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Stanley Siegel
University of Michigan Law School

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THE UNITED STATES POST OFFICE, INCORPORATED: A BLUEPRINT FOR REFORM

*Stanley Siegel**

FOR several generations, the United States Post Office has been the textbook demonstration of the inefficiency of the government in business. To some, the solution to its problems lies only in turning over its functions to free enterprise. A more constructive and politic approach is to inquire whether a structural arrangement falling somewhere between that of a governmental department and that of a privately owned business would permit the Post Office to achieve some of the efficiencies of private enterprise without compromising the most essential elements of public responsibility. This approach has been given new timeliness by the proposal of Postmaster General O'Brien to convert the Post Office into a public corporation.

It is hardly surprising that the Founding Fathers did not establish the Post Office as a public corporation. Even as a device for the accumulation and management of *private* wealth, the corporation was then in its infancy. Since that day, the United States has witnessed not only the development of large private corporations to perform public service functions—the railroads, power companies, and telephone companies—but has also gained experience with public corporations such as the Tennessee Valley Authority (TVA). This experience has been complemented by developments in other nations, such as Great Britain, in the use and management of public corporations.

Through all this accumulation of experience and administrative science, the United States Post Office has slumbered like an enchanted princess in the outdated mold of its eighteenth century creation. It is the purpose of this article to inquire into the deficiencies of the Post Office and to consider whether a basic structural change would permit it to fulfill more completely and more efficiently its critical functions.

Complaints about the Post Office Department are as diffuse as they are frequent and strident. Criticism cannot be sharpened, and ordered attempts at reorganization are not possible, without a clear

* Assistant Professor of Law, University of Michigan. B.S. 1960, New York University; LL.B. 1963, Harvard University.—Ed.

understanding of the Department's present problems and the roots of these problems.¹

It is fair to say that at least in recent years some progress has been made in most areas of the Department's operations. More mail is moved² than at any previous time in its history.³ Mechanization has proceeded, wages have been increased, and steps have been initiated to infuse top-level talent into the Department. To some extent these innovations arise out of earlier studies of the Post Office, such as the 1949 and 1955 *Hoover Commission Reports*,⁴ but to a significant degree they represent delayed responses to the pressures of increasing size and complexity of operations. Recent events, such as the catastrophic tie-up in the Chicago Post Office,⁵ demonstrate that these responses have been inadequate. Mail volume is increasing at a rate of over three billion pieces annually; it is estimated that the volume in fiscal year 1968 will be some 415 pieces per capita.⁶ Postmaster General Lawrence O'Brien has claimed that the Department is in a "race with catastrophe";⁷ that the Post Office will be incapable of dealing with its future demand unless massive changes are instituted. The major problems will be detailed below under three headings: Personnel and Organization, Finance, and Operations.

I. PROBLEMS OF THE POST OFFICE

A. Personnel and Organization

As of June 30, 1966, the Post Office had over 675,000 employees; employment statistics indicate larger increases of the work force each

1. As of 1962, "the whole of the scholarly literature on the Post Office comprise[d] just six doctoral dissertations . . ." M. BARATZ, *THE ECONOMICS OF THE POSTAL SERVICE* 1 (1962).

2. Present volume is eighty-three billion pieces of mail annually. *Hearings on Post Office Appropriations Before a Subcomm. of the House Comm. on Appropriations*, 90th Cong., 1st Sess. 28 (1967) [hereinafter cited as *1968 Appropriations Hearings—House*]. The mail moves through 44,000 post offices, stations and branches. *Id.* at 402-03.

3. A British study suggests that the real cost of transporting mail has declined, but no studies in the United States establish this hypothesis. Compare 1 SELECT COMMITTEE ON NATIONALISED INDUSTRIES, FIRST REPORT—THE POST OFFICE 61 (1967) [hereinafter cited as SELECT COMMITTEE REPORT].

4. COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, THE POST OFFICE DEPARTMENT, and other reports (1949) [hereinafter cited as 1949 HOOVER COMMISSION]; COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, PERSONNEL AND CIVIL SERVICE, and other reports (1955) [hereinafter cited as 1955 HOOVER COMMISSION].

5. Remsberg, *The Day the Mails Stopped*, SATURDAY REV., Dec. 17, 1966, at 21.

6. *1968 Appropriations Hearings—House* 28. Approximately 80% of all mail and 75% of all first-class mail is business mail. *Id.* at 54-55. Moreover, mail is heavily concentrated at certain times and places. It is estimated that a billion pieces of mail are handled by New York City's General Post Office during the Christmas period. This is more than the total annual mail of Belgium, and as much as that of France. N.Y. Times, Dec. 6, 1967, at 41, col. 5.

7. *1968 Appropriations Hearings—House* 4; Cordtz, *It's Now or Never for the Post Office*, FORTUNE, March 1967, at 134.

year.⁸ It is a bottom-heavy labor force: clerks, mail handlers, carriers, drivers, and maintenance personnel constituted 402,000 of the total, and substitute employees in these positions⁹ comprised an additional 201,000. Pay grades among this group range from PFS-1 through PFS-6, a salary range of \$4,324 to \$8,680.¹⁰ Fewer than 100,000 positions in the entire postal service are above the postal clerk and letter-carrier category.¹¹

At the lower levels, the problems of attracting and retaining employees are significant, for rather obvious reasons. Pay rates are uniform nationwide; thus, while Post Office positions are desirable in areas of low living costs, it is difficult if not impossible to attract prospects of similar quality to Post Office positions in major urban centers, where costs of living and competing opportunities together render postal salaries unattractive.¹² Moreover, new employees begin

8. ANNUAL REPORT OF THE POSTMASTER GENERAL—FINANCIAL SUPPLEMENT 38, 80 (1966).

9. Authorized by 39 U.S.C. § 3302 (1964).

10. 39 U.S.C. § 3542 (Supp. II 1965-1966) (pay scale). Under a postal rate and federal salaries bill signed by the President in December 1967, postal field service salaries were increased 6% retroactive to October 1, 1967, and will be increased another 5% on July 1, 1968. H.R. 7977, § 3542, 90th Cong., 1st Sess. (1967). See S. REP. NO. 801, 90th Cong., 1st Sess. 23-24 (1967). The cited figures are effective July 1, 1968. 85% of all postal workers are in the bottom five grades. Cordtz, *supra* note 7, at 136.

11. S. REP. NO. 801, 90th Cong., 1st Sess. 24 (1967).

12. 1968 Appropriations Hearings—House 24, 430-31. See, e.g., the statement of the President of the National Association of Letter Carriers concerning low entrance salaries in New York City. *Id.* at 728. The 1955 Hoover Commission noted that postal pay classifications were too detailed and elaborate and that they did not respond to varying regional pay rates. 1955 HOOVER COMMISSION, PERSONNEL AND CIVIL SERVICE 54-57. Although there is authority for the Civil Service Commission to establish higher minimum wages, within limits, if area wages are so substantially above the pay rates of statutory pay schedules as to handicap significantly the Government's recruitment or retention of well-qualified individuals, this authority appears to have been sparsely used—if at all—in the postal service. 5 U.S.C. § 5303 (Supp. II 1965-1966). See, e.g., the testimony of Congressman William Ford of Michigan:

I have spent some time looking at the wage policies of the American Telephone & Telegraph Co. They have a very sophisticated regional wage scale system that they have worked out over a period of years.

Now, I have heard it said around the Hill since I came here a couple of years ago that the reason we don't try to do this with Federal employees is because the employee organizations have opposed it.

If they have opposed it vigorously, I don't know what proposal they might have opposed, because in preparation for these hearings I have checked back, and found that in the past 4 years the administration in none of its proposals has suggested any such plan.

[F]rankly, I don't know of a single post office in my district that doesn't have more positions authorized than it has people to fill them. . . .

It seems unfortunate that we should be building toward a service that is growing as fast or faster, in the demand that the public is making on it, than anything in our entire economy. . . . [Y]et we are not anticipating the tremendous demands that will be made on it by doing something realistic about recruiting and keeping the kind of people who can be trained for the more sophisticated machinery that this committee is talking about making available.

Hearings on H.R. 8261 and Related Bills Before the Subcomm. on Compensation of the House Comm. on Post Office and Civil Service, 90th Cong., 1st Sess., ser. 90-15, at 53-54 (1967).

as substitutes, with no assurance of a full week's work and pay, and often with undesirable night shifts.¹³

Once in the postal service, employees receive little training and have remarkably few opportunities to progress to higher grades or greater responsibilities. Four out of five postal employees remain in the same grade throughout their careers, receiving periodic salary increases within that grade; they have little motivation to excel.¹⁴ Moreover, it has frequently been claimed, though not well documented, that the giving of promotions at even the lowest grades is affected by political considerations.¹⁵

In technical positions, as well as at the managerial and executive levels, these problems are at least as severe. Until quite recently, little effort was made to hire college graduates for managerial positions. Efforts to attract such people, as well as professional talent—engineers, attorneys, and the like—have been hampered by low salaries, unattractive working conditions,¹⁶ and the suspicion that political considerations affect advancement.¹⁷ A pilot program was recently initiated to develop a cadre of trained supervisors; this operates in conjunction with a project that for the first time permits voluntary transfers of employees from one post office to another for experience and advancement.¹⁸ Since, however, postmasters are polit-

Regional pay variation, however, is an issue of considerable union concern, and many employee organizations do not favor such a policy. Cf. SELECT COMMITTEE REPORT 36, 38 (union objections to local pay differentials in Great Britain).

13. 1968 *Appropriations Hearings—House* 73, 338-41, 754. Turnover among such substitutes is high.

14. See Cordtz, *supra* note 7, at 136-37.

15. See, e.g., the statement of the President of the National Postal Union in 1968 *Appropriations Hearings—House* 756; Cordtz, *supra* note 7, at 137; Greenfield, *What's the Matter With the Mails*, REPORTER, Feb. 11, 1965, at 21, 24.

16. 1968 *Appropriations Hearings—House* 321, 701, 715, 722-23. Rigidity of the civil service promotion scheme makes it difficult to retain professionals. *Id.* at 682.

17. *Id.* at 69-70. Note the following rather strained exchange:

Mr. Robison. . . . Isn't one of your problems, Mr. Postmaster General, in attracting talent, young talent, from the college university campuses and so on that political overstructure that tends to inhibit career advancement, at least at the top levels of the Post Office?

Mr. O'Brien. I am not sure, Mr. Robison, that in general management, headquarters, regional, across this country that we have restrictions imposed upon us along these lines. Perhaps there are occasions. I am trying to recall now but I I can't—any specifics.

18. 1968 *Appropriations Hearings—House* 361. The Department has had a year of favorable experience with a management intern program, and it plans for 1968 to initiate a Postal Staff Institute. *Id.* at 341-42, 367-68. ANNUAL REPORT OF THE POSTMASTER GENERAL 143-44 (1966).

It may prove surprising to those unfamiliar with the Post Office that lateral transfers have generally been forbidden from one post office to another. *But see* 39 U.S.C. § 3332 (1964) (permitting transfers to branches). Mr. O'Brien describes the voluntary transfer arrangement as "unprecedented." 1968 *Appropriations Hearings—House* 7. In fairness to the Department, it should be noted that labor generally opposes such

ical appointees, the advancing Post Office employee who is without political influence faces a substantial impediment to his further progress.¹⁹ While it is true that in all government departments political considerations enter into promotions at the highest levels, under present policies the top 25,000 jobs in the Post Office are filled by presidential appointment;²⁰ and, from 1960 to 1967, nearly two-thirds of the new postmaster appointments were drawn from outside the ranks of postal employees.²¹ That some of these outside appointees prove to be excellent postmasters is clear; it is equally clear, however, that many do not, and even more obvious that the appointment process produces a grave morale problem.²² Objections to the political appointment of postmasters have been voiced since at least the 1949 *Hoover Commission Report*, which recommended generally that "the Post Office should be taken out of politics," and specifically that confirmation of postmasters by the Senate be abolished.²³ A task force of the 1955 Hoover Commission concluded that political selection of postmasters "is incompatible with a businesslike management of the largest civilian business that the Government operates," and recommended that postmasters be named by the Postmaster General without Senate confirmation.²⁴ This recommendation, however, was never adopted by the Commission itself; it remained for subsequent legislative proposals to

transfers, even on a voluntary basis; for example, they oppose the pilot project on voluntary transfers. *Id.* at 68.

19. Postmasters of first-, second-, and third-class post offices are appointed by the President, with Senate confirmation, 39 U.S.C. § 3311(a) (1964). The formal procedure calls for written or oral examinations to be given by the Civil Service Commission, with the top three eligibles certified to the Postmaster General, who in turn recommends one for appointment by the President. But in fact, an "advisor," usually the local Congressman of the party in power, transmits the choice of local party leaders to the Postmaster General. Indeed, if the chosen man does not qualify on the examination, a new examination may be scheduled. NATIONAL CIVIL SERVICE LEAGUE, POLICY STATEMENT: ABANDONING PATRONAGE IN POSTAL APPOINTMENTS (1966). Patronage rights of Senators and Congressmen are a matter of record not only as to appointment of postmasters, but also as to appointments in regional offices of the Post Office. See *Hearings on Nomination of Lawrence F. O'Brien To Be Postmaster General of the United States Before the Senate Comm. on Post Office and Civil Service*, 89th Cong., 1st Sess. 7 (1965).

20. As of June 30, 1966, 24,720 postmaster positions were subject to presidential appointment. 8,401 fourth-class postmaster positions are filled by appointment of the Postmaster General under 39 U.S.C. § 3311(b) (1964). ANNUAL REPORT OF THE POSTMASTER GENERAL—FINANCIAL SUPPLEMENT 44-45 (1966).

21. 1968 *Appropriations Hearings—House* 49.

22. *Id.* at 48-50, 354-55. Note that the postmaster position can be filled temporarily by the naming of an acting postmaster, 39 U.S.C. § 3315 (1964), and that this process has been used to allow an otherwise unqualified candidate to qualify himself for office. *Id.* at 164-66; NATIONAL CIVIL SERVICE LEAGUE, *supra* note 19.

23. 1949 HOOVER COMMISSION, THE POST OFFICE DEPARTMENT 9-10.

24. 1955 HOOVER COMMISSION, REPORT OF TASK FORCE ON PERSONNEL AND CIVIL SERVICE 133-35.

advance this approach.²⁵ Despite these proposals, renewed with increasing frequency, the original appointment process remains.

Incompetent employees pose yet another problem: adverse personnel actions are long and drawn-out. The average processing time for an appeal is nearly two months,²⁶ during which time the employee stays on the rolls—often as a genuine impediment to local operations—despite the fact that the Board of Appeals and Review sustains the adverse action in about eighty-five per cent of its cases.²⁷

A problem endemic to the entire Department is lack of individual authority: from the Postmaster General down, executives, managers, supervisors, and workers are so hamstrung by statutory and regulatory restrictions that they are left with too little discretion to perform their jobs well.²⁸ Witness the following exchange between Congressman Steed and Postmaster General O'Brien:

Mr. Steed. General, in some degree by matters beyond anybody's control and in some degree by act of the Congress and by other legal requirements, would this be a fair summary: that at the present time, as the manager of the Post Office Department, you have no control over your workload, you have no control over the rates of revenue, you have no control over the pay rates of the employees that you employ, you have very little control over the conditions of the service of these employees, you have virtually no control, by the nature of it, of your physical facilities, and you have only a limited control, at best, over the transportation facilities that you are compelled to use—all of which adds up to a staggering amount of "no control" in terms of the duties you have to perform. . . .

Mr. O'Brien. Mr. Chairman, I would have to generally agree with your premise certainly. I must say that is a staggering list of "no control." I don't know it has ever been put that succinctly to me. If it had been at an appropriate time, perhaps I wouldn't be sitting here.²⁹

Postmasters, like the Postmaster General, also suffer from a lack of authority; although, for example, additional purchasing authority was delegated to the postal region in 1966, the procurement authority of local postmasters remains small.³⁰ A task force of the 1949 Hoover Commission reported that lack of authority and the correspond-

25. See text accompanying note 83 *infra*.

26. 1968 *Appropriations Hearings—House* 357 (57 days).

27. *Id.* at 331.

28. See generally Greenfield, *supra* note 15.

29. 1968 *Appropriations Hearings—House* 27-28.

30. ANNUAL REPORT OF THE POSTMASTER GENERAL 117 (1966). Note, for example, the case of a lost lock box key that ultimately was resolved in the office of the Postmaster General. 1968 *Appropriations Hearings—House* 259.

ing diminution of accountability have produced a philosophy of postal management that is "sluggish, irresolute, and wasteful, rather than imaginative, decisive, and cost conscious." Efforts at improvement have accordingly been uninspired, low-gear, and, by comparison with private industry, generally mediocre.³¹

B. Finance

The most often-voiced complaint as to finances is that despite rate increases in all classes of mail, postal deficits increase annually.³² Financial problems begin with the preparation of the budget, estimates for which are assembled locally some fifteen months before the beginning of the fiscal year, an average of some two years before funds are actually spent. Enactment of the Post Office budget has generally preceded the beginning of the fiscal year. Postal revenues are paid directly into the Post Office Fund in the Treasury; Congress annually appropriates this fund plus an additional amount to cover the projected deficit, and the total is then usable directly to pay Post Office expenses.³³ Supplemental appropriations to cover unexpected increases in volume or wages have usually been passed without difficulty; they are occasionally made necessary by budget cuts imposed earlier in the regular budgetary process. Appropriations are presently in six categories; the largest of these, some eighty per cent of the total appropriation, is that devoted to operations. Ten per cent is spent on transportation, and the remainder for administration, research and development, building occupancy, and plant and equipment.³⁴ Transfer between appropriations not in excess of five

31. 1949 HOOVER COMMISSION, TASK FORCE REPORT ON THE POST OFFICE 32-34. Note the comparable conclusion of the British investigation with respect to detailed Parliamentary control. SELECT COMMITTEE REPORT 194.

32. Figures for 1966, 1967 and 1968 are as follows:

	Deficiency in Rates & Fees	Losses on Public Services	Net Operating Loss
1966 Actual	\$399 million	\$543 million	\$ 942 million
1967 Estimated	637 million	567 million	1204 million
1968 Estimated*	82 million-profit	574 million	492 million

* Including an estimated \$700 million revenues from rate increases. 1968 *Appropriations Hearings—House* 107.

It is contemplated that the costs of "public services" will be assumed directly by the federal government. 39 U.S.C. § 2302(c)(3) (1964). These costs, listed in 39 U.S.C. § 2303 (1964), include such items as reduced rates for second-class mailings, free postage on reading matter for the blind, reduced third-class rates for charitable organizations, and certain other free mailing privileges.

33. 39 U.S.C. § 2202 (1964). *See, e.g.*, Post Office Department Appropriation Act, 81 Stat. 115 (1967).

34. 1968 *Appropriations Hearings—House* 98. In 1968 a seventh appropriation was

per cent is permitted when authorized by the appropriation act;³⁵ and expenditure in excess of the appropriation is prohibited by the Anti-Deficiency law.³⁶

This entire budgetary process, at least as applied to the Post Office, has tended to misdirect efforts that might otherwise have been spent on seeking cost effectiveness to assuring legality and securing appropriate approvals for the expenditure of appropriated funds. The process is unresponsive to genuine Post Office needs, and it is occasionally subject to political influences wholly unconcerned with postal operations.³⁷ It was recognized nearly twenty years ago that despite the liberalizing influences of freely available supplemental appropriations and the ability to spend postal receipts, the postal budget merely created the appearance of flexibility, while the real effect was to produce rigidity of control within the department rather than the flexibility of financial operations necessary to a rapidly changing, essentially commercial activity.³⁸ Yet the Post Office has only recently initiated financial controls based to some degree on performance. The new Planning-Programming-Budgeting System³⁹ is not yet used, however, in preparing budget presentations to Congress. Congress therefore has little meaningful data for evaluating the financial effectiveness of the Department.

A second area of concern, operational as well as financial, is approval of capital expenditures, including not only acquisitions of post office buildings but purchases of machinery and equipment

added for postal public buildings, to be constructed by the Post Office Department for the first time pursuant to a delegation of authority from the General Services Administration. *Id.* at 518-20. In an earlier period, Post Office appropriations were under fifty-eight separate headings. This came under sharp attack. 1949 HOOVER COMMISSION, THE POST OFFICE DEPARTMENT 11.

35. 39 U.S.C. § 2201 (Supp. II 1965-1966). This transfer authority was excluded from the 1968 Appropriation Act. Post Office Department Appropriation Act, 81 Stat. 115 (1967).

36. 31 U.S.C. § 665 (1964).

37. For example, the House attempt, in the context of cost-cutting associated with the proposed 1968 tax increase, to cut postal spending to the point where the Department might have been forced to adopt drastic reductions in services. *Wall Street Journal*, Oct. 18, 1967, at 2, col. 3. For an example of rate lobbying that backfired, however, see *Wall Street Journal*, Dec. 6, 1967, at 6, col. 2. See generally Greenfield, *supra* note 15, at 22-23.

38. 1949 HOOVER COMMISSION, TASK FORCE REPORT ON THE POST OFFICE 13.

39. This is a system of long-term program planning that has been adapted from one in use by the Department of Defense. See, e.g., *Hearings on Postal Modernization Before the Subcomm. on Postal Facilities and Modernization of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-17, pt. 1, at 19-20 (1967). Budget estimates to the Bureau of the Budget were presented on a program basis as well as the traditional appropriation basis in 1967. ANNUAL REPORT OF THE POSTMASTER GENERAL 142-44 (1967).

as well. A major Post Office problem, the construction of multi-purpose buildings to house post offices in accordance with General Service Administration (GSA) plans, has recently been solved in large measure through a delegation of construction authority from the GSA to the Post Office Department.⁴⁰ However, many problems still remain: so heavily do the political patronage process and budgetary delays enter into building construction that many years elapse after submission of a request before a new post office is erected. And, despite the existence of sophisticated and effective mechanized devices for sorting and moving mail—such as the multi-position letter sorting machine⁴¹—many major postal centers, including New York and Baltimore, have done without these machines for years and even now do not have them. While it is true that some recently publicized devices, such as the experimental optical scanner in operation in Detroit,⁴² may yet be unproven and not available for general use, many other devices as effective and trouble-free as conveyor belts have not yet been generally infused into the system. One may well conclude that querulous claims of the operationally unproved reliability and safety of new machines should be treated with skepticism,⁴³ and that delays in the development and introduction of new machinery are more traceable to fiscal limitations than to questions concerning the effectiveness of the machinery. Postmaster General O'Brien, in rate increase hearings, noted the wide disparity between capital expenditures of the American Telephone and Telegraph Company, which devotes more than one-third of its annual revenue to capital expenditures, and the Post Office, which allocates only two per cent of its budget thereto.⁴⁴ A portion of this difference may be attributable to differences in the operations of the two enterprises, but the point should not be obscured that private industry has shown far greater readiness to make substantial capital investments where increased business or more effective operations are at stake.

40. *1968 Appropriations Hearings—House* 8, 519-20 (text of delegation).

41. See ANNUAL REPORT OF THE POSTMASTER GENERAL 47 (1966).

42. *Id.* at 68-70. The latest listing of postal modernization by city and type of equipment appears in *Hearings on Postal Modernization Before the Subcomm. on Postal Facilities and Modernization of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-17, pt. 1, at 42-43 (1967).

43. See, e.g., SELECT COMMITTEE REPORT 45.

44. *Hearings on the Postal Revenue Act of 1967 Before the Subcomm. on Postal Rates of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-14, at 16, 27 (1967). The first trace of postal modernization was not evident until 1955. *Hearings on Postal Modernization Before the Subcomm. on Postal Facilities and Modernization of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-17, pt. 1, at 28-30 (1967).

Ratemaking is the third financial headache. The Post Office cannot regulate the demand for its services, and the Postmaster General has authority to set rates on only special services, international mail, and parcel post, the latter only with Interstate Commerce Commission consent and on a nondeficit basis. Rates on first-, second-, and third-class mail are determined by Congress, theoretically in accordance with the general mandates of the Postal Policy Act.⁴⁵ The Department's Cost Ascertainment System shows that in fiscal year 1967, first-class mail produced a revenue surplus of \$116 million; all other mail produced deficits—second-class, \$416 million; third-class, \$401 million; and fourth-class, \$98 million.⁴⁶ While it is contemplated that some services, such as mailings of nonprofit organizations, will not cover their full costs, these deficits have been greater than the so-called "public services costs."⁴⁷ Cost ascertainment, however, is at best an estimate; since most postal costs are common costs shared in some degree by all classes of mail, much depends on the postulates of the costing system. Not surprisingly, therefore, the Cost Ascertainment System has been called into question.⁴⁸ A particular point of contention has been the extent to which third-class mail (often called "junk mail") pays its way.⁴⁹ It has been suggested that third-class mail not only fails to pay its totally allocated average costs, but even fails to cover its marginal costs.⁵⁰ Perhaps the introduction of computer work measurement⁵¹ will allow more precise measurement of costs on each of several costing postulates, but the setting of postal rates still remains a matter for Congress, not the Department, to evaluate. Although many will argue that postal rates are matters of essential public policy properly entrusted only to Congress, it is not impossible to conceive of a rate schedule set by the Postmaster General, subject to approval by Congress, much in the manner of a public utility rate approved by a regulatory commission.⁵² This rate sched-

45. 39 U.S.C. §§ 2301-04 (1964).

46. *Hearings on the Postal Revenue Act of 1967 Before the Subcomm. on Postal Rates of the House Comm. on the Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-14, at 29 (1967).

47. See note 32 *supra*.

48. The Cost Ascertainment System is subject to the major criticism that it reflects fully allocated costs without regard to differences in the type of service rendered for each class of mail. See M. BARATZ, *THE ECONOMICS OF THE POSTAL SERVICE* 35-39 (1962).

49. See text accompanying note 229 *infra*.

50. BARATZ, *supra* note 48, at 42-43.

51. See *ANNUAL REPORT OF THE POSTMASTER GENERAL* 53-55 (1966).

52. Both Congress and the Department have considered such an approach. 1968 *Appropriations Hearings—House* 52-53. The British view is that rates should be set by the Post Office if it is to operate on a sound commercial basis. *SELECT COMMITTEE REPORT* 62-63.

ule could, of course, make provision for subsidized rates where appropriate.⁵³ As it presently stands, however, the rate-making process is another area of "no control" for the Department.

C. Operations

To the using public, the operational problems are obvious and easily stated: delays, lost mail, insufficient pickup and delivery service. As might be expected, expansion of the system without compensating modernization has exacerbated these problems. What remains amazing is the small percentage of complaints about postal service generally, possibly explained in part by the predisposition of users simply not to complain.⁵⁴

Few would argue that operations cannot be improved. It is important to recognize, however, the existence of certain limitations endemic to the job. Post Office operations are labor-intensive and will probably remain so notwithstanding improved technology. Of the three major operations—pickup, sorting, and delivery—only the second shows immediate promise of substantial manpower savings through mechanization.⁵⁵ To be sure, some devices have cut manpower demands in both pickup (for example, mail chutes) and delivery (for example, Vertical Improved Mailing),⁵⁶ but increases in mail volume more than offset the manpower saved by mechanization. Thus, postal costs will rise as labor costs increase with the cost of living; it has been suggested, however, that the financial savings from those machines that are introduced can be expected to be rather high.⁵⁷

A major issue in operations, then, is the extent to which research will be pursued and the degree to which products of that research will be introduced into the system. Here, as we have already noted, the problem is essentially financial: expenditures for research have been inadequate, and the introduction of even proven devices has been slow. The recent creation of a new position, Assistant Postmaster General for Research and Engineering, and the establishment of a Research and Engineering Advisory Council⁵⁸ reflect a change in attitude, but it remains to be seen whether Con-

53. "Public services costs" are recognized by 39 U.S.C. § 2303 (1964). These costs are listed separately as part of the net operating loss for the year. See note 32 *supra*.

54. Cordtz, *supra* note 7, at 136. But see 1968 *Appropriations Hearings—House* 19-20.

55. SELECT COMMITTEE REPORT 43-44; Cordtz, *supra* note 7, at 195-96.

56. See ANNUAL REPORT OF THE POSTMASTER GENERAL 41-44 (1966).

57. See SELECT COMMITTEE REPORT 44, 51-52.

58. 1968 *Appropriations Hearings—House* 8.

gress can appropriate—and the Post Office can spend—at a rate necessary to assure effective modernization. The job is a big one: nearly all of the seventy-five largest post offices, handling half of the nation's mail, were built near railroad stations at a time when 10,000 trains daily hauled the mail. Today, with only 700 trains in mail service, many of these buildings are badly located for transporting mail by truck or air. Moreover, many of them cannot be modified to accept heavy and bulky mechanized equipment.⁵⁹ The Postmaster General has estimated that an optimum modernization plan would cost \$5 billion within the coming five years.⁶⁰

Other operational problems derive from the excessive control exercised by Congress. In 1949, over 900 pages of laws and regulations circumscribed Post Office operations, tending to favor "operation of the Postal Service as an expensive arm of the Government, rather than as the revolving fund service which it actually is."⁶¹ Detailed control over minor matters deprived the Post Office of the flexibility essential to meet changing commercial conditions.⁶² Matters have changed little since then, as a few illustrations will show. Although substantial savings can often be effected by shipping some mail through freight forwarders or common carriers by truck, the Post Office has difficulty in using these means where rail service is available, even when it is more expensive.⁶³ In a related area, though it has been established that Post Offices must have access to highways and air terminals, more often than not they are still erected in town squares to satisfy local political demands.

These are the problems in brief, and while it is clear that only recently have they been brought widely to the public's attention, it is also true that Congress and the Department have addressed

59. Cordtz, *It's Now or Never for the Post Office*, FORTUNE, March 1967, at 136; O'Brien, *The Other Side of the Postal Story*, U.S. NEWS & WORLD REPORT, Dec. 18, 1967, at 54; Remsberg, *The Day the Mails Stopped*, SATURDAY REV., Dec. 17, 1966, at 22.

60. *Hearings on Postal Modernization Before the Subcomm. on Postal Facilities and Modernization of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-17, pt. 1, at 34-35 (1967).

61. 1949 HOOVER COMMISSION, THE POST OFFICE DEPARTMENT 3, 14-15.

62. *Id.* This detailed control, for essentially political motives unrelated to the Department's operations, dates from the Department's origins. See generally W. RICH, THE HISTORY OF THE UNITED STATES POST OFFICE TO THE YEAR 1829 127-36 (1924); D. ROPER, THE UNITED STATES POST OFFICE 309-13 (1917).

63. Formal advertisement of contracts for transportation of mail is required by 41 U.S.C. § 5 (1964). Contracts with railroads, however, may be made without formal advertising pursuant to 39 U.S.C. § 6215 (1964). The complexities and delays of formal advertising interfere with on-the-spot exercise of discretion in the choice of transportation modes as loads vary. See 39 C.F.R. § 521.3 (1967). Indeed, 39 U.S.C. § 6402a (1964) was passed to allow negotiated contracts with bus-lines, because advertising proved impossible. S. REP. NO. 756, 88th Cong., 1st Sess. (1963).

them before. The history of congressional reform efforts does not afford great hope for the future.

II. THE FUTILITY OF PRIOR REFORM EFFORTS

The most recent comprehensive effort to reform the Post Office followed the 1949 Hoover Commission findings on the Department. An immediate result of the entire *Hoover Commission Report* was the passage of the Reorganization Act of 1949,⁶⁴ the purpose of which was to facilitate reorganization of the executive agencies through submission of reorganization plans by the President.⁶⁵ The Act authorizes the President to deliver reorganization plans to both houses of Congress, and provides that any such plan shall take effect and be printed in the *Statutes at Large* if neither house, within sixty days, passes a resolution disfavoring the plan.⁶⁶ One of the earliest plans thus delivered was Reorganization Plan No. 3 of 1949,⁶⁷ which addressed a few of the most significant problems unearthed by the *Hoover Commission Report* on the Post Office. It centralized authority over the Department in the Postmaster General for the first time; previously the Assistant Postmasters General had specifically delegated areas of authority over which the Postmaster General had no control. In addition, the Plan authorized the Postmaster General to delegate his authority.⁶⁸ It established a Deputy Postmaster General, three Assistant Postmasters General, and a Postal Advisory Board, as recommended by the Hoover Commission.⁶⁹ Finally, the Plan abolished the separate Bureau of Accounts of the Post Office Department and the Office of the Purchasing Agent for the Post Office Department.⁷⁰ All this was done, as the accompanying message from President Truman noted, as "an important first step in strengthening the organization of the Post Office Department."

It was not much more than a first step, and a tentative step at that. So, although the Hoover Commission had recommended that the President appoint an experienced executive, preferably from within the Postal Service, to serve without term as a Director of Posts under the Postmaster General,⁷¹ the Plan specified neither

64. 5 U.S.C. §§ 901-13 (Supp. II 1965-1966).

65. See H.R. REP. NO. 23, 81st Cong., 1st Sess. I (1949).

66. 5 U.S.C. §§ 903, 906 (Supp. II 1965-1966).

67. 63 Stat. 1066 (1949); 5 U.S.C. § 1332-15 (Note) (1964).

68. Section 1.

69. Sections 2-4.

70. Section 5.

71. The title was changed to Deputy Postmaster General in Reorganization Plan No. 3.

term nor qualifications. The fault lay to some extent with the Reorganization Act, which requires that any appointment not under the classified civil service be made by the President, with Senate confirmation. Moreover, the term of office can be fixed at no greater period than four years. Indeed, as noted earlier, the Hoover Commission made no suggestion to eliminate this appointment process as to the Postmaster General or the proposed Director of Posts.⁷² However, in addition to their recommendation on the Director of Posts they did recommend that the Postmaster General should not be a political party official. Given the political nature of the appointment process, it may be questioned whether such limitations could ever have been effectively enforced, and the Plan made no such attempt. Only two bills⁷³ were ever introduced that included provisions to prohibit appointment of a party official as Postmaster General. The Senate Committee on the Post Office and Civil Service held hearings on one of these bills, a general reorganization proposal,⁷⁴ but made no mention of this prohibition. The bill was indefinitely postponed because the Committee felt that Reorganization Plan No. 3 and other bills under consideration—none of which addressed the issue of appointment of the Postmaster General—were adequate. A year later, this same recommendation of the Hoover Commission was again considered. Testimony before the House Committee at that time noted that the incumbent Postmaster General was not a party official,⁷⁵ and no further action was taken on this recommendation. All Postmasters General since then have been selected from outside the Post Office on the basis of political considerations.⁷⁶

Among the most significant of the Hoover Commission recom-

72. 1949 HOOVER COMMISSION, THE POST OFFICE DEPARTMENT 8 (Recommendations 1, 2).

73. S. 2062, 81st Cong., 1st Sess. (1949); and a companion House Bill, H.R. 5177, 81st Cong., 1st Sess. (1949).

74. S. 2062, 81st Cong., 1st Sess. (1949); *Hearings on Bills To Implement Recommendations of the Commission on Organization of the Executive Branch of the Government Before the Senate Comm. on Post Office and Civil Service*, 81st Cong., 1st & 2d Sess. (1949 & 1950).

75. *Hearings on Recommendations of the Commission on the Organization of the Executive Branch of the Government Before the House Comm. on Post Office and Civil Service*, 82d Cong., 1st Sess. 38 (1951).

76. Arthur E. Summerfield (1953-1961) was the Chairman of the Republican National Committee immediately preceding his appointment. J. Edward Day (1961-1963) at the time of his appointment was Chairman of the Democratic Association of Los Angeles County. John A. Gronouski (1963-1965) was the Commissioner of Taxation for Wisconsin; while he was Postmaster General he also acted as political liaison to various groups. Lawrence F. O'Brien (1965 to date), an original member of the Kennedy "Irish Mafia," acted as White House liaison with Congress before his appointment, and continues to do so.

mendations was that Senate confirmation of postmasters be abolished.⁷⁷ It is doubtful whether the Reorganization Act of 1949 permitted inclusion of such a provision in a Reorganization Plan,⁷⁸ and Reorganization Plan No. 3 of 1949 did not so provide. However, President Truman strongly supported nonpolitical selection of postmasters in a special message to Congress:

It is an axiom of sound administration that authority should be commensurate with responsibility. No authority of management is more important than that of selecting the personnel who are to operate the business. If the Postmaster General is to be held responsible for the efficient conduct of the postal service, he should be given full authority to appoint postmasters and other postal employees subject only to the provisions of the Civil Service and Classification Acts. Legislation should be enacted which will give such authority to the Postmaster General.⁷⁹

In this recommendation, stronger than that of the Hoover Commission Report, the President was joined by the Postmaster General, the Bureau of the Budget, and the Civil Service Commission.⁸⁰

Beginning with the Eighty-first Congress, there have been introduced to date some ninety bills to remove political influences, to a greater or lesser extent, in the naming of postmasters. A favorable subcommittee recommendation on one such bill, one of the six addressing the issue in the Eighty-first Congress in response to the *Hoover Commission Report*,⁸¹ was rejected by the full committee on grounds that the Senators were better informed as to the qualifications of prospective postmasters in their respective states than the Postmaster General.⁸²

The bills fall into two general categories, reflecting varying views on the methods of insulating the choice of postmasters from the political process. The first group would amend section 3311(a) of title

77. 1949 HOOVER COMMISSION, THE POST OFFICE DEPARTMENT 10 (Recommendation 5).

78. See 5 U.S.C. § 904(2) (Supp. II 1965-1966).

79. H.R. Doc. No. 239, 81st Cong., 1st Sess. 3 (1949).

80. *Hearings on Bills To Implement Recommendations of the Commission on Organization of the Executive Branch of the Government Before the Senate Comm. on Post Office and Civil Service*, 81st Cong., 1st & 2d Sess., 131 (1949-1950).

81. S. 2062, S. 2213, H.R. 5177, H.R. 5344, H.R. 5538, H.R. 5643, 81st Cong., 1st Sess. (1949).

82. *Hearings on Bills To Implement Recommendations of the Commission on Organization of the Executive Branch of the Government Before the Senate Comm. on Post Office and Civil Service*, 81st Cong., 1st & 2d Sess. 131-34 (1949-1950) (S. 2213). The number of bills introduced shows an interesting pattern: in the Eighty-second through Eighty-eighth Congresses, between one and four bills were introduced in each Congress. In the Eighty-ninth Congress, thirteen bills were introduced; and in the Ninetieth, forty-two bills have been introduced to date.

39 of the United States Code to provide that the Postmaster General, rather than the President, shall appoint postmasters at first-, second-, and third-class post offices, and to provide for exclusion of political advice and recommendations.⁸³ A second class of bills would continue the naming of postmasters by the President with Senate confirmation but would add a new requirement: that the selection be made first from within the Postal Field Service on the basis of non-competitive examinations; and if no candidate qualifies thereby, by competitive examinations. The political influence question would be dealt with by a section detailing prohibitions against receiving or giving political advice in connection with any position in the Postal Field Service, and making violation thereof the cause for dismissal and fine.⁸⁴ Two bills passed by the Senate in the Ninetieth Congress now await House action. In different forms both attempt to combine the favorable features of earlier bills. One of these is part of the proposed Legislative Reorganization Act of 1967.⁸⁵

The history of reform in other spheres is not promising. Despite the Hoover Commission's recommendation to simplify some 900 pages of statutes and regulations applicable to the Post Office, title 39 of the United States Code today comprises 132 pages, and title 39 of the Code of Federal Regulations adds another 694 pages. Recognition by at least some members of Congress of this administrative nightmare has yet to produce a comprehensive effort to reform and simplify the operational framework of the Department.

Some changes have been made in the last twenty years. The third recommendation of the Hoover Commission—that the Department be decentralized into fifteen regions under regional directors—was partially implemented in 1955 and fully put into effect by 1956 by

83. *E.g.*, H.R. 3312, 90th Cong., 1st Sess. (1967); H.R. 12862, 90th Cong., 1st Sess. (1967).

84. *E.g.*, H.R. 5284, 90th Cong., 1st Sess. (1967).

85. S. 355, 90th Cong., 1st Sess. (1967) was passed by the Senate on March 7, 1967, and referred to the House Rules Committee. Section 441 thereof would amend 39 U.S.C. § 3311 (1964) to provide for the naming of postmasters by the Postmaster General in accordance with civil service laws and rules by competitive examinations and promotions within the postal service. Recommendations or statements by members of Congress or party officials would be prohibited. Sections 442 and 443 of the bill extend essentially the same provisions to the naming of interim postmasters and the appointment of rural carriers.

The second bill, S. 2154, 90th Cong., 1st Sess. (1967), was passed by the Senate on November 30, 1967. It would amend 39 U.S.C. § 3311 (1964) to read:

Notwithstanding any other provision of law, the Postmaster General shall appoint postmasters in accordance with the Civil Service Act and rules except that in each case he shall appoint the person who is certified to him by the Civil Service Commission as the eligible applicant who has the highest earned rating among the applicants examined.

regulation.⁸⁶ Ironically, this was the one *Hoover Report* recommendation most strongly opposed by both the President and the Postmaster General, on grounds that the Postmaster General could not genuinely decentralize what authority he had; that he could not, for example, allow regions to set local wage scales, as a decentralized industry might.⁸⁷ The subsequent history of the postal regions suggests that the President and Postmaster General may have been correct: regions now have inadequate authority or information to pass on many issues put to them, and they often function either as rubber stamps for the postmasters or as intermediaries between the postmasters and the office of the Postmaster General.⁸⁸

The picture is not entirely bleak. A key recommendation of the *Hoover Report*, that the business-type controls of the Government Corporation Control Act of 1945⁸⁹ be made applicable to the Post Office, was at least partially effected, with favorable results. The recommendation was not literally followed, but an important first step in simplifying fiscal operations was embodied in the Post Office Appropriation Act of 1951:⁹⁰ reduction of the number of individual appropriations from fifty-eight to four.⁹¹ The second step was passage of the Post Office Department Financial Control Act of 1950.⁹² This Act centralized accounting and reporting functions previously performed by the General Accounting Office in the Post Office Department; provided a revolving fund for the Post Office composed of its revenues plus additional appropriations necessary to cover predicted deficits; provided for separate reporting of services performed free or at special rates; authorized audit of the Department by the Comptroller General; and implemented other administrative simplifications. The Act was designed generally to afford flexibility in accounting and auditing procedures and to allow better use of ac-

86. See S. REP. NO. 167, 85th Cong., 1st Sess. 35 (1957); 2 U.S. CODE CONG. & ADMN. NEWS, 84th Cong., 1st Sess. 3274 (1955). The postal regions are established by 39 C.F.R. § 811.3 (1967).

87. *Hearings on Bills To Implement Recommendations of the Commission on Organization of the Executive Branch of the Government Before the Senate Comm. on Post Office and Civil Service*, 81st Cong., 1st & 2d Sess. 19-21. But see W. DOHERTY, MAILMAN, U.S.A. 203 (1960), in which a former president of the National Association of Letter Carriers suggests that the Postmaster General's objection to this recommendation was provoked by his personal inability to delegate responsibility.

88. See 1968 *Appropriations Hearings—House* 733-34; DOHERTY, *supra* note 87, at 262.

89. 31 U.S.C. §§ 841-69 (1964).

90. Post Office Department Appropriation Act of 1951, 64 Stat. 640 (1950).

91. There are now seven appropriation headings. See note 34 *supra*.

92. 39 U.S.C. §§ 2202, 2206-08, 2211 (1964).

counting techniques as tools of management;⁹³ without question administration was significantly simplified. But today, more than fifteen years since passage of these simplifications, the Department has taken only the first steps toward using business-type financial controls.⁹⁴ The annual appropriation process and the associated accounting for legality of obligations, as opposed to efficiency of operations, has much to do with this lack of progress.

Other major problems of the Post Office remain untouched. Ratemaking is still a highly charged political process largely unrelated to Post Office needs or operations. The same must be said of wages, and of the classes and details of service. Capital financing and research and development have seen improvements, as have training programs, but as to these far more remains to be done than has been done to date. And in periods of fiscal austerity, financial investments in progress may be small.

The verdict is inescapable. Congress has not done the job, partly because it has had to satisfy conflicting political desires, but perhaps primarily because it cannot handle the details of a complex department's operations, and it has consistently failed to give the necessary authority and incentive to those who can and should improve the Department: those within the Department itself. Recent history suggests that some measure of congressional disengagement may afford the only hope for true reform. Can some other form of organization—for example, the public corporation—reasonably be expected to do the job better? If so, what must be done to establish the necessary organizational framework?

III. THE OPERATIONS OF PUBLIC CORPORATIONS

Of the wide variety of organizations that can be used to carry on the government's public enterprises, the most tightly tied to the government is the department or ministry, the category into which the United States Post Office Department presently fits. Public authorities, often of a local or regional nature, are widely used for the operation of roads, bridges, tunnels, and ports, as well as conservation and utility projects.⁹⁵ Alternatively, services of an inherently monopolistic nature or those affected with a public interest may be provided by private corporations subject to control by a regulatory commission, of which examples on a national level are the

93. See H.R. REP. NO. 2339, 81st Cong., 2d Sess. 8 (1950).

94. See text accompanying note 39 *supra*.

95. See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT 12-25 (1964).

Federal Power Commission, Interstate Commerce Commission, and Federal Communications Commission. In addition to these familiar forms of public enterprise, there are as well the private stock corporation used for public enterprises,⁹⁶ the mixed enterprise, and the public corporation.

Discussion herein will be directed to possible use of the public corporation for the Post Office, although it is clear that arguments might be advanced in favor of using another form of organization. Telephone service, though provided by a government department or ministry in virtually all other nations of the world,⁹⁷ is in the United States provided by a private corporation regulated by federal and state regulatory commissions. While this approach can be adapted to the Post Office,⁹⁸ the Post Office has existed so long under tight government control that any attempt to move it into the hands of private stockholders, however regulated, might encounter insurmountable political resistance. Moreover, the problems of organization and transition to public corporation status would be considerably less complex than those attendant upon establishment and capitalization of a private corporation together with the necessary regulatory commission.⁹⁹ Although the private corporation idea is not considered in detail herein, many of the critical attributes of any workable public corporation arrangement must be similar if not identical to those of a regulated private corporation. A mixed enterprise might introduce capital contributions by private investors as well as the government, with some sharing of control between the government and the private shareholders. While reduction of the government's investment in the Post Office may be desirable, there do not appear to be compelling reasons for shifting control to the private investors, and as the TVA example shows,¹⁰⁰ bond financing in a wholly public corporation can reduce the government's investment without affecting control. Finally, the distinction between the public corporation

96. See W. ROBSON, NATIONALIZED INDUSTRY AND PUBLIC OWNERSHIP 27-28 (1960) (citing use of this device in India at the present time, and in England briefly during nationalization of the steel industry).

97. ROBSON, *supra* note 96, at 24.

98. See, e.g., Milton Friedman's oversimplified suggestion to allow competition in the delivery of mails by revocation of 39 U.S.C. § 901 (1964). NEWSWEEK, Oct. 9, 1967, at 87.

99. Creation of a public corporation subject to internal governmental control often obviates the need for a regulatory commission. See Lillienthal & Marquis, *The Conduct of Business Enterprises by the Federal Government*, 54 HARV. L. REV. 545, 575 (1941). But cf. the mixed internal and regulatory control structure of the Communications Satellite Corporation discussed in Schwartz, *Comsat, the Carriers, and the Earth Stations: Some Problems With "Melding Variegated Interests,"* 76 YALE L.J. 441 (1967).

100. See text accompanying note 151 *infra*.

and the public authority may be largely a matter of definition, the latter often being considered a form of public corporation. Both have been used to carry out local or regional activities with a degree of insulation from the usual political process and an element of financial independence; and, in both, politics still plays a role.¹⁰¹ Reorganization of the Post Office would look toward an organization of this type, but of nationwide scope. At the root of our inquiry will be the powers and control structure of such an enterprise, whatever it be called.

Among the best developed examples of public corporations are the nationalized industries of Great Britain and several public corporations in the United States. In the first group are the National Coal Board, the British Electric Authority, the Gas Council, the British Overseas Airways Corporation (BOAC) and the British European Airways (BEA). The British Post Office, though not in law a nationalized industry, is conducted as such.¹⁰² In the second group are the World War I emergency corporations,¹⁰³ various banking corporations,¹⁰⁴ and the TVA. More numerous are corporations or public authorities organized by state governments or by interstate agreements, such as the Port of New York Authority.¹⁰⁵ The nationalized industries, which are essentially commercial enterprises involved in selling a product or service to consumers, and TVA, part of whose operations are of this type, bear marked similarities to the operations of the Post Office; details of their relations with the government offer clues to the utility of the corporate form as it might be applied to the delivery of mail. For aside from its long history as a government department affected with a public interest, the Post Office is essentially a business enterprise rendering a commercial service to the public for a fee. And, at least arguably, the public interest in it is not substantially different from that in the telephone system, which is a regulated private corporation. British experience with their

101. See R. Wood, 1400 GOVERNMENTS 131-34 (1964). Illustrative of the detailed arguments on definitions is Gerwig, *Public Authorities in the United States*, 26 LAW & CONTEMP. PROB. 591, 592-94 (1961).

102. See SELECT COMMITTEE REPORT 7.

103. For example, the Emergency Fleet Corporation. See Abel, *The Public Corporation in the United States*, in THE PUBLIC CORPORATION 338, 341 (W. Friedmann ed. 1954).

104. For example, the Reconstruction Finance Corporation. See Abel, *supra* note 103, at 343; Lilienthal & Marquis, *supra* note 99, at 548-49.

105. More than 18,000 such corporations or "special districts" were in existence in 1964. Numbers will vary based on definitions. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE PROBLEM OF SPECIAL DISTRICTS IN AMERICAN GOVERNMENT 26-33 (1964).

nationalized industries led, in fact, to the proposal that their Post Office be reorganized as a public corporation.¹⁰⁶

It is important to note that the nationalized industries are examples of private corporations or local public authorities reorganized as national public enterprises, a movement toward greater government control. By contrast, any suggestion that the Post Office—a government department—be reorganized as a public corporation asks for a movement toward greater autonomy. TVA involved organization of governmental activities as a public corporation, but TVA was *initiated* as a government corporation, and its activities, too, are in large part commercial in the recognized sense. Thus, reorganization of the Post Office as a public corporation would represent an unprecedented divestiture of control by the Congress and the Executive in one of the government's largest enterprises.

Use of public corporations in both Great Britain and the United States was sparked by the need for greater managerial independence and control over details of operations than would be afforded by a government department:

The underlying reason for the creation of the modern type of public corporation is the need for a high degree of freedom, boldness and enterprise in the management of undertakings of an industrial or commercial character and the desire to escape from the caution and circumspection which is considered typical of government departments.¹⁰⁷

Earl Attlee, a former Postmaster-General, stated the effect of detailed government control as follows:

[It] tends to timidity and centralization and has militated against the adoption of a public relations technique in the service. . . . The Minister and his principal officials, who ought to be concerned with major problems, are constantly diverted to deal with matters which owe their importance only to the status of those who bring them forward.¹⁰⁸

Full realization of the potential benefits of public corporations turns on the presence of several essential characteristics. The first

106. See REORGANISATION OF THE POST OFFICE, CMND. No. 3233 (1967).

107. ROBSON, *supra* note 96, at 47. The footnote to this sentence notes:

The Post Office has been criticized by members of all political parties as an example of how the constitution of an ordinary government department is ill-designed to secure business efficiency in the services which it administers. Criticism culminated in a Memorial signed by some 320 M.Ps. and addressed to the Prime Minister in December, 1931. See the *Report of the Committee of Inquiry on the Post Office*, HMSO, CMND. 4149/1932.

108. Attlee, *Post Office Reform*, NEW STATESMAN & NATION, Nov. 7, 1931 (cited in ROBSON, *supra* note 96, at 59).

is freedom from governmental inquiry into the details of management, as opposed to over-all policy. The second is disinterestedness, in the sense that the corporation's board of directors not be enjoined to make a profit for the benefit of shareholders, but rather to run the corporation in the public interest, on an essentially self-sustaining basis. In addition, those corporations should not be a part of the civil service; and while they might be subject to occasional admonitions to keep wage scales in line with those paid government employees, they should not be subject to detailed regulations on conditions of service, hiring, dismissal, and the like. Neither should finances of public corporations be subject to all the controls of the appropriation process, despite government control over some aspects of financial operations. Finally, the boards of these corporations should have fixed terms—they should not change with each administration, nor have the life tenure of career civil servants.¹⁰⁹

The public corporation is based on the theory that a full measure of accountability can be imposed on a public authority without requiring it to be subject to ministerial control in respect of its managerial decisions and multitudinous routine activities, or liable to comprehensive parliamentary scrutiny of its day-to-day working. The theory assumes that policy, in major matters at least, can be distinguished from management or administration; and that a successful combination of political control and managerial freedom can be achieved by reserving certain powers of decision in matters of major importance to Ministers answerable to Parliament and leaving everything else to the discretion of the public corporation acting within its legal competence. The Government are further endowed with residual powers of direction and appointment which mark their unquestionable authority.¹¹⁰

Have these broad principles been effected in the British nationalized industries and their American counterparts? Did the corporations achieve the purposes for which they were created?

A. *The British Nationalized Industries*

In view of the similarity of organization and control among the British nationalized industries, they may usefully be discussed collectively. Major areas of control are relationships between the minister and the corporation board, and between Parliament and both the minister and the board.

109. See Lilienthal & Marquis, *supra* note 99, at 560-67; ROBSON, *supra* note 96, at 64-69.

110. *Id.* at 74, 76.

The appropriate minister names the members of the corporation's board. He may give the corporation "directions of a general character as to the exercise and performance by the corporation of their functions in relation to matters appearing to the Minister to affect the national interest";¹¹¹ and the corporation is bound to give effect to these directions. To this broad grant are appended certain stated powers; thus, the minister has express statutory power, with Treasury approval, to give detailed directions concerning the establishment, management and application of a reserve fund, provided only that any application of the fund must be for purposes of the corporation. Reorganization or development programs involving substantial commitments of capital must be framed along lines approved by the minister. In addition, stated powers may be granted on major matters affecting certain corporations; for example, the Minister of Transport and Civil Aviation has power to require all aircraft used by BOAC and BEA to be registered in some part of Great Britain. Other powers are conferred on the Treasury: it must approve salaries of chairmen, deputy chairmen, and members of the boards. It also has general approval over establishment and use of reserve funds, and over the form of financial statements in the annual accounting. And, most important, borrowing by the corporations is from the ministry by consent of both the minister and the Treasury.¹¹²

This statutory framework—particularly the naming of the board and approval of reorganizations—clearly affords the government very substantial control over the operations of the corporations.¹¹³ But it does not, at least on its face, substantially limit the corporations in such detailed business questions as choice of equipment, type of service, and rates to be charged therefor. And the financial objective, as outlined in a 1961 White Paper, does not seriously limit the freedom of the corporations: they are required to break even (including a return on investment and charges for depreciation and contingencies) over a five-year period.¹¹⁴ But in practice, control over the corporations has been substantially expanded. The statutory formula

111. *Id.* at 139. See, e.g., Gas Act, 1948, 11 & 12 Geo. 6, c. 67, § 7(1); Electricity Act, 1957, 5 & 6 Eliz. 2, c. 48, § 8(1).

112. E.g., Electricity Act, 1963, c. 59, § 2(1). On long-term capital planning, there is now annual discussion between the corporation and the government. *THE FINANCIAL AND ECONOMIC OBLIGATIONS OF THE NATIONALIZED INDUSTRIES*, CMND. No. 1337, at 8-9 (1961).

113. See Albu, *Ministerial and Parliamentary Control*, in *THE LESSONS OF PUBLIC ENTERPRISE* 93-94 (M. Shanks ed. 1963).

114. *THE FINANCIAL AND ECONOMIC OBLIGATIONS OF THE NATIONALIZED INDUSTRIES*, CMND. No. 1337, at 7, 8 (1961). The industries have varied in their ability to break even. *Id.* at 11.

concerning ministerial intervention is open to varying interpretation, and any attempt at narrow interpretation by the board of a corporation might well be met with overwhelming counterpressure—perhaps in the form of proposed legislation—by the appropriate minister. The ministerial power to appoint and reappoint board members is also not an inconsiderable weapon. Ministers have tended by the use of such influence to exercise substantially more control over the corporations than the statutory language, or their infrequent public announcements, would indicate.¹¹⁵ Indeed, at least a few ministers have suggested that they have a duty to exercise such influence, and in some industries pricing and wages have been subject to continual ministerial intervention, with clearly undesirable results.¹¹⁶ This practice raises questions on the extent of government control over operations and the form in which any such control should be exercised.

We have noted that the advantages to be obtained from the public corporation, as opposed to a government department, derive from its autonomy in certain key areas such as prices, employment, and details of service. There can be little question that if all of these areas are subject to detailed governmental control the corporation will remain only a concept while the organization continues to be run entirely as a government department.¹¹⁷ On the other hand, an enterprise vested with a key national interest may in the course of making business-type decisions impair major national objectives. While many of these decisions affecting the national interest can be dealt with by statute (as, for example, the British statutory requirement of approval of major capital expenditure by the Treasury), an equal number of such problems—often arising unforeseen—must be dealt with on an ad hoc basis.¹¹⁸ As to these, the necessity of a concordance of business interest and public interest is inescapable:

When full allowance has been made for the possibility that Ministers may not always act from politically disinterested motives, there is

115. Albu, *supra* note 113, at 91, 93-99. This influence has been used most frequently in the area of price. Jenkins, *Foreword*, in *THE LESSONS OF PUBLIC ENTERPRISE* 8-9 (M. Shanks ed. 1963).

116. ROBSON, *supra* note 98, at 142-44, 150-56 (transport and coal); Shanks, *Prices and Profits*, in *THE LESSONS OF PUBLIC ENTERPRISE* 56-58, 62 (M. Shanks ed. 1963); Shanks, *The Aims and the Problems*, in *THE LESSONS OF PUBLIC ENTERPRISE* 17, 30-31 (M. Shanks ed. 1963).

117. Even in that situation it is critical who in the government actually controls the enterprise. A major problem discussed earlier is that Congress—and not the Postmaster General—runs much of the Post Office. Text accompanying note 28 *supra*.

118. See Note, *The Role of the Public Corporation in British Nationalized Industry*, 97 U. PA. L. REV. 534, 537 (1949).

nevertheless a hard core of truth in the assertion that most elusive, nebulous, and frequently abused concept "the national interest" may sometimes point in a different direction from that indicated by the needs of a public corporation considered in isolation. Hence in the last resort the Minister must be able to override the board.¹¹⁹

The problem, then, is to preserve a governmental voice on issues of national concern while maintaining autonomy. It may be possible to preserve essential autonomy by limiting the ministerial power to overrule to those situations where the public interest genuinely demands it. If discretion over rates, operations, and the like is vested primarily in the corporation's board (with whatever specific exceptions might be essential, such as continuation of unprofitable services), with the governmental authority to overrule exercisable only when the national interest so demands, and then only by formal direction of the minister, there is at least a political check on such exercise:

It may be argued that in present-day Britain with its regulated economy and narrow margins it is inevitable that the government of the day will want to control by one method or another the price and wage policies of nationalized industries. . . . But I do not accept this contention nor the premises on which it is based. The determination of wages and prices in nationalized industries should not normally be a political matter at all. The government should intervene only when they are prepared to accept full and formal responsibility to the public and to Parliament for the decision. If this principle were to be accepted there would be a notable reduction in the "political" element in most decisions about wages and prices except on comparatively rare occasions.¹²⁰

Direct parliamentary control over the nationalized industries is exercised primarily in the initial drafting of the corporate charters and associated statutes. This area of control is expanded by the practice of questioning the minister in Parliament, to the extent questions are admissible and are in fact answered by the minister. Parliamentary procedure offers two points at which questions may be rejected: they may be refused by the Speaker through the clerks of the House, or the minister may himself refuse to answer them. The extent of admissibility of questions on nationalized industries has been the subject of contention, some taking the view that the ultimate responsibility of ministers justifies a rule that virtually all

119. ROBSON, *supra* note 96, at 158.

120. *Id.* at 160. But see ALBU, *supra* note 113, at 110-12 (suggesting a semi-independent board, with policy clearly in ministerial hands).

questions should be allowed and others arguing that unrestricted questioning would in effect destroy the necessary independence of these corporations.¹²¹ It is difficult to demonstrate that expanding the scope of inquiry by Parliament would affect adversely the performance of the nationalized industries, but the history of the United States Post Office strongly suggests that detailed legislative control can have substantial inhibiting effects. But expanded questioning appears likely: the clerks of Commons now reject only repetitive questions and those concerning details of administration; all others must be answered or refused by the minister on the floor of the House. Members of Parliament have developed ways of circumventing these rules and, occasionally, of forcing answers to questions. In short, although Parliament spends less time and inquires in less detail into the nationalized industries than do Congress and its committees into governmental departments, the degree of control exercised, particularly when added to the influence of the ministers, is substantial and often detailed.¹²²

As the public enterprise is granted greater autonomy the question of how to assure financial accountability becomes critical. The Public Accounts Committee of Parliament has authority to examine financial reports submitted to Parliament, but the authority to examine and certify or to audit is granted to the Auditor General only as to those corporations wholly or mainly dependent on money voted by Parliament. Most of the nationalized industries are thereby excluded. It has been suggested that this should be remedied by creation of an audit commission to report to the Standing Committee on Nationalized Industries; this commission would perform a full efficiency audit, apparently much like the studies of the Comptroller General of the United States. It has been contended that financial accountability through such efficiency audits in addition to accountability through ministers and directly to Parliament would tend to: (1) satisfy the government and the public that the nationalized industries are being run efficiently and progressively; (2) prevent exploitation of consumers through use of monopolistic position; and (3) prevent work stoppages due to bad labor relations.¹²³ Accountability, however, is inextricably intertwined with control, and experience with the United States General Accounting Office¹²⁴ suggests that the very existence of such an audit organ, unless it were circum-

121. See ROBSON, *supra* note 96, at 163-66, 169-75.

122. *Id.* at 175-76, 181-83.

123. *Id.* at 195, 203-06, 210-11.

124. See Lilienthal & Marquis, *supra* note 99, at 577-86.

scribed in the scope of its activities, might unduly extend detailed control by the government.

B. *The Tennessee Valley Authority*

Public corporations in the United States date back to the Bank of North America, created by the Continental Congress in 1781. The First and Second Banks of the United States were also public corporations.¹²⁵ Use of the public corporation as an arm of the government began in earnest during World War I, with the creation of such corporations as the Emergency Fleet Corporation and the War Finance Corporation.¹²⁶ Perhaps the most successful American public corporation, and surely the most carefully analyzed, is the Tennessee Valley Authority, chartered by statute in 1933.¹²⁷ Moreover, TVA remains unique among federally chartered public corporations in its independence and business oriented control structure. Curiously, despite the success of the TVA, the government corporation has not until recently found wider use.¹²⁸

The Tennessee Valley Authority is a corporation; and though corporate status per se does not carry special rights or privileges, it is clear that use of the corporate form was intended to confer considerable freedom, approaching that of a private commercial company.¹²⁹ At its head is a full-time, three-man board of directors, with staggered nine-year terms, named by the President and confirmed by the Senate. The President designates the chairman thereof, but all other officials, agents, and employees are selected by the board or its delegates.¹³⁰ In the early days of TVA, the board members attempted to act both as policymakers and as administrators. The experience, under Chairman Arthur Morgan, progressed from the merely confusing to the absolutely disastrous. Initially, the three directors split up the operations of TVA into three areas of total responsibility. Al-

125. For a listing of early public corporations in the United States, see Note, *supra* note 118.

U. PA. L. REV. 534 (1949).

126. Lilienthal & Marquis, *supra* note 99, at 547-48.

127. 16 U.S.C. §§ 831-831dd (1964).

128. Other "valley authorities," modeled after the TVA, were proposed as public corporations in bills introduced in the mid-1940's. None of the proposals was passed. See Clark, *Proposed "Valley Authority" Legislation*, 40 AM. POL. SCI. REV. 62 (1946). In each of these proposals, key features of TVA—civil service exemption, bond financing, and corporate status—were included. *Id.* at 62-63, 67-68, 70. The Corporation for Public Broadcasting, authorized by Public Law 90-129 (May 26, 1967) is similar to TVA in the degree of its autonomy, but without authority to raise funds by sale of bonds. *Id.* § 396.

129. See H.R. REP. NO. 130, 73d Cong., 1st Sess. 19 (1933); Swidler, *Legal Foundations*, in T.V.A.—THE FIRST TWENTY YEARS 16, 26-29 (R. Martin ed. 1956).

130. 16 U.S.C. §§ 831a & b (1964).

though one commentator suggests the possibility that the early spectacular achievement of TVA may be attributable to this organization,¹³¹ the division of responsibility, together with the varying philosophies of the board members and Chairman Morgan's domineering personality, led ultimately to President Roosevelt's removal of Morgan and an unusually bitter congressional investigation of TVA.¹³² The upshot of the Morgan affair was confirmation of the President's authority to remove a board member.¹³³ But the controversy left TVA's autonomy in all other respects unaffected, and 1937 saw the establishment, over Morgan's objections, of a General Manager as the chief administrative officer of TVA.¹³⁴

The uniqueness of TVA lies in the board's responsibility and independence, delegated in turn through the General Manager into the organization. The corporation is specifically exempted from the civil service laws, and this exemption is coupled with a powerful injunction against the use of political influence:

In the appointment of officials and the selection of employees for said Corporation, and in the promotion of any such employees or officials, no political test or qualifications shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. Any member of said board who is found by the President of the United States to be guilty of a violation of this section shall be removed from office by the President of the United States, and any appointee of said board who is found by the board to be guilty of a violation of this section shall be removed from office by said board.¹³⁵

This statute attempted to preserve the best of the civil service system—merit promotions and elimination of the spoils system—while avoiding the inhibiting influences of standardized examinations, uniform pay scales, and cumbersome dismissal procedures. Initiation of such a system was an act of confidence; the virtually absolute exclusion of politics from TVA and the unusually high morale and devotion of TVA employees have borne out this trust.¹³⁶ Added flexibility is found in at least three areas: wages and salaries (TVA has nonetheless tended to follow the civil service lead on salaries and

131. See C. PRITCHETT, *THE TENNESSEE VALLEY AUTHORITY* 156-57 (1943).

132. For the details of this important early development in TVA, see *id.* at 186-216.

133. *Morgan v. TVA*, 115 F.2d 990 (6th Cir. 1940), *cert. denied*, 312 U.S. 701 (1941).

134. See PRITCHETT, *supra* note 131, at 163-70; Oliver, *Administrative Foundations*, in *T.V.A.—THE FIRST TWENTY YEARS* 35, 39-42 (R. Martin ed. 1956).

135. 16 U.S.C. § 831a (1964). Compare the proposed provisions to preclude political influence in the naming of postmasters discussed in note 85 *supra*.

136. See PRITCHETT, *supra* note 131, at 267-71, 282-83; Case, *Personnel Administration*, in *T.V.A.—THE FIRST TWENTY YEARS* 50, 52-55 (R. Martin ed. 1956).

is required to pay prevailing area wages),¹³⁷ hiring standards and procedures,¹³⁸ and firing.¹³⁹ The TVA has developed a decentralized personnel administration by which supervisors select those they wish to hire from a list and are then held responsible for the work of their employees; dismissal and appeals procedures are similarly localized, starting with the employee's immediate supervisor.¹⁴⁰ Moreover, labor relations—by any standard—have been particularly good.¹⁴¹

Clearly, TVA cannot be allowed complete autonomy in its operations, and the means of congressional and executive control are several. As with the British nationalized industries, the most powerful means of control is legislation; in both situations this has been used sparingly and with little inhibiting effect on autonomy.¹⁴² The Statute itself grants very broad discretion to the TVA board. But since the TVA program is not fully self-supporting, a potential area of control is appropriations.¹⁴³ In some respects, the financial limitations of TVA parallel those of governmental departments: it submits a budget, some seventeen months in advance of the beginning of the fiscal year, to the Bureau of the Budget, and that budget is included in the President's budget passed on by Congress.¹⁴⁴ But there are critical differences in the financial structure of TVA as compared with governmental departments. By contrast with other government agencies, TVA receives most of its appropriation in a lump sum available for all programs and not limited to one fiscal year.¹⁴⁵ Moreover, bond financing is a potential source of financial independence, even though the original statute was so drawn as to

137. 16 U.S.C. § 831b (1964). TVA is still subject, however, to veterans' preferences, anti-communist provisions, and some other restrictions. See Case, *supra* note 136, at 52-53.

138. 16 U.S.C. § 831b (1964).

139. See PRITCHETT, *supra* note 131, at 295.

140. See Case, *supra* note 136, at 55-56.

141. Thompson, *Collective Bargaining in the Public Service—The T.V.A. Experience and Its Implications for Other Government Agencies*, 17 LAB. L.J. 89, 90-91 (1966).

142. See PRITCHETT, *supra* note 131, at 229-30. Indeed, subsequent legislation has increased TVA's independence in some areas. See text accompanying note 150 *infra*.

143. Even a self-supporting organization, like several of the nationalized industries, is subject to audit and other investigatory controls. Indeed, even a private corporation vested with a public interest will be subject to legislative or administrative control, often by a regulatory commission. The appropriations "lever" is clearly not essential to the exercise of such control, but it often makes possible control of the excruciatingly detailed type that is now applied to the Post Office.

144. See Clark, *Financial Administration*, in T.V.A.—THE FIRST TWENTY YEARS 62, 64-68 (R. Martin ed. 1956).

145. Jones, *The Financing of TVA*, 26 LAW & CONTEMP. PROB. 725, 730-31 (1961). Compare the subdivided, time-limited appropriations of the Post Office discussed in the text accompanying note 34 *supra*.

render the use of bond financing quite unlikely.¹⁴⁶ However, in connection with the TVA's acquisition of the power facilities of the Commonwealth and Southern Corporation, Congress authorized the issuance of \$61.5 million worth of bonds; these were issued to the United States Treasury in 1939-1941.¹⁴⁷

Still, an early commentator was disturbed at the inadequate use of bond financing and the failure to make provision for repayment of congressional appropriations and payment of some return thereon to the Treasury.¹⁴⁸ Although even the original act required TVA to repay to the Treasury its net proceeds in excess of expenses (less a reserve of \$1 million), at least in the early years there was no such excess to repay.¹⁴⁹ The situation has changed greatly, both in operations and in financing. Power and fertilizer operations began to produce substantial revenues, so that by the end of fiscal year 1960, TVA had paid pursuant to this section \$185 million of power proceeds and \$41.5 million of nonpower proceeds to the Treasury, in addition to the repayment of the bonds issued in 1939-1941.¹⁵⁰ Moreover, in 1959 TVA was given more general authority to borrow up to \$750 million for power financing, since increased to \$1.75 billion.¹⁵¹ As of June 30, 1966, debt outstanding under this section was \$385 million.¹⁵² Of equal importance, the new section provides for repayment beginning in fiscal year 1961, of the congressional appropriations investment in TVA at the rate of \$10 million annually for five years, \$15 million for the next five, and \$20 million thereafter, until \$1 billion has been repaid. In addition, TVA now must pay a return on the net appropriations investment equal to the average interest rate payable by the Treasury on its public obligations as of the beginning of the fiscal year.¹⁵³ In 1967, payments were \$62.125 million under this section: \$15 million as repayment, and \$47.125 million as a return (4.134 per cent on an investment of \$1.14 million) on appropriations. The results of such repayments have been dramatic: in 1956, the portion of the power investment

146. 16 U.S.C. §§ 831n, 831n-1 (1964); see PRITCHETT, *supra* note 131, at 236-37.

147. 16 U.S.C. § 831n-3 (1964); see PRITCHETT, *supra* note 131, at 238.

148. *Id.* at 238-41.

149. 16 U.S.C. § 831y (1964); see PRITCHETT, *supra* note 131, at 235-36.

150. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT A-11 (1960), A-9 (1961).

151. 73 Stat. 280 (1959), *as amended*, 16 U.S.C. § 831n-4(a) (Supp. II 1965-1966). Note that these bonds are not obligations of the United States Government nor are they guaranteed by the Treasury; and while the Treasury has authority to defer issuance of such bonds, its authority is limited. See note 195 *infra*.

152. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT A-14 (1966).

153. 16 U.S.C. § 831n-4(e) (1964). See Jones, *supra* note 145, at 737-39. Similar requirements are imposed on the British nationalized industries. THE FINANCIAL AND ECONOMIC OBLIGATIONS OF THE NATIONALIZED INDUSTRIES, CMND. NO. 1337, at 4-5 (1961).

represented by appropriations was seventy-seven per cent; by the end of fiscal 1966, it was less than fifty-two per cent. Appropriations now no longer are applied in any significant measure to power programs, but rather go toward the other aspects of TVA operations;¹⁵⁴ indeed, in 1966 total TVA appropriations of \$59 million were very nearly matched by returns of the power program of over \$58 million.¹⁵⁵ In short, profitability of the power program and increased use of bond financing—with concomitant elimination of reliance on appropriations except as to nonpower programs—have reduced the congressional lever of appropriations as a means of control, at least as to the power programs,¹⁵⁶ and possibly as to other programs as well.

But control in the fiscal area does not stop at appropriations: the statute also requires TVA to file an annual report and confers audit authority on the Comptroller General.¹⁵⁷ The importance of audit by the General Accounting Office (headed by the Comptroller General) lies in its authority to “settle and adjust accounts” under the Budget and Accounting Act of 1921, as amended.¹⁵⁸ Acting as an arm of Congress, the Comptroller General may retroactively disallow expenditures; he exercises this authority broadly, inquiring into the details of legality and appropriateness of all expenditures and disallowing in toto items on which he has any question.¹⁵⁹ Shortly after establishment of TVA, issue was joined between TVA and the General Accounting Office on the extent of the latter’s audit authority under the TVA Act, with the result that in 1941 the TVA Act was amended to prevent the Comptroller General from disallowing expenses determined by the TVA board to be necessary to carry out the provisions of the Act.¹⁶⁰ Since then, TVA’s accounting system

154. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT 52-53 (1966).

155. *Id.* at A-11.

156. Of special interest, perhaps, in contemplating a TVA-type setup for the Post Office Department is our power financing. TVA exercise its highest degree of autonomy in the management of its power system since it is financed for all practical purposes from power revenues and borrowings, and congressional appropriations are not required. However, as I have indicated, TVA keeps Congress and the President’s office fully informed of its activities in the power field through its annual report and its annual budget submissions.

Letter from Aubrey J. Wagner, Chairman of the Board of Directors, TVA, to Thomas L. Smithson, Jan. 8, 1968, on file in the author’s office.

157. 16 U.S.C. § 831h (1964).

158. 31 U.S.C. §§ 71, 74 (1964).

159. See Lillienthal & Marquis, *The Conduct of Business Enterprises by the Federal Government*, 54 HARV. L. REV. 545, 577-79 (1941).

160. 16 U.S.C. § 831h(b) (1964). See PRITCHETT, *supra* note 131, at 249-63, for the history of the GAO-TVA dispute. Another important area of independence written into the same section of the Act is freedom from the usual government purchasing requirements.

and procedures have been highly praised by the General Accounting Office and others;¹⁶¹ more important, however, the flexibility afforded by freedom from accounting to the General Accounting Office for specific expenditures in accordance with appropriations¹⁶² has allowed for the development of a genuinely useful accounting system. Resulting financial statements are similar to commercial statements, and in addition they break down operations into meaningful activities for which costs are separately accumulated: for example, power, fertilizer, agricultural and munitions developments, and flood control operations.¹⁶³

C. *Evaluating TVA and the Nationalized Industries*

In evaluating TVA and the British nationalized industries, it is essential at the outset to realize that there is no general agreement on either the criteria of evaluation or the benchmarks against which any comparative evaluation should be made. Profitability, the market-place standard of evaluating private industries, suffers from obvious defects. It is not the primary aim of the public corporation. Moreover, income or deficit may turn on the extent of public-service subsidy, the degree to which monopoly position is exploited or ignored in pricing, the quality and extent of service provided, and other factors not reflective of the total performance of the enterprise. A more nebulous, less quantifiable standard must be applied: the effectiveness and economy with which the ends sought from the corporation are pursued, and the degree to which they are achieved.¹⁶⁴ Application of such a standard is confused by the multiplicity of numerical criteria it comprehends (output in kilowatt-hours, price and costs, employment, and capital investment, among others), by the nonquantifiable standards that must be included (for example, worker satisfaction, fulfillment of purposes, and public attitudes), and by the lack of uniformity in standards of comparison. Some activities of TVA, such as power production, may be compared with private

161. See Clark, *supra* note 144, at 68. From 1938 to 1944, TVA was audited by a firm of independent certified public accountants, but in 1945 TVA, along with other government agencies, was prohibited from making expenditures for outside auditors. 31 U.S.C. § 866(d) (1964). The 1959 bond authorization amendments to the TVA Act permitted resumption of audits by certified public accountants in fiscal year 1960. 16 U.S.C. § 831n-4(c) (1964). See TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT A-2 (1960).

162. See the criticism of GAO examinations in Beach, *Role of the General Accounting Office in the Regulation of Industry*, 21 BUS. LAW 235 (1965); Lilienthal & Marquis, *supra* note 159, at 581-84.

163. See TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT A-1 through A-14 (1966).

164. See W. ROBSON, NATIONALIZED INDUSTRY AND PUBLIC OWNERSHIP 416-24 (1960).

industry (although not without considerable objection from private power producers) or public power authorities, but it would be difficult to develop any comparative standard for reforestation, flood control, and many other activities. It is traditional to compare performance of the British nationalized industries with the same industries before nationalization, but this comparison may be unfair in failing to take account of general progress in industry; and, it is nearly impossible to draw meaningful comparisons between these industries and other totally different industries that have not been nationalized.

That the TVA has been remarkably successful in achieving its purposes can hardly be seriously disputed at this date, notwithstanding doubts about standards of comparison. In thirty years, its system of river control has averted flood damage of more than one-third of a billion dollars, at a saving of some \$140 million even after all capital and operating costs of flood control are deducted.¹⁶⁵ TVA saves shippers nearly \$30 million annually by maintaining a shipping channel, and its early optimistic forecasts of river traffic have been substantially exceeded.¹⁶⁶ Achievements in electric power generation are the most impressive: TVA has met heavy power demands for defense, industry, and home use. Average residential use of electricity in the valley is over twice the national average, and cost per kilowatt-hour (including a return of more than four per cent to the government on its entire power investment) is less than half the nationwide average.¹⁶⁷ The power investment of the government, as we have noted, is gradually being repaid, and the government is being paid a return on this investment as well. Achievements in the development and use of new fertilizers, forest development, munitions, and regional employment have been similarly impressive.¹⁶⁸ It would be erroneous to suggest that corporate form caused TVA to be successful. By the same token, there can be little doubt that greater fiscal autonomy, freedom of personnel policy, and inde-

165. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT 1 (1966); Martin, *The Tennessee Valley Authority: A Study of Federal Control*, 22 LAW & CONTEMP. PROB. 351, 361-62 (1957).

166. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT 1 (1966); Martin, *supra* note 165, at 362.

167. Average cost per kilowatt-hour in 1966 was .90¢, contrasted with the national average of 2.22¢. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT 2 (1966). Some portion of TVA's lower costs, however, result from its lower cost of raising capital and its reduced tax burden. Taxes and interest together amount to nearly one-third of the power revenues of private power companies. FEDERAL POWER COMMISSION, ANNUAL REPORT 206-07 (1967).

168. TENNESSEE VALLEY AUTHORITY, ANNUAL REPORT 3, 7-11 (1966); Martin, *supra* note 165, at 365-70.

pendence from detailed government control have contributed importantly to the initiative, flexibility, and sense of mission that have led to TVA's successes.¹⁶⁹

The job of taking over and remaking an existing industry in unhappy straits is obviously more difficult than the task posed by an operation started with a clean slate. Without detracting from the significance of TVA's performance, it should be obvious that the job of the nationalized industries—and the task to be faced by any reorganized Post Office—must be considerably more difficult. The nationalized industries have not fared as well as TVA. Their record is inconclusive, and some claim that their performance on the whole has been uninspired,¹⁷⁰ perhaps to some extent because they have had (by virtue of the substantial governmental control previously noted) little of the free rein that has characterized TVA.¹⁷¹ In several respects, the industries have done quite well: the airlines (BOAC and BEA) have provided generally good service; production, working conditions, and wages have improved significantly in the coal mines since nationalization; and nationalized electricity has turned in a remarkably effective and efficient record. Gas operations show a mixed record: production is efficient but sales are disappointing, due in part—it is claimed by some—to underpricing and overutilization of electricity.¹⁷² Finally, the British Transport Commission produced enormous deficits regularly, caused directly by government intervention in prices; the lack of any degree of commercial freedom given to the railroads led to disastrous results. Ultimately, the Commission was abolished in a decentralization program and over-all control was vested in the Minister of Transport.¹⁷³

No study definitively establishes a causal relationship between autonomy and efficiency, but the public corporations examined above, together with the United States Post Office, afford some empirical support for a conclusion that most businessmen would derive from

169. "The freedom and flexibility given to the Directors of TVA in the organic Act and the responsible exercise of that authority by the Board have been major factors in the achievements of TVA in carrying out its assigned responsibilities." Letter, *supra* note 156.

170. Davies, *Who Decides the Public Interest?*, in *THE LESSONS OF PUBLIC ENTERPRISE* 243-44 (M. Shanks ed. 1963); Shanks, *The Future of Public Enterprise*, in *THE LESSONS OF PUBLIC ENTERPRISE* 300 (M. Shanks ed. 1963).

171. See Shanks, *Islands of Socialism*, in *THE LESSONS OF PUBLIC ENTERPRISE* 219-20 (M. Shanks ed. 1963).

172. ROBSON, *supra* note 164, at 436-46.

173. Four public authorities and a holding company took the place of the British Transport Commission. Responsibility for rail transportation is now divided among six regional boards. Transport Act of 1962, 10 & 11 Eliz. 2, c. 46, §§ 1, 2, 29; see Shanks, *The Aims and the Problems*, in *THE LESSONS OF PUBLIC ENTERPRISE* 30-31 (M. Shanks ed. 1963); ROBSON, *supra* note 164, at 150-54, 456.

common sense. Efficiency in conducting whatever task is assigned tends to suffer as the alternative courses of action and the freedom of choice of the managers are limited. Parliament and the Cabinet ministers have less information, less time, and less ability to determine rail rates consistent with break-even operation than the managers of the railroads. Political advisors cannot and do not pick local postmasters to maximize the efficiency of the Post Office Department, and Congress cannot, in the first instance, do as effective a job of choosing a location for a dam or power plant as TVA experts. To be sure, many such decisions may involve issues of the public interest, and some may demand review or even initiation by the legislature. At some point, however, performance is compromised by excessive intervention; and it seems clear that the formula for facilitating the carrying out of the industry's job is maximum autonomy consistent with the maintenance of overriding public policy.¹⁷⁴ That the Post Office does not fit this formula hardly needs elaboration.

In generalizing from these illustrations, some caution is in order. Use of the corporate form, as such, will not assure success nor even necessarily facilitate it. The powers and control structure of the enterprise determine its ability to carry on whatever purposes have been entrusted to it. If anything clear emerges from these histories, it is that vesting an organization with appropriate powers can in fact facilitate—through greater autonomy, creativity, and flexibility—more effective performance of its job. Without adequate controls, a public corporation might act contrary to the public interest; with overly tight limitations, the corporate device becomes largely useless and the organization loses whatever added effectiveness autonomy can provide.

It will be argued by some that all, or nearly all, of the virtues of a public postal corporation can be achieved by reorganization without a corporation. Obviously that is true. The common law could have fared well with a limited-liability, perpetual-life, delegated-responsibility, transferable-share partnership in the place of the corporation. The corporate device institutionalizes these characteristics as well as others, and the public corporation in the same way affords an institutional framework to which the desired characteristics may be attached. It might also be true that the symbolic act of establishing a new

174. This position was explicitly adopted by the British Select Committee on Nationalised Industries in their recommendations concerning government control of the proposed British postal corporation. The Committee rejected increased government control based on historical reasons or on notions of unusual monopoly position, and favored vesting initial authority over rates in the corporation. SELECT COMMITTEE REPORT 194-97.

entity would lend impetus to the reorganization effort. Reorganization could indeed be carried out without a corporation, but the job would be more difficult.

IV. THE POST OFFICE AS A PUBLIC CORPORATION

A. *The Background of the Corporation Proposal*

The genesis of the present round of discussions concerning incorporating the Post Office was a proposal made last April by Postmaster General Lawrence O'Brien in a Washington address to a meeting of magazine editors and publishers.¹⁷⁵ Claiming that the Post Office Department had grown in self-destructive ways, he concluded:

[T]here are so many existing and formidable barriers to efficient management that the ultimate solution to the problems of the postal service lies in taking the Department out of its present context entirely. . . . This is a situation that has grown up over such a long period of time and has such a strong tradition, that the only effective action I foresee is sweeping it away entirely.

O'Brien's proposal is sweeping, and at least a few of its points have been the subject of considerable dispute. He proposes that the Postal Service should:

- (1) cease to be a part of the President's Cabinet;
- (2) become a nonprofit government corporation, rendering essential public service;
- (3) provide postal services authorized by the Congress;
- (4) be operated by a board of directors, appointed by the President, and confirmed by the Congress;
- (5) be managed by a professional executive appointed by the board;
- (6) be given a clear mandate on the percentage of cost coverage for postal services, so that further revisions in rates—should they be necessary—would be made on a fixed formula basis.

His proposal seems to contemplate as well exemption from the civil service system for he envisions payment of employees according to the standards of comparable industry, with greater scope for collective bargaining. Finally, he suggests the possibility of bond financing for the construction of post office buildings.

That the Postmaster General's proposal had been carefully considered by the Executive Branch was obvious: within five days, the President established a Commission on Postal Organization with the following broad mandate:

¹⁷⁵ Address by Postmaster General Lawrence O'Brien Before a Meeting of the Magazine Publishers Ass'n and the American Soc'y of Magazine Editors, April 3, 1967.

[The Commission shall] study the organization and structure of the postal service of the United States, and . . . determine and report upon the feasibility and desirability of a transfer of the postal service from the Post Office Department to a Government corporation, or such other form of organization as the Commission may consider desirable.¹⁷⁶

The Commission is directed to consider organization and management, rates, compensation, personnel practices, financing, and modernization, among other factors. Any recommendation against a transfer to a government corporation or other form of organization must be accompanied by reasons and by alternative proposed improvements; a recommendation in favor of a transfer must include consideration of the nature and relationship of the organization to the President, the Congress, and the public. In addition, recommendations must be made concerning composition and appointment of top management, methods of setting postal rates, compensation, employment policies and labor relations, transportation, financing, and any other relevant issues. The Commission was given one year to prepare a final report. Its ten members, chaired by Frederick Kappel (former chairman of the board of American Telephone & Telegraph Company), reflect the magnitude of its task: they include the Dean of the Harvard Business School, the Board Chairman or President of five major corporations, the Vice-President of the Ford Foundation, a distinguished Washington attorney, and the President of the AFL-CIO.

This proposal to consider reorganization of the Post Office as a public corporation is not without precedent. The German Federal Post, though not technically established as a body corporate, has at least a few of the attributes of a corporation.¹⁷⁷ Moreover, the Postmaster General's proposal was preceded by a British White Paper outlining the impending change of status of the British Post Office to a public corporation.¹⁷⁸ Finally, the 1949 *Hoover Commission Report*, though generally viewed as favoring less autonomy for public corporations,¹⁷⁹ nevertheless recommended use of at least some of the attributes of such an organization (such as a revolving fund and a business-type budget) for the Post Office.¹⁸⁰ Still, the organization

176. Exec. Order No. 11341, 32 Fed. Reg. 5765 (April 8, 1967).

177. The *Bundespost* is administered by a federal minister, but its board sets postal rates, budgets, and major technical plans. It is a self-supporting special fund. See Friedmann & Hufnagel, *The Public Corporation in Various States: Germany*, in *THE PUBLIC CORPORATION* 159-60 (W. Friedmann ed. 1954).

178. REORGANISATION OF THE POST OFFICE, CMND. No. 3233 (1967).

179. See, e.g., Hanson, *Regional Survey: North America*, in *PUBLIC ENTERPRISE* 34-35 (A. Hanson ed. 1954).

180. 1949 HOOVER COMMISSION, *THE POST OFFICE DEPARTMENT* 11-14.

proposed by the Postmaster General is in many ways unique. For aside from long history as a government department and sheer size—the United States Post Office dwarfs that of any other country—incorporation of the Post Office would follow hard on the heels of developing governmental distrust of public corporations and a sharp decline in their use in the United States.

In the period before World War II, the use of public corporations by the federal government increased substantially; by 1945 the General Accounting Office counted some fifty-eight federal corporations or groups of corporations of various types.¹⁸¹ The proliferation of these corporations was due in large part to the desire for greater autonomy in operations and also in part to attempts to avoid uncertainty of congressional action in the establishment of a new agencies.¹⁸² With the onset of the war, Congress paid greater attention to these corporations and began the process of chipping away at their autonomy. The Ramspeck Act of 1940 drew the employees of every federal government corporation, with the exception of TVA, into the classified civil service.¹⁸³ Then in 1941, Congress established the Joint Committee on Reduction of Nonessential Federal Expenditures, which reported in 1944 on government corporations, recommending that:

- (1) the corporations be required to present a business-type budget to the Bureau of the Budget;
- (2) the budget be submitted to Congress, and acted upon as Congress acts on appropriations;
- (3) the General Accounting Office be given authority to audit the corporations; and
- (4) the Comptroller General of the United States be made auditor and comptroller, ex officio, of every government corporation.

This last recommendation was not agreed to by the Secretary of the Treasury and the Director of the Budget, and it was not included in the bill drafted in response to the report.¹⁸⁴ Nevertheless, the initial bills introduced¹⁸⁵ would virtually have eliminated all meaningful freedom of action, with the following language:

181. GENERAL ACCOUNTING OFFICE, REFERENCE MANUAL OF GOVERNMENT CORPORATIONS III, S. Doc. No. 86, 79th Cong., 1st Sess. (1945).

182. See Pritchett, *The Government Corporation Control Act of 1945*, 40 AM. POL. SCI. REV. 495, 496 (1946).

183. 5 U.S.C. § 631a (1964) authorized the President of the United States to cover such employees by Executive Order. This was done under Exec. Order No. 8743, as amended, 5 U.S.C. § 631a (1964).

184. JOINT COMM. ON REDUCTION OF NONESSENTIAL FEDERAL EXPENDITURES, REPORT ON GOVERNMENT CORPORATIONS, S. Doc. No. 227, 78th Cong., 2d Sess. 30 (1944).

185. Three identical bills were introduced: S. 469, H.R. 2051, and H.R. 2177, 79th Cong., 1st Sess. (1945).

Sec. 104. No wholly owned Government corporation shall transact any business in any fiscal year except such business as is authorized by Act of Congress as a part of its budget program for such fiscal year, and no expenditures for administrative expenses in any fiscal year shall be made by any such corporation except in the amounts authorized and made available by Congress for such fiscal year. No funds so made available by the Congress for administrative expenses shall be obligated or expended unless and until an appropriation account shall have been established therefore pursuant to an appropriation warrant or a covering warrant, and funds so made available shall be subject to apportionment by the Bureau of the Budget, and claims and accounts thereunder to adjustment and settlement by the General Accounting Office under title III of the Budget and Accounting Act, 1921.

The limitations of this section—fiscal year budgeting and settlement of accounts by the General Accounting Office—as noted by witnesses at hearings on the bills, would have rendered impossible businesslike operations of the corporations.¹⁸⁶ The revised bill specifically took account of the corporations' demand for a degree of fiscal autonomy:¹⁸⁷

Sec. 104. The Budget programs transmitted by the President to the Congress shall be considered and, if necessary, legislation shall be enacted making available such funds or other financial resources as the Congress may determine. The provisions of this section shall not be construed as preventing wholly owned Government corporations from carrying out and financing their activities as authorized by existing law, nor shall any provisions of this section be construed as affecting in any way the provisions of section 26 of the Tennessee Valley Authority Act, as amended. The provisions of this section shall not be construed as affecting the existing authority of any wholly owned Government corporation to make contracts or other commitments without reference to fiscal year limitations.

While this section as enacted did not, therefore, impose fiscal year limitations on the corporations, the Government Corporation Control Act of 1945,¹⁸⁸ of which it formed a part, sufficiently restricted

186. *Hearings on S. 469 Before a Subcomm. of the Senate Comm. on Banking and Currency*, 79th Cong., 1st Sess. 59 (David Lilienthal, Chairman of the Board of TVA), 122 (Joseph Mehauffey, President of the Panama Railroad Company) (1945). See Pritchett, *supra* note 182, at 498-99, 501.

187. H.R. 3660, 79th Cong., 1st Sess. (1945); see H.R. REP. No. 856, 79th Cong., 1st Sess. 3 (1945). Note that § 26 of the TVA Act is 16 U.S.C. § 831y (1964), effectively permitting the TVA to use its receipts for the carrying on of its programs.

188. 31 U.S.C. §§ 841-69 (1964). Note that a 1947 amendment to the Act changed the quoted section to allow Congress to place limitations on the use of corporate funds as well as appropriations: "legislation shall be enacted making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources *or limiting the use thereof* as the Congress may determine . . ." 31 U.S.C. § 849 (1964) (emphasis added).

the freedom of public corporations that one contemporary authority claimed that "the pattern of control imposed means that, for good or ill, American experience with autonomous public corporations is substantially at an end."¹⁸⁹

Though Congress may obviously exempt any postal corporation from the Government Corporation Control Act—TVA is exempted from parts of that Act and the Ramspeck Act¹⁹⁰—an examination of the nature of the Act's controls is useful in determining the usual ground rules for government corporations, for which it may be expected Congress will argue if any postal reorganization is proposed. The focus of the Act is exclusively financial: it deals with budgeting, audits, and debt financing. The budget provisions, though they do not tie expenditures to fiscal years, do require *all* wholly owned government corporations, including those that are totally self-supporting, to present annual budgets for congressional consideration.¹⁹¹ In prescribing a business-type budget, Congress recognized the difference in function between these corporations and government departments and, implicitly, the legitimacy of the corporate device to carry out the business-type operations of the government; but these sections were intended to, and did, curtail fiscal autonomy. The provisions for audit by the General Accounting Office similarly represent a compromise: control was increased, but to a level significantly lower than that exercised over government departments. Particularly significant was deletion of "settlement authority" of the General Accounting Office as proposed in the initial bills; this paralleled the outcome of the General Accounting Office dispute with the TVA on this issue, previously discussed.¹⁹² The General Accounting Office is to perform annual audits "in accordance with the principles and procedures applicable to commercial corporate transactions" and report to Congress thereon.¹⁹³ Finally, the Control Act vests control over debt financing of government corporations in the Secretary of the Treasury.¹⁹⁴ This absolute power—which might be exercised by the Treasury, for example in a period of financial stress, to the clear detri-

189. Pritchett, *supra* note 182, at 509.

190. 5 U.S.C. § 631a (1964) specifically excludes TVA from civil service coverage. The limitations of § 104 of the Government Corporation Control Act are similarly inapplicable to TVA [31 U.S.C. § 849 (1964)]; and the prohibition against private audits of 31 U.S.C. § 866(d) (1964) is expressly negated in the TVA Act, 16 U.S.C. § 831n-4(c) (1964).

191. 31 U.S.C. §§ 847-49 (1964).

192. See text accompanying note 160 *supra*.

193. 31 U.S.C. § 850-51 (1964).

194. 31 U.S.C. § 868 (1964).

ment of the corporation—should be contrasted with the clearly limited veto given the Treasury in TVA bond financing.¹⁹⁵

Autonomy was clearly limited in the fiscal area by the Government Corporation Control Act, and the Ramspeck Act limited corporate freedom over personnel policy. It remains to be determined whether these elements of autonomy, or others, are critical to an efficient postal operation, and whether exemption from aspects of these acts will be necessary.

B. *Details of a Postal Corporation*

It is beyond the purview of this Article, and perhaps beyond the capabilities of any before-the-fact study, to prescribe with precision the details of a reorganization plan for the Post Office. Accordingly, this analysis will be concerned with a few of the most fundamental issues that any such reorganization must consider: distribution of control between Congress and the proposed corporation, personnel policies, and finance.

1. *Management and Control*

The proposition that organizational efficiency will increase if rules which preclude desirable courses of conduct are eliminated needs little proof. Many of the rules under which the Post Office now operates are archaic and unduly restrictive,¹⁹⁶ and if reorganization does nothing but eliminate these rules it will have made a step forward. Beyond the elimination of undesirable restrictions, however, there is a major institutional effect of distributing control more widely throughout an enterprise. Though an occasional voice has been raised against the view that autonomy in business-type operations of the government is desirable,¹⁹⁷ both history and empirical research put its desirability beyond doubt. Freedom from many details of government control has characterized the highly successful operations of TVA, government corporations in many nations, and

195. 16 U.S.C. § 831n-4(c) (1964) gives TVA power to set terms, rates, and conditions of its obligations. The Secretary of the Treasury must receive fifteen days' notice of proposed issuance of obligations with a term of one year or more. If the Secretary does not approve the issue—he may pass only on the time of issuance and the maximum interest rate—the Treasury must provide interim financing to TVA up to \$150 million. If agreement on issuance is not then reached within eight months, TVA may sell bonds without Treasury approval.

196. See, e.g., text accompanying note 63 *supra*.

197. See, e.g., Seidman, *The Theory of the Autonomous Government Corporation: A Critical Appraisal*, 12 PUB. AD. REV. 89, 93-96 (1952).

local authorities in the United States.¹⁹⁸ While it is difficult to develop adequate theoretical measures of organizational effectiveness, several recent studies have found a significant correlation between the total control and its distribution in an organization and the effectiveness of that organization.¹⁹⁹ The "participative management" advocates have produced impressive demonstrations of the favorable organizational effects, over time, of moving from authoritative management toward greater participation in decision-making by lower-level employees.²⁰⁰ Studies such as these suggest the potentiality of increasing the effectiveness of the Post Office by giving it greater control over its operations and by allowing for the delegation of that authority to a far greater extent than at present.

Control given to a postal corporation must, regardless of what efficiency may demand, be limited by national policy. There is nevertheless a vast amount of freedom of action—so far withheld—that can be afforded in the running of the postal system by eliminating political appointments below cabinet level, by granting freedom of choice in the location of new post offices, by allowing greater freedom in transportation policy and contracting, and by reducing unnecessarily detailed controls over local operations. Even some politically tinged powers, such as setting of postal rates, bond financing authority, and possible exemption from civil service laws, can to some measure be granted to the corporation without compromising genuine national interests.

Although a board of directors is not essential to a public corporation, it is a fixture of private corporations, and it serves functions of a value not to be ignored by the Post Office.²⁰¹ Inside, full-time

198. See generally *THE PUBLIC CORPORATION* (W. Friedmann ed. 1954); *PUBLIC ENTERPRISE* (A. Hanson ed. 1954).

199. See Marcus & Cafagna, *Control in Modern Organizations* 25 *PUB. AD. REV.* 121 (1965).

200. A landmark work is R. LIKERT, *NEW PATTERNS OF MANAGEMENT* (1961), the themes of which are developed in greater depth in R. LIKERT, *THE HUMAN ORGANIZATION* (1967). Likert finds that as management systems move from "System 1" (exploitative-authoritative) to "System 4" (participative group) they tend to be more productive and have lower costs and more favorable attitudes. *Id.* at 46. Moreover, such variables as group loyalty, conflicts, motivation, and pressures are directly affected by the management system. *Id.* at 75-77. A detailed study of two companies, generally supporting Likert's thesis, is A. MARROW, D. BOWERS & S. SEASHORE, *MANAGEMENT BY PARTICIPATION* (1967). Doubts have been expressed concerning the universal application of the "participative management" approach, particularly as to low-level employees or old-line companies, but its effects have already been felt widely. See Albrook, *Participative Management: Time for a Second Look*, *FORTUNE*, May 1967, at 166.

201. Among the most important of these are selection of executives, development of corporate policy, and evaluation of performance. And while there is as much variation among boards as among business managers, the continuing functions of the board in these areas have strongly affected the success of business enterprises. The consensus among businessmen, at least, is that a capable and devoted board of directors is a

members of the board set major policy and act as an internal control on effectiveness; outside, part-time members—if they do their jobs conscientiously—afford the corporation a diversity of views.²⁰² To these virtues, in the public corporation setting, is added the advantage of another layer of political insulation. If the President of the United States names the board, and the board in turn names the executives, as is the case in TVA, the executives are more likely to be chosen for their ability to manage as opposed to their political attractiveness.²⁰³ It would be naive to suggest that political factors would play no part in the naming of the board, but staggered terms of a relatively substantial period would prevent the operation of a complete spoils system and would also provide necessary continuity of experience and knowledge. Experience shows that the nonpolitical aspect of such a board would tend to be preserved by avoiding any provision that its members be named in stated proportions from each political party.²⁰⁴ In addition, the board should not include members of the executive departments or ex officio members, such as the Comptroller General.²⁰⁵ Moreover, whatever controls are necessary can as effectively be imposed by statute or regulation. Whether the board should be large or small, full-time or part-time, and representative or not are important issues. Communications Satellite Corporation, probably most accurately classified as a publicly sponsored, regulated private corporation, has a representative board; its fifteen members are named six by vote of the common-carrier

very valuable business asset. See, e.g., the case studies in J. BAKER, *DIRECTORS AND THEIR FUNCTIONS* (1945) and the subsequent Harvard Business School Study, M. COPELAND & A. TOWL, *THE BOARD OF DIRECTORS AND BUSINESS MANAGEMENT* (1947).

202. The longstanding dispute among corporate executives as to the relative value of "inside" and "outside" directors—those who devote full time to the board's activities, as contrasted with those for whom directorship is not an exclusive occupation—shows no sign of abating. Arguments in favor of outside directors center on the virtues of obtaining an outside, objective view of business affairs. The influence of outside directors is reduced to a substantial degree, however, by their inability to obtain full information on the operations of the corporation. See *THE DIRECTOR LOOKS AT HIS JOB* 38-101 (C. Brown & E. Smith ed. 1957). The only systematic study of the relationship between corporate performance and the nature of the board of directors adduces persuasive evidence for its conclusion that inside-run directorates produce better corporate performance than outside-run boards. S. VANCE, *BOARDS OF DIRECTORS: STRUCTURE AND PERFORMANCE* 1-3, 44-61 (1964).

203. Note that the day-to-day affairs of TVA are under the direction of a General Manager, appointed by the board. Early attempts to have the board assume direction of both policy and operations were unsuccessful. See text accompanying notes 131-34 *supra*.

204. Such a provision tends to polarize the board, rather than to assure impartiality. See J. THURSTON, *GOVERNMENT PROPRIETARY CORPORATIONS IN THE ENGLISH-SPEAKING COUNTRIES* 159-61 (1937).

205. Canadian public corporations have used this device, with strong critical disfavor. Hodgetts, *The Public Corporation in Various States: Canada*, in *THE PUBLIC CORPORATION* 75-78 (W. Friedmann ed. 1954).

shareholders, six by vote of public shareholders, and three by appointment by the President of the United States.²⁰⁶ This attempt to reflect various constituencies on the board has been sharply criticized on theoretical and historical grounds,²⁰⁷ and has the additional fault of being contrary to the theory of a board as acting in the best interests of the corporation and not individual constituents.²⁰⁸ While part-time board members may bring useful perspectives to the new corporation, it will be essential—at least at the outset—that a nucleus of members be prepared to devote their full efforts to reorganization, which only *begins* with the establishment of a corporation. Thus, a board composed predominantly of full-time members appears desirable, probably no larger than necessary to assure continuity. A nine-man board, with staggered terms, would be consistent with the practice of the public corporations discussed earlier.²⁰⁹

The board of the new British postal corporation will report to the Postmaster General, a Cabinet official, in the same manner as the boards of the nationalized industries.²¹⁰ By contrast, direct accountability to Congress by public corporations in the United States avoids the need for retention of such ministerial responsibility; indeed, Postmaster General O'Brien's proposal contemplated the elimination of his job.²¹¹ Moreover, the critical public interest aspects of postal operations—type, distribution and frequency of service, postal rates, and finances—can, to the extent necessary, be made the subject of specific statutory criteria without the need for continued cabinet-level intervention in the details of operations.

Is a board of directors essential, or merely desirable? Top-level executive continuity is desirable, though perhaps not critical. But insulation from political patronage and other influences unrelated to postal operations, together with freedom from detailed control over operations, is critical to any viable reorganization. Without a board of directors and the insulation it gives to officers of the postal service, a fixed-term Postmaster General might be a possible alternative, but a poor one: a chief executive subject to removal for political

206. This is so provided in the articles of incorporation, as required by 47 U.S.C. § 733 (1964). See COMMUNICATIONS SATELLITE CORPORATION, PROSPECTUS 33-35 (1964).

207. See Schwartz, *Governmentally Appointed Directors in a Private Corporation—The Communications Satellite Act of 1962*, 79 HARV. L. REV. 350, 363-64 (1965).

208. See 3 W. FLETCHER, CYCLOPEDIA OF CORPORATIONS § 848 (1965); cf. Rostow, *To Whom and for What Ends Is Corporate Management Responsible?*, in THE CORPORATION IN MODERN SOCIETY 46 (E. Mason ed. 1961).

209. A board of between five and fifteen members is large enough to assure diversity of outlook and experience without frustrating effective discussion. Cf. ROBSON, *supra* note 164, at 213-15.

210. REORGANIZATION OF THE POST OFFICE, CMND. No. 3233, at 9 (1967).

211. See text accompanying note 175 *supra*.

reasons cannot maintain autonomy. A board of directors would assure necessary autonomy and political insulation, as well as desirable division between policy formation and its execution; it is an essential element of any reorganization.

2. *Personnel*

The Ramspeck Act would require that all employees of a postal corporation be within the classified civil service in the absence of a statutory exemption.²¹² Ironically, the goals of the civil service laws—elimination of nepotism and political influence, and emphasis on merit—have in large part been perverted in the present Post Office Department. Some specific reforms could eliminate the major shortcomings; at least a few of the proposed bills to eliminate political appointment of postmasters would tend to eliminate deleterious political influences generally, and help to provide hope of advancement for postal employees.²¹³ Unfortunately, the problem does not stop there: remaining are the difficulties of uniform nationwide pay scales, impediments to transfer from office to office, and the inability of the Department to attract university trained potential managers and executives.²¹⁴ While some of these problems can be mitigated by changing Post Office Department regulations, most of them stem from requirements of the civil service laws themselves. Exemption from these laws is unusual, but not entirely without precedent: TVA, exempted from the Ramspeck Act, has developed a personnel system that has proved remarkably successful.²¹⁵ Not the least of the advantages of this system has been the opportunity it provides—withstanding the bar against strikes—for genuine collective bargaining based on local wage scales, with the high degree of satisfaction this has provided both management and labor.²¹⁶

Generalizing from TVA in this area has its dangers: the esprit of that organization began with its initial organization and to some degree results from the recognition by both labor and management that they are an example for others. There is a vested interest in amicable relations, which no doubt affects negotiations favorably. Never-

212. 5 U.S.C. § 631a (1964).

213. See text accompanying notes 83-85 *supra*.

214. See text accompanying notes 12-22 *supra*.

215. The TVA Act provides only that the Board shall select all employees, and that no political tests shall be applied. 16 U.S.C. §§ 831b, (1964). TVA has developed comprehensive regulations pursuant to this statutory grant, consistent with the nature of its operations. TENNESSEE VALLEY AUTHORITY, ADMINISTRATIVE RELEASES § III (1967).

216. Thompson, *Collective Bargaining in the Public Service—The T.V.A. Experience and Its Implications for Other Government Agencies*, 17 LAB. L.J. 89 (1966).

theless, it is important to recognize that TVA's personnel policy represents an adaptation of the essentials of the civil service system to the details of TVA's operation by allowing local wage rates, hiring on the spot, and individualized hiring and supervision. And while uniformity has its virtues, there seems little reason why it must prevail over demonstrably different needs of a particular organization. So with the Post Office: let it be granted that any organization for the carrying on of United States government functions should assure a fair, merit-based system of employment, advancement, and firing. Does such a policy require, for example, that a nation-wide business-type enterprise pay uniform wages, even if those wages make employment unattractive in some areas and a political plum in others?²¹⁷ Local wage differentials are a matter of some sensitivity to organized labor, but should not the issue be resolved by concentrated genuine wage negotiations, rather than a restrictive and obviously unsuitable statutory and regulatory scheme?

Labor relations must be the subject of another study, but a few points should be noted. The Post Office as a national communications network under over-all government control may not be able to risk the threat of a strike. Moreover, it is difficult to imagine Congress granting the right to strike under even the most liberal reorganization plan. Nevertheless, some effective collective bargaining technique must be developed, and although TVA has produced an enviable labor relations record within the strike ban, a device such as compulsory arbitration binding on both parties may be essential to the Post Office. Though no suggestion is offered herein, it must be recognized that if an approach like compulsory arbitration is adopted it must appear in the corporation's charter and should therefore be considered along with other elements of the reorganization plan.

Executives or managers are a second problem, and here the issue is not area differentials, but flexibility in hiring, advancement, and transfers. To some degree, the Department itself has been responsible for creating a staid and unattractive image by offering little opportunity for either experienced managers or university graduates, and by itself limiting transfers. Although the Department has taken some first steps to change this pattern, more are required.²¹⁸ Attracting professional managers, engineers, and attorneys in the numbers needed by the Post Office will require competitive starting salaries and working conditions, opportunities for substantial advancement commensurate with demonstrated ability, and possibly even compensation

217. See note 12 *supra*.

218. See note 18 *supra*.

comparable to private industry positions of equal stature. These are not within the possibilities of civil service employers: private industry spirits away top executives by offering them substantial compensation and therefore holds them to a high standard of performance. How can the Post Office expect to achieve similar performance when it is limited to top pay of \$27,900 in postal field positions, where enormous job security is coupled with no upward mobility?²¹⁹ And, more important, what overriding national policy demands these limitations? Perhaps it would be uneconomic to have different statutory standards applicable to each government department or enterprise. But the Post Office is not just another department. It is the government's largest civilian employer, and second in size only to the armed forces, which have a separate personnel policy.²²⁰

Is exemption from the civil service laws essential, or merely operationally desirable? Clearly, elimination of political perversion of the civil service system as it applies to the Post Office²²¹ is absolutely essential, for without that reform the Post Office remains the unwilling depository of political favors. It is this observer's view that exemption from the civil service is essential, at least for managerial employees. Critics will respond by noting that other government agencies, equally limited by the civil service pay scales, experience requirements, and the like, have had no difficulty attracting talent. This argument tends to stretch the truth. Top flight professionals are attracted to certain government positions, but they tend to stay only a few years, obtain needed experience, and move on to the private sector. Government *does* have difficulty at least in *retaining* talent. Moreover, the talent is attracted to "glamor" jobs. Top law graduates flock to the Justice Department, the Defense Department, and other loci of power and influence. They do not seek out the Post Office, and even with the added attraction that a major reorganization might afford, they would not form lines at the hiring office. The Post Office is not the White House. It is not at the center of national policy, it makes little news, and it must therefore compete

219. Effective July 1, 1968, the top salary in the Postal Field Service (grade PFS-21) will be \$27,900. H.R. 7977, § 3542, 90th Cong., 1st Sess. (1967). The Department is limited to fifty-five employees in the top two PFS grades. *Id.* § 3301. (Positions at Department headquarters in Washington are within the General Schedule and Executive Schedule pay rates.) The gap between executive-level salaries in the Civil Service and those in private industry is documented in *Hearings on H.R. 8261 and Related Bills Before the Subcomm. on Compensation of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-15, at 29-30, 36-37 (1967).

220. UNITED STATES BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 408-09 (1967).

221. See NATIONAL CIVIL SERVICE LEAGUE, POLICY STATEMENT: ABANDONING PATRONAGE IN POSTAL APPOINTMENTS (1966).

with private industry by paying competitive salaries and offering comparable advancement opportunities. This it cannot do under the present laws. As to nonmanagerial positions, the TVA example shows that meaningful collective bargaining on wages and working conditions, together with a degree of flexibility in labor relations, can assist in evoking a sense of participation and creating loyalty among the entire work force, notwithstanding the government ban against strikes. Perhaps this is not essential, but the importance of a joint management-labor sense of mission during a period of upheaval and change in technology cannot be overemphasized. Exemption from civil service, subject to statutory requirements concerning merit standards and due process in personnel administration, avoidance of political interference, and the usual strike ban would facilitate progress throughout the postal system.

3. *Finance*

It is in the area of finance—rate structure, capital expenditures, borrowing, budgets, and auditing—that freedom of action tends to be most critical and most controversial. It has regularly been assumed that postal rates are of such great national concern that they can only be determined by Congress. That rate structures are of public concern is a truism; it does not follow, however, that Congress should—or indeed, that Congress *can*—set a viable structure for postal charges. The proposed postal corporation in England is to have statutory power to set rates, subject to applicable nationwide legislation on prices and incomes, with provision for consultation with a users' council on major rate changes.²²² Rates set by the corporation, though considered by the users' council and subject to review by Parliament, are therefore not originally set by the legislature. Similarly, United States telephone rates, no less a matter of public interest than postal charges, are established initially by the telephone companies, subject to regulation by the Federal Communications Commission and local utilities commissions. Clearly, no postal corporation could be allowed to set rates without supervision; its monopoly position and the public interest preclude such a scheme. But it is difficult to see what objection could be posed, on public interest grounds, to giving initiative to the postal corporation to submit a rate structure, subject to modification by Congress on the basis of demonstrated public interest. Giving the corporation initial authority to set proposed rates—subject to broad statutory guidelines on rate policy—thus has two virtues:

²²² REORGANIZATION OF THE POST OFFICE, CMND. NO. 3233, at 6-7 (1967); see SELECT COMMITTEE REPORT 195-97.

it allows submission of a rate structure based on operational considerations, and it requires that Congress justify publicly any variation therefrom. If second-class mail rates, for example, are to be maintained at a nonremunerative level by congressional intervention, Congress must make changes in the rates submitted by the corporation and be prepared to justify those changes, together with whatever losses—clearly identified as such—result therefrom.

Rates cannot be discussed without opening the problem of deficits, government investment, and break-even operations. The British nationalized industries, TVA, and numerous other public corporations are directed to break even on their business-type operations after repayment of a portion of the government's initial investment.²²³ It has become commonplace to consider the Post Office a public service that cannot fit within this framework; but interestingly, the British Post Office operated within these strictures prior to the corporation proposal and will continue to do so after the corporation is organized.²²⁴ Any decision that the Post Office will be subsidized means that some costs of using the mails will be borne not by the users, but rather by the general public as a portion of tax costs. Is this justified? The distribution of mail use suggests a resounding *no* to this question. First-class mail, which according to the Department's Cost Ascertainment System is not subsidized, is approximately seventy-five per cent business mail. Rate increases on this class affect seriously neither individual nor business users.²²⁵ Second-class mail, heavily subsidized by any standard,²²⁶ is invariably passed on to the consumer of newspapers and magazines that are mailed pursuant to this class. Is there any reason why magazine readers should pay for increased costs of paper and ink and labor—as they clearly

223. See text accompanying notes 114 & 153 *supra*.

224. Postal operations, however, have produced deficits which have been offset by profitable telephone services. POST OFFICE REPORT & ACCOUNTS 40-41 (1965). It has been recommended that separate financial objectives—each to require a return on investment—be established for postal and telephone services. SELECT COMMITTEE REPORT 175-76.

225. See note 6 *supra*. Most companies spend between one-tenth and one-fifth of one per cent of their operating expenses on first-class mail. Nonbusiness users spend an average of only one-tenth of one per cent of per capita disposable income on first-class mail. Even substantial rate increases should not, therefore, significantly affect the users or the volume of first-class mail. MCKINSEY & CO., REPORT TO THE HOUSE COMM. ON POST OFFICE AND CIVIL SERVICE ON THE IMPACT OF POSTAL-RATE INCREASES 2-4, 2-7 (Comm. Print 1960).

226. See text accompanying note 46 *supra*. The new postal rates enacted by H.R. 7977, which increase cost coverages of all classes, still provide only 34% cost coverage on regular second-class mail and 72% coverage on bulk third-class mail. It is difficult to find a clear rationale in the congressional deliberations for the variations in cost coverage, although 39 U.S.C. §§ 2301, 2302 (1964) provide general guidance on rates. See S. REP. NO. 801, 90th Cong., 1st Sess. 4-5 (1967).

have—and not increases in postage charges?²²⁷ And is there any reason to believe that the original rationale for the second-class subsidy, facilitating the spread of news to remote areas by the only available means, is still viable? Finally, it is difficult to understand why advertisers, the primary users of third-class mail, should not pay a fair share of the cost of services rendered them.²²⁸ There is dispute as to the validity of the Department's cost accumulations on third-class mail,²²⁹ some suggesting that third-class mail does not even pay its marginal costs.²³⁰

Taken at its face, this evidence establishes that within broad ranges postal rates can be adjusted without adversely affecting the system or its users. The argument that the Post Office should not break even is barren. The Department *can* break even, and there is no satisfactory justification for preventing the costs of its services from rising when all other costs rise. To the extent that there is genuine justification for certain subsidies, such as free mail for the blind, they can as easily be supported directly and identifiably by a lump-sum payment from the Treasury. The advantage of break-even operations, which present attainable goals to the Department and allow careful financial analysis to play a role in operations, cannot be overestimated. This reform must be rated as essential; if Congress continues to set rates to produce a deficit, and the Department continues to take the blame for a loss not of its own making, the genuine incentive to maximize efficiency in operations will forever be blunted.

Capital expenditures and borrowing power are related. It was noted earlier that the Post Office's investment in research and development and in capital improvement is inordinately small.²³¹ Failure to make adequate investment in earlier periods saddles the postal operations of today with outdated facilities. Inability to make substantial capital improvements derives from the appropriations pro-

227. Publishers have successfully passed on to subscribers significant increases in other costs without substantial reduction in their profits, and with continued increases in circulation. From 1946 to 1957, the average subscription price of magazines increased 44%. MCKINSEY & Co., *supra* note 225, at 2-12 through 2-17.

228. Postage is a significant part of the cost—nearly one-third—of direct mail advertising. Direct mail advertising, however, is at least ten times as expensive as advertising in magazines or newspapers; its use is justified by its remarkable effectiveness. Raising postage rates will affect only marginal operations: neither quantity of mail nor profits of most users will be adversely affected by most postage rate increases. MCKINSEY & Co., *supra* note 225, at 2-24 through 2-35. Past experience with rate increases supports these assertions. See *Hearings on H.R. 7977 and H.R. 7978 Before the Subcomm. on Postal Rates of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-14, at 21-22 (1967) (Statement of Postmaster General O'Brien).

229. *Id.* at 38-39. But see *id.* at 49.

230. *E.g.*, M. BARATZ, *THE ECONOMICS OF THE POSTAL SERVICE* 42-43 (1962).

231. See text accompanying note 44 *supra*.

cess: Congress has regularly failed to make substantial appropriations for research and capital development, and the Department has responded by expending little effort on developing such plans.²³² The historical lesson is that the system of appropriations for capital development does not do the job. Moreover, it would be impossible to accumulate substantial capital funds through increases in postal rates, since any such increase would have to be so substantial as to create a public outcry and congressional intervention into rate structures. The solution to this problem is straightforward and well-tried: give the postal corporation authority to raise funds by the issuance of bonds. TVA has such authority, and the bonds it issues—though neither obligations of the United States, nor guaranteed by the Treasury—are highly rated securities.²³³ If the postal corporation is put on a break-even footing, it may be possible, at least after some years of favorable operations, for it to sell such bonds on its own credit, without Treasury guaranty.²³⁴ Provision must be made for coordination with the Treasury to prevent a substantial disturbance of fiscal policy by the large issuance or retirement of debt at times when the Treasury itself is engaged in open-market operations, but a statutory scheme similar to TVA's bond-issuing authority seems a reasonable compromise.²³⁵ If the postal corporation is to be given a meaningful charter to develop the postal system according to the latest technology, independence in capital financing, backed up with bond-issuing authority, is essential.

Excessive control by the use of budgets and audits can negate the impact of any attempted reorganization. This was the basis of TVA's early dispute with the General Accounting Office.²³⁶ While TVA must prepare and submit a budget, the statute specifically authorizes it to spend receipts on its programs.²³⁷ By contrast, the Government Corporation Control Act permits Congress, when approving a sub-

232. From 1955 to 1967 total postal modernization, including investments in land, buildings, and mechanization, amounted to an average of less than \$40 million per year. Proposed expenditures for the five years beginning 1968, by contrast, amount to \$263 million annually. It remains to be seen whether Congress will appropriate such amounts. *Hearings on Postal Modernization Before the Subcomm. on Postal Facilities and Modernization of the House Comm. on Post Office and Civil Service*, 90th Cong., 1st Sess., ser. 90-17, pt. 1, at 34 (1967).

233. TVA bonds are rated Aaa, the highest rating, by Moody's. MOODY, PUBLIC UTILITY MANUAL 1191-92 (1967).

234. *But cf.* REORGANIZATION OF THE POST OFFICE, CMND. NO. 3233, at 7 (1967), permitting long-term borrowing by the new British postal corporation only from the government. It is arguable that a Treasury guaranty might give the corporation the benefit of lower interest rates.

235. *See* note 195 *supra*.

236. *See* text accompanying note 160 *supra*.

237. 16 U.S.C. § 831y (1964).

ject corporation's budget, to make changes therein: presumably, subsequent expenditures in violation thereof would be illegal.²³⁸ It should be obvious that this authority, if applicable to a postal corporation, would leave open the possibility of regular intervention on a political basis into locations of post offices, areas to be modernized, and similar matters. While Congress must have ultimate control in the national interest, it is not clear that such control must include the right to change budget items not supported by appropriations in the absence of special justification.

That audit authority can be equivalent to control is obvious to long-time observers of the General Accounting Office. When expenditures are supported by appropriations, this control seems justified: Congress has no way to assure the integrity of the appropriation process other than audit (and disallowance) by the General Accounting Office. That Office has been effective in carrying out this function, although complaints have been heard that in so doing, it has often presumed to pass on issues of internal policy beyond the area of its expert competence.²³⁹ However, when an organization finances its operations through its own revenue-producing activities, as would be the case with break-even operation of a postal corporation, the function of assuring compliance with appropriation limits disappears and disallowance of expense items by the General Accounting Office becomes inappropriate. The only function of audit then becomes evaluation of the efficiency and effectiveness of the operation. Doubts have been expressed concerning the General Accounting Office's ability to perform such an audit, and it is true that many of its reports are more in the nature of indictments than impartial observations.²⁴⁰ The Government Corporation Control Act makes abundantly clear its approval of such fishing expeditions for possible flaws or inefficiencies:

[The audit report shall include] . . . a report of any impairment of capital noted in the audit and recommendations for the return of such Government capital or the payment of such dividends as, in his judgment, should be accomplished. The report shall also show specifically any program, expenditure, or other financial transaction

238. See note 188 *supra*. Though the Act does not on its face give the Comptroller General authority to disallow such expenditures, it is not altogether clear that he would not claim such authority under appropriate circumstances, as the TVA-GAO dispute demonstrated.

239. See, e.g., Beach, *Role of the General Accounting Office in the Regulation of Industry*, 21 BUS. LAW. 235 (1965).

240. See H. MANSFIELD, *THE COMPTROLLER GENERAL* 267-77 (1939); Pritchett, *The Government Corporation Control Act of 1945*, 40 AM. POL. SCI. REV. 495, 502-05 (1946).

or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law.²⁴¹

Experience with General Accounting Office audits, albeit by government departments under the settlement authority,²⁴² suggests that the Comptroller General will stop at nothing in searching out details of possible illegality or inefficiency, and that his audits are not intended to indicate those aspects of operations that have been conducted efficiently. Why audit by the General Accounting Office was specified in the Government Corporation Control Act is difficult to understand except as a means for exercising control, since the Office's primary experience is with legality audits pursuant to departmental appropriations.²⁴³

Essential to an effective reform, therefore, is a business-type budget not keyed to appropriation headings and not subject to detailed modification by Congress in the absence of some showing of public interest. Clear exclusion from the disallowance authority of the Comptroller General²⁴⁴ is similarly essential. Audit by independent certified public accountants, though perhaps desirable, can safely be foregone if the other protections listed above are assured.

V. CONCLUSION

Evidence of the need for reorganizing the Post Office Department is abundant. Without meaningful improvements, the Department will experience increasing difficulty in performing its job of delivering the mails. It should be made quite clear that no miracles will stem from the changes. There is substantial evidence to prove the obvious conclusion that the effects of changes in organizations are felt only after significant passage of time.²⁴⁵ Moreover, the issue now is not whether the Post Office will suddenly be made a vigorous model of governmental efficiency, but rather whether reorganization can equip the Post Office to deal with the problems of the future.

It was noted earlier that incorporation of the Post Office of itself would have little importance. It should now be evident that the

241. 31 U.S.C. § 851 (1964).

242. See text accompanying note 158 *supra*.

243. Audit by a firm of independent certified public accountants would bring objectivity and commercial experience to the examination. This, however, is precluded by the Government Corporation Control Act. 31 U.S.C. § 866(d) (1964). See note 161 *supra*.

244. 31 U.S.C. §§ 71, 74 (1964).

245. See, e.g., R. LIKERT, *THE HUMAN ORGANIZATION* 78-100 (1967).

absence in any reorganization plan of certain critical elements, though it may not render the plan entirely useless, will leave major impediments to the effective operation of the postal system. Reorganization of the postal system as a corporation can have important symbolic significance; it can represent a break with the past and a genuine attempt to infuse operations with new ideas. I make no pretense that the proposed plan will not encounter major political roadblocks, but if critical features are compromised now, the chance to remake the Post Office may be lost for generations. And if a corporation is established without some genuine elements of autonomy, the effect may be to perpetuate long-standing abuses in the name of reform.