PENNSYLVANIA'S APPROPRIATIONS TO PRIVATELY-MANAGED CHARITABLE INSTITUTIONS

THE constitution of Pennsylvania contains two interesting clauses not found in many of the other state constitutions. These deal with the granting of state appropriations to privately-managed or sectarian charitable or educational institutions. Article iii of the present Pennsylvania constitution, adopted in 1873, deals with the actions of the state legislature. Among the regulations and limitations set down for this body are the following :

Article III, Section 17. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

Section 18. No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association.[1]

There must have been definite reason for the insertion of these very specific clauses, stating to the members of the legislature what they must and what they must not do. It would seem that the constitutional convention which discussed these sections and the electorate which incorporated them into their organic law had some clear idea of their meaning and of their need. It would seem that appropriations were forbidden except under very extraordinary circumstances and that under no conditions were certain types of appropriations to be made. We find, however, that although Pennsylvania is one of the few states which includes such prohibitions in her constitution, she is the only one that gives state money in large amounts and to a large number of privately-managed charitable agencies.

[1] The meaning of the sections under discussion has never been determined by the courts of the state.

The emphasis in these sections of the Pennsylvania constitution, instead of stopping appropriations for these private purposes, seems rather to have encouraged them. Prior to the adoption of the new constitution, the legislature met annually. In 1871, seventeen privately-managed charitable institutions received $239,295. In 1872, the legislature appropriated to ten privately-managed institutions the sum of $365,686.24. For the two-year period ending 1913, the legislature of 1911 appropriated to two hundred and seventy-five privately-managed institutions the sum of $6,249,400. For the corresponding two-year period and for the same purposes, $604,981.24 had been appropriated for 1872-73. The number of institutions had increased over two thousand per cent in forty years; ten times as much money was appropriated. The evil that the members of the constitutional convention sought to combat was certainly small as compared with the pernicious developments indicated by the present figures. One-tenth of the entire revenue of the state is today being given to privately-managed institutions not under the control of the state. If it were the intention of the people of Pennsylvania in 1873 to limit the amount of the appropriations to institutions not under the absolute control of the commonwealth, what would be their consternation today if they realized that the state of Pennsylvania is actually allowing private persons and private corporations to spend one-tenth of its income.

It is not our purpose here to discover the reasons for the rapid increase of expenditures for this purpose. Various suggestions have been made: first, that the system was developed as an adjunct to the Pennsylvania "machine", so that individual communities could be "held in line" for the dominant Republican organization; second, that the practice of holding up the appropriations of the hospital "back home" was a club over the head of the individual legislator; and third, that the rapid increase of the appropriations to privately-managed institutions of purely local scope was a return to the corporations and to the local communities for the removal of certain taxable property from the field of local taxation. In all probability there is truth in all these explanations and there are very probably

others that could be discovered. It is our desire, however, to discover the intent of the framers of the constitution and to learn whether their purpose has been violated.

The people of Pennsylvania apparently made an effort to stop an abuse which was just beginning. The abuse was not stopped, but has grown instead to proportions far beyond the conception of the people who framed and secured the adoption of this organic law forty years ago.

The constitutional convention was called as the result of the feeling in the state that it was necessary to remodel certain sections of the constitution, especially those which dealt with the powers of the legislature and with its procedure. The two clauses in question were made a part of the article which limits the power of the legislative branch of the government; the convention apparently desired to put a stop to various abuses that had grown up in the granting of appropriations. There had been numerous accusations of irregularities in the legislature preceding the calling of the convention. It was the desire to limit the powers of this body that created the demand for a new constitution. Ex-Governor Curtin, one of the leaders of the convention, said that "if the members of the legislature, as has been repeatedly said on this floor, are the corrupt men they have been represented to be, if one tithe of what is said in reference to them on this floor be true, it is indeed alarming . . ."[1] At a large meeting of citizens held in Horticultural Hall, Philadelphia, to urge the adoption of the constitution, a resolution was adopted of which the following is a part:

> Resolved, That this meeting earnestly recommend the adoption of the new Constitution.
>
> First. Because the Legislature are hereby restrained from employing their high public functions for those base purposes of mere private gain which the statute books and shameful experience prove has for many years been their chief occupation. . . .[2]

This was a representive meeting and many of the prominent

[1] Debates of the Constitutional Convention, vol. v, p. 274, c. 1.

[2] *The Age*, Philadelphia, Dec. 9, 1873, p. 1, c. 5. *Cf. Public Ledger*, Philadelphia, December 9, 1873, p. 1, c. 4.

citizens of Philadelphia acted as vice-presidents. The "gang" was opposed to the constitution because it seemed to limit its power, but it was for just this reason that the so-called "respectable vote" supported the new constitution and secured its adoption. Colonel McClure, in his interesting reminiscences of Pennsylvania politics, states that

> This condition [private grafting] continued, varying only in degree until the adoption of the new Constitution . . . It is only just to say that since the enlargement of the Legislature there has been no instance in which anything approaching a majority of either branch of the Legislature has been open to venal purchase.[1]

That the purpose of the convention was to limit the legislation is shown by the following analysis of the constitution, made by the chairman of the convention:

> The article upon legislation is mostly new and is elaborate in its provisions. It contains a large body of limitations upon the legislature and regulations for its action . . . They are of high importance and will doubtless produce a decided effect upon the character of future legislation in this commonwealth. . . . Of the thirty-three sections of this article, fully three-fourths contain new matter and are well calculated to elevate the character and secure the perfection of future laws.[2]

The reasons for the introduction of these clauses appear to be four-fold: (1) to limit the power of the legislature, (2) to stop the grafting of individual legislators, (3) to do away with the excessive lobbying of private institutions and the development of charities simply for the purpose of obtaining state appropriations and (4) to abolish any possible connection between church and state.

1. The matter of charitable appropriations was brought to the attention of the convention by the introduction of a number of

[1] A. K. McClure, Old-Time Notes of Pennsylvania, vol. ii, p. 420.

[2] A Statement and Exposition of the Changes contained in the New Constitution of Pennsylvania. Signed by John H. Walker, President, quoted in A. D. Harlan's Pennsylvania Constitutional Convention, 1872 and 1873: Its Members and Officers and the Results of their Labors. Philadelphia, 1873, p. 164.

resolutions. Resolution number two of the constitutional amendments that were suggested in convention read as follows:

Section —. No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, except by a vote of three-fifths of all members elected to each House, on a call of ayes and nays.

Section —. No appropriation of public money shall be made to any denominational or sectarian institution, corporation or association for charitable, educational or other purposes.[1]

Resolution number thirty-three is as follows:

That all appropriations by the state to denominational or sectarian institutions be prohibited. That this resolution be referred to the appropriate committee for their consideration.

The question of appropriations to privately-managed charitable and educational institutions came to be considered one of the most serious problems before the constitutional convention. Almost two per cent of the proceedings of the constitutional convention is devoted to a discussion of these matters. From statements made on the floor it appears that the committee on legislation, to which these matters were referred, gave an enormous amount of time to their consideration. Hon. Harry White, speaker of the senate and chairman of the committee on legislation of the convention, made the opening speech on these subjects and led the defense of the sections. He felt that the clauses were exceedingly valuable and that they would eliminate much of the "log-rolling" which had been prevalent in the legislatures previous to 1873. He felt that a clear admonition was being given the legislature, and that its power to give away the taxpayers' money was being definitely limited. He also felt that the section dealing with denominational or sectarian institutions would cut at the root of a grave abuse, and one which the state could not under any consideration continue to countenance.[3] But the members of the convention felt that even

[1] Unbound pamphlet in Library of the Pennsylvania Historical Society.

[2] Debates of the Constitutional Convention, vol. i, p. 90, cc. 1, 2.

[3] *Ibid.*, vol. v, p. 272, cc. 1, 2.

more important than the points mentioned by Mr. White was the need of limiting the legislature. The convention had been called for this purpose and it was essential that the public treasury be defended. ". . . We should . . . not throw open the treasury's strong box and bid the poor unfortunates throughout the state to walk in and help themselves, and such a course would bankrupt this commonwealth."[1] Some members of the committee which brought the clauses before the convention felt that a more stringent limitation should be made and that no appropriations should be allowed to any except absolutely state-managed institutions.[2] These private institutions were considered special and really personal matters of the founders. The state could in no way be held responsible. It was felt that a safeguard should be thrown around the treasury and that the legislature should not be allowed to waste the people's money indiscriminately.

2. One of the most interesting points developed in regard to the limiting of the legislature was the undenied statement on the floor of the convention that there had been actual graft in the matter of charitable appropriations. It was stated that in some cases, perhaps in all, ten per cent of the sums donated to these charities was kept out of the treasury and given to the lobbyist or to the members of the legislative committees.[3] In one instance it appears that one-half of the money appropriated was spent in obtaining the appropriation.

> The gentleman from Carbon [Mr. Lilly] has said that he believes it is a business to lobby for these bills at Harrisburg, and that the average price is ten per cent. I believe, sir, that the price is more than that. I know of a single instance myself where there was an amount of $8000 asked on behalf of a charitable institution to be appropriated by the legislature. It went to a committee of conference, and there the members of the committee were divided, and it became necessary, in order to get that item put through, that the man who was "engineering" for this charitable institution to pay $4000 to get the ap-

[1] Speech of Hamilton Alricks. *Ibid.*, vol. ii, p. 692, c. 1.

[2] Speech of Wm. B. Hanna. *Ibid.*, vol. ii, p. 641, cc. 1, 2.

[3] Speech of William Lilly. *Ibid.*, vol. ii, pp. 637–8.

propriation made, and he paid it, as he alleges, and as I believe. The institution knew the money was coming, and as the slang phrase is, they "went back" on this man they had hired. He handed them $4000, and when they asked him where the rest of the money was, he said he had given it to the members of the committee on conference, and that he did not have it. They said it must be produced, and they sued him for it. It was afterwards paid for him by a request of one who was a friend of his and also a friend to the institution. . . .[1]

It is certain that the institution never obtained the money. When the head of the institution came to draw $8000, he was given but half and told that the other half had already been drawn.[2] Not only was there extravagant expenditure in order to obtain appropriations, but the "log-rolling" between members of the legislature was continuous. Groups of representatives were able to secure appropriations for a few institutions in various parts of the state.[3]

3. Statements in the constitutional convention which appeared to voice a growing feeling in the state pointed out that institutions were being actually formed for the purpose of obtaining appropriations. At the time of the adoption of the constitution, institutions were chartered by the legislature because there was at that time no general incorporation law for charitable organizations. The matter of granting charters by the legislature to new charitable institutions was abused as the legislature proceeded at once to grant them appropriations.[4] It was not only the deserving and honest privately-managed institutions that received state aid, but a number that were organized, so it was claimed, simply for the purpose of creating new positions and "making a splurge in the world."[5]

4. But by far the most important object in limiting charitable appropriations was to stop those to sectarian institutions. There can be no doubt that the constitutional convention was

[1] Speech of W. H. Smith. *Ibid.*, vol. ii, p. 637, c. 2.

[2] *Ibid.*, vol. v, p. 272, cc. 1, 2.

[3] Speech of H. G. Smith. *Ibid.*, vol. ii, p. 645, c. 1.

[4] Speeches of William Lilly and of H. G. Smith. *Ibid.*, vol. ii, pp. 637–8, 645, c. 1.

[5] Speech of William Lilly. *Ibid.*, vol. ii, pp. 637–8.

certain of its stand on this point. In the "Address to the People" by the executive committee of the convention, just prior to the vote on the constitution, we find the following in an explanation of the content of the constitution:

> . . . The shortened legislative sessions; the prevention of reckless appropriations of public moneys, . . . by decreasing the expenses of the government, will greatly reduce taxation. . . . No state institution of charity is denied proper aid from the treasury, and private charities not sectarian, can by adequate vote of the legislature receive appropriations from the commonwealth. . . . Appropriations for denominational or sectarian institutions are prohibited according to the spirit of our institutions. . . .[1]

Even those members of the convention who favored appropriations to privately-managed institutions recommended a distinct separation of state and church and felt throughout that there should be absolute restriction of appropriations to denominational or sectarian institutions.[2]

On the final passage of this measure nine distinct amendments were suggested. Each of these would, to some extent, have let down the bars and left the matter of appropriations in the hands of the legislature. A number of these amendments sought to stop appropriations to denominational or sectarian institutions only when they were organized for a definite religious purpose and when their religious work was a tangible part of their charitable efforts. These amendments were in various forms, but the intent was the same and they were voted down with consistent regularity.[3] The constitutional convention was emphatic in its demand that a restriction be thrown about the legislature and that it be closely limited in the making of appropriations to privately controlled and managed institutions.

A summary of the various arguments is of interest. It was

[1] *The Age*, Philadelphia, December 8, 1873, p. 2, c. 2. *Cf. North American and United States Gazette*, Philadelphia, December 8, 1873, p. 1, c. 9.

[2] Speeches of Lin Bartholomew and of D. N. White. Debates of the Constitutional Convention, vol. ii, p. 688, cc. 1, 2.

[3] *Ibid.*, vol. v, p. 268, c. 2; p. 269, c. 2; p. 290, cc. 1, 2; vol. ii, p. 695, c. 2; p. 696, c. 1.

stated that this country had stood throughout for absolute liberty of conscience and that there should never be any connection between church and state. Various denominations, if the bait of state aid were thrown to them, would seek to gain control of the legislature and be forced into politics.[1] State taxes were not collected for denominational purposes and the people of a state should never be taxed for the support of any religious activity.[2] It is absolutely impossible for any institution in control of a sect to be strictly non-sectarian in any of its efforts. It is almost impossible to keep religious work from entering into any other work that a religious or semi-religious corporation may undertake.[3]

Some members of the convention thought that the insertion of the clause forbidding such appropriations would be a direct insult to religious bodies. The majority, however, felt that the principle of complete separation of church and state must be maintained and that if these appropriations were allowed, the acknowledgment of some sect or sects could not be avoided. The fear that these clauses would be unpopular and that the adoption of the constitution would be endangered by them was not thought serious.[4] The convention was so certain of its position and so definite in its stand that it was decided that the appropriations to a sectarian institution should be cut off rather than to leave this loophole in the constitution.[5]

It was even argued that it would be detrimental to the institutions themselves if they were to receive aid from the state.[6]

Private giving is definitely decreased and people lose their interest in the work of an association if they are not asked to support it.[7]

There are specific fields of charity which the state should

[1] Speeches of Lin Bartholomew, *ibid.*, vol. v, p. 278, cc. 1, 2, and of Harry White, *ibid.*, vol. ii, p. 640, c. 1.

[2] Speech of Henry Carter. *Ibid.*, vol. v, p. 277, c. 2.

[3] Speech of Thomas Ewing. *Ibid.*, vol. v, p. 289, c. 2; p. 290, c. 1.

[4] Speech of Thomas Ewing. *Ibid.*, vol. ii, p. 662, c. 2; p. 663, c. 1.

[5] Speech of Thomas Ewing. *Ibid.*, vol. ii, p. 663, c. 1.

[6] Speech of John H. Broomall. *Ibid.*, vol. v, p. 277, c. 2.

[7] Speech of Lin Bartholomew. *Ibid.*, vol. v, p. 278, cc. 1, 2; p. 279, c. 1.

control and there are certain persons who are undeniably wards of the state. Any money that the state desires to spend for charities should be used exclusively for the care and treatment of those groups of the unfortunate and afflicted for whom it is directly responsible. Because of the system of appropriations to private charities it becomes necessary for the state to neglect its own wards.[1]

There are certain great charities which peculiarly belong to the state, and which church or private charities cannot so well reach and manage; such as asylums for the insane, the blind, the deaf and dumb, and houses of refuge and other reformatory institutions. Add to these the common school, and while the necessity lasts, the soldiers' orphan schools, and there the state should stop. All other charities can be better managed by counties and cities, with their homes for the destitute, and by the different Christian denominations, with their orphan asylums, their homes for the friendless and the various other ways in which the true spirit of Christianity reaches out to relieve and bless mankind.[2]

The debates of the convention show very clearly that the members felt that a rapidly growing abuse would be stopped.[3] They thought that they had really succeeded in stopping practically all appropriations by inserting a clause which required a two-thirds vote of the members of the legislature.

I have listened, Mr. President, with a great deal of interest to the debate on this question, and if I gather correctly the sense of the House, it is to limit and restrain by constitutional provision that which would be dangerous and which is becoming an abuse. . . . It is to be observed that in the eighteenth section we have guarded with great care against appropriations being made unadvisedly and for improper purposes, by requiring that they shall be passed only by a two-thirds vote of both the Senate and the House. . . .[4]

[1] Speeches of D. N. White and of Harry White. *Ibid.*, vol. ii, p. 640, c. 2; p. 641, c. 1; p. 688, cc. 1, 2.

[2] Speech of D. N. White. *Ibid.*, vol. ii, p. 688, cc. 1, 2.

[3] Speeches of William Lilly and of Hamilton Alricks. *Ibid.*, vol. ii, pp. 637–8; vol. v, p. 287, c. 2.

[4] Speech of William H. Armstrong. *Ibid.*, vol. v, p. 288, cc. 1, 2. *Cf.* speech of H. G. Smith. *Ibid.*, vol. ii, p. 645, c. 1.

The legislature would no longer be able to appropriate for "undeserving" charitable purposes, and each bill would be considered and voted upon on its merits alone.[1] They could no longer be made a part of the general appropriation bill, but would have to be considered as separate measures.

They were certain, moreover, that they had drawn a clear distinction between public and private philanthropy and had left the door open for appropriations to exclusively state institutions. They felt that the private institutions doing the work the state should do would soon come under the control of the state and in that way be entitled to adequate appropriations.[2]

The convention felt that it was not closing the doors to all appropriations, but was casting definite limitations around the legislature and making it impossible for any institution to receive aid unless it could command a very substantial support from the legislature.[3]

After the various amendments weakening the section had been voted down with absolute regularity we find the following clear statement of what the convention really intended to do, by one of the members who vigorously opposed the introduction of any constitutional limitations in these matters:

> We have seen enough this morning, Mr. President, of the temper of the convention, to be fully aware that the majority is determined to impose this iniquitous section upon the people of this commonwealth. I have no language strong enough to express my condemnation of the sentiment which prevails here today. I offer this amendment, not because I favor the section or the principle which it involves, but with the earnest, anxious hope that at least this much opportunity may be given for the expression of sentiments of charity and benevolence by the commonwealth. . . .[4]

The members of the constitutional convention undoubtedly

[1] Speech of Thomas R. Hazzard. *Ibid.*, vol. ii, p. 648, c. 1.

[2] Speech of Harry White. *Ibid.*, vol. ii, p. 640, c. 2; p. 641, c. 1.

[3] Speech of Wm. H. Ainey. *Ibid.*, vol. ii, p. 644, c. 1. *Cf.* speeches of Wm. H. Armstrong and of C. R. Buckalew. *Ibid.*, vol. v, p. 283, c. 2; p. 284, c. 1; p. 288, cc. 1, 2.

[4] Speech of S. M. Wherry. *Ibid.*, vol. v, p. 269, c. 2; p. 270, c. 1.

felt that they had placed an insurmountable obstacle before the legislature and had cured the threatening evils attendant upon the granting of appropriations. In view of the rapid increase in the number of institutions receiving appropriations and in the amounts expended, it is interesting to inquire to what extent constitutional limitations are at present operative. This can best be done by an analysis of the present method of granting appropriations.

1. "Log-rolling." Lobbying for private appropriations, which the constitutional convention sought to stop, has persistently increased rather than diminished. Political influence is utilized to obtain appropriations.[1] It is openly stated that the members of the appropriation committees continually favor the hospitals and homes in their own districts.[2] At the session of 1911 the superintendent of one of the state-aided hospitals was a member of the legislature and acted as chairman of the appropriation committee of the house. "The McKeesport Hospital was the hospital that the chairman of the appropriation committee of two years ago was favoring, and it was very well taken care of, just as the Punxsutawney Hospital is being well cared for by the chairman who hails from that county this year."[3] One of the few appropriation bills to which there was objection in 1913 was that to a hospital especially befriended by the chairman of the house appropriation committee, in which case it was repeatedly stated that favoritism had been shown, and that the amount of money to be appropriated to this particular hospital had been raised in committee and sent out earlier than the other appropriation bills so that it might reach the governor before the others.[4]

The check which the two houses of the legislature are supposed to exert on each other in our present system of constitutional government is absolutely lost sight of in the making of private appropriations. The appropriations are worked out jointly by the chairmen of the appropriation committees of the

[1] *Cf. ibid.*, vol. ii, p. 636 ff. and *Legislative Journal*, 1913, p. 4815.

[2] *Legislative Journal*, 1913, p. 4816.

[3] *Ibid.*, p. 4344, c. 1.

[4] *Ibid.*, p. 4342, c. 1.

two houses and are simply submitted to their respective committees for endorsement. We find the statement made by the chairman of one of these committees that ". . . the appropriation committee of the senate as well as of the house feels it expedient under the circumstances to make an appropriation . . . [it] was the consensus of opinion of the senate committee and also of the house committee, that this institution be given assistance at this time."[1] This is shown indirectly when we find that bills are reported out of committee in one house on the same day or the day following their final passage in the other. It is naturally impossible to suppose that each committee investigates the matter separately and considers it carefully on its own merits, as was intended by the framers of the constitution. The word of the first house considering a bill is taken on no measure except an appropriation bill, but if one of these is reported out of committee in one house it is practically assured of passage by both houses by the agreements of the chairmen of the two committees. In some cases this agreement leads to very rapid consideration of bills. In one instance a bill was introduced, reported from committee and read the first time on one day, passed second reading on the next and third reading the week following. It was sent to the other house and came out of committee at once and passed finally three days thereafter. Such a proceeding naturally makes incredible the claim of certain members of the committee that the appropriations are carefully considered by the committees of each house.[2]

2. The Work of the Appropriation Committees. It is difficult to obtain definite information on the inner workings of the appropriation committees. There is almost no documentary evidence to support statements that can be made. A sub-committee of the large committee visits each institution and knows about the conditions.[3] Moreover, the general committee has material presented to it and from this, together with the reports of the sub-committees, makes its recommendations of amounts.[4] But few members of the committee know about many of the

[1] *Legislative Journal*, 1913, p. 4359, c. 1. [2] *Ibid.*, p. 4215, c. 2.
[3] *Ibid.*, p. 3922, c. 1; p. 4215, c. 2. [4] *Ibid.*, p. 3960, c. 1.

individual institutions and they rely largely on the opinion of the chairmen.[1] Ten members of a committee of forty are a quorum for the transaction of business. The result is that ten members can dispense the large revenues of the state[2] and, as will be pointed out later, any criticism of their methods or of the amount suggested is definitely resented. However, twelve to thirty members are usually present at meetings.[3] It was stated on the floor at the last session that at times insufficient notice was given of the meetings of the committee and, although the general statement was denied by the chairman, it was admitted that on one occasion at least, a bill had been reported without notice of meeting having been given.[4] The business of the committee seems to be conducted in a rather slipshod manner and there is complaint of continual mixing of various types of appropriation bills with consequent confusion of the members of the committee.[5] From the following statement it would appear that, at times at least, very little thought is given to some appropriation measures: "I am informed by one of the members of the appropriation committee that the statements made by the gentleman from Philadelphia, Mr. Scott, that it would look as if these bills were admitted without consideration, would appear to be correct."[6]

There has been grave criticism that the bills have been held until the last days of the session so as to preclude the possibility of opposition. The last days are exceptionally rushed and consequently it is deemed more expedient to hurry through the hundreds of appropriation bills without time for discussion.[7]

3. The Committees are Supreme. In spite of these criticisms of the methods of the appropriation committees, it is generally felt that the committees must be upheld. Their statement must be final.[8] The chairman not only resents any opposition[9] but feels that such opposition is a personal attack.[10]

[1] *Legislative Journal*, 1913, p. 4067, c. 1.
[2] *Ibid.*, p. 3675, c. 1.
[3] *Ibid.*, p. 3675, c. 1.
[4] *Ibid.*, p. 3674, c. 1.
[5] *Ibid.*, p. 3674, c. 2.
[6] *Ibid.*, p. 4489, c. 2.
[7] *Ibid.*, p. 4063, c. 2.
[8] *Ibid.*., p 3652, c. 1; p. 4342, c. 2.
[9] *Ibid.*, p. 3417, c. 1; p. 3425, c. 2.
[10] *Ibid.*, p. 4342, c. 2.

Since the appropriation committee, or some of its members, have visited an institution, any discussion is out of place.[1] After the bills have been held until the closing days of the session the statement is made that it is "not fair to hold them up now"[2] and to discuss them. It is considered an unusual and very improper[3] procedure to delay the passage of an appropriation measure.[4]

> Here is an appropriation committee . . . which tries to tell us how this is going to be distributed, and when that recommendation comes in, it is our bounden duty to follow, to say "aye" to everything that has been recommended to us. We must close our eyes; we must close our ears, you must be blind and deaf, and all you have to do is go along.[5]

In one instance a senator in whose district a hospital was to be located objected to an appropriation being made to this institution, since it was still to be constructed. So strong is the precedent of supporting the appropriation committee, however, that in spite of the opposition of this senator the bill granting an appropriation to this institution passed the senate with only two dissenting votes.[6] The statement of the appropriation committee is apparently the last word. ". . . The information which the appropriation committee has given us and which they have ascertained after careful investigation" is never to be questioned.[7]

Any member who desires to have a bill carefully considered on the floor and does not wish to have the word of the appropriation committee taken without explanation is scoffed at and a mass of irrelevant questions are asked him.[8] It seems that whatever material is presented, the legislator in order to protect his own appropriations must "go along."[9]

It is considered by many members of the legislature that the

[1] *Legislative Journal*, 1913, p. 3429, c. 2; p. 3652, c. 1.
[2] *Ibid*, p. 4487, c. 1.
[3] *Ibid*, p. 3652, c. 2; p. 4214, c. 2.
[4] *Ibid.*, p. 4067, c. 1.
[5] *Ibid.*, p. 4343, c. 2.
[6] *Ibid.*, p. 4358, c. 2; p. 4359, c. 1.
[7] *Ibid.*, p. 4058, c. 1.
[8] *Ibid.*, p. 4345, c. 2.
[9] *Ibid.*, p. 4815, c. 2.

present system is ridiculous, because the legislators do not know on what they are really voting. This results in appropriations being given " . . . with childlike confidence in the appropriations committee." [1]

> . . . All of us in the house appreciate the want of knowledge that we have in voting out the vast number of thousands of dollars to various charitable institutions. We must depend upon the appropriations committee and the appropriations committee must depend upon the various interests that bring influence upon that committee to name various amounts in the various appropriations. . . .[2]

As was expressed on the floor: "It is a physical impossibility that those of us here could possibly know the needs of the charities, or know the expenditure of money . . ." [3] The house seems to pay absolutely no attention to the appropriation bills.[4]

It can be seen from this analysis that "one committee has the power to distribute all this money. You have the power of this legislature in its closing hours to give out these vast millions. . . . We are extravagant in our money matters; we are careless with our money. We are most crude in expending our money." [5] The power in the appropriation committee in the two houses is centralized in the chairmen and in the final analysis but one man—the stronger of the two—controls the expenditure of the state's revenues of thirty-four million dollars a year. The check between the two houses is set at naught. The care which the constitutional convention felt would be secured by the increased size of the legislature has failed. The appropriation system, especially as it relates to privately-managed institutions, is obviously far from the intent and purpose of the constitution.

4. The Clause Requiring a Two-thirds Vote is Frequently Ignored. As has been mentioned, one of the important limitations of the constitution is the one requiring a two-thirds vote

[1] *Legislative Journal*, 1913, p. 4240, c. 2.
[2] *Ibid.*, pp. 4815, 4816.
[3] *Ibid.*, 3792, c. 1.
[4] *Ibia.*, p. 4265, c. 1; 3960, c. 1; 4342, c. 1; 4240, c. 2.
[5] *Ibia.*, p. 3792, c. 1.

on all private appropriation bills. It was felt that this would definitely limit the amount and number of appropriations, as it would be an exceedingly difficult matter to obtain so many votes. At present, however, the recommendations of the appropriation committees are seldom discussed, and the passing of these measures by the two houses is simply a formality. Seldom is the full roll called, but the announcement in each case shows that far more than the required two-thirds of the members voted for it. During the last session of the legislature it became customary in the house to announce that about two hundred members had voted for the various private appropriation bills. In these instances the first name on the roll was called and the house shouted aye. No individual member could legitimately be recorded as voting for this bill except the man whose name appeared first on the roll.[1] No direct evidence of this fact can be found in the legislative record, as the constitutional requirements are in each case stated to have been followed out, but we find that in one instance during the last session the question of a quorum was raised, and it was found that 130 members were in the house and that 17 were "absent with leave." Directly after this the house began to pass appropriation bills, and we find that four members who were reported out of the city are recorded as voting "aye" on twenty-two measures.[2] There are many examples in the record that point to this practice of not calling the roll accurately, as required by the constitution. On one occasion a discussion of a quorum showed 128 votes in the house. The seven roll calls that directly followed this showed 133. An appropriation bill

[1] *Cf.* Constitution of Pennsylvania, art. ii, sec. 4, which reads: "Every bill shall be read at length on three different days in each house; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law, unless on its final passage the vote be taken by ayes and nays, the names of the persons voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor." It would appear that by the present procedure the evident intent of this section is being ignored.

[2] *Legislative Journal*, 1913, p. 4592; p. 4610 ff.; p. 4502, c. 1. J. R. Jones is reported as voting after he had been granted leave of absence for the remainder of the day. *Ibid.*, p. 4419, c. 1.

was announced on the calendar and is reported to have had 202 votes in its favor.[1]

The procedure in the senate is similar. Thirty-four votes are required in the senate for passage of an appropriation bill. It is seldom that the required number vote. The following newspaper note is interesting:

"Thirty-four members having voted in the affirmative and none in the negative, the amendment is therefore agreed to," announced Lieutenant-Governor Reynolds, as clerks finished a roll call to which actually four men had answered, while only 16 senators were in any parts of the hall whatever.[2]

The question of a quorum is seldom raised and we find in one instance that although only 13 senators were in the capitol during a day and not more than 9 on the floor at any one time, 292 bills were acted upon in eighteen minutes.[3] At times, however, the chair refuses to proceed unless the number of votes required by the constitution to pass an appropriation bill are in the house, and Speaker Alter at one time stated that "unless 138 members are present the chair will not permit the private appropriation bills to be voted upon except by the *ordinary* roll calls," which, of course, would be fatal to the bills.[4] This ruling of the speaker was questioned and the answer given was that "it is a matter of conscience on the part of the chair."[5] The general principle seems to be that private appropriation bills are to be simply "sung through the house with 138 votes."[6] The practice seems to be to ignore the constitution.

[1] *Legislative Journal*, 1913, pp. 4829-4833. Other examples of this striking discrepancy between the recorded vote of the house and the actual number of voters present (according to succeeding roll calls) may be found on p. 5032 (a discrepancy of 64 votes); p. 5056 (a difference of 47 votes). See also pp. 3279, 3281–3306, 3309, 3319, 3546–65, 3566, 4219, 4220–32, 4234, 4236–40, 4258–60, 4909. The same discrepancy may be found in the senate votes, as shown on pp. 3576–85 and 4380.

[2] *Harrisburg Patriot*, May 28, 1913, p. 2, c. 5. *Cf. ibid.*, June 20, 1913, p. 1, c. 7.

[3] *Ibid.*, June 20, 1913, p. 1, c. 1.

[4] *Legislative Journal*, 1913, p. 4586, c. 1.

[5] *Ibid.*, p. 4619, c. 1.

[6] *Ibid.*, 4240, c. 2.

The constitutional restriction on the legislature looking toward economy is practically a dead letter.[1]

By far the most serious discussion in the constitutional convention was on the question of appropriations to sectarian or denominational institutions. Not only was no appropriation to be given for sectarian or denominational purposes, but no money was to be appropriated to any religious organization, no matter what its purpose. This is absolutely ignored at the present time. A study of the charter and by-laws of the institutions receiving state aid brings out clearly the fact that this clause, which caused so much discussion in 1872 and 1873, no longer receives consideration. The question of gifts to sectarian or denominational charities is not limited to those of any faith, and we find Catholic, Protestant and Jewish institutions receiving state aid indiscriminately and on the same level as purely state-owned, state-controlled and state-managed institutions. It is possible at this time to mention only a few examples.

We find, for instance, in a certain corporation conducting a hospital that only professed members of a definite sisterhood shall be eligible for membership. The mother superior of the order is *ipso facto* president of the corporation, and the board of directors, which may be elected from outside of the sisterhood, is purely advisory. All property is held in the name of the sisterhood.[2]

In the case of a Catholic children's association, the corporation is self-perpetuating and the property is in the control of a sisterhood whose mother-house is not within the state.[3]

One children's home which receives state aid requires that its

[1] In spite of these instances that seem to show open violation of the constitution it is to be doubted if the courts would interfere. In Kilgore *v.* Magee (85 Pa. St. 401) it was stated that "In regard to the passage of the law and the alleged disregard of the forms of legislation required by the constitution we think the subject is not within the pale of judicial inquiry. . . . The presumption in favor of regularity is essential to the peace and order of the state. If every law could be contested in the courts on the ground of informality in its enactment, the floodgate of litigation would be open so widely that society would be deluged in the flow. . . . ."

[2] St. Joseph's Hospital, Pittsburgh. By-laws, art. 2, sec. 2; art. 4, sec. 1; art. 5, sec. 3; art. 7, sec. 1.

[3] St. Catherine's Asylum, Reading. Constitution, secs. 4–7; by-laws, sec. 7.

wards "shall be carefully instructed in the precepts of the Protestant religion and shall attend with the matron the nearest Protestant church and Sunday-school." [1]

In another instance, one-fifth of the board of managers of a prominent hospital shall be the rector and church-wardens of an Episcopal church. The rector shall always be the warden and chaplain of the hospital and in case of dispute the bishop of the diocese shall appoint managers to carry on the work.[2]

Religious services are limited in the case of an old ladies' home. The following extract from the rules is interesting: "Any minister properly authorized as a preacher of the Gospel of any Evangelical denomination of Christians shall be cordially received and none other will be admitted." [3]

One Jewish hospital states in the preamble to its constitution that the hospital is needed "since there is no institution now in existence within the State of Pennsylvania under the control of Israelites." Although apparently any person is admitted to membership in the association by subscribing and although the hospital is non-sectarian in its reception of patients, we find that the association conducts an old people's home which is open only to Jews and also a home for incurables which has similar restrictions.[4] There is no differentiation in the books of the association between the work of the hospital and the work of the homes. The homes are distinctly for Jewish inmates, but for a number of years the state gave its appropriation to the association, which governs them together. At the last session of the legislature, however, the appropriation was made to the "Hospital Department of the Jewish Hospital Association." But in the last available annual report of the association, there was no differentiation of accounts between the two sides of their work.

The final responsibility for appropriations rests, however, with

[1] Easton Home for Friendless Children. By-laws, art. 16.

[2] St. Timothy's Memorial Hospital and House of Mercy, Roxborough. Charter, art. 4 and art. 6.

[3] Pennsylvania Asylum for Indigent Widows and Single Women. Rules for the Regulation of the Board of Managers.

[4] Jewish Hospital Association. By-laws, art. 15, secs. 1, 2.

he governor, because of the veto power. At almost every session of the legislature appropriations are made far exceeding the prospective revenues of the state. The legislature of 1913 appropriated some $89,000,000 for the biennial period ending in 1915. The estimated revenues of the state for that period will be about $64,000,000, and the governor is required to harmonize these figures.[1] At one time in the last session the house referred back a group of appropriation bills for further consideration, but the appropriation committee evaded its responsibility and as a result almost all the bills were passed and it was left to the governor to cut them down.[2] The constitution of the state provides that the governor may veto not only entire bills but also any individual item in a bill.[3] The governor, however, frequently goes farther and scales down the appropriations to the various charitable institutions. Practically no institution receives finally the money that is appropriated to it by the legislature, but receives the amount which the governor decides to give it. Appropriations, therefore, are put in the hands of one man. This would also appear to be contrary to the meaning of the constitution. The power which has been given the governor seems to be overstepped.[4]

We find, therefore, an interesting contradiction in Pennsylvania. The framers of the constitution wrote certain clauses dealing with appropriations to charitable institutions. They felt that the large number of votes required would make it impossible

[1] *Legislative Journal*, 1913, p. 4486, c. 1; p. 3792, c. 1; p. 3701, c. 1.

[2] *Ibid.*, p. 4824.

[3] Constitution, art. 4, sec. 16.

[4] In Commonwealth *v.* Barnett (199 Pa. St. 161), it was held that the governor might pare down individual items in the general appropriation bill. The ruling opinion as given by Chief Justice Mitchell stated that the right to veto an item in a bill included the right to veto a part of an item. Moreover, as this power of the governor had become customary, the court did not desire to interfere. Justice Mestrezat, in his dissenting opinion, held that the governor did not have this power of paring because the constitution should be literally interpreted, as it was perfectly clear on this point. The supreme court of Mississippi (State *v.* Holder, 76 Miss., 158), has held with the dissenting opinion. A similar judgment to that of Pennsylvania is found in Porter *v.* Hughes (32 Pac. Rep., 165). By this decision the legislature is set at naught, as it has no way of "going over" the governor's veto, as there is no veto to be set at naught.

for the constitution to be circumvented. They felt that there would be no affiliation between religious or sectarian institutions and the state government. Lobbying for private appropriations would become a thing of the past. Such was undoubtedly the hope and purpose of the framers of the constitution.

And yet Pennsylvania is today giving money to three hundred institutions—most of them local in scope as well as private in management. The state is subsidizing institutions that are sectarian or denominational. It continues to foster the development of agencies which are not only unnecessary but actually detrimental to the charitable work of the commonwealth. Most pernicious of all, it has made the philanthropies of the state a crucial part of the unsavory political system for which Pennsylvania has been unhappily notorious. In view of these facts is it not pertinent to ask, "What is the Constitution among Friends?"

ALEXANDER FLEISHER.

NEW YORK CITY.

MILITARY STRATEGY VERSUS DIPLOMACY

IN BISMARCK'S TIME AND AFTERWARD[1]

IT is the purpose of this paper to compare the conduct of Austro-German diplomacy before the outbreak of the present war with that of Prussian and German diplomacy in the Bismarckian period; and, in so far as the more recent diplomacy appears to have been less successful than the earlier, to indicate what seems to have been one of the principal obstacles to its success.

It would be a grateful as well as an easy task to treat this subject from an idealistic and humanitarian point of view, and to assume that it is the duty of governments to render war impossible. Such a discussion, however, would leave us where we started, in a world not yet realized. War persistently recurs, and in certain contingencies it seems to be unavoidable. In the existing world-order the first duty of the statesman is to protect the interests of his own country, and his action is to be judged, neither by pacificist nor militarist theories, but according to the standards of approved political practice.

I shall hardly be accused of adopting a utopian standard for the conduct of international politics if I base my criticism mainly on the practice and doctrines of Prince Bismarck. Some modern German writers have remarked that the more pacific theories of this statesman, formulated for the most part after 1871, are not in harmony with his foreign policy before that time. If, however, we note certain distinctions upon which he himself insisted, his practice and his doctrines do not appear to be inconsistent.

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Bismarck held that a state may rightly make war for the realization or defense of vital national interests, but that it should

[1] The substance of this paper was presented to the Phi Beta Kappa Society of New York, December 14, 1914, and to the Century Association of New York, February 13, 1915.