

POLITICS & GOVERNMENT

class conflict. The common man yearned for cheaper utilities and better public services, but national leaders, committed to a weak federal government, stood pat. Some municipal and state politicians responded, but from New York to California, inexperience and low funding crippled fledgling regulatory commissions.

The spark for effective reform came from muckraking journalists and legislative investigations, writes McCormick. From 1904 to 1908, reporters such as Lincoln Steffens shocked the nation with tales of graft in the smallest towns, while legislators in Alabama, Ohio, Vermont, Colorado, and elsewhere exposed bribery by the railroads, the power companies, and the insurance industry. What many citizens had viewed as isolated incidents of corruption began to be seen as systemic.

Politicians got the message. From 1903 to 1908, the number of states that regulated legislative lobbying jumped from zero to 12, and the number banning corporate campaign contributions rose from zero to 22. States enacting direct primary laws shot up from four to 31. And from 1905 to 1907 alone, 15 new state railroad commissions were established. Even the federal government began, haltingly, to regulate railroads and the food and drug industries.

But reform sentiment had heated up too fast. Many politicians eschewed strong antibusiness measures in favor of the "quick fix," hiring "impartial experts" to run commissions in place of corruptible politicians. State agencies were usually based in remote capitals such as Albany and Sacramento, where business interests could wield power outside the scrutiny of reformers in the big cities. Once policy shifts were announced, writes McCormick, public concern waned; Big Business often won over the new regulators as it had the old.

Judicial License

"A Theory of U.S. Constitutional History"
by Christopher Wolfe, in *The Journal of Politics* (May 1981), University of Florida,
Gainesville, Fla. 32611.

The principles behind judicial review have changed profoundly since the Supreme Court first struck down an unconstitutional act of Congress in 1803 (in *Marbury v. Madison*). Wolfe, a Marquette political scientist, sees two major phases: one lasting from the post-Revolutionary period through the Civil War, and another starting in 1937 and continuing to this day.

Influenced by John Marshall, the early Courts tied their decisions closely to the words and intent of the Constitution's framers. Justices held that the Constitution vested the legislature with *kinds* of power (e.g., power to tax) and that only politicians should decide the *degree* of legitimate power to exercise (e.g., levels of taxations). From 1789 to 1861, they struck down only two acts of Congress (in *Marbury* and *Dred Scott*) and 36 state laws, a low tally by today's standards.

The "modernists," says Wolfe, have gone further. As Justice Oliver Wendell Holmes wrote in a 1929 decision, cases now "must be consid-

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ered in the light of our whole national experience, and not merely in the light of what was said a hundred years ago." Justice Benjamin Cardozo (1932–38) argued that effective interpretation by the Court fills the Constitution's "vacant spaces." Modernists often wrestle with matters of degree, as in free speech cases in which judges decide whether an utterance poses "clear and present danger" to others.

Modernists usually invoke the due-process clause of the Fifth Amendment (adopted in 1791, it barred deprivation of "life, liberty, or property without due process of law") and the Fourteenth Amendment (adopted in 1868, it guaranteed "equal protection of the laws"). But did the Fifth Amendment's authors mean to lay the foundations for broad Supreme Court review—when even "limited" review was then controversial? Wolfe thinks not. And Congress's debate over passage of the Fourteenth Amendment makes clear its intention only to solve Southern race problems, not to launch a "constitutional revolution."

The modernists prize the democratic results of their actions—their protection of free expression, privacy, and minority rights. But by making the Constitution a "container into which the desired content may be poured," argues Wolfe, they sacrifice "government by law" for "government by men."

FOREIGN POLICY & DEFENSE

What China Really Wants

"Choice and Consequence in Sino-American Relations" by Thomas W. Robinson, in *Orbis* (Spring 1981), 3508 Market St., Ste. 350, Philadelphia, Pa. 19104.

"The enemy of my enemy is my friend." Such reasoning, and fears of growing Soviet power, led the United States and China to formal contacts in 1971. Since then, the Carter and Reagan administrations have nursed along a quasi-alliance with offers of military and economic aid. Yet Robinson, a political scientist at the National Defense University, warns U.S. policymakers to expect a double-cross.

The erosion of America's military edge over the Soviets has made close ties with China a must for Washington, writes Robinson. But enlisting U.S. help in containing Soviet power is only a short-term ploy of Beijing's. China's huge standing army is equipped largely with obsolete 1950s weapons, and the new drive for economic modernization launched by Vice Premier Deng Xiaoping will channel scarce resources into civilian industry. Beijing's foreign-policy priority now is to avoid international conflict—hence its strong interest in defusing its 20-year feud with Moscow. Western arms aid is needed to allow China to negotiate with the Soviets as a near-equal.

Other factors may push China toward the Soviets before long. Many