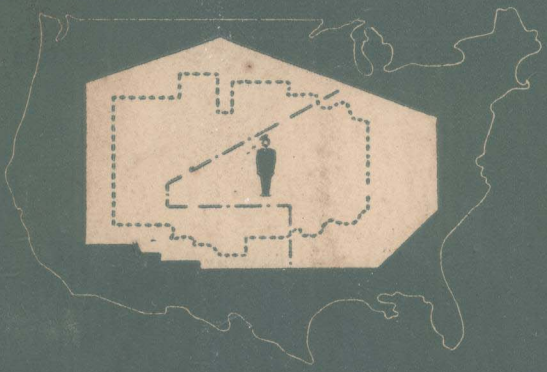

Principles and Problems of State and Local Government

SWARTHOUT AND BARTLEY

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JOHN M. SWARTHOUT
Professor of Political Science
Oregon State College
and
ERNEST R. BARTLEY
Professor of Political Science
University of Florida

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For

MICHAELA JEANNE

JOHN VAN LEWEN

SUSAN KAY

DEBORAH DELL

Tables and Illustrations

Preface

Ever since the thirteen states of the Confederation submerged their sovereignty within the Federal Union in 1789, the American states and their local units have attracted the attention of students of government and politics. The high emotion that has always surrounded the question of state power, the continuously evolutionary nature of state and local governments as they have responded to the pressure of a remarkably dynamic society, and the immense variation that has marked the American political scene from region to region and state to state—all these factors have acted to make any writing on the subject a challenging task. The fact that so much of state and local politics is a face-to-face matter, concerned with intimate, bread-and-butter issues and shaped by personal relationships that shift as the personalities involved change, adds another dimension to the challenge.

In this book we have tried to fit the treatment to the field. We have attempted throughout to incorporate a little of the explosive spirit that surrounds the issue of 'local sovereignty,' to take into account the facts of constantly changing problems and changing responses, and to allow for the variety in traditions, circumstances, forms, and practices that has characterized American government and politics since the first days. In the interest of realism, we have tried where we could to carry description beyond purely legal and institutional relationships and into the realm of those more tenuous relations that are personal.

Insofar as possible, we have attempted to stress 'principles and problems,' using specific detail largely to illuminate and to illustrate. At the same time, we have tried to remember throughout that the fascinating game of political problem-solving can be indulged profitably only when the problem-solver has a pretty firm grounding in the legal basis and institutional form of the governmental organism with which he is dealing. It is the duty of a book that purports to serve as a text to provide the necessary groundwork. Accordingly, we have attempted to ensure that essential matters of legal and institutional form and practice receive adequate description before proceeding to the problems that surround them. Wherever we could, we have tried

to trace origins of political facts to their economic, sociological, and philosophical roots; the first chapter is devoted largely to a historical review of these roots as they have affected state and local governments, a matter that seems to us of much importance to an understanding in perspective of state and local governments today, and comparable materials appear here and there throughout the other chapters.

Some important areas of our field we have purposely not treated in full. The great bulk of students of American state and local government come to the subject either fresh from, or as a part of, their study of the national government. For this reason we have avoided lengthy discussion of those topics commonly covered in detail in national government courses and textbooks, hoping in this way to avoid the sort of duplication of materials already understood that so often plagues instructors and students alike. We have assumed that this book will be used either in conjunction with or directly following upon some standard text in which such things as the fundamentals of federalism, the separation of powers, and the American system of civil rights, are adequately described and explained.

This book is designed to deal with American state and local governments in general, not those of any one state in particular. In view of the complex and varied nature of the subject matter, it has seemed desirable to make generous use of charts and tables, not only to illustrate points made in the text matter but also to furnish state-by-state details that would otherwise require pages of discussion. The specifics of forty-eight state constitutions, legislatures, executives, courts, tax systems, and so on can be presented most economically in tabular form for those whose interests in a single state attract them that way.

The responsibility for the failures in form and substance that may appear in this book rests, of course, upon the authors. We cannot, however, take full credit for all that may be worthwhile in its pages, for we have had much help from friends and colleagues around the country. Our debt to many persons is great. Professor David Fellman of the University of Wisconsin, Professor William McClenaghan of Oregon State College, and Professor Frederick Mosher of Syracuse University examined the manuscript at the request of the publishers, making many helpful suggestions as well as correcting a number of misstatements. No authors of a state government text can fail to acknowledge the extensive work of the Council of State Governments; the *Book of the States* and other publications of this organization are invaluable source materials. We have drawn freely from them. We record, too, our thanks to the Alaska Statehood Committee and its chairman, Mr. Robert Atwood, for allowing us to use in our chapter on the judiciary a great

deal of the material and the organizational features of the staff paper on judiciary, which was prepared under the direction of the Public Administration Service for the Alaska Constitutional Convention. Professors Robert Fuquay and Russell Maddox of Oregon State College read parts of the manuscript, aided in the preparation of charts, and generally provided encouragement. Senator Spessard Holland of Florida, Senator Richard Neuberger of Oregon, Congressman D. R. Matthews of Florida, and Delegate E. L. Bartlett of Alaska provided us with many hard-to-obtain materials. Mrs. Anne Sigler, Mrs. Georgena Knapp, and Mrs. Margaret White typed the first versions of the manuscript and Mrs. Phyllis Durell the final draft. Oxford University Press, as always in times past, co-operated with us and extended us every aid. The errors and shortcomings which remain are chargeable only to us as the authors.

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ERNEST R. BARTLEY

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CHAPTER I

State and Local Governments and the American Political Scene

To most Americans, 'the Government' has come to mean the national political structure centered in Washington, D.C. Foreign affairs, defense activities, atomic projects, nation-wide highway, welfare, and regulatory programs—such national functions as these are undeniably spectacular; and since distance lends enchantment, the misty figures who inhabit the White House and Capitol Hill and carry on these functions take on a heroic proportion, as uncommon men and women who move, debate, and act in something more than life size. Furthermore, the wonders of modern invention have worked a revolution in the dissemination of political information just as they have in other fields. News comes from Washington to most American communities today as rapidly as from a nearby state capital, and today's national newsgathering agencies and radio and television chains allow local news purveyors to furnish their readers and listeners much better coverage of national than of local affairs.

As a result of these facts of modern life, the affairs of the national government are more familiar to the average American citizen than are the governmental activities that go on geographically closer to him. Unless he is personally friendly with his state's governor or his city's mayor, he knows less about either of them than about his nation's President, and he would recognize the national executive more quickly on the street. He can name the United States senators from his state more readily than he can his representatives in his state legislature. He is more familiar with the issues that face his nation than with those that confront his city, his county, or his state, and he has more decided opinions about them. In a very real sense, the national government has come to be *politically* closer to Americans throughout the country than their local governments are.

Yet by this concentration of attention on national matters, the citizen may blind himself to the considerable importance of governmental affairs that go on geographically nearer home. Most Americans know, hazily, that the states played a large role in the past. Not so many are fully aware

of the degree to which those same states, and the local governments that draw existence from them, *still* act day after day in ways that are politically and socially vital. We need to be reminded now and then of the really significant role of state and local governments in modern, as in older, times.

As one indication of that continuing role, though national expenditures and the national payroll have increased by leaps and bounds over the last half-century, so have those of our state and local units. It may seem incredible to one who has not heard it before, but state and local governments among them employ today over twice as many civilians as does the 'Washington colossus'—roughly 5 million to 2.4 million in 1957. The expenses of all state and local units together—well above $40 billion in 1957—are more than double those of the national government for purposes other than defense. New York City by itself has an annual budget that approaches $2 billion!

Nor should we forget the fact that state and local politics, today as a century ago, are at the heart of much of what we call 'national politics.' Not only are all national elective officers except President and Vice-President chosen in ballot battles conducted largely by state parties; state and local party organizations form very nearly the whole of the national party structures. State and national politics are interwoven in one large scene, within which political leaders move back and forth. Regularly, all but a few of the members of Congress have begun their political experience 'back home,' as state governors, legislators, judges, or administrative officials, or as local mayors or prosecuting attorneys. Of the ten Presidents since 1900, Wilson, Coolidge, and the two Roosevelts were state governors when they rose to national prominence; defeated candidates Hughes, Cox, Landon, Dewey, and Stevenson had served in the same capacity. Indeed, a sharp lesson may be learned from the elections of 1948 and 1952. In 1948, when President Truman carried Illinois by 34,000 votes against New York Governor Dewey, a Democrat named Adlai Stevenson was winning the state's governorship by 573,000. Four years later Mr. Stevenson was his party's presidential candidate. National recognition often grows out of a victory at state level.

Perhaps most significant of all, state and local governments, today as in the past, perform the mass of the regulatory and service functions that directly touch the individual, that determine the commonplace details of what he can and cannot do. When he is born, it is the state that issues his birth certificate and the county that records it. The state, with its local units, provides his education. State law regulates his marriage and au-

thorizes, or not, his operation of a car. State law, subject to the pertinent limitations in the national Constitution, tells him when, and under what conditions, he can vote, even for national officers. The state is responsible for the great bulk of the laws that prescribe what acts are 'crimes,' and it is the state and city police and county sheriffs' deputies who are charged primarily with the task of protecting persons and property from criminals. The services that state and local governments furnish the citizen directly as a day-by-day matter stretch from sewage disposal for his health and comfort to the maintenance of botanical gardens for his pleasure and edification.

Certainly today's American society is increasingly an integrated one, its character nationally determined to a degree far beyond that true of an earlier age. The national government assumes each year, as it must in the face of such a changing society, new functions that make its activities of growing importance to everyone who lives in the United States. But American state and local governments have hardly been left behind. Their activities and their budgets have multiplied too, under the pressure of increasingly intricate social and economic relationships. All in all, the need today for popular attention to them as a fundamental part of the American political system is as great as it ever was.

The Historical Background

American state and local governments follow a pattern of their own. They differ from their counterparts in other countries, even in those democracies most like our own. They vary too among themselves, from region to region and even from state to neighboring state. And, like the national government, they are different in many regards from what they started out to be. They are as they are today largely because of the factors involved in their historical development. Each age through which they have gone has left something of its mark upon the modern pattern, often a characteristic that has lingered on long after the original reasons for it have disappeared. Their strengths, their virtues, and their flaws are understandable only in light of their histories.

THE COLONIES AND THE EARLY STATES

American state and local government antedates the nation. Under British practice, if not in British theory, the thirteen American colonies enjoyed from the outset a large share of authority to rule themselves. Further, the practical necessities arising from difficult travel conditions forced the ex-

tension of much autonomy to local communities within each colony. Almost by force of circumstances, the colonists were compelled to develop the habit of local self-government at both the colony and the local settlement levels. By the time the home country was prepared and anxious to reverse the trend, the habit had grown too strong.

The development of the American colonial governments is a study in the effect of a new environment upon a political pattern brought from elsewhere. The colonists had erected their local governments as nearly as they could in the image they imagined the government at home to be. In time, though, the strange new environment, so different from the settled, traditional surroundings at home, came to be a decisive force; and colonial executives, legislatures, and courts, borrowed from English models, developed distinctive characteristics of their own. Under the impact of liberal Revolutionary theory, the new state governments that emerged from them even before the Articles of Confederation formed the 'United States' were something new under the sun. Many of the standard features of the American governments of today are recognizable in those early forebears.

Philosophical and Structural Similarities among the Early States. The basic theory that sparked the Revolution, part English, part purely American, held a common allegiance among patriot leaders from Georgia to New Hampshire. It is not surprising, then, that the thirteen new states that arose with independence should have based their governments on a common set of principles. In each of these governments the Revolutionary ideas of popular sovereignty, limited government exemplified in provisions for civil rights, separation of powers, and checks and balances appeared as basic characteristics.

Structurally, the state governments varied in detail as environmental conditions and colonial histories varied, but they possessed a fundamental similarity which revealed their common English origin and Revolutionary experience. Bicameral legislatures,[1] with members elected for short terms,[2] governors with short terms ineligible to succeed themselves and chosen in eight states by the legislature, appointive judges with lengthy terms or life tenure—these structural characteristics were common. Though separation of powers formed the theoretical basis for governmental organization,

[1] Georgia and Pennsylvania retained the unicameral legislatures of their colonial days until 1789 and 1790 respectively. Vermont followed unicameralism from its entrance into the Union in 1791 until 1836.

[2] Members of lower houses were given one-year terms in all states but South Carolina, which set the term at two years. The term for the upper house was usually two years. In Maryland members of the upper house were originally chosen indirectly through electors.