

2002

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Recommended Citation

Mills, Paul H. . "Gubernatorial Power and the Struggle for Executive Efficiency in Twentieth Century Maine." *Maine Policy Review* 11.1 (2002) : 86 -89, <https://digitalcommons.library.umaine.edu/mpr/vol11/iss1/14>.

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Gubernatorial Power and the Struggle for Executive Efficiency in Twentieth Century Maine

By Paul H. Mills

The recent proposal to hike the salary of Maine's governor above its present \$70,000 level met a legislative road block recently in Augusta. Even though this was the first proposal to increase the salary of Maine's chief executive officer in more than fourteen years and even though only two other states—Nebraska and Arkansas—are below us on the totem pole of gubernatorial salaries, the proposed increase was quickly scuttled by legislative leaders.

This recent episode is but one other illustration of the diminished regard that Maine appears to have for affording its governor the prestige and authority that is given in so many other states. It is also but one of several symbolic expressions of how Maine regards its governor and the frustrations that executive authority often has encountered in recent decades.

Limits to executive power are inherent in a system of checks and balances. While they serve to prevent abuses in power, they also have the unintended consequence of thwarting our elected executives from implementing a coherent set of policies for the state in an efficient and business-like manner. Beginning with the 1931 Gardiner Administrative Code, this commentary looks at several significant attempts to improve executive efficiency, including actions of the legislature and the voters themselves.

Like many Maine governors, Tudor Gardiner is better known for what he did after leaving the Blaine House than for what he accomplished during his tenure in Augusta. His daring mission behind enemy lines in Italy just before the allied invasion there in 1943 was one of the most heroic episodes of World War II. However, fifteen years earlier Gardiner had become the twentieth century's second youngest governor (Ken Curtis

was the youngest) when, at age thirty-six, he was elected in 1928 to the first of two terms that ended in 1933.

Upon assuming office, Gardiner found a proliferation of independent boards, commissions and committees whose authorities frequently duplicated one another. Moreover, at that time, a governor often had to wait long into his administration for the expiration of the terms of these officials before putting his own people in power. In short, Gardiner found that Maine governors were not able to govern. Though what Gardiner found is a condition which, to some extent, still exists and though there has hardly been a Blaine House occupant who did not complain about it, Gardiner is among the few who was able to do something about it.

Gardiner realized that to bring about a dramatic change in government organization required either a crisis or an in-depth non-partisan independent survey. Realizing that the legislature itself might not approve the \$20,000 required to finance such a survey, Gardiner obtained a grant from the Spelman Fund to hire the National Institute of Public Administration to conduct a study on the many technical aspects of Maine government. The result was a 1930 survey that recommended a consolidation of many separate functioning agencies and a strengthened gubernatorial role in appointing powers.

Recognizing that the legislature might not be enthusiastic about building up a branch of government that could more effectively compete with its own authority, Gardiner appealed to a conservative sense of government economy, emphasizing that by creating a more coherent system and tightening up the previously loose aggregation of agencies, extensive cost savings to government would result.

The 1931 Gardiner Administrative Code that resulted from these efforts abolished twenty-eight of the state's bureaus and agencies and put four departments with centralized decisionmaking responsibilities in their place. Over a dozen separate fiefdoms that ran the gamut from the Tuberculosis Board to the Crop Pest Commission were put under the single umbrella of a newly created Health and Welfare Department. Decisionmaking efficiency and streamlined control over state affairs were the hallmarks of the new code.

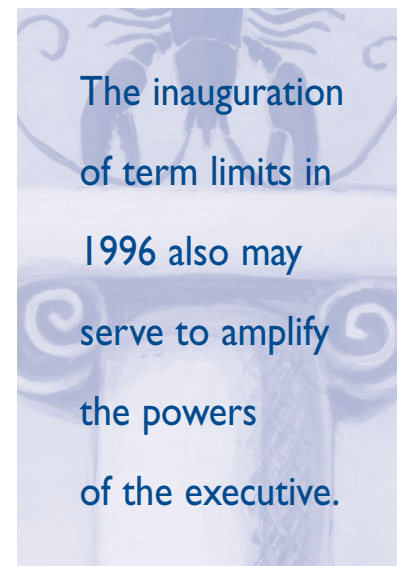
While the Gardiner Administrative Code moved the state in the direction of establishing some department heads whose tenure was coterminous with the governor, there remained in 1940—and for many years afterward—a number of positions over which the governor had little or no authority, and a number of boards and agencies with terms that expired long after the governor's. For example, Public Utilities Commissioners and University of Maine Trustees had seven-year terms, a tenure that also was afforded the chairman of the State Highway Commission when that term was extended from three to seven years in 1953. (In contrast, until 1958, governors were elected for two-year terms. Clinton Clauson, a Waterville chiropractor and also long-time director of the federal Internal Revenue Service for Maine, was the first to be so elected to a four-year term, but, because he died in office, it would not be until the completion of John Reed's full term in 1967 that Maine would have a governor who had completed a four-year term.)

Moreover, by 1966, once again a proliferation of state agencies created to meet the challenges of a changing world but not always with an eye toward

preserving a scheme of efficient government, left a number of stumbling blocks in the path of a governor attempting to implement his vision for the state. The similarities between the Curtis reforms and the Gardiner reforms are significant, beginning, ironically, with the fact that Kenneth M. Curtis and William Tudor Gardiner were the two youngest governors to hold office in the twentieth century.

Faced with a proliferation of agencies and departments, each commissioned a study to analyze the efficiency of state government and, based upon the results of that study, proceeded to forward a plan to sharply revise matters. In 1972-73, Governor Curtis reorganized 85% of all executive departments into a modified cabinet system. With the heads of the executive department now serving coterminously, governors have since been able to choose department heads who suited their own plans for the future and who would work toward implementing their own short- and long-range goals, rather than being handcuffed by the executive appointments of a previous administration, which might well be of a different political party.

Still, throughout the Democratic Muskie-Clauson era, governors had to have appointments confirmed by the GOP legislatively elected governor's council. Under these circumstances, the governor, in effect, was required to abdicate much of his already weak appointive responsibility to allow for the fact that confirmation had to occur by a seven-member body of the opposite political party that wielded considerable veto power and was expected to be consulted in advance before the posting of the most prominent gubernatorial nominees. An arrangement Muskie reached to avert impasse was an acknowl-



edgment that some two-thirds of his appointees would be drawn from the Republican party.

Finally, in 1977, the executive council was abolished; the legislative committees and Senate took over the council's confirmatory powers. The resulting structural change has afforded the governor more flexibility, in large part, because the confirming bodies are larger, more cumbersome, and more remote from the governor, making it more difficult for the legislature to have coherent, on-going input into the initial selection process.

Thus, since 1940, the powers of the executive have been amplified most notably by the 1957 constitutional amendment that extended the governor's term to four years, the introduction of the modified cabinet system in 1972, and abolition of the executive council in 1977.

The inauguration of term limits in 1996 also may serve to amplify the powers of the executive. However, even with term limits, Maine legislators today are more experienced than their 1940 counterparts. For example, only sixty-nine of the 151 house members elected for the term that served in 1940 had previous

legislative experience, a ratio typical of the era. It was not until the 1960s that the twentieth century consistently saw a majority of both branches of the legislature elected from the ranks of those who had served at least one prior term. This is now the norm despite the advent of term limits. Indeed, thirty-one of the thirty-five state senators elected in 1998 were incumbents.

All governors elected from 1986 through the present have had a different political affiliation than the legislative majority elected to serve with them.

Despite the significance of reform efforts since the Gardiner Administrative Code, responsibility for one of the more significant checks on executive authority lies not with the head of any legislative, executive or judicial department, but instead rests with the people themselves. In the first fifty-four years of the twentieth century, with the exception of the four years of the two Brann administrations (1933-1937), those that the voters elected to be governor and to serve in the legislature were always of the same political party. Thus, when the voters elected a Democratic governor in 1910 and again in 1914, they also elected a Democratic legislature to go with him. At all other times (but for the brief Brann interval), the voters also selected members of the same political party for each elected branch of government.

However, since the election of Edmund Muskie in 1954, this has not been the norm. The governor and the legislature have been of the same political

party in only eleven of the last forty-seven years, and at no time has this occurred in the last fifteen years. All governors elected from 1986 through the present have had a different political affiliation than the legislative majority elected to serve with them. It seems that our government has a popularly instituted regime of almost permanent bipartite and often—as in the instances when an Independent governor

has faced a Democratic House and GOP Senate—tripartite government. In the case of Independent James Longley, the executive and legislative relationship remained adversarial, with the legislature often gaining the upper hand by virtue of Longley's somewhat uncompromising posture, and on account of the ability of both Republicans and Democrats to unite in overriding the veto authority he frequently exercised (some sixty-seven or over half of Governor Longley's vetoes were overridden by the two-thirds legislative vote).

Thus, even as the mechanics of government have become more efficient through reforms, the people of Maine themselves have created and enforced a system in which governor and legislature are set at odds and hampered in their ability to move forward with their respective goals. It is doubtful whether any amount of legal change can effect a modification in a system the people themselves have chosen to institute and

sustain. Thus, even as the twentieth century's most enthusiastic and active governors were attempting to implement their policies for the state of Maine, they have been met with a number of barriers to exercise the authority needed to put those policies into effect. Even as government in the state of Maine has steadily progressed to a more business-like and efficient model by learning the lessons of corporate structure and applying them to the structure of government, conflicts over more fundamental theories of political outlook—as backed by the choices of the people of the state of Maine—have contained gubernatorial power.

It is perhaps that the people of Maine have recognized one of the fundamental truths of democracy likewise realized by our nation's founders: the effective concentration of power in any one individual leads to the opportunity for excessive control and corruption. The dispersal of power among the various branches of Maine's government, while recurrently frustrating to those who inhabit the Blaine House, also prevents the overly rapid implementation of policies—which may initially seem attractive but eventually prove detrimental to the welfare of the state. 🐟

ACKNOWLEDGMENT

I would like to thank my associate Darrell Whitney, Jr. of Farmington for his assistance in reviewing drafts and offering suggestions for revision.

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