Assembly, The Forty-eight States: Their Tasks as Policy Makers and Administrators (1955); The Council of State Governments, Reorganizing State Government (1950); and Lipson, The American Governor from Figurehead to Leader (1939).

37. Note, 11 Am. Pol. Sci. Rev. 322, 323 (1917).

38. Morrison & Shugrue, *Streamlining the Executive*, 40 Neb. L. Rev. 634, 646-47 (1961).

39. The Albuquerque Journal, Oct. 8, 1966, § A, p. 9, col. 1.

j. Trends

The trend is toward the short executive ballot; in fact, toward a single executive.[40] Hawaii and Alaska limit the elected executives to the governor as does the proposed New Mexico constitution.

2. Special Attributes of the Single Executive

a. Authoritative Leadership

Presently the attributes of the New Mexico plural executive such as fragmented authority, weak gubernatorial powers, uncoordinated executive action, restricted appointive and removal powers, and related matters prohibit authoritative executive leadership. *The proposed constitutional* provisions for a single executive are attended by remedies of these weaknesses. There is a single executive in an exceptionally authoritative posture who has a relatively strong role in the appointment and in the removal of executive officials except as abridged by the legislature in certain areas such as independent regulatory agencies.[41]

If the executive lacks authoritative leadership, there doubtless is little vigor in that branch; and it is doubtful that the government will have sufficient vigor to act effectively. Without authoritative leadership, there is certainty that the state will not serve well in fulfilling its federalism role because today too many programs depend upon state executive action and too many interstate compacts and joint efforts have at their base advanced executive thinking and vigorous executive action. The effectiveness of the doctrine of separation of powers and the theory of checks and balances is eroded if the strength of the executive branch is reduced due to lack of authoritative leadership. Furthermore, the republican system works poorly if the elected executive's authority is weak, yet he is still held accountable—redress at the polls becomes a mockery.

What best provides the vigor of authoritative leadership and avoids overapplication and misapplication of the doctrines and theories underlying the axiom that governmental power should not be concentrated? Of cardinal importance, the appointment and removal power must be such that the single executive in large part both can appoint the underlings of the executive department and can remove them. The exception to the power of removal should exist with respect to certain administrative agencies which are designed to be independent regulatory bodies free from interference

40. See Bartholomew & Kamins, *The Hawaiian Constitution: A Structure for Good Government*, 45 A.B.A.J. 1145, 1148 (1959).

41. Proposed N.M. Const. art. 5, § 4.

of a political nature. Board members of independent regulatory bodies as well as executives thereof, though subject originally to gubernatorial appointment or approval, should be removable only for cause or perhaps with the concurrence of the executive and the senate. This is the New Mexico proposal as compared with the present procedure always requiring senate confirmation of appointments and always requiring removal for cause.[42] Certainly it is inconceivable that all appointed officials should be removed only for cause. This is not a question of civil service protection or experience in the lower echelons; it is a question of the impracticalities of having a governor unable to act authoritatively because he cannot discharge subordinates who do not agree with him for political or any other reasons. No business could ever be operated successfully in that manner; it would be chaotic. Any military organization with such rules would find absolute disaster if it could survive long enough to reach combat.

United States history abounds with major debates and cases on the removal power of the President. In 1789 extensive congressional debates centered on the power of removal. Admitting the Senate veto of executive appointments, it was argued that the removal power was the President's alone; and the reasons given for this position are pertinent to our inquiry:

> It was urged with great force also that if the power of removal was divided between the President and Senate responsibility would be destroyed and the benefits expected from its exercise, in a great measure, lost. Secrecy and despatch were often necessary to secure and preserve the public interest. Facts relative to the malconduct of an officer might come to the knowledge of the President, rendering an immediate removal indispensable, and the delay in convening the Senate might be fatal to the best interests of the community.[43]

Again, in 1867 when the Tenure in Office Act was debated, Senator Reverdy Johnson of Maryland declared:

> Suppose he [the President] has a Secretary of State who he does not trust . . .; what is he to do with him? Leave him in, says the honorable member; suspend him. What then? . . . And when he sends to the Senate his reasons for the suspension . . . and the Senate declares that they are unsatisfactory, this suspended officer becomes again Secretary of State. What is the effect of that upon the Presi-

42. N.M. Const. art. 5, § 5.
43. 9 Great Debates in American History 10 (Miller ed. 1913).

> dent . . . ? He ceases to have any control of it; he is a mere cipher; you might as well not have him.
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> * * * *
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> All that I mean to say, in conclusion, is that it is all-important that the Executive shall be a unit. If he fails to perform his duty criminally, the remedy is in our own hands. If we unfortunately elect a man who is incompetent, not from wilfulness, but from incapacity, the remedy which the Constitution confers is in the succeeding election, and in no other way.[44]

There is no inconsistency in denying the executive the unfettered power to remove heads of independent regulatory bodies and certain agencies of a non-executive nature because cogent reasons exist for the ostensible inconsistency. The most obvious agency examples are those concerning public education and those concerning the regulation of public utilities. These agencies are often arms of the legislature or judiciary rather than the executive. Furthermore, they need independence from political control in order to assert effective policy and provide continuity in program. Finally, only when freed from political control will the men of the high quality and thorough experience desired be easily attracted to the positions which are often low paying in relation to industry.

The other recommended attributes of the single executive significantly contribute to his authority and reference is made to them for a more complete understanding of the matter.

b. Organization Conducive to Efficient Management

Presently, the constitutional and statutory measures concerning the management of the executive department deplorably induce inefficiency. This principally results from the hodge-podge organization of the executive branch into an almost unbelievable multiplicity of agencies and from a failure to departmentalize the executive branch and assign specific agencies to managing department heads. There is no planned periodic reorganization of the executive branch or pattern of continual revisions of the department and agencies therein in order to avoid the elimination of deadwood agencies, overlapping agency functions, and conflicting agency programs. *The proposed constitution* improves the matter considerably, for the authoritative leadership of the single executive is enhanced by a

44. *Id.* at 25-27. See also Pritchett, American Constitutional Issues 170 (1962); Harris, The Advice and Consent of the Senate 267 (1953); The Oklahoma State Legislative Council, Oklahoma Constitutional Studies, at xiii (1950); Swisher, The Growth of Constitutional Power in the United States 69, 133 (1946); and Milton, The Use of Presidential Power 37 (1944).

departmental organization designed to create efficient management. The basic scheme is provision for departmentalization of all but educational institutions, certain independent agencies, and certain temporary agencies "within not more than twenty principal departments, in such manner as to group the same according to major purposes so far as practicable."[45]

Vigor is the consequence of coupling authoritative leadership with an organization conducive to efficient management. An army general may have the greatest authority but poor organization structure of his units inevitably means a sickened campaign. Generals avoid such inefficient dispersal of the force of their authority by constantly changing the size, composition, and cooperation of their units as changes arise in problems, techniques, and equipment. Similar changes are true in businesses. The federal government also constantly reorganizes. The same should be true of the executive branch of state government, for inefficiency resulting from poor organizational structure is unforgivably expensive in the intra-branch attrition produced.

How can constitutionally required departmentalization help solve this plight? Organization, in and of itself, whether of thoughts, men, machines, governmental agencies, military units, or anything else, demands the resolution of conflicts, the elimination of overlappings, and discard of the useless. Without that result, there is no organization. At the present time there is no mandate that this be done. It is unlikely that the plural executive will commence it voluntarily due to selfish desires of some to preserve their own domains. The legislature, overworked in the short sessions provided it and recognizing the heated political issues involved, will hesitate to initiate such reform. It is a time for the ultimate sovereignty to be exerted most emphatically.

Why rigidness of a limit of twenty departments at a time when the simplicity and fundamentalness of constitutions is being urged? The subjective judgment of repeated numbers of constitutional drafters in recent times has been that twenty major departments reasonably should provide sufficient basic categories and should not strain the supervisory abilities of the single executive. Furthermore, it does not seem unreasonable to require a constitutional amendment to expand the basic number, particularly since leaving the matter to the legislature alone would provide an opportunity to add

45. Proposed N.M. Const. art. 5, § 4 (a).

executive departments merely to serve pet legislative desires or to harass an executive who is unpopular with the legislature.

Other organizational and related factors conducive to efficient management include adequate staffs for the governor and his department heads, certainty that the governor is the supreme head[46] of all agencies properly placed in the executive department, and the use of such devices as executive orders[47] for streamlining control.

Comprehensive details of reorganization are too space consuming for this Article, and have been treated thoroughly elsewhere in works concerning the New York effort,[48] the Hoover Commission,[49] and many others.[50] The major elements discussed herein should be borne in mind. One caveat should be cast: organization must be humanized and practically applied rather than be considered in a sterile context on the basis of theories and empirical studies ignoring the qualities of men such as varying abilities and needs.[51]

Another precautionary statement is due. It is not always best to reorganize something which is working well and is only moderately unbalanced; the trauma of change and the relearning process might cost more than the reorganization gains.

c. A Reasonable Term of Office

The *present* constitution provides the governor a two-year term with the right to succeed himself once.[52] A governor elected for two consecutive terms can seek a third nonconsecutive term after two years during which he can hold no state office.[53] There is a similar provision for most elected executive officers.[54] *The proposed constitution* provides a four-year term and permits two consecutive terms for a governor before requiring an absence from the offices of gov-

46. That is the central theme of that part of the book by the Oklahoma State Legislative Council, *op. cit. supra* note 44, at 133.

47. Recent writings on the subject of executive orders include these student notes: Note, *Gubernatorial Executive Orders as Devices for Administrative Direction and Control,* 50 Iowa L. Rev. 78 (1964); Comment, *Presidential Legislation by Executive Order,* 37 U. Colo. L. Rev. 105 (1964); and Note, *Presidential Power: Use and Enforcement of Executive Orders,* 39 Notre Dame Law. 44 (1963).

48. For details see The New York State Constitutional Revision Commission, The Revision of the State Constitution (1915). For a summation, see Note, 21 Am. Pol. Sci. Rev. 349 (1927).

49. The Hoover Commission Report on Organization of the Executive Branch of the Government (McGraw-Hill Book Co. Inc. ed. 1949).

50. See, *e.g.*, Meriam & Schmeckebier, Reorganization of the National Government (1939); and Burdine & Reavley, *Toward a More Effective Administration,* 35 Texas L. Rev. 939 (1957).

51. See Waldo, The Administrative State 175 (1948).

52. N.M. Const. art. 5, § 1.

53. *Ibid.*

54. *Ibid.*

ernor and lieutenant governor for a period of one full term.[55] A lieutenant governor who has served two full terms remains eligible to seek the governorship.[56]

The gubernatorial term should be long enough to do the work but short enough to provide a check upon the governor's power by the people at the polls. The subjective compromise of a four-year term is the recurrent provision in modern times.[57] It has proven rather satisfactory also for the federal government. Furthermore, it takes little objective judgment to note that the short span between inauguration and commencement of a concerted campaign for re-election provides little time for effective leadership in broad and long-range programs. Finally, in comparison to the present four years in office, eight years in office provides a far greater possibility that long-range goals will be sought or realized. Since there is an electorate judgment made at the end of the first four years, and since the proposal is that the governor can succeed himself only once, there seems to be no great concern that political empires will be built by the governor or that an incapable man can long retain the office. In addition, the biennial elections of legislators will serve to hinder his overzealous conduct by an assessment in some measure of the legislative members of his party. It is possible that he might then be virtually paralyzed by an uncooperative legislature responding to the electorate's command. Also, restraint of extremely overreaching executive power lies in the available impeachment and criminal proceedings.

Since the proposed constitutional provision lengthens the tenure and reeligibility of the New Mexico governor, this question arises: why not eliminate altogether the limits upon reeligibility? From the viewpoint of popular sentiment, that position apparently would be erroneous if the enactment of the presidential reeligibility limitation[58] of two terms is any guide. One cogent argument is the personal exhaustion often suffered by one in high office for an extended period and the consequences of continued service. One writer reports several arguments:

> Supporters of tenure limitations . . . continue to stress the arguments that it will tend to give an executive greater freedom from narrow partisan considerations in the conduct of his office; curb his lust for power; free him from the temptation to use his powers,

55. Proposed N.M. Const. art. 5, § 1.
56. Proposed N.M. Const. art. 5, § 1 (e).
57. See Bartholomew & Kamins, *supra* note 40.
58. U.S. Const. amend. XXII.

> especially the patronage power, to achieve his own renomination and reelection; and in general afford greater security against the threat of 'dictatorship.'[59]

On the whole, it seems that there are no certain dire consequences of limited reelection; and, as shown, there are some good arguments therefor plus at least a strongly suspected popular desire therefor.

d. A Strong Role in Legislation

Presently, in New Mexico the formal role of the governor in legislation consists of a veto power which can be overridden;[60] a power to transmit financial reports of all executive officers, apparently as prepared by them, to the legislature;[61] and a power to call special sessions of the legislature.[62] Before 1960 he had the power to fill interim vacancies in the legislature from a list prepared by the appropriate county commissioners.[63]

The governor has informal powers resulting from his constitutionally required statewide election and the accompanying endorsement of his views and judgment. His popular position means force is added to his recommendations to the legislature. However, since he is one of many executive officers elected statewide and presenting legislative programs or suggestions, his power is diminished considerably. Under *the proposed constitution,* the governor's veto power is enlarged,[64] his budget power is multiplied,[65] his power to call a special session is virtually unchanged,[66] and his power to fill legislative vacancies can be as prescribed by law, but if no such prescription is made, "the governor shall fill the vacancy by appointment."[67] Aside from the foregoing provisions dealing directly with the governor's legislative role, he is indirectly strengthened in that role by other constitutional provisions which raise the general strength and stature of his office and hence his ability to deal with

59. Kallenbach, *Constitutional Limitations on Reeligibility of National and State Chief Executives,* 46 Am. Pol. Sci. Rev. 438, 445 (1952). See also Corwin & Koenig, The Presidency Today 126 (1956).

60. N.M. Const. art. 4, § 22.

61. N.M. Const. art. 5, § 9.

62. N.M. Const. art. 4, § 6.

63. N.M. Const. art. 4, § 4 (1953). Presently this power is vested solely in the county commissioners of the county where the vacancy occurs.

64. Proposed N.M. Const. art. 4, § 19.

65. Proposed N.M. Const. art. 5, § 7.

66. Proposed N.M. Const. art. 4, § 6.

67. Proposed N.M. Const. art. 4, § 10.

the legislature. For example, the governor becomes the single executive.

The governor rapidly would become a mere administrator and perhaps cajoler if he had no effective power role in legislation, for there alone his policies and those of his party become law. Therefore, a strong role in legislation is an absolute requirement for vigor in the executive.

The exact form of the governor's role evolves from the constitutional structure of government as enunciated in the axiom that governmental power to act vigorously is essential to effective government and in the axiom that power should not be concentrated in one person or body of persons.

The vigor instilled by the direct and indirect legislative power provisions can be very great. The veto is not a simple negative; its threat concerns each legislator in the sense that it can be seen as an offensive weapon against him. This is uniquely true as respects the power of the line veto. Financial recommendations in the form of annual budgets, when backed by popular election of a single executive, are not something that the legislature en masse can ignore without danger. The call of special sessions is a power that can otherwise be asserted only by much more than a simple majority of the legislature[68]—a group of diverse views and in scattered locations when not in session. The call of the session limits its scope within the governor's desires, unless the call is by the legislature.[69] The power to appoint members to vacated legislative positions also is of some small aid in the governor's legislative role. Aside from these more direct powers, the patronage power, the party powers, the general persuasive force of the office, and other attributes lend vigor to the governor's legislative role. With certitude, the proposed constitution has provided in his strong legislative role a critical element of a framework for a vigorous executive of the first order.

The legislative role of the governor has received great interest of political scientists and others.[70] This is especially true of the veto

68. N.M. Const. art. 4, § 6; and Proposed N.M. Const. art. 4, § 6.

69. *Ibid.*

70. *E.g.*, Carley, *Legal and Extra-Legal Powers of Wisconsin Governors in Legislative Relations* (pts. 1-2), 1962 Wis. L. Rev. 1, 280; National Municipal League, Salient Issues of Constitutional Revision 88 (1961); Graves, Major Problems in State Constitutional Revision 192 (1960); Lipson, The American Governor From Figurehead to Leader 47, 206 (1939); and Fairlie, *The State Governor*, 10 Mich. L. Rev. 370, 376 (1912).

power.[71] The reader may refer to the cited works for rich detail. Therein, one likewise can find thorough consideration of statutory aids to the executive in his legislative role.

3. A Lieutenant Executive

The *present* constitution provides, quite fortunately, for the election of the governor and lieutenant governor "jointly by the casting by each voter of a single vote applicable to both offices."[72] This results from an amendment effective in 1959. The lieutenant governor serves as president of the senate and votes in the event of ties.[73] He acts as governor of the state when the governor "is absent from the state, or is for any reason unable to perform his duties . . . ."[74] Upon the death or the occurrence of any other event leaving the office vacant, the lieutenant governor becomes governor for the remainder of the term.[75] *The proposed constitution* first has the beauty of clearer and simpler language. Substantively, it provides essentially the same as the present provisions with some deletions and some additions. The major deletion is that the lieutenant governor no longer is president of the senate.[76] The major addition is that the lieutenant governor shall succeed the governor if the governor fails to assume office within six months or for a like period "has been continuously absent from office or has been unable to discharge the duties of his office by reason of mental or physical disability" as defined by statute.[77] A noteworthy modification concerns absence from the state; when this occurs, the lieutenant governor "shall serve as acting governor on some or all matters as designated by the governor."[78] There are other changes of minor import.

Retention of a lieutenant governor is not inconsistent with the single executive concept if he is truly a lieutenant. Inconsistency is particularly absent in the proposed and existing New Mexico constitutions because the governor and lieutenant governor would

71. The matter is considered at various points in all the works cited in the preceding note; other examples of its consideration include: Fairlie, *The Veto Power of the State Governor*, 11 Am. Pol. Sci. Rev. 473 (1917); and 2 Curtis, History of the Constitution of the United States 57 (1858).

72. N.M. Const. art. 5, § 1.

73. N.M. Const. art. 5, § 8.

74. N.M. Const. art. 5, § 7.

75. *Ibid.*

76. N.M. Const. art. 5, § 8, provides that the lieutenant governor presides over the senate; Proposed N.M. Const. art. 4, § 8, provides that the president pro tempore shall be presiding officer.

77. Proposed N.M. Const. art. 4, §§ 6 (b), (e).

78. Proposed N.M. Const. art. 5, § 6 (d).

be of the same party and elected jointly. Furthermore, total justification for the office exists in the stability assured by an immediate successor to a dead or disabled governor.

The lieutenant governor in most states is the man next in line for the governorship while he spends his time as the chief officer of the state senate appointing committees, presiding over sessions, referring bills, and attending to similar legislative business. He is the counterpart of the speaker of the house of representatives. There is little to base a claim to categorization as an executive official. Since he so clearly is the legislative official who is the leader of the senate, it is an incongruity in governmental structure to have him elected in a popular election. The senate head should be elected by the senate so that he will reflect the political composition of that house and hence provide a better coordinated body for asserting the legislative role in the separation of powers and checks and balances. Such internal harmony would add vigor to the legislative branch which is already burdened with enough impediments to vigor due to its necessarily deliberative function. Admittedly, elimination of the senate role of the lieutenant governor would be quite an innovation for New Mexico and make it one of the leaders in such action. The majority of the states having lieutenant governors use them as the presiding senate officer.

What other advantages would inure from the proposed change? The New Mexico Constitutional Revision Commission clearly has indicated that it contemplates use of the lieutenant governor at more ceremonial functions in order to relieve the governor. Another possibility not restricted by the constitution is the use of the lieutenant governor in such an office as chief administrative assistant to the governor, although a career expert therein might be more appropriate as a general rule.

One can argue that the legislative role of the executive is decreased by eliminating the lieutenant governor from the senate role. This would appear to be true in New Mexico, especially since the lieutenant governor is elected on a ticket with the governor. The answer to this is that one cannot consider the executive in a vacuum because the operation of the three branches and thus the recommendations for the three branches are interrelated. Other executive recommendations heretofore made should suffice for the vigorous executive desired even when the non-concentration of power recommendations are noted fully. As for the legislative branch, it would be enhanced by its election of both its presiding officers; and a source of irritation, the imposed leadership of the lieutenant governor in

the senate, would be removed by the change. In this light, the disadvantage becomes less forceful.

As for succession to the governorship, the critical problem has been succession in the event of disability, mental or physical. Two well publicized cases are those of Governor Henry Horner of Illinois and Governor Earl K. Long of Louisiana. Governor Horner's physical illness is discussed thoroughly elsewhere,[79] as is Governor Long's alleged mental incapacity.[80] The proposed provisions coupled with the effectuating legislation will offer answers to these types of questions which can be of almost unbelievable importance when they arise.[81]

Of modern significance is the effect of advanced message communication and advanced travel methods upon the temporary vacancy in the governorship when the governor absents himself from the state. Obviously, today, a governor can issue intelligent directions by telephone call from another state just as he can by telephone call from Santa Fe. Likewise, there is often little difference from a time viewpoint between a trip across giant New Mexico and an interstate trip. There are other communication shortcuts such as radio, television, telegraph, and fast modes of personal travel. Therefore, it is quite reasonable to provide that when the governor is absent from the state the lieutenant governor "shall serve as acting governor on some or all matters as designated by the governor."[82]

The proposed provisions do provide the desired lieutenant executive who is principally attached to the executive rather than the legislative branch, who is of the same political party as the chief executive, and who is subject to a succession process answering traditional and modern problems.

4. An Electoral Process Emphasizing State Political Issues

All major New Mexico officials are elected biennially;[83] so there necessarily is a joinder of state and national political issues at each election. *The proposed constitution* provides for a single executive who "shall be elected at a general election held in a non-presidential election year for a term of four years."[84]

79. Note, 8 U. Chi. L. Rev. 521 (1941).

80. Hansen, *Executive Disability: A Void in State and Federal Law*, 40 Neb. L. Rev. 697 (1961).

81. See Rich, State Constitutions: The Governor 9 (1960), for varying examples of the critical problems that can arise.

82. Proposed N.M. Const. art. 5, § 6 (d).

83. N.M. Const. art. 5, § 1.

84. Proposed N.M. Const. art. 5 § 1 (b).

The proposed change represents the prevailing view.[85] If state issues are buried by the more important concern for national issues, the effectiveness of the federal system is diminished. Furthermore, obscuring state issues with national issues will cause the electorate to make errors in judgment on the state issues confronting them.

The election of the executive is not the only matter affected by avoiding conflict with presidential elections. Often state constitutional amendments accompany gubernatorial elections, and they cannot receive their due deliberation in competition with great national issues. Note that it is quite common to schedule school district and municipal elections, both for offices and bond issues, so that they conflict neither with national nor state elections, and the electorate's attention accordingly is properly focused.

The non-presidential year election has repeatedly been urged;[86] and, as stated above, it is the prevailing process. Overpowering rational arguments support the process. Thus, New Mexico should adopt the proposed change.

5. Accountability of the Executive and His Party

When the electorate votes, the governor and his party should receive an assessment of their record. It is audit day. If the constitution contains the provisions making the governor the effective and well-rounded leader he should be, he and his party should be held accountable; the responsibility is traceable, and the responsibility is reducible only by such mitigating factors as lack of party control in the legislature. In any event, the heavy concentration of the issue in the election of a single executive who has vigor (as a result of provisions for authoritative leadership, efficient management, a reasonable term of office, and a strong role in legislation accompanied by the other recommendations) will result in much more intelligent voting than can otherwise occur.

The importance of the strong executive and the resulting effective accountability procedure must not be slighted. The executive has been the most neglected branch of state government. This has in turn been a dominant cause of weakness in state government. Weak governments in general, and particularly those emanating from a weak executive, were well described by Alexander Hamilton:

85. See 1964 Report of the Constitutional Revision Commission of New Mexico 17 (1964). *Accord*, National Municipal League Model State Constitution art. 5, § 5.02.

86. See, *e.g.*, Graves, American State Government 322 (4th ed. 1953); and Fairchild & Seibold, *Constitutional Revision in Wisconsin*, 1950 Wis. L. Rev. 201, 220.

> A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government.[87]

Furthermore, since the weak executive means a lessened effectiveness of the sovereignty of the people when choosing its leaders in a republican form of government, the weakness likely feeds upon itself to the further detriment of the state. As James Wilson has written: from an error in the exercise of the sovereignty of the people "there is no superior principle of correction."[88] Repeated, uncorrectible errors could do great damage.

87. The Federalist No. 70, at 210 (Great Books of the Western World ed. 1952) (Hamilton).

88. 1 The Works of James Wilson 363 (Andrews ed. 1896).