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THE AUTHORITY PLAN — TOOL OF MODERN GOVERNMENT†

MORTIMER S. EDELSTEIN

In 1921, there was but one authority¹ in the United States—The Port of New York Authority. In 1938 there were thirty-three in New York State alone²—ten in the metropolitan area.³ Their functions ran the gamut from public housing authorities to sewer authorities and marketing authorities. There was even an authority for an industrial exhibit, another for a war memorial, and one concerned with star gazing—the Hayden Planetarium in New York City. Most of these were created from 1933 to 1935.

By 1936, the rapid spawning of authorities in the state evoked special mention from Governor Herbert H. Lehman. In his Annual Message to the Legislature,⁴ he cautioned: "There is grave danger that the Legislature and the Governor are too readily approving the establishment of authorities. . . . Hence, I would urge the Legislature to exercise great restraint and care in the establishment of any additional authorities."

He tempered this warning, however, with the opinion that:⁵ "In certain instances an Authority may well be a sound and reasonable method by which to reach a desired end. Equally true, an Authority such as The Port of New York Authority may be the *only* suitable agency."

In the light of this statement, it is apparent that The Port of New York Authority is an excellent specimen to place under our legal microscope with a view to evaluating the genus *Authority*. Before proceeding to the detailed examination of the guinea pig, we might inquire briefly into the reasons for the sudden and remarkable fecundity of the species.

†An address delivered at the annual banquet of the Board of Editors of the CORNELL LAW QUARTERLY, December 11, 1942, Ithaca, New York.

The writer wishes to express his appreciation for the many helpful suggestions and criticisms of Marion K. Sanders, Assistant Director of Public Relations of The Port of New York Authority.

¹The term "authority" is used to describe state or municipal agencies whose obligations are payable solely out of revenues and which lack the power to levy taxes or special assessments. Doubtless, there were in the United States in 1921 some other self-liquidating agencies which lacked the power of taxation and special assessments (*e.g.* The Department of Water, Los Angeles, Cal., established in 1903), but it is generally recognized that The Port of New York Authority is the prototype of what has since been known as the public authority. Cf. Williams and Nehemkis, *Municipal Improvements as Affected by Constitutional Debt Limitations* (1937) 37 COL. L. REV. 177, 201; see particularly notes 110, 111.

²*Problems Relating to Home Rule and Local Government*, 11 N. Y. STATE CONSTITUTIONAL CONVENTION COMMITTEE (1938) 239.

³*Id.* at 245.

⁴Knickerbocker Press, Albany, New York, January 2, 1936, p. 11.

⁵*Ibid.*

Many of them were depression babies. As Governor Lehman observed, he himself was the sire of a number of authorities brought forth by the legislature in the threadbare thirties—for the specific purpose of creating jobs. That was the period of severe unemployment problems, followed by a large public works program. The days of the infant RFC, followed CWA, PWA and WPA. So-called works projects became the vogue.

But why were so many geared to the Authority Plan? For generations the states had built highways. County-built bridges were a commonplace. New York City had pioneered three great suspension bridges across the East River long before the Authority Plan emerged.

The Nation's public works program and the ready availability of federal grants-in-aid and loans, it seems, were so much honey to attract the bees. But the reasons for attracting the particular species—the authorities—are threefold: First, the Authority Plan permits government to plug a jurisdictional gap. Second, the Authority Plan permits government to finance public works free of constitutional debt limitations; and to utilize a new financial tool which avoids saddling the taxpayers with additional burdens.⁶ And third, the Authority Plan affords government the opportunity to apply the principle of public ownership, with its concomitant freedom from the profit motive, and, at the same time, to permit the operation to flow along functional lines of business.⁷

All these points can be illustrated in the prototype of all American authorities—The Port of New York Authority.

The Port of New York is a great natural harbor. Geographically, opportunities were presented to develop ocean-borne commerce on both sides of the Hudson River and the network of lesser rivers, bays and straits which make up the natural waterway we refer to as the Port of New York.

Man at one time, however, saw fit to run a fence through the middle of this great natural port, dividing its jurisdiction between the sovereign states of New York and New Jersey. The interstate tug-of-war that resulted spanned more than a hundred years.

In 1818 New York, claiming exclusive jurisdiction, gave Fulton and Livingston an exclusive monopoly to operate their steamboats in the Hudson

⁶The writer is informed by Leander I. Shelley, General Counsel of The Port of New York Authority, that from his knowledge of P.W.A. financing (The Port of New York Authority obtained the first P.W.A. loan) the avoidance of constitutional debt limits was the chief reason for the creation of the vast number of authorities in the nineteen thirties. As the writer points out in the text, this reason was not a direct or primary consideration in the creation of The Port of New York Authority.

⁷*Cf. Problems Relating to Executive Administration and Powers*, 8 N. Y. STATE CONSTITUTIONAL CONVENTION COMMITTEE (1938) 326.

River. The states' dispute which resulted from New York's action, it will be recalled, was settled by the Supreme Court in *Gibbons v. Ogden*.⁸

Nevertheless, the boundaries between the states remained unsettled. New Jersey tried to hail New York into the Supreme Court on a bill of original jurisdiction no less than three times.⁹ And you will recall from the cases, New York literally ignored New Jersey's summons.

Finally in 1833,¹⁰ New York in a more conciliatory mood joined with New Jersey in a treaty to settle this boundary dispute and for eighty years no further interstate disputes marred the development and growth of the Port of New York. Clinton's ditch, the Erie Canal, had already made New York a seaport for the new west. Then came the period when the empire builders—or as Matthew Josephson¹¹ calls them, the Robber Barons—rose to power. The Iron Horse came of age; the trunk lines were welded together, and the push was ever westward. Dynasties were hammered out on the anvil of a new industrial age. It was an age which witnessed the development of the air-brake, the Kinetoscope, gas stoves and high-wheeled bicycles, 1400 horse power engines, and Bell's telephone. The Port of New York grew and developed. But it was a planner's nightmare. To the uncontrolled, highly competitive railroads, spurred on by intense rivalry, integration was of no interest. Competition was the spur of wasteful and costly duplication of facilities and operations.

Jurisdiction divided in both states, political conflicts and jealousies between the hundred odd municipalities which dotted the shores of the harbor—these added to the confusion. Then came the epochal *Harbor* case¹² in 1916; the eighty-year truce was terminated.

In terms of the issues presented to the Interstate Commerce Commission, New Jersey contended that her side of the Port, where all of the railroads terminated at the water's edge, was entitled to a lower railroad freight rate than New York. Shipments to the New York side necessitated lighterage operations which New Jersey contended were unduly expensive, and the application of the same rate to both sides of the Port discriminated against her.

The Interstate Commerce Commission denied New Jersey's contention. Railroad freight rates to and from the interior United States remain the same to the New Jersey and New York shores of the Hudson River (within

⁸Wheat. 1 (U. S. 1824).

⁹New Jersey v. New York, 3 Pet. 461 (U. S. 1830); 5 Pet. 284 (1831); 6 Pet. 323 (1832).

¹⁰Referred to in the Port Authority Compact of 1921 (N. Y. Laws 1921, c. 154) as the 1834 Treaty, The New York-New Jersey boundary treaty was signed in 1833. See N. Y. STATE LAW § 7.

¹¹JOSEPHSON, THE ROBBER BARONS (1934).

¹²47 I. C. C. 643 (1917).

free lightering limits). The litigation did, however, serve to highlight the need for a cooperative undertaking to support port improvement, instead of eternal interstate wrangling.

The impact of World War I also served to point up the costly, slow and congested freight handling and transportation conditions which existed in the Port of New York on *both* sides of the river.¹³ Parenthetically, it may be noted that the Army's method of handling the movement of the AEF and its matériel contributed no small part to that congestion. Today, the Army has learned its lesson; freight is being consolidated at storage depots, some of them hundreds of miles inland. Freight cars are routed to the appropriate port as ships are available to move cargoes out. Today, despite ever increasing cargo loads, there is no congestion at the Port of New York.

In 1917, the commercial interests had cause to worry that a vast amount of traffic would be diverted from New York to the outports while New York was congested with troops and supplies. Nothing hurts more than a pinch in the pocketbook.

The spirit of conciliation prevailed. The governors of New York and New Jersey, Whitman and Edge, appointed a bi-state Port and Harbor Development Commission¹⁴ and delegated to it the problem of improving and developing the Port in the best interest of both states. Julius Henry Cohen, the young lawyer who so successfully represented New York in the *Harbor* case, was appointed counsel.^{14a}

The Commission and its staff set to work promptly and wrestled with the port problem, while counsel attacked the legal problem. Mr. Cohen was convinced that no matter what physical plan might be evolved, it was essential to strike while the mood of conciliation was still strong, and to bring the states together in an agreement on broad general principles of port and harbor development. It was equally important to implement the agreement by setting up an administrative agency which would have a continuity of purpose and function.

Thus inspired, counsel turned to the compact clause of the federal Constitution¹⁵ and adapted it to meet the needs of the Port of New York.¹⁶ For while interstate compacts had been signed for various purposes prior to 1918, this clause had not theretofore been used as the legal foundation

¹³NEW YORK, NEW JERSEY PORT AND HARBOR DEVELOPMENT COMMISSION, JOINT REPORT WITH PLAN AND RECOMMENDATIONS (1920) 35.

¹⁴Appointed under N. Y. Laws 1917, c. 426; N. J. Laws 1917, c. 130.

^{14a}Julius Henry Cohen served as General Counsel of The Port of New York Authority until June, 1942.

¹⁵U. S. CONST. Art. I, § 10, cl. 3: "No State shall, without the consent of Congress, enter into any Agreement or Compact with another State, or with a foreign Power."

¹⁶The treaty or compact creating The Port of New York Authority is in N. Y. Laws 1921, c. 154; N. J. Laws 1921, c. 151.

for a permanent interstate body.¹⁷ Moreover, up to that time, no state had granted administrative jurisdiction within its own borders to a bi-state commission. At that time, it was as radical an idea as proposing that New Jersey grant New York extra-territorial jurisdiction within her borders. And yet, in effect, that is what both states did when they authorized the Port Authority to govern the Port District¹⁸ in the field of port and harbor development. Thus, the prototype of our American authorities was created primarily to plug a *jurisdictional* gap.^{18a} It also implemented a treaty which dealt with broad general principles—principles which would have died had there not been an agency to breathe life into them.

Of the thirty odd authorities in New York State, this jurisdictional problem was important in several other instances. The Lake Champlain Bridge connects New York and Vermont. The Niagara Falls and Buffalo-Fort Erie Bridges connect New York and Canada. The Palisades Interstate Park was reorganized along the lines of a continuing bi-state authority in 1939 when the states of New York and New Jersey executed the Palisades Interstate Park Compact.¹⁹ All these projects span political boundaries, and the Authority was a convenient tool to bridge an existing division in jurisdiction.

Apart from this necessity, there are cogent financial reasons for the popularity of the Authority Plan. It made possible vast public works projects even in cases where constitutional debt limitations would otherwise have prevented them; incidentally, it made it possible for the states to construct such projects without saddling additional tax burdens on the taxpayers.

The authority financial pattern was evolved by The Port of New York Authority in actual operation. Unlike the legal and political tenets of the agency, it did not spring full-grown from the heads of the founders. When the Port and Harbor Development Commission recommended the creation of a Port Authority, it was, in fact, very vague about financing. In a 471 page report²⁰ of some thirty odd chapters, the fiscal program was dismissed in several short paragraphs which assumed that the projected port and terminal developments would be self-supporting. The report stated almost *en passant* that the communities of the Port were all²¹ "greatly limited by

¹⁷BARD, THE PORT OF NEW YORK AUTHORITY (1942) 27.

¹⁸The 1921 Treaty creating the Port Authority carefully delineates a civil division of government, designated as the Port of New York District, which is described with particularity by metes and bounds. The Port of New York Authority is directed to improve and develop the commerce of the Port District.

^{18a}See Merriam, *Observations on Centralization and Decentralization* (Jan. 1943) 16 STATE GOVERNMENT, on the scope of interstate agreements and citing the Port Authority as "an outstanding illustration of joint effort not only in agreement but in the more difficult problem of administration."

¹⁹See N. Y. Laws 1937, c. 170.

²⁰*Op. cit. supra* note 13, at 444.

²¹*Id.* at 37.

constitution or statute in their power to borrow capital for port and terminal developments." "This inhibition,"²² it continued, "can be overcome by the Port Authority, which may issue its own debentures secured by revenues to be derived from the property it acquires."

The report was not vague because the commissioners lacked financial acumen or experience. On the contrary, subsequent events show that they demonstrated unusual financial perspicacity. But as realists well steeped in the background which gave rise to the appointment of their commission, they knew that the plan would have a small chance of adoption if it called upon the states for substantial financial aid. Some of the local politicians were highly vocal in their opposition to the proposed authority upon wholly different grounds—the fear that it would be a super-state, an octopus swallowing up local governments.²³ A request for substantial financial help would have engulfed the whole concept of port improvement in solid bi-state opposition.

Counsel was strongly impressed by the fact that the Mersey Dock and Harbor Board of Liverpool and the Port of London Authority²⁴ had constructed their port improvements on a self-sustaining basis. This pointed the way to the solution of financial difficulties which otherwise would have been insuperable.

The treaty²⁵ which created the Port Authority authorized the new agency to borrow money, to issue bonds and make charges for the use of its property.²⁶ Denied to the new agency was the right to pledge the credit of the states,²⁷ or to levy taxes.²⁸ The arrangement was welcomed by Governor

²²*Ibid.*

²³BARD, *op. cit. supra* note 17, at 31 *et seq.*, 60 *et seq.* See also *City of New York v. Willcox*, 115 Misc. 351, 189 N. Y. Supp. 724 (Sup. Ct. 1921).

²⁴In "What Authority Has an Authority," an address delivered before the American Association of Port Authorities, Toronto, 1933, Julius Henry Cohen, the then General Counsel of the Port Authority, said:

"Mr. Lloyd George, as the President of the Board of Trade, had been one of the strongest advocates of the unification of the various agencies having jurisdiction over the Thames River and the London Docks. At that time he had become a member of the Ministry. The story, as told me, by Lord Devonport, Chairman of the Port of London Authority, in London in 1924, is that a draft of the bill, with the name of the proposed organization left blank, was under consideration. Many conferences had been held, and a decision had at last been reached to create the new body. The question then arose as to what it should be called, and Mr. Lloyd George rose to the situation.

"This is a lengthy bill," he said. "Practically every sentence grants authority to do something. There is authority to do this, there is authority to do that and there is authority to do the other thing. Why not call it the Port of London Authority?"

"And so the words, Port of London Authority, were written into the bill as the official title of the new organization."

²⁵See note 16 *supra*.

²⁶*Id.* art. VI.

²⁷*Id.* art. VII.

²⁸N. Y. Laws 1922, c. 43, § 8.

Smith²⁹ as a "thoroughly modern method of financing public improvements without burden to the taxpayers of the State, maintaining the State's ownership, yet financing on the basis of the economic value of the improvement itself."

But between this rejoicing in the executive and legislative halls of both capitols, and the effectuation of the plan, was a significant dearth of experience with this type of financing. For the Port Authority Plan, as it emerged, was to issue bonds secured wholly by revenues from as yet unbuilt and untried projects. At that time, the revenue experience of vehicular toll crossings was of very little consequence. As a matter of fact, there was very little revenue bond financing of any kind in the United States, though the medium was known and used in Great Britain.³⁰ It is said that the first instance of actual revenue bond financing in this country occurred in Spokane, Washington, about 1895.³¹ The issue soon became involved in litigation, and the experience was short-lived. There was one other misadventure in Chicago in 1898.³²

From 1910 to 1925 the municipal revenue bond did become an established medium of financing in the United States. But because of alternate periods of depression and prosperity, and peace and war, revenue bond financing in this period made no great impression in the field of government financing.³³

In 1926, the first Port Authority revenue bond issues, amounting respectively to \$14,000,000 and \$20,000,000, were sold. As one writer, John Fowler in his work on revenue bonds, has since said,³⁴ The Port of New York Authority financing stands out as a landmark in the history of revenue bond financing because the issues were very much larger than any previous public offerings of revenue bonds; they were for an entirely new type of revenue bond project, namely, toll bridges, and they introduced to the public for the first time agency revenue bonds issued in this case by a new form of body known as an authority.

The importance of the revenue bond in the scheme of authority financing lies in the fact that the wholly self-contained debt of the authority can be incurred free from the constitutional and statutory debt limitations of the parent unit of government. This theory was advanced by counsel for the Port and Harbor Development Commission as early as 1920.³⁵ It was con-

²⁹PUBLIC PAPERS OF ALFRED E. SMITH (1924), *Annual Message to the Legislature* 39.

³⁰FOWLER, REVENUE BONDS (1938) p. 17 *et seq.*

³¹*Id.* at 20.

³²*Ibid.*

³³*Id.* at 21.

³⁴*Id.* at 24.

³⁵*Op. cit. supra* note 13, at 37, 444.

firmed for the first time in 1935 when our own Court of Appeals in *Robertson v. Zimmerman*³⁶ held that the debt of the Buffalo Sewer Authority did not violate the constitutional debt limit of the City of Buffalo.

The third advantage of the Authority Plan, and one which accounts for some of its popularity, is that it permits government to function along business lines. From the very outset the Compact guaranteed the Port Authority the right to select its own employees and to fix and determine their qualifications.³⁷ The Port of New York Authority was able to attract engineers of unquestioned repute and the highest professional reputation. General Goethals, builder of the Panama Canal, O. H. Ammann, former Chief Engineer of the Port Authority and designer of the George Washington Bridge, John C. Evans, the present Chief Engineer and originator of the modern bridge approaches and multi-level traffic separators (devices, which by the way, the Nazis copied from us and included in their *Autobahnen*), were attracted to the Port Authority on a salary basis.

Austin J. Tobin, the present Executive Director of the Authority, left a prominent New York City law firm and joined the organization in 1927. His predecessor, who retired voluntarily at fifty-five in order to encourage the promotion of younger men in the organization, rose to his high post from the position of statistician. The present General Counsel served successively as Attorney, and Assistant General Counsel. The present Director of Port Development came to the Port Authority as a research assistant. The Port of New York Authority has been able to attract professional talent and able minds in an era when private enterprise competed for the best.³⁸ It has been able to derive the maximum advantage of their knowledge and experience by offering a continuity of service. Unlike the more conventional units of government, the Port Authority has not been confronted with the turnover which takes place with the change of political fortunes; Port Authority staff members have been able to see projects through to completion without election date deadlines. In the choice of staff and in the execution of the work, the Port Authority has enjoyed freedom from political pressure.³⁹

Given these theoretical advantages: (1) That the Authority Plan meets a jurisdictional need; (2) It permits public works to be constructed on a self-sustaining basis; and (3) It permits government ownership to operate

³⁶268 N. Y. 52, 196 N. E. 740 (1935). Cf. Williams and Nehemkis, *op. cit. supra* note 1, at 21.

³⁷See note 16 *supra*, art. XIV. Other authorities, it should be observed, may be subject to state or city civil service requirements.

³⁸Cf. BARD, *op. cit. supra* note 17, at 290.

³⁹*Ibid.*

along business lines, what has been the yield by a more practical yardstick? What service has the Port Authority rendered to New York and New Jersey in its first twenty years? On the more dramatic side, islands and mainlands have been linked together in a network of vehicular crossings and feeder highways.⁴⁰ The cost, a 200 million dollar debt, is being charged to those who prefer to pay for a high-speed de-luxe service.⁴¹ Those to whom the time factor in crossing the river is unimportant may still use the ferries, but at much lower rates than prevailed before the Authority entered the field.

Port Authority studies, surveys and reports on Port conditions have aided the United States Army Engineers in fixing bridge height clearances, resulted in the world's largest drydock being constructed in our Port, aided the City of New York in establishing the first United States Foreign Trade Zone. These are typical of the many Port problems which are referred to the Port Authority by the states and their municipalities.

In the field of protecting port commerce⁴² against the rapacious competition of the outports, the Port Authority has done yeoman's service since its inception. With the times pressures change—but the problem is essentially the same in wartime, as in peace. Recently waterfront labor and the Port interests were severely hit by the diversion of much commercial shipping from New York to Gulf ports. In order to secure greater utilization of the Port's shipping facilities, particularly for the Latin American trade, a number of federal administrators and agencies had to be brought together with the Port's commercial and labor interests. Acting as a catalytic agent in that matter, the Port Authority performed one of the essential functions which the states intended it to perform when they joined in solemn compact to pledge faithful cooperation in the development of the Port of New York.

Construction and operation of the Port's first union inland freight station for less carload freight, coordination of one belt line railroad, equalization of transport rates and customs rules throughout the Port District, the retention of essential government-owned steamship lines, adjustment of ocean freight rates to meet the competition of other ports—these are all part and parcel of the service that the Port Authority has rendered the states in peacetimes.

Today, under war conditions, the opportunities to be of further service

⁴⁰See REPORT OF THE PORT OF NEW YORK AUTHORITY (1940) 56.

⁴¹*Id.* at 58.

⁴²The Port of New York Authority is, under a mandate to protect and develop the commerce of the Port of New York District. See the recitals to the 1921 Compact, *supra* note 16; also arts. VII and VIII.

in the war effort are beginning to multiply. Originally reluctant to turn for help to a state agency, the Army and Navy are now gradually beginning to avail themselves of the services of our expert Port staff. The Port Authority was the spearhead of the drive to bring the eastern seaboard relief from the critical fuel oil shortage. The Authority is planning to present the Port's case for the post-war restoration of important steamship services which have been allocated to other ports because of the war. This, of course, is only one phase of the Port Authority's larger post-war port plans.

So much for the advantages of the Authority Plan.

What grounds were there for Governor Lehman's statement⁴³ that there is "grave danger that the Legislature and the Governor are too readily approving the establishment of Authorities"?

Some inkling of the Governor's fears may be found in the report of the Committee on Home Rule and Local Government of the 1938 Constitutional Convention.

The Committee raised this question: Notwithstanding the debt of an authority is paid out of tolls and revenues, in the event of financial difficulties, the municipality or state may possibly feel it is bound to take over the debt of the defaulting authority, either to prevent foreclosure on public property, or to salvage the public credit. As to this, the Committee said:⁴⁴ "It might be argued that the debt of the Authority would become a drain on public revenues and thus be in danger of violating the debt limit. Would the mere possibility of such an eventuality lead the Courts to hold that the debt of an Authority is subject to debt limitation? That the Courts have not so far made such a decision argues against this likelihood."

The New York Constitution was amended in 1938 by the addition of Paragraph 5 of Article 10. It provides in general that neither the state nor any political subdivision shall at any time be liable for the payment of any obligations of a public corporation. When authorized to do so by the legislature, the state may, however, acquire the property of a public corporation and pay its indebtedness. Just what interpretation the Court of Appeals will ultimately place upon this amendment remains to be seen.

Currently, the prudent financial policy established by the commissioners is standing the Authority in good stead in these days of gasoline and tire rationing. Far-sighted men of sage experience in banking and business circles, they saw a \$200 million refunding program through to completion

⁴³See note 4 *supra*.

⁴⁴*Op. cit. supra* note 2, at 243.

before the war clouds gathered and broke. Interest rates were reduced substantially.⁴⁵ A general reserve fund authorized by the New York and New Jersey legislatures directs the Port Authority to create a reserve equal to ten per cent of currently outstanding debt.⁴⁶ Today, because of a far-sighted commission policy, the reserves of some \$14,400,000 should carry the Port Authority through the worst of the war period, especially when it is coupled with the fact that the great bulk of Port Authority traffic consists of trucks, buses and other commercial traffic. Other authorities may not enjoy the same ratio which the Port Authority's essential traffic bears to non-essential traffic, but there is no monopoly on prudent management. Nor did the legislatures patent the general reserve fund.

The Constitutional Convention Committee's report raises another interesting point. Authorities, they said,⁴⁷ have come into being with comparatively little of the excitement usually attending the creation of any additional governmental unit, much less the creation of a *new kind* of governmental unit.

It is difficult to guess how much "excitement" the Committee expected should attend the birth of a new authority, and perhaps there was none when the large number of authorities was spawned in 1933. But that simply is not the fact in the case of The Port of New York Authority.

The statement by the Committee "that nothing more formal than a State statute ushered in the first Authority, The Port of New York Authority,"⁴⁸ is hardly an accurate portrayal of the events which are a matter of historic record.

The Port Authority, as indicated, came into being only after a bi-state commission had studied the problem for more than four years. Public hearings were held on the compact itself and the opposition was strongly vocal, to say the least. As for the question of formality, it is difficult to know how the two states could authorize the signing of the treaty, except by a statute authorizing the signing of such a document. If formality is important, it can be found in the formation of the Port Authority right down to the red ribbon, wax seal and the ceremony at the signing of the treaty held in the Great Hall of the Chamber of Commerce.

⁴⁵The Port of New York Authority launched its refunding plan, when it sold its General and Refunding Bonds, First Series, on March 25, 1935, at an interest cost to the Authority of 3.74 per cent. The program was completed with the sale of an installment of Sixth Series Bonds on December 17, 1940. Interest costs range from 2.914 per cent to 3.91 per cent.

⁴⁶N. Y. Laws 1931, c. 48; N. J. Laws 1931, c. 5.

⁴⁷*Op. cit. supra* note 2, at 243.

⁴⁸*Ibid.*

It would seem that the Committee merely meant that, in each case, the legislature should carefully weigh all of the reasons for creating a particular authority. With that there can be no disagreement.

The Home Rule Committee of the Constitutional Convention also voiced the belief that the creation of authorities may tend to complicate an already complicated administrative scene.⁴⁹ Practical experience demonstrates that whenever government enters a new field of activity, whenever new governmental services are extended, at either the state or federal level, the administrative scene is complicated. Witness the manifold activities of the federal government. But no one with a social consciousness would seriously urge government to refrain from unemployment insurance, regulation of workmen's compensation, or social security, because these activities will complicate the job of government. We live in an age when we expect government to do more than exercise the police power along historically conventional lines. We must, also, accept some complication in the administration of government. It is difficult, moreover, to see why the delegation of some of the functions of government to a *particular type of agency*, to wit, an authority, will *in and of itself* complicate the administrative scene.

Another problem which concerned the Constitutional Convention Committee was the matter of "popular responsibility." The Committee posed the question⁵⁰ whether there was any danger in the fact that the directors of an authority are usually appointed and not elected officials. The implication is that appointive officials are not responsive to the will of the electorate.

No matter how much one respects the substance of democracy, it does not follow that the existence or absence of the *forms* makes democracy work. In the case of the Port Authority, even though the commissioners are appointed, they maintain a close liaison with the governors and the legislatures. They report annually to the two legislatures in more than routine fashion.⁵¹ By statute⁵² the Authority's minutes are forwarded to the governors of both states, and they have power to veto⁵³ acts of malfeasance or misfeasance by the commissioners. Liaison with the elected officials of government exists not only in theory but in fact. Some time ago the Port Authority decided to take a position in the highly controversial St. Lawrence Seaway issue. The staff was concerned with the port aspects of the problem and not the development of hydro-electric power. Almost at once the gov-

⁴⁹*Id.* at 245.

⁵⁰*Id.* at 244.

⁵¹Compact of 1921, *supra* note 16, art. VII.

⁵²N. Y. Laws 1927, c. 700; N. J. Laws 1927, c. 333.

⁵³*Ibid.*

errors of the two states called the Port Authority commissioners into consultation, because it appeared that our position was contrary to the two states' policy with respect to the Seaway. The Commission conformed to state policy, but with the consent of the governors, its staff expert was, nevertheless, able to be of service to the congressional committee studying the matter.

From time to time, legislative commissions have examined and reported on Port Authority policy. The last such examination occurred in 1940, when a New Jersey legislative commission⁵⁴ was appointed to determine whether a reduction in tolls would result in an improvement of the Port Authority's net income. After holding extensive public hearings which culminated in a detailed study of the Port Authority's financial and toll structure, that legislative commission concluded that the Authority's toll policy was sound.⁵⁵

Port Authority facilities were built in response to a public demand for crossings geared to the motor age. The location of approach ramps, exits and entrances, reflect popular demand. The experiment with commutation tolls was borne of agitation for rate reductions. In instituting various Interstate Commerce Commission proceedings to protect the Port's commerce, the commissioners have acted in response to the demands of labor and industry alike. For example, recent efforts to direct more of the Latin American shipping to the Port of New York were responsive alike to the unemployment problem of the International Longshoreman's Association, as well as the needs of the shippers in this area.

The commissioners of the Port Authority are as sensitive to the popular will as any elected officials, and perhaps more responsive than some elected officials.

Recently a critique entitled *The Port of New York Authority* was published by Erwin Wilkie Bard, Professor of Public Administration at Brooklyn College. Copies were distributed to the staff with the following note from our Executive Director: "This book is a must! It is no sugary review of our progress, rather it will prick you with the barb of criticism. However, it is a healthy thing to see ourselves as an unprejudiced scholar found us and to have him opening long-forgotten doors in search of the family skeleton. After all, it profits us very little to be told how well the job was done. Rather, let us resolve to sin no more."

We know our weaknesses. We know them well. The Port Authority was

⁵⁴Senate Concurrent Resolution (New Jersey) introduced March 11, 1940, by Mr. Hendrickson, and Senate Concurrent Resolution No. 5 introduced June 3, 1940, by Mr. Toolan.

⁵⁵REPORT OF THE NEW JERSEY JOINT LEGISLATIVE COMMITTEE APPOINTED PURSUANT TO SENATE RESOLUTION No. 5, 37.

set up to effectuate a comprehensive plan of port development.⁵⁶ The blueprint was prepared and adopted by the legislatures. It sets forth in great detail some nine principles to govern the development of the Port of New York. Essentially, these principles relate to the consolidation, unification and integration of the Port's transport, terminals and operations.

In almost a quarter of a century, the Port Authority has been able to effectuate only a small part of that phase of the plan which deals with unification of terminal operations. The failure to enforce consolidation of wasteful operations was due neither to a lack of zeal nor ability. The Authority's files are replete with monumental reports and studies made in full cooperation with the railroads. But if the files are filled with tomes, the staff also has vivid memories of adamant railroad executives who refused to go beyond the study stage. Only in 1933 when Mr. Joseph Eastman served as Federal Coordinator of Transportation, under the Emergency Transportation Act of 1933, did the railroads begin to adopt the Port Authority's recommendation for consolidation of lighterage operations. As soon as the Coordinator's office was terminated, the railroads lost all interest in joint operations which would reduce competitive waste. Some day, perhaps, either by judicial interpretation or supplementary legislation, the Port Authority will be able to enforce the principles of consolidation as laid down in the comprehensive plan.

It is significant that the recent Transportation Report⁵⁷ of the National Resources Planning Board proposed for post-war coordination the very consolidations and the very principles the Port Authority has been advocating these twenty odd years. Perhaps with this latest federal baptism (the infant plan was already once approved by Congress)⁵⁸ the child will grow and mature. We hope, too, to have a part in its growth and development.

One problem with respect to the future of the Authority Plan as a tool of government may be posed: Will the strong and financially able authorities stultify themselves by a wave of reaction?⁵⁹ Will hardening of the administrative and financial arteries set in? As man grows prosperous he tends to become fat and reactionary.

⁵⁶N. Y. Laws 1922, c. 43; N. J. Laws 1922, c. 9.

⁵⁷TRANSPORTATION AND NATIONAL POLICY (National Resources Planning Board 1942) p. 140 *et seq.*

⁵⁸In Public Res. No. 66 (67th Cong., 2d Sess.), Congress formally approved the Port Authority's Comprehensive Plan of Port Improvement.

⁵⁹The writer grants (1) that *certain* authorities lack the power to expand their operations, even if their financial operations are successful; and (2) that in some instances it is both desirable and proper to limit the activities of an authority to the self-liquidation of the originally authorized project. It may be noted, however, that the legislature consolidated the Triborough Bridge Authority with the New York City Parkway Authority (N. Y. Laws 1940, c. 6), thus enabling the consolidated authority to pool toll revenues and extend its activities.

If The Port of New York Authority adopts as its sole function the collection and disbursement of revenues, it will fail, in the writer's judgment, to justify its existence. The test of economic self-sufficiency may be the yardstick, when an authority is first created. It is not always the sole yardstick because in the case of housing authorities cash and other subsidies *were* provided. But, in any event, the writer believes that an authority, like the Port Authority, which can stand upon its own financial feet should apply another yardstick. A broader concept of economic self-sufficiency can be substituted. The criterion should not be merely the willingness of investors to purchase bonds to finance a specific project. That is the yardstick of profit enterprise. For example, if the Port Authority were to offer a bond issue to sell a union motor truck terminal, backed solely by the revenue from such a project, the issue might not be salable. The project might be too close to the financial borderline; it might or might not prove to be self-sufficient. If, on the other hand, the authority offers an issue for the same purpose and places behind it all of the Port Authority credit and resources, the bonds will sell; the project is feasible. There need be no real fear that the application of that principle will result in sending the pitcher to the well once too often. Economic practicability is a relative value. The proposal to finance too many thin projects on the same credit base will fall of its own weight.

An authority with a cash reserve or sound credit basis may be strongly tempted to sit back and apply the same yardstick to new projects as private business enterprises. This should not be allowed to happen. An authority is a tool of government. It must affirmatively and continuously perform functions in the public interest, functions which must be fluid enough to meet the changing needs of all of our people. Failing this, it has no justification.