

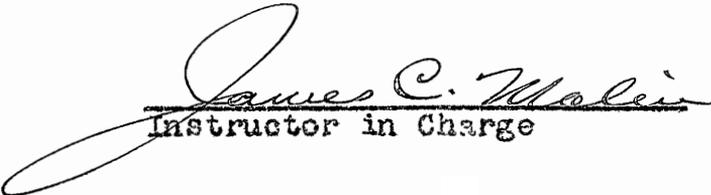
THE EVOLUTION OF FEDERAL CONTROL OF THE PUBLIC  
HEALTH SERVICE

by

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## Introduction

The evolution of the federal control of the public Health service is an illustration of the tendency of the federal government to extend its activities. From the quarantine law of 1796 to the quarantine law of 1893 there was a constant effort to frame a national quarantine law which would be not only constitutional but practicable.

With the development of science and the growth of cities public health has tended to become more and more a part of the business of government. The submission of the individual to health regulations is the price of living in organized groups.

Originally the regulation of public welfare and public health were left to the states. When the national government passed a quarantine law it was simply to aid the states. During the years between 1796 and 1893, however, several frightful epidemics of yellow fever and cholera brought the people of the country to a realization that the state quarantines were not as efficient as they should be. Public opinion finally forced the attention of Congress to the need of more uniform and more efficient quarantine measures.

Then arose the question of whether Congress could assume the powers necessary to grant the wish of the people. The federal government has found four Constitutional bases for centralization -- the commerce clause, the taxing clause, the postal

clause, and the treaty making power. The legal basis for the assumption of public health functions was the commerce clause and, to a limited extent, the taxing clause.

The courts have always maintained that the federal government is one of enumerated powers. Do these powers include the right to make police regulations? The courts have, with but few exceptions, declared that the police power is vested solely in the states. The question then arises, What is police power? This has been defined as embracing "those powers by which the health, good order, peace and general welfare of the community are promoted."<sup>1</sup>

Throughout the struggle for a national quarantine law the supporters of the measures looking toward this end based the constitutional right of Congress to assume this power upon the commerce clause. Senator Harris of Tennessee, who for twelve years worked for a national quarantine law, voiced the opinion of the supporters of these measures in his speech in favor of the quarantine bill of 1893. After stating that the power of Congress to regulate interstate commerce was not denied, he said: "Every power in this bill is the exercise of that Constitutional power to regulate commerce with foreign nations and among the several states."<sup>2</sup> The taxing power of the national government prohibited the states from levying certain kinds of taxes to obtain revenue for the execution of their quarantine laws.

Congress has exercised certain powers conferred upon it by the Constitution in a manner not sanctioned by the Constitution, with the result that it has thus regulated matters which were formerly regulated by the states. Under the power to regulate interstate commerce it has forbidden the transportation in interstate commerce of articles deemed injurious to public health or public morals.

Under the general welfare clause the federal government has engaged in functions not prescribed in the Constitution, but which are deemed necessary to public welfare. The work of the Department of Agriculture is an example of this.

Another way in which the federal government has increased its control in matters formerly left exclusively to the states is by the extension to them of financial aid for the promotion of certain activities. An illustration of this is found in the assistance which the National Board of Health, in the years from 1897 to 1883, gave the states in combatting the epidemics of cholera and yellow fever.<sup>3</sup>

The century of public health history reviewed in the following pages presents the problem of the federal government in providing an efficient, yet workable, quarantine law, and at the same time interfering as little as possible with the police power of the states.

PART I

STATE QUARANTINE

Chapter I.

The Quarantine Act of 1796

Early in the year 1796 there existed a widespread epidemic of yellow fever, of great severity. So serious was this epidemic that the attention of Congress was called to it, and in April of the year mentioned Representative S. Smith of Maryland introduced into the House a bill purposing to regulate quarantine. This bill, which occasioned a lively debate<sup>4</sup> consisted of two sections:

Section 1. Be it enacted etc: That the President of the United States be and is hereby authorized to direct at what place or station in the vicinity of the respective ports of entry within the United States, and for what duration and particular periods of time, vessels arriving from foreign ports and places may be directed to perform quarantine.

Section 2. Be it enacted etc: That the President of the United States be, and is hereby authorized, to direct the revenue officers and the officers commanding forts and revenue cutters, to aid in the execution of quarantine, and also in the execution of the health laws of the States, respectively, in such manner as may appear to him necessary.<sup>5</sup>

The first section, giving the President authority to declare and regulate quarantine, was opposed in the House by representatives from Pennsylvania, Rhode Island, Virginia, Georgia, New York, Massachusetts and North Carolina, and was finally stricken

out by a vote of 46 to 23. The bill then passed the House May 23, 1796.

In the Senate the committee to which the bill was referred reported an amendment calling for the insertion after the word "that" the words "until general regulations relative to quarantine are made by law." This amendment was adopted by the Senate but the House refused to concur as the amendment implicitly recognized the power of the general government to regulate quarantine. The bill finally passed without further amendments, except the omission of the first section, and was approved May 27, 1796.

The attitude of the House toward the first section is explained in the course of the debates which took place over the bill. In the committee of the whole Mr. Maister of Pennsylvania raised three objections to the bill: first, that it proposed to take from the individual states the power to regulate what concerned the health of their citizens and to place it in the hands of the President of the United States; second, that because of the distance of some states from the President a disease might be introduced and great damage wrought before notice could be given the President and his reply received, the government of each individual state, through its closeness, thus being better able to regulate quarantine; third, that if the power were to be transferred from the President to the collectors at each port, and this must have been the case, it would have put too much power into their hands.

Mr. S. Smith of Maryland, who had introduced the bill, spoke in its favor, stating that each state had or might have its own health laws, but that the performing of quarantine was under the direction of the general government, because it was a commercial regulation.

Mr. J. W. Kittera of Pennsylvania said that if states had no regulations it was because they had not felt the want of them; that he believed each state understood its own concerns better than the general government and therefore the regulation of quarantine might be safely left with them.

Mr. S. Smith denied that there was any authority in state governments to regulate quarantine. They could not command the officer of a fort to use force to prevent a vessel from entering their ports. The authority over him was in the general government.

The committee (of the whole) arose without making any amendment to the bill and the House took it up. After further debate Mr. Heister proposed that the first section be stricken out, but the House adjourned without taking the question of this motion.

The debate was resumed May 12. Mr. Bourne of Rhode Island considered the first section a necessary regulation. In his state, by the aid of custom house officers, the health authorities had been able to effect all necessary control. Without this aid they could not have stopped vessels bearing infectious diseases from entering their ports, the regulation being commercial in nature and, under the Constitution, enforceable only by Congress.

Mr. Sitgreaves of Pennsylvania attempted to answer some of the objections which had been raised. In his view, where states had made quarantine arrangements, it was reasonable to suppose that they would be respected. With regard to varying periods of quarantine, he replied that the longer should be observed. He stated that the strongest and best reason for the law was that it is a matter of very serious doubt whether in this matter the states have any authority at all and whether such power is not vested by the Constitution in the Congress, under its general authority to regulate commerce and navigation.

Mr. W. Lyman of Massachusetts thought individual states had sole control over quarantine regulations. While admitting that the United States could prohibit the importation of goods, he thought it was not in the power of the federal government to prevent the landing of persons.

Mr. Hillhouse of Connecticut was in favor of the entire bill. He stated that the objecting gentlemen had not been as near infectious disorders as he had been. He observed that individual states might as well be said to have the power to prohibit commerce as to regulate quarantine, because if they had the power to stop a vessel for one month they might stop it for twelve months. This, he brought out, might interfere with regulations respecting trade and break treaties. He granted, however, that the states were the best judges of the time and place for the imposing of quarantines.

Mr. Gallatin of Pennsylvania did not agree that the power of regulating quarantine lay exclusively in the hands of the federal government. The only clause in the Constitution which could admit such an interpretation, he held, was the article relative to commerce. Regulation of quarantine had nothing to do with commerce. It was a regulation of internal police. He had no objection to the United States assisting the individual states in enforcing their quarantine regulations or of making health laws for individual states.

Mr. W. Lyman believed<sup>4</sup> that quarantine was not primarily a commercial regulation; it was a regulation for the preservation of health. If commerce was incidentally affected, it ought so to be, when the object was the preservation of health and life.

He further held that the United States could prevent the importation of any goods, whether infected or not, but that it did not follow that the government could permit the landing of infected goods contrary to the laws of any state. The several states possessed sole power in this matter. They were the best judges of the exercise of it. The right to preserve health and life was inalienable. The bill, he said, was not only unnecessary and improper, but an injudicious interference with the internal police of the states.

Mr. Brent of Virginia said that the states had always been considered as possessing the power of regulating quarantine. Such was the opinion at the time the constitution was adopted and

with this understanding the states had passed laws. Necessity, expediency or policy did not require that the power should be changed. If this was the case, the question could be brought forward only for the purpose of establishing a Constitutional principle, which he should certainly oppose.

Mr. S. Smith of Maryland granted that vessels had stopped when ordered to do so for the purposes of quarantine, but that there was no legal right to stop any vessel. The law now under consideration was to give full effect to state laws; without it states could make laws but lacked power to enforce them.

Was not this a question of delegated power? By this bill the national government would delegate control over commerce to the states to enable them to enforce quarantine.

It is evident that certain important and far reaching questions were raised during the debate over the quarantine bill of 1796.

1. To what extent shall the federal government go in regulating human conduct?
2. What activities should be subject to federal regulation?
3. What is police power?
4. What justification for federal regulation of quarantine is there in the commerce clause of the Constitution?
5. What was the intention of the Constitutional Convention in regard to the power of the general government under the Commerce clause?

Discussion of these questions must necessarily be very limited. In this connection, and more specifically with reference to the first two questions, the words of Dr. Walter Thompson in "Federal Centralization" (New York, 1923) may well be borne in mind:

"Perhaps nothing has been done to determine what functions should naturally and inherently be performed by the federal government and what could be more satisfactorily performed by the states. This involves more than problems of constitutional construction. It involves a consideration of social, economic and psychological factors. It involves a consideration of the part that public opinion plays in government. It involves a consideration of human nature and human conduct."

Police power, of course, is an exceedingly vague and inclusive term. In the case of *Webber vs. Virginia* in 1880, police power was defined as embracing those powers by which the health, good order, peace and general welfare of the community are promoted.<sup>5</sup>

With reference to the fourth question, it may be pointed out that under the power to regulate interstate commerce the right of Congress to enforce quarantine regulation was not recognized by either Congress or the Supreme Court during the early period. Certainly quarantine regulation can hinder or entirely stop commerce between states. This question became of great importance in later years. Closely related to the question stated was another: Would national quarantine regulation be a benefit or hindrance to commerce?

In regard to the intention of the Constitutional Convention as to the power of the general government under the commerce clause, it should be borne in mind that there is nothing in the

records of the convention which indicates that in giving Congress power to regulate commerce the framers of the Constitution thought this power would include police regulations.

When the Constitution was before the Constitutional Convention for ratification Mr. Wilson of Pennsylvania, who was a member of that body, made a speech in which he declared that the framers, in drawing a line between the powers of the national government and those of the states, had acted upon the principle that

"Whatever object of government is confined in its operation and effect within the bounds of a particular state should be considered as belonging to the government of that state; whatever object of government extends its operation or effects beyond the bounds of a particular state should be considered as belonging to the government of the United States." 6

## Chapter 2

### Administration of the Marine Hospital Service, 1798 -- 1878.

The Marine Hospital Service grew from one of the earliest of the federal activities outside the actual operation of government.

The act of July 16, 1798,<sup>\*</sup> provided that after September 1 of that year the master of every American ship arriving from a foreign port should pay the Collector of Customs twenty cents a month for each seaman, which amount he was authorized to deduct from the seamen's wages. The President was authorized to use this money to provide temporary relief and maintenance for sick and disabled seamen. He was also authorized to accept cessions of buildings and grounds and donations. The money received was to be expended in the district where collected, and the surplus after expenses were paid could be used to purchase buildings and grounds and to erect buildings. Inasmuch as the tax was collected by the Collectors of Customs the service was under the jurisdiction of the Treasury Department.

An act of March 2, 1799,<sup>\*\*</sup> included naval officers and seamen and marines. Later acts included seamen other than the merchant seamen provided for in the act of 1798.

The first hospital operated by the government was purchased in 1800. It was situated at Washington Point, Norfolk. By 1802 there four hospitals. By an act of May 3, 1802, \$15,000 was

\* Vol. 20 U.S. Stat. at Large, 605

\*\* Vol. 20 U.S. Stat. at Large, 619

provided for the erection of a hospital in Massachusetts. By this same act the admission of foreign seamen to hospitals, at the rate of seventy-five cents a day, was authorized. Thereafter new hospitals were built at various times. <sup>7</sup>

(b) Sick and Disabled Seamen

On February 3, 1837, Mr. Davis of Massachusetts, a member of the committee on commerce, to which the Senate bill No. 79 had been referred, made a written report accompanied by a substitute for the bill, which substitute suspended for one year the tax of twenty cents per month on American seamen for hospital funds and appropriated \$150,000 for one year in lieu thereof to be paid from the Treasury. The report was also accompanied by three resolutions to the effect that the Secretary of the Treasury be instructed to report on needs for hospitals and submit a plan for regulating the disbursement of funds for the relief of sick and disabled seamen and for the governing of marine hospitals. <sup>8</sup>

Mr. Calhoun of South Carolina said he understood this to be a change of system, the hospital tax having previously been paid by seamen. He asserted that the great and prevailing disease of the times was centralism and that he was utterly opposed to anything which would tend to increase it. He was opposed to opening all sluices to further expenses of the government as a tendency to corrupt the public morals and to endanger our institutions. The tendency of the government was already to the destruction of liberty. Mr. Calhoun further stated that the tax taken from the sea-

men's wages fell on the branch of business in which they were engaged and that the interests concerned should bear the expense. Congress should not pay the expense of sickness in one branch of business more than in another; it might as well pay similar expenses arising from the cultivation of sugar, rice or cotton.

Mr. Davis of Massachusetts replied that there was a wide difference between the cases which Mr. Calhoun had paralleled; that the legislation in regard to seamen had commenced with the existence of the government and was intimately connected with commerce, which was wholly subject to the legislation of Congress; also that seamen were necessary to the defense of the country, and asked whether the class compared to them by Mr. Calhoun was equally important in the nation's defense.

The resolutions were amended and adopted.<sup>9</sup>

By the act of March 3, 1849,<sup>10</sup> \$1,000 was appropriated for the collection of information relative to the marine hospital fund and for a report to Congress on necessary changes. Dr. G. B. Loring and Dr. T. O. Edwards were appointed to make the report. This report, which was made in 1851, contained a number of recommendations, the most important of which was that the marine hospital system should be placed under a chief surgeon.

Thirty-one hospital projects were undertaken by the government, but only nine of these were in use by the government in 1870. Hospitals had been built at points where there were no patients or too few patients to justify maintenance of the institutions.

As early as 1856 the graft in connection with these hospitals had become a Congressional scandal. On March 3 of that year Mr. Campbell of Ohio read an extract from the reports of two Secretaries of the Treasury stating that their department was not prepared to advise the erection of more marine hospitals. The experience of the department seemed to indicate that arrangements made for the care of seamen with private hospitals was more satisfactory. <sup>11</sup>

In his speech Mr. Campbell stated that disabled seamen were better provided for where the government had no hospital than at points where millions had been spent to construct them. At Charleston patients were being maintained in private hospitals at a cost of sixty-nine cents each a day, whereas the average daily cost of maintenance per person in the government hospitals was \$2.03.

This speech was made March 3, 1856, in defense of the Deficiency bill, the object of which was to give the Secretary of the Treasury a discretionary power to change the system at such points only as the public interest might require, having in view, first, the proper provisions for seamen, out of whose pockets a part of the funds were drawn and, secondly, economy in the expenditure.

Mr. Campbell further stated that the cost of supporting such seamen at forty-three ports where arrangements were made

with private hospitals was \$4.37 per man per week. In the marine hospitals the average cost was \$24 a week. In the marine hospital at Pittsburgh the average cost was \$21.35 a week, while at Cincinnati, where there was no marine hospital, the maintenance cost per man was but \$5 a week.

On March 3, 1857, Mr. Campbell reported from the ways and means committee a bill similar to the one of March 3, 1856.<sup>12</sup> In doing so he asserted that in at least one instance the appointees of the government having charge of these hospitals used the hospital stores, the wines and brandies, for the purpose of entertaining evening parties. The bill passed.<sup>13</sup>

The tax on seamen was collected continuously from 1798 to 1870, except for a period of one year beginning April 1, 1837. Except for thirty-four of the seventy-three years the proceeds of the tax were insufficient for the service. During the remaining years it was necessary to appropriate money from the general funds of the government. From 1841 to 1870 appropriations were made each year, with the exceptions of 1846 and 1854.

From 1798 to 1870 all authority for the control of the service was vested in the President, who delegated it to the Secretary of the Treasury. As there was no head for the service as a whole, each hospital was nearly a law unto itself and conditions differed widely.

Under the act of June 29, 1870,<sup>14</sup> which organized the administration of the service, a supervising surgeon was appointed

(April 1, 1871); the seamen's tax was increased to forty cents a month; and appointments were made to the general service, instead of to particular hospitals or stations, the surgeons being transferred to more important stations as vacancies occurred. The foregoing method of handling appointments emphasized the national character of the service. Appointments to the medical staff were made only after examination by a board of surgeons, the appointment being made by the Secretary of the Treasury on the recommendation of the supervising surgeon. The general discipline and administration of the hospitals were modeled on military lines.

The first annual report of the reorganized service (for the year 1872) included, besides statements of receipts and expenditures, medical statistics on cases treated and brief reports on the history of surgical cases. In 1873 the publication of more detailed technical and scientific papers on subjects of special interest was begun.

The civil appropriations act of March 3, 1875, provided the title Supervising Surgeon General for the head of the service. By the same act his salary was set at \$4,000 a year, and he was to be appointed by the President with consent of the Senate; other officers were to be appointed by the Secretary of the Treasury. The term seamen was made to include all persons employed on vessels.

### Chapter 3

#### Quarantine Problems 1799 - 1873.

In the third session of the fifth Congress a bill "respecting quarantine and health laws" was reported from the committee on commerce of the House by Mr. Smith of Maryland. It was amended by the Senate, passed by both bodies, and approved February 25, 1799.<sup>15</sup>

This act formally repealed the act of May 27, 1796. By it Congress distinctly and fully recognized the actual possession of and right to exercise quarantine authority by the states, required that it should be respected by federal officials, and instructed all such officers to aid states in the execution of quarantine and health laws as they should be directed by the Secretary of the Treasury.

On April 7, 1832, Mr. Howard of Maryland reported from the committee on commerce a bill to enforce quarantine regulations. In defense of this bill he stated that it was desirable that quarantine regulations should prevail beyond the limits of a city's jurisdiction, which could never extend farther than the limits of the state in which the city was situated. As an illustration he drew attention to the fact that the municipal regulations of the Philadelphia health board could not extend into Delaware Bay. It was therefore necessary that the authority of the general government should supervene to supply the deficiency and thus guard the health of the country.<sup>16</sup>

On July 5 this bill provoked a discussion on the part of Mr. Doddridge of Virginia, who favored the bill, and Mr. Dearborn of Massachusetts who opposed it. The interest in this bill was increased by a threatened epidemic of cholera in Washington, D.C., and

the surrounding region.

Mr. Dearborn opposed the bill on the ground that all such regulations, while in their operation are inconvenient and oppressive to individuals, were of no avail to the safety of the country. He referred to the quarantine laws against the introduction of yellow fever, all of which were now generally admitted to be useless, inasmuch as the disease was not contagious. If cholera were a contagious disease, he reasoned, it could not be kept out by quarantine regulations, the ports of entry were so numerous.

Some medical men held that cholera was a foreign<sup>ly</sup> disease; others that it was generated by local filth. Assuming that cleanliness was the most effective preventive, Mr. Dearborn offered an amendment appropriating \$10,000 for improving the health police in the cities of Washington, Georgetown and Alexandria, the money to be expended under the direction of the President of the United States.

Mr. Doddridge forced Mr. Dearborn to admit that at least the form of a quarantine law was still kept in Boston, and stated that apparently the mercantile interests, which were known to be always desirous of having free ingress and egress for their ships, had not been able to repeal the opinion of society in Boston. The bill passed.

On March 21, 1866, a joint resolution was passed<sup>17</sup> which provoked a lively debate and brought out some of the varying opinions in regard to quarantine. The resolution (House No.57)

authorized the Secretary of War and the Secretary of the Navy, respectively, in their discretion, to place gratuitously at the disposal of the commissioners of quarantine, or the proper authorities of any ports in the United States, to be used temporarily for quarantine purposes, such vessels or hulks belonging to the United States as are not required for other uses of the national government, subject to such restrictions and regulations as the Secretaries may respectively deem necessary for their preservation. 18.

Mr. Grimes of Iowa thought it very important that the operations of the various departments should be kept distinct. If the government established quarantine it should do so, in his opinion, under the provisions of the Constitution that relate to commerce and it should be regulated by the Treasury Department. He was not willing to give to the Treasury Department the control of the navy.

In reply Mr. Nye of Nevada said that this resolution was on government business, and the greatest of all the business of government was to protect the lives of the people.

Mr. Riddle of Delaware stated that although he was not disposed to interfere or participate in the debate he should vote against the resolution, stating his reasons as follows:

"I think that this talking about the cholera in the Senate is only inviting it here. I think the less we say about it the better, because by talking about it we are invoking it. We are creating fears which should not exist. I therefore move to lay the whole subject on the table." 19

The motion was rejected.

The reasons for opposing the resolution advanced by Mr. Anthony of Rhode Island were interesting:

"I regard this as a proceeding that belongs to the fourteenth and fifteenth centuries rather than the nineteenth. No question in medicine that has ever been disputed is better settled than that quarantine is as useless against cholera as it would be to attempt to keep out the east wind by quarantine, and the effect of a measure of this kind will only be to divert the public mind from the sanitary measures which alone can arrest the progress of the disease and they are temperance, cleanliness and orderly living." 20

A resolution submitted by Mr. Nye on January 18, 1869,<sup>21</sup> was interesting because of its suggestion that the Secretary of the Treasury report in regard to the feasibility and propriety of adopting a uniform system of quarantine laws applicable to foreign vessels and vessels of the United States whether engaged in the foreign or coasting trades, and of placing the superintendence and execution of such laws exclusively under the control of the Treasury Department.

On June 6, 1872,<sup>22</sup> a joint resolution of the House and Senate "for a more effective system of quarantine on the Southern and Gulf coasts" was passed. This resolution directed the Secretary of War to detail one or more medical officers of the regular army to visit each town and port on the coast of the Gulf of Mexico and on the South Atlantic coast, and to inquire whether any system of quarantine was likely to be effective in preventing invasions of yellow fever and if so what system would least interfere with commerce at said ports.

Dr. Harvey E. Brown of the United States Army was detailed for this duty. In his report he clearly demonstrated the

value of quarantine and recommended the substitution of national for local quarantines.

Following Doctor Brown's suggestion Representative Bromberg of Alabama, in the winter of 1873-74, introduced a bill for a national quarantine. This action followed a yellow fever epidemic in the summer of 1873. The bill provided for a quarantine board to consist of the Surgeon Generals of the Army, of the Navy and of the Marine Hospital Service, whose duty it would be to prepare quarantine regulations, which were to be enforced by an officer from one of these services detailed for that purpose. This bill passed the House but failed in the Senate.

Its failure in the Senate was probably brought about by the speech of Senator Thurman of Ohio, who pointed out that the regulations of the board should not interfere with regulations of the states. While granting that the bill recognized this point, he maintained that it would be difficult for the board not to interfere. "Health regulations of the states," he said, "are different one from the other. How this Board is to make any general regulations that will be effective and not interfere with the state regulations I do not clearly perceive." 23

## Chapter 4

### Review of Quarantine Laws

By 1866 Congress had passed four quarantine laws. These laws merely extended federal aid in the enforcement of local regulations.

By the act passed May 27, 1796, the President was authorized to direct revenue officers and officers commanding forts and revenue cutters to aid in the execution of health laws of the states in such manner as might appear necessary.

This law was repealed by the act of February 25, 1799, which provided that any quarantine established by or in conformity with the health laws of any state should be observed by Collectors of Customs and all other officers of the revenue, by masters of revenue cutters and by military officers as directed by the Secretary of the Treasury.

The act of July 13, 1832, gave the Secretary of the Treasury authority for one year to employ additional boats and officers if he deemed the revenue boats and officers insufficient to enforce the quarantine regulations.

By the act of May 26, 1866, the Secretary of the Treasury was directed to make quarantine regulations necessary to aid state and municipal authorities guarding against the introduction of cholera. He was also authorized to direct revenue officers and commanders of revenue cutters to assist in the execution of the quarantine and health laws of the states.

An epidemic of cholera in 1873 aroused interest in the

subject of quarantine and on September 8, 1874, the Secretary of the Treasury issued a general circular calling attention to the act of February 25, 1799, which for some years had been practically a dead letter. In this circular officers of the Marine Hospital Service and customs officers were directed to inform themselves fully regarding local health laws and regulations, and to give prompt assistance in their enforcement.

#### Judicial Decisions

In the case of *Gibbons v Ogden* in 1824 Chief Justice Marshall, referring to the quarantine laws of 1796 and 1799, said:

"Acts of Congress passed in 1796 and 1799 empowering and directing the officers of the general government to conform to and assist in the execution of the quarantine and health laws of a state proceed, it is said, upon the idea that these laws are constitutional. It is undoubtedly true that they do proceed upon that idea; and the constitutionality of such laws has never, so far as we are informed, been denied. But they do not imply an acknowledgement that a state may rightfully regulate commerce with foreign nations or among the states; for they do not imply that such laws are an exercise of that power or enacted with a view to it. On the contrary they are treated as quarantine and health laws, are so denominated in the acts of Congress and are considered as flowing from the acknowledged power of a state to provide for the health of its citizens.

But as it was apparent that some of the provisions made for this purpose and in virtue of the power might interfere with and be affected by the laws of the United States made for the regulation of commerce, Congress in that spirit of harmony and conciliation, which ought always to characterize the conduct of governments standing in the relation which that of the Union and those of the states bear to each other, has directed its officers to aid in the execution of these laws and has in some measure adapted its own legislation to this object by making provisions in aid of those states."

Mr. Marshall evidently understood the power of the government under the commerce clause and the quarantine laws of the states to proceed from different sources. He also believed in the effectiveness of concurrent legislation.

In rendering the decision in the case of *Gibbons v. Ogden* he said:

"It is no objection to the existence of distinct, substantive powers, that in their application they bear upon the same subject. The same bale of goods, the same cask of provisions, or the same ship which may be the subject of commercial regulations, may also be a vehicle of disease and the health laws that require them to be stopped and ventilated are no more intended as regulations on commerce than the laws which permit the importation are intended to inoculate the community with disease. Their different purposes mark the distinction between the powers brought into action, and while fairly exercised, they can produce no serious collision." <sup>24</sup>

With reference to concurrent legislation, Justice Barbour, in giving the decision in the case of *New York v. Miln* (1824) said:

"The power to pass quarantine laws operates on the ship which arrives, the goods which it brings and all the persons in it whether the officers, the crews or the passengers. Now the officers and crews are the agents of navigation, the ship is an instrument of it and the commerce on board is the subject of commerce and yet it is not only admitted that the power remains with the states but the laws of the United States expressly sanction the quarantine and other restraints which shall be required and established by the health law of any state, and declare that they shall be duly observed by the collectors and all other revenue officers of the United States." <sup>25</sup>

PART II

CONCURRENT QUARANTINE.

## Chapter 5

### The Quarantine Law of 1878 (April 29)

The act of April 29, 1878<sup>1</sup> described as an act to prevent the introduction of contagious or infectious diseases into the United States gave authority to the Supervising Surgeon General of the Marine Hospital Service, subject to the approval of the President, to make quarantine rules and regulations. These rules and regulations were not to conflict in any way with rules and regulations of state or municipal authorities. (The Attorney General held that this did not mean that nothing could be done except by state law, but that federal regulations must not interfere with state laws.)

Officers of state or municipal quarantine systems could become officers in the national quarantine system but where they did not national officers could enforce the regulations. The act also provided that United States consular officers should advise the Supervising Surgeon General regarding the appearance of contagious diseases in the ports where they were stationed; they were also required to report the departure of vessels from such ports to the health officer at the port of destination. The Supervising Surgeon General was required to prepare weekly digests of the reports received from consuls and other data and to send them to officers of the Marine Hospital Service, to Collectors of Customs, and to state and municipal health authorities.

Section 5 of this act, although struck out, was of special interest because of the manner of and reasons for its removal.

(See debate on bill.) This section stipulated that the provisions of the act should not be construed to prevent state health or quarantine measures, "but any local law or regulation interfering with or obstructing the due execution of the national rules and regulations as approved by the President under the act shall be null and void." <sup>2</sup>

The distinctive feature of the quarantine law of 1878 was that the supervising surgeon general of the Marine Hospital Service and custom officers were to be charged with the execution of the provisions of the act and were to be authorized and required to fram<sup>2</sup>e all needful rules and regulations for that purpose, subject to the approval of the President. He should not conflict with or impair any sanitary or quarantine law or regulations of any state or municipal authority which then existed or might thereafter be enacted.

All previous quarantine laws assumed that quarantine was a local function and that any action of the federal government should be merely for the purpose of assisting state or municipal authorities. This act, it is to be noticed, still insisted that there should be no conflict with state law but the provisions of the act and regulations for its execution were to be made by the surgeon general subject to the approval of the President. This law, then, was a national quarantine act.

Congress was evidently forced to a consideration of such a law as this by the terrible epidemics of 1873 and 1876, and

by the fear of another such disaster the coming summer.

The yellow fever epidemic in 1873 caused widespread damage and loss of life throughout the South. At Shreveport, La., Memphis, Tennessee, Montgomery, Alabama, Galveston, Texas, and other cities were known to be 16,000 cases and 4,000 deaths. The infection was believed to have been brought into the country by the ship Valparaiso. In 1876 the South experienced another epidemic of yellow fever. This was especially serious in Savannah, Georgia, causing a loss of \$5,800,000.<sup>3</sup>

On March 27, 1878, Mr. Felton of Georgia reported from the committee on commerce a quarantine bill (H.R. 3739) to prevent the introduction of contagious or infectious diseases into the United States. Mr. Felton then stated that by the authority of the committee he moved to strike out the fifth section of the bill, in order that the rights of the states may not even apparently suffer encroachment.<sup>4</sup>

Three amendments were offered by Mr. Hartridge of  
as follows:

1. In Section 1 to insert the words "contrary to the quarantine laws of any one of the said United States."

2. To insert in Section 2 "but such rules or regulations shall not conflict with or impair any sanitary or quarantine regulations of any state or municipal authority."

(Mr. Cox of New York wished to insert after the word regulations "now existing or may hereafter be enacted.")

3. The third amendment provided that not only United States officials should be notified of the departure from a foreign port of an infested vessel, but that state and municipal officers should also be notified.

The foregoing amendments were adopted; also a few minor amendments, consisting of words inserted to make the rights of states clearer. Sections 5 and 7<sup>5</sup> were struck out. The bill passed the House by a vote of 103 to 21.

The debate over this bill in the House showed the conflicting opinions in regard to its constitutionality.

Mr. Felton, who reported the bill after moving to strike out section 5, which forbade state laws to conflict with national laws, said:

"Upon all questions relating to the public health within their territorial limits the states are absolutely sovereign. We must guard most carefully upon all occasions these sacred and very precious rights of the state. We could not permit these rights to be impaired even if their infringement should temporarily produce valuable results, because these reserved rights of the state are safeguards of life and property, and above all they secure the liberty of the citizen against the centralizing tendencies of the age."<sup>6</sup>

Mr. Felton also said that the committee had received a memorial from a convention composed of delegates from twelve Southern municipalities.\* This convention, which had met in Jacksonville, Florida, on February 14, 1878, for the purpose of considering the establishment of uniform quarantine laws for the Atlantic and Gulf coasts, petitioned Congress to establish such a system. He also quoted from a letter of Dr. Samuel Choppin,

\* Norfolk, Charleston, Port Royal, Savannah, Darien, Brunswick, St. Marys, Fernandina, Jacksonville, St. Augustine, Cedar Keys and Pensacola.

president of the board of health of Louisiana. Dr. Choppin expressed a favorable opinion in regard to asking Congress to establish a uniform system of quarantine. Mr. Felton read a resolution passed by the Board of Trade of Mobile, Alabama, October 9, 1873. It read: "Resolved that inasmuch as no quarantine measure of our seaports can be effective against the importation of diseases without uniformity in time and method, that Congress be memorialized to establish a uniform system of quarantine under national supervision."

Mr. Felton stated that Congress has the authority to regulate commerce and these imported diseases were part of our commercial intercourse with foreign nations. There was no excuse for conflict, in his opinion. State law was supreme within the jurisdiction of the state and state and city quarantine officials might at their request be made officials of the national quarantine system. The sanitary measures contemplated by the bill applied to vessels arriving from without before the vessel, passengers or merchandise could in any way become subject to state or municipal health rules or regulations.

"One of the Senators from Kentucky the other day," said Mr. Felton, "presented to the Senate a petition from the cattle breeders of the state asking the government to protect their interests against the importation of diseased cattle from abroad. It is right, for what power has Kentucky to protect its interests in this particular at the port of New York? But, pray, shall we establish

a national quarantine against rinderpest, which we have a right to do, and at the same time be powerless to interfere in preventing the introduction of cholera and yellow fever? This bill would make quarantine laws efficient and the period of quarantine shorter.

"Information which is essential to a safe and perfectly reliable quarantine can only be obtained through the consuls and commercial agents of the United States at foreign ports. Section 2 provides for the acquisition of necessary information. Section 4 provides prompt notice to the countries exposed. The bill simply provides for the proper utilization of the already existing machinery of the general government for the protection of the general welfare."

Mr. Felton seemed to be a firm believer in the doctrine of concurrent legislation. While this doctrine seemed excellent in theory, the human element involved introduced a large measure of risk. The provision in the bill that city and state health officials could by their request become part of the federal system of quarantine furnishes, however, a possible chance that concurrent legislation might prove practicable.

Mr. Hartridge, in his speech in defense of the bill, raised the following questions: Is the bill constitutional? Have we the right to pass such a measure? If we have the right to pass it, is it practical in its details and will it be practical in its results? He gave a brief history of the origin of the bill. The

convention held at Jacksonville sent a commission to Washington, D.C., and after consultation with the medical authorities of that city, prepared the bill.

He also stated that Congress had no right, as the original bill would do, to infringe upon the police regulation of a sovereign state. "We have no right," he said, "to interfere with the sanitary or quarantine regulations of any state or of any municipality under the laws and powers and leave of that state." In support of this statement Mr. Hartridge quoted from the decision in the case of *Gibbons vs. Ogden*.

In a summary of the arguments in favor of the bill Mr. Hartridge made the following points: information from consuls will be of great aid; many Southern cities were unable to care for effective quarantines; many Southern cities were petitioning the federal government for aid; state officials could become federal officials (i.e. have the power of federal officials) and still be state officials; the measure was constitutional and practicable.

In replying to Mr. Hartridge, Mr. Jones of Alabama admitted the seriousness of yellow fever. He also admitted that perhaps the quarantine systems of all the states were not as efficient as they might be, but raised the question:

"Does it follow on this account that Congress has the right or power to interpose and pass quarantine laws? Do our powers depend on the failure of the states to exercise powers properly belonging to them?"

In this country and under our system of government sanitary regulations are purely police regulations. The government can exercise only such powers as have been delegated. In one of the amendments to the Constitution

It is expressly declared that all powers not delegated to the United States are reserved to the states respectively or to the people. If, then, this power to frame quarantine regulations has not been surrendered by the states to the general government, and if, moreover, it is included among those powers reserved by the states, there is no warrant or authority for this proposed bill." <sup>7</sup>

Mr. Jones also raised the question, Is this quarantine a question of commerce or internal police? He stated that it was a police power, not a commercial regulation. "It is a confusion of terms," he asserted, "to say that commerce included quarantine. Therefore the government has no direct power over that subject and cannot establish a national quarantine system."

The power to regulate commerce, he held, is exclusive in the United States government (settled in the case of Gibbons vs. Ogden) and if the power to pass quarantine regulations falls under the power to regulate commerce, it must likewise be exclusive in the United States government. This power of quarantine, then, could not be concurrent in both state and national government.

The United States courts in deciding questions of this kind had repeatedly held that quarantine laws, though affecting commerce, were not regulations of commerce. (Story: The Constitution, Sections 1070-1072).

To contend that because Congress has the power to regulate commerce it can regulate anything connected with commerce would throw upon that body a mass of legislation which it could not perform, and the legislative powers of the states would be at an end. They

would become mere municipal corporations.

Mr. Jones summarized his objections to the bill under the following heads:

1. There was no authority for it in the Constitution.
2. It had a tendency to centralize power in the general government.
3. It would add another bureau to the government.
4. It would be an uncalled for and unwarrantable interference with the local self government and the police affairs of the states.
5. The amendments did not cure the defects in the bill.

"I think I see the poison under its wings."

With reference to the public Mr. Jones observed:

"This is not the first time the people may have asked this government to do something it had no constitutional authority to do. It is a matter of regret that the people are so forgetful of the true principles of our government and are so prone to regard it as a paternal government whose chief object is to relieve them in time of need and distress. Let them be involved in trouble or threatened with disease or vexed with a labor strike and immediately they appeal to the general government for help and protection. It is the duty of the states to exert their powers of self government and to promote the public good and to secure the public safety." 8

Mr. Jones also objected to the power given the surgeon general, claiming that it was an abdication by Congress of its powers of legislation and a delegation of that power to a single individual. He closed his speech with the forceful expression, "I am opposed to the United States policing the states with soldiers or with doctors."

Mr. Cox of New York asserted that the bill was not centralization, but decentralization. He expressed a new point of view, reminding Congress that since the Constitution was drawn, steam had developed the country; time and space had been annihilated and a new application of governmental powers seemed necessary.

The bill presented the difficulty which Mr. Thurman had referred to in connection with the Bromberg bill and which had probably caused its defeat in the Senate. Congress might have recognized this fact, because no appropriations were made for the execution of the law, which thus became a dead letter.

## Chapter 6

### National Board of Health Act of March 3, 1879.

The yellow fever epidemic of the summer of 1878 proved destructive to life. To what extent lives were taken there is no reliable estimate, but the economic loss was estimated at some \$200,000,000. In the debates in Congress on public health the economic loss commanded more attention than references to the loss of life. Evidently the epidemic of 1878 gave a new impulse to the movement for protection against such disasters by quarantine.

The annual meeting of the American Public Health Association was held in Richmond in November of that year. This meeting was attended by the health authorities of all the Southern cities which had recently suffered from the invasions of the fever and also by leading sanitarians of the North. Resolutions were adopted to the effect: That it is the duty of the general government to aid in the establishment of a practical and proper quarantine, by all means in its power; that it is the duty of the general government to invite foreign nations to cooperate with it in the establishment of the uniform and effective international quarantine regulations. \*

When Congress assembled each branch appointed a special committee to "investigate and report the best means of preventing

\* National Board of Health Report for 1879, page 6.

the introduction and spread of epidemic diseases."

On the recommendation of these committees a mixed congressional and medical commission was created by an act of Congress, for the purpose of collecting the opinions of physicians and other residents in the localities where the fever had prevailed as to causes of the outbreak and the most practicable methods of preventing a recurrence of such disasters. This commission followed one which had been organized by Dr. J. M. Woodworth at the request of Mrs. Elizabeth Thompson, who paid all its expenses. The two commissions reached similar conclusions as to the exotic origin of yellow fever and the necessity of a rigid quarantine for its exclusion from the country.

The main recommendations of the report were:

1. That a system of quarantine would be the greatest protection.
2. That the quarantine should be adequate but inflicting only a minimum of injury and inconvenience on commerce.
3. That there should be two classes of medical officers, one to serve in foreign ports from which the United States received importations of yellow fever and cholera and, second, officers to have charge of quarantine stations and to supervise interstate travel and traffic from infected places in times of epidemic. Such officers were considered necessary because of the necessity for a method of quarantine which would not involve suspension of intercourse with foreign ports.
4. That investigations of late epidemics should be continued and made to include the West Indies.
5. That Congress should try to organize an international commission.

On December 18, 1878, Mr. Young of the select committee

on epidemic diseases reported a joint resolution (H. Res. 210) appropriating \$50,000 for the purpose of paying necessary expenses of the investigating commission. The resolution passed both House and Senate and was approved by the President January 7, 1879.

The debate on the resolution in the House consisted chiefly of an argument over the number of experts to be employed. The committee which framed the resolution provided for thirteen, and after a long discussion the resolution was passed without amendment.

The speech of Mr. Singleton of Mississippi against an amendment providing for seven experts presented forceful arguments in favor of public health work. He reminded the House that the government was annually spending thousands of dollars upon investigations into the causes of hog cholera, the cattle diseases, the cotton worm, the locust of the Northwest, and that surely the preservation of human life would be much more valuable. He also used the "economic" argument with skill. He said:

"In addition to the loss of human life we are losing hundreds of millions of dollars of capital by the prevalence of this disease. Unless something can be done, and that very soon, to protect the Southern country against the renewed ravages of this plague, the whole South will be of very little value to the country. The truth is, if the yellow fever should be permitted to prevail there continuously for two or three years, that section of the country will be abandoned except perhaps by the colored race." 10

Several bills for establishing quarantine, with uniform

regulations under national direction, were introduced into the Senate during the winter of 1878-79. One of these (S. 1462), which was introduced December 10, 1878, provided for the appointment of a director general of health, who was to be charged with the duty of declaring quarantine at his own discretion, in any part of the United States, and to make and enforce quarantine regulations. This bill, like others, was never reported back from the committee to which it was referred.

On February 7, 1879, Mr. Harris of the select committee to investigate and report the best means of preventing the introduction and spread of epidemic diseases, submitted a report (734) accompanied by a bill (S.1784) to prevent the introduction of contagious or infectious disease into the United States and to establish a bureau of public health.

On February 24 Mr. Harris moved that the Senate proceed to consideration of the bill.<sup>11</sup> The motion carried forty-five to fourteen. Mr. Edmunds of Vermont moved an amendment to take the sanitary control of the District of Columbia from the bureau of health. The motion was lost.

Mr. Morgan of Alabama tried to put in an amendment to require members of the board to make personal visits to infested places. The motion was lost.

Mr. Edmunds moved to strike out the words "Bureau of Health shall be charged with the supervision of all matters connected with the Marine Hospital Service. The amendment was lost.

Mr. Kernan of New York moved to strike out the provision that the bureau of health should appoint officers where local authorities refuse to adopt and observe rules and regulations of that bureau. This motion was lost, and no further amendments were proposed.

When, on February 24, Mr. Harris moved that the Senate proceed to the consideration of the bill, an argument took place over the order of precedence.

Mr. Voorhees of Indiana was in favor of giving this bill precedence, because if it contained any suggestion toward preventing another epidemic no other measure could compare with it in importance.

Mr. Edmunds replied that the United States had been affected with the yellow fever a good many times in a good many administrations, and it had never been thought fitting hitherto to exercise the national power, whatever it may be against the regulations of the states for the health of their citizens.

During the consideration of the bill by the Senate in committee of the whole, Mr. Morgan stated that he considered the act a dangerous provision and warned the House that in the alarm over yellow fever there was danger of doing something which it would later regret. He also said:

"The measure will soon dwarf, if not put out of existence, all local power in reference to quarantine. Courts

have decided that the power of quarantine is purely a matter of local jurisdiction. This act creates a new board and legislation ought to be directed towards suppressing boards instead of creating them." 12.

Mr. Hill of Georgia said:

"I wish simply to say that I do not like this bill. I do not like the creation of a new bureau. I do not think any good will result from it myself. Nevertheless I shall vote for it because it is an experiment and I take it as such." 13.

In defending the bill Mr. Harris stated that it proposed to so regulate commerce as to prevent the importation of contagious or infectious diseases from foreign countries into the United States, or from one state to another.

"It is wholly independent of any state regulation," he said. "Within its scope I suppose it will be paramount law, but there is nothing in this proposed act that is intended to prevent, or in my judgment can prevent, any state from adopting any additional regulations. This bill does not propose to change a single rule or regulation with regard to the Marine Hospital Service. It simply changes the name of the officer who shall execute the rules and regulations of that service from surgeon general to director general of health." 14.

Mr. Lamar of Mississippi held that this bill was simply supplementary, making additional regulations and providing for using the machinery that the state authorities had already furnished, so long as the state authorities consented that it be used.

"There is nothing in the bill," he said, "which threatens to overshadow state rights in any respect whatever. The bill is a simple experiment for the purpose of averting, if possible, a great impending calamity which has visited a large section of the country, the devastations of which are greater than any wrought in the same period of time by

the war and which no local power that the states, with all their authority are able to exert, can avoid or even mitigate." 15

Feeling over the bill seems to have become somewhat bitter. When Mr. Edmunds (of Vermont) asked whether by changing the title of the surgeon general it was expected to stop the yellow fever, Mr. Matthews of \_\_\_\_\_ replied:

"No; I could stop the yellow fever, I think, better. I am told that refrigeration is a cure by the destruction of its germs, and if I could only make use of the Senator from Vermont I am sure I could prevent it." 16.

Mr. Voorhees maintained that if a state fails to enact regulations excluding disease the federal government has the power under the commerce clause of the Constitution to keep black death, cholera or yellow fever away from our coast. He took a nationalistic view, saying:

"The city of New York does not own the port of New York. The port of New York belongs to Indiana in her commercial relations with the world as much as it does to the city of New York." 17.

Finding themselves at 11 o'clock without a quorum, the Senators engaged in a long debate over their authority to compel the attendance of absentees. Mr. Voorhees, who wished to force a quorum, reminded the Senate that there were more than four hundred bills on the calendar calling for action, while Senators were asleep in their beds or attending evening parties at the houses of foreign ministers.

"I have been shocked and mortified in observing Senators, especially those from the South, taking the ground that we cannot compel a quorum here tonight on this bill, whose purpose is to protect their wives, their children, their seaboard, their cities, their homes and their hearthstones from the ravages of pestilence. It is true that we cannot abolish yellow fever by law, but whenever I find a ~~new~~ measure whose purpose is to lessen the calamities of disease, I will allow it to supercede anything else, and at 1 a.m. we are without a quorum." 18.

It was decided that the attendance of absentees could be compelled. The bill finally passed at 4:35 a.m., Tuesday, February 25, and the Senate adjourned.

On February 25 the Senate asked the concurrence of the House on bill No. 1784. On March 1 Mr. Casey Young of Tennessee offered an amendment, which was really a substitute. A furious debate followed, which centered around two points, the power of the national government and the power given to the director general. On March 1, on motion of Mr. Garfield of Ohio, the bill was laid on the table by a vote of 134 to 100.

#### The House Bill, March 3, 1879

On February 24, Mr. Jonas H. McGowan of Michigan presented a bill (H.R. 6500)<sup>19</sup> to prevent the introduction of infectious or contagious diseases in the United States and to establish a national board of health. This bill was referred to the select committee on the origin, introduction and prevention of epidemic diseases in the United States.

On March 3, 1879, Mr. Randall L. Gibson of Louisiana moved that the rules be suspended so as to discharge the select committee from further consideration of the House Resolution 6500 and

pass same with amendments. This motion carried. The rules were suspended and the bill passed with amendments, by a vote of 169 to 64. The Senate was asked to concur. The President signed the bill the same day.

The bill, it will have been noted, was carried through both Houses in the last hours of the session and approved by the President on the same day.

The act of March 3, 1879, merely created a national board of Health. It conferred no power and imposed no duty in respect to quarantine.

According to its title the act of March 3, 1879<sup>20</sup> was designed to prevent the introduction of infectious or contagious diseases into the United States. It is chiefly known, however, for its creation of the National Board of Health.

After providing for the organization of the board and its meeting in Washington within thirty days after the passage of the act, the bill made it incumbent upon the board to frame all rules and regulations required by this act and to make all examinations at any times or places it deems necessary to aid in the execution of the act. Further provisions were "that the duties of the national board shall be to obtain information upon all matters affecting the public health, and to advise the several departments of the government, the executives of the several states and the commissioners of the District of Columbia, on all questions submitted by them, or

whenever in the opinion of the board, such advice may tend to the preservation and improvement of the public health."

The act also provided that the National Board of Health should, after consulting with the Academy of Science, report to Congress at its next session a full statement of its transactions and a plan for a national public health organization, with attention given to the subject of quarantine, especially as to regulations which should be established between state or local systems of quarantine and a national quarantine system. Fifty thousand dollars, or as much thereof as necessary, was appropriated to pay the salaries and expenses of the board and to carry out the purposes of the act.

In the course of the debates over the board of health bills the doctrine of concurrent legislation was referred to again and again by the defenders of the bills. Could both the national and local governments have laws in effect in the same places, at the same time, and not have one supersede the other. Mr. Harris said that there was no question at all regarding the right of a state to adopt any quarantine regulations it might think proper. Both would then be in force and in operation. This situation raised the question as to whether concurrent legislation was practicable? While the respective powers of state and federal government might not conflict in theory, was it possible for human agents to put

the laws into execution without conflict of authority?

During the debates several senators reminded their colleagues that they must go slow in order not to adopt legislation in the fear of an epidemic which they would afterward regret. These measures came up for consideration immediately following epidemics. As one sanitary commissioner pointed out in a report dated December 24, 1904, the creation of the National Board of Health was panic legislation, for the law was abrogated as soon as the fear of epidemic had died down. \*

This leads to the question, Did public opinion influence quarantine legislation? As to this it is impossible to offer definite proof, but the speeches of the senators seem to reflect a strong public opinion in favor of some legislation toward the prevention of future epidemics. In this connection it is significant to note that the act creating the National Board of Health was rushed through both houses and signed by the President on the last day of the session.

Several questions arose relative to delegation of power. Were legislative powers delegated to the individual? Were the rules and regulations of the national health bureau to have force of law under the national government? Did the national government have quarantine powers? If it did not, how could it delegate this power to either a board or director general of health?

According to the instructions of the act creating the

\* "Special Sanitary Commissioner's Report" - Lancet Dec. 24, 1904.

National Board of Health, a report was made by the board at the next session of Congress. This Congress passed an act defining the quarantine powers of the board of health.

The act of June 2, 1879<sup>21</sup> to prevent the introduction of contagious or infectious diseases into the United States and from one state to another provided penalties for violations of rules of the board of health by vessels from foreign ports where disease existed; that such vessels must obtain a bill of health from the consular officers at the port of departure with certificate stating that they have complied with rules and regulations prescribed for securing the best sanitary condition of the vessel; and that the National Board of Health cooperate with and, so far as it lawfully may, aid state and municipal boards of health in the execution and enforcement of the rules and regulations of such boards to prevent the introduction of contagious or infectious diseases into the United States from foreign countries and from one state to another.

The bill also provided that where no quarantine regulations were supplied by state authority and the board deemed it necessary to have them, the board should report these facts to the President of the United States, who might order the board to make such rules and regulations as were necessary to prevent the introduction of contagious diseases. When these rules were approved by the President they should be enforced by the sanitary authorities of the states, but if the state authorities failed or refused to enforce said rules the President might detail any officer or appoint a proper person for that purpose.

The National Board of Health was directed to obtain information in regard to ports from which diseases might be imported into the United States. In order that they might obtain this information the United States consuls at such ports were required to send weekly reports to the National Board of Health. The board was required to transmit weekly reports of the sanitary condition of ports and places within the United States to medical officers of the Marine Hospital Service, to Collectors of Customs and to state and municipal health officers and authorities; also abstracts of consular and other reports received by the board.

Five hundred thousand dollars, or so much thereof as might be necessary, was appropriated, to be disbursed under the direction of the Secretary of the Treasury. The bill conferred upon the newly created board health quarantine powers to be exercised at stations lying outside the jurisdiction of the states. It conferred no police power, and was not to continue in force longer than four years.

On March 24, 1879, during the extra session of Congress, Mr. Harris of Tennessee introduced the foregoing bill as Senate bill No. 108. It was referred to the select committee on that subject.

On April 11 Mr. Harris reported the bill from the committee with an amendment. The bill was recommitted to the committee and it was again reported out by Mr. Harris, on April 25. Beginning April 23 the Senate considered the bill at various times until May 21, when it was passed by a vote of thirty-four to twelve. In the

House the bill passed without amendment, on May 28, and was signed June 2, 1879.

This bill conferred upon the newly created board of health quarantine powers to be exercised at stations lying outside the jurisdiction of the states. Even in this form, however, it met with determined opposition. Not until the objectionable features conferring police powers upon the board had been entirely eliminated would Congress pass it. This act of June 2, 1879, is really a quarantine law, imposing additional duties upon the National Board of Health, but conferring no police powers. Instead of assigning quarantine duty to the board, the act limited its powers to cooperation, in so far as legally possible, in aiding state and local authorities.

The debate over this bill was long and earnest. The senators used all the arguments that had been used before in their discussions of quarantine measures, and added some new ones. 22.

Mr. Morgan of Alabama said, in opposing the bill, that it was a matter of doubt whether quarantine was the means of preventing yellow fever. He also raised the question as to where quarantine power belongs, in the states or in Congress.

He referred to "the great weight of public opinion which is driving us into hasty legislation." The necessity of having a quarantine uniform was, in his opinion, one of the strongest arguments against the system, because the needs of the different sections were different. The people, he held, would not be satisfied when

powers of legislation were transferred to a board of health; they would positively have no effect in the United States because of having no acceptance in popular opinion.

Mr. Morgan used quotations from several supreme court cases. From the case of Railroad Company v. Husen he cited the following words of the supreme court: "We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the states was not a surrender of that which may properly be denominated police power." Acknowledging the difficulty in defining police power, he quoted from the case of Thorp v. The Rutland and Burlington Railroad Company, in which police power was defined as "the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the state."

Under the decision (also cited by Morgan) given by Justice Grier in the Passenger Cases v. T. Howard, 233, a state may exclude from its limits, among others, persons affected by contagious or infectious disease, a right founded in the sacred law of self defense.

In reply to Mr. Morgan's speech Mr. Jones of Louisiana stated that nine-tenths of the medical men in his state believed that yellow fever could be kept out by a system of quarantine. No state quarantine could give control to its health authorities beyond the limits of the state, he held; quarantine then must be controlled by a power that can pass beyond the boundaries of state limits. He also felt that the interests of commerce must be protected from cause-

less panics, which might ensue unless there is such a quarantine as will give satisfaction to the people.

Mr. Jones further stated that it was the purpose of the bill to put the whole matter under the charge of the federal government; to make quarantine regulations general and national in character. He wished, he explained, to spend the money of the government in order to prevent the Southern sections from being again compelled to depend upon the charities of the people of the country for sustenance.

In defense of the bill Mr. Garland of Arkansas cited the act of 1799 which made it obligatory for vessels collecting the revenue of the United States to obey and comply with the quarantine laws of the different states, the ports of which they should enter. If the states have plenary power over the whole matter, and can do all that is necessary exclusive of the United States, he asked, why should the United States have said anything about sanitary regulations? If the states are omnipotent in this sphere the statute of the United States was a piece of supererogation when it said these vessels should comply with the state quarantine regulations. Attention was called to the passage in 1878 of another law, a little broader than the act of 1799, but which was also for the purpose of promoting and preserving public health. Mr. Garland asserted that nothing was gained in argument by saying that Congress theretofore had sanctioned state

regulations; it did so simply because it did not see fit to exercise the power itself, and for reasons that once existed but do now exist. Times had changed; the man of thirty-five or forty was not wearing the same kind of clothes as when he was fifteen.

Mr. Jones reminded the Senate that only seventeen states had quarantine laws, yet Congress was being asked to turn all public health regulations over to the states. Furthermore provisions made by the states for enforcing quarantine law and raising the funds necessary had been set aside by the Supreme Court. In the case of *Peete v. Morgan*, Justice Davis said in his opinion:

"It is evident that the power to establish quarantine regulations cannot be executed without the state possesses the means to raise a revenue for their enforcement, but it is equally evident that the means used for this purpose must be of such a character as the restrictions imposed by the Federal Constitution upon the taxing power of the state authorize. The tax in question is manifestly outside the jurisdiction of the state to impose as it is "the duty of tonnage" and within the meaning of the constitution." <sup>23</sup>

The foregoing decision embarrassed the Texas quarantine measure.

"I do not claim that because the states do not do this", Mr. Jones continued, "therefore Congress has a right to do it. I say in the first place Congress has the right to do it and for the best reason in the world it should do it when states fail necessarily to make laws that can stand the test of the United States Supreme Court; within the limits of a state the state can do these things but when you go beyond the lines of the states the national power commences." <sup>24</sup>

In the case of *Munn v. Illinois* the state of Illinois was permitted to prescribe rules and regulations as to the use of certain warehouse property. While holding that the state could do

this, the court said that if Congress chose to interfere by other regulations it could do so; the state was given permissive authority until Congress set up counter regulations.

Summarizing his arguments, Mr. Jones said that the proposed act was expedient, first, because of lack of proper authority in the states to establish efficient quarantines and, secondly, because there was no other protection, the country would be helpless without it.

The bill gave power to the National Board of Health to supplant the quarantine laws of the states as affecting passengers and traffic between states, not to supplant the quarantine laws of the states, not to supplant them within the territory of the state.

Mr. Conkling of New York was perhaps thinking of the pressure of public opinion when he said in the course of the debate:

"Nothing is more dangerous than a sentiment. You can argue against a conviction; you can overthrow a statement,<sup>25</sup> but a sentiment is always an awkward force to deal with."

Consultation with its legal advisors revealed that the act of June 2, 1879, had not conferred authority on the board to erect buildings or to acquire on behalf of the United States titles to real estate. When this fact was made known to the committee in the House and Senate which had been instrumental in procuring the enactment of the law in question, a supplemental bill was introduced. This passed and was approved July 1, 1879.

The supplementary bill provided that:

"Section 3 of the act approved June 2, 1879, entitled 'An act to prevent the introduction of contagious and infectious diseases within the United States' be amended as

follows: At the end thereof insert 'and the Board of Health shall have power, when they may deem it necessary, with the consent and approval of the Secretary of the Treasury, as a means of preventing the importation of contagious or infectious diseases into the United States or from one state to another, to erect temporary quarantine buildings and to acquire on behalf of the United States titles to real estate for that purpose or rent houses, if there be any suitable at such points and places as are named in each section.'

One of the earlier recommendations of the board -- made October 16, 1879 -- was for the holding of an international sanitary conference. A similar recommendation had been made in November of 1878 by the American Public Health Association.

By a joint resolution passed by the House and Senate and approved by the President May 14, 1880,<sup>26</sup> the President was directed to call an international conference for the purpose specified by the board. An invitation was extended to all powers whose ports were likely to be infested with yellow fever and cholera. Attention was especially invited to the fact that the joint resolution contemplated only the securing of an international system of notification as to the actual sanitary condition of ports and places, and did not touch on the preventive sanitary measures employed by each country. It disclaimed any <sup>u</sup>purpose or wish to propose any international code of quarantine laws.

The conference was held in Washington, D. C., from January 5, 1881, to March 1 of that year.<sup>27</sup> Delegates were present X from twenty-three states, besides the United States and Canada.

The delegates from the United States succeeded in obtaining a general recognition that the accredited agents of each

government should have facilities for verifying the statements which would be contained in a bill of health delivered by the local authorities of foreign ports and visited by their agents. The United States delegates also obtained the adoption by the conference of a form of bill of health, submitted by themselves, which was so arranged as to make it almost impossible to mislead the authorities of the port of arrival except by fraud on the part of those who furnished the bill.

The delegates to this conference were not empowered to enter into any international agreement. Accordingly a communication was addressed to the President, requesting him to call the attention of Congress to the fact that the conclusions reached by the International Sanitary Conference were as yet merely recommendations, but that it was desirable to confirm them by a convention between the participating powers.

With reference to the possibility of obtaining an international sanitary code, the president of the National Board of Health remarked in his report of 1879, that the United States could not become a party to such an arrangement because police power was vested in the states. It would be impossible, he pointed out, to guarantee entrance to any vessel, since it is within the power of the states to impose a quarantine at their ports. For this reason the board attempted at the time being to secure only an international system of notification as to the sanitary condition of ports and vessels.\*

\* Such an International Sanitary Convention was concluded in 1903, and proclaimed in 1907.

Chapter 7

Organization Of the National Board of Health.

According to the act of March 3, 1879, the National Board of Health was to consist of seven members, to be appointed by the President, by and with the consent of the Senate, not more than one of whom should be appointed from any one state, and of one medical officer of the army, one medical officer of the navy, one medical officer of the Marine Hospital Service, and one officer from the Department of Justice, to be detailed by the Secretaries of the various departments and the attorney general, respectively.

The by-laws of the National Board of Health provided for a president, vice president and secretary, an executive committee of four members and seven standing committees.

The following appropriations were made to meet the expenses of the board:

By act of March 3, 1879	\$50,000	
By act of June 2, 1879	500,000	
By act of June 16, 1880	75,000	
By act of March 3, 1881	75,000	
By act of August 7, 1882	<u>68,000</u>	
		768,000

additional appropriations, to be used

only in case of epidemics, were:

By act of June 16, 1880	\$100,000	
By act of March 3, 1881	<u>100,000</u>	<u>200,000</u>
Grand total		\$ 968,000

The expenses of the board for the first three years of its existence, ending April 3, 1882, aggregated \$506,216.17 or an average of \$168,738.72 a year; the entire expenditure for the three years being about \$44,000 less than the amount appropriated for the first year.

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An act passed August 7, 1882, appropriated \$68,000 for the expenses of the board for the fiscal year ending June 30, 1883, which sum the board claimed to be totally inadequate. This act also provided "That no other public money than that hereby appropriated shall be expended for the purposes of the Board of Health," and further "That hereafter the duties and investigations of the Board of Health shall be confined to the diseases of cholera, smallpox and yellow fever."

The history of the Public Health Service Publications was varied. The annual report of the surgeon general has been issued continuously since 1872. Bulletins of Public Health were published by the Marine Hospital Service from July 13, 1878 to May 24, 1879. These bulletins were not printed, but issued by manifold process. In 1881, however, the early issues were printed and designated as Volume I of the series. From July 5, 1879 until July 1, 1882, this series was superseded by the weekly bulletins of the National Board of Health. There were no issues between July 1, 1882, and January 20, 1887. Publication was then resumed by the Marine Hospital Service under the title "Weekly Abstracts of Sanitary Reports." This series is now known as the Public Health Reports.

## Chapter 8

### The Activities of The National Board of Health.

The activities of the Board of Health during the four years it was in operation were many and varied. Space will be taken for a brief discussion of the most notable of them.

The acts of March 3, 1879, and of June 2, 1879, were probably panic legislation, occasioned by fear of a recurrence of the yellow fever epidemic. It is significant that nearly all the legislation affecting public health was enacted after a severe epidemic of either yellow fever or cholera.

During this period the origin of yellow fever was unknown, and there was grave doubt as to whether it was an importable disease. This subject engaged the attention of the British Parliament as early as 1852,<sup>29</sup> when a committee was formed for the purpose of determining that point. The report of this committee, which was made April 7, 1852, stated that yellow fever, like cholera, breaks out where there is not the slightest ground for supposing it was derived from a foreign origin; that the fever often occurs where communication with infected persons or articles is impossible; that there was no evidence to prove that yellow fever has ever been imported, and consequently the means of protection against yellow fever were not quarantine restrictions and sanitary cordons but sanitary works for the removal and prevention of local conditions. (The worthy gentlemen omitted to state what local conditions should be prevented.) When such projects were impossible, they recommended the removal of

the population from infected localities. In the case of an epidemic in a city of the population of New Orleans or Charleston this advice would scarcely have been practical. This report is reviewed at some length because it contained views on the origin of yellow fever and cholera held by a large number of people in America during the nineteenth century.

The other theory -- that yellow fever was an importable disease and could be kept out by an efficient quarantine -- was held by many of the medical profession, and all quarantine measures, as well as the work of the National Board of Health, was based on this assumption.

Was there a real reason for the fear of yellow fever epidemics? Unfortunately there are few estimates in regard to the loss of life, but it was estimated that the epidemic of 1878 cost \$200,000,000. In Mr. Felson's speech in defense of the quarantine bill of 1878, which he introduced, he gave some interesting figures relative to yellow fever. The disease, he said, first appeared in the United States about 1668. From then until 1877 there had been 741 reappearances of the disease. It had spread to 228 cities and towns, extended to 28 states of the Union and caused 65,311 deaths, counted, besides innumerable deaths of which no record was made. About 45 per cent of these deaths were clearly traceable to disease of foreign origin.

The memorials from the convention at Jacksonville, presented to Congress in 1878, asserted that the losses produced by the

epidemic which raged in Savannah in 1876 had been estimated at \$5,300,000, or nearly one-half the value of the taxable real estate of that city. This epidemic occurred during the cotton season. As Savannah was the third largest cotton market in the United States the loss in money to the general government cannot be estimated. <sup>31</sup>

The National Board of Health sent a commission to Havana to study yellow fever conditions in that port. In the report of Dr. Daniel M. Burgess to the board, in 1880, he gave it as his belief that yellow fever was imported, stating further that spontaneous generation had never been supported by conclusive proofs, while the portability of the disease was fully established. He quoted Professor Haenisch (Page 491, Vol.I Tremssen) as stating that yellow fever had never yet been observed on a ship which had not in some way come into communication with the land or with some ship where the disease already prevailed.

Dr. Burgess also quoted Professor Auguste Hirsch to establish the fact that direct or indirect communication with an infected ship was necessary for the contraction of the disease. "Reports of the disease on ships without direct or indirect communication with infected ships or harbors are not deserving of the slightest confidence."

Dr. A. Dutrorilau, who had more than twenty years' experience with yellow fever in Martinique under circumstances peculiarly favorable for the observation of infected ships, published in 1868 the final conclusions of his experience, which dated from

1832. In this report he stated that yellow fever had never declared itself spontaneously one single time on board the numerous vessels which had been attacked by the disease and that since vessels were not attacked until after some sojourn in infected harbors there was reason to believe that a ship did not, independent of localities, inclose within itself the producing cause of yellow fever.

With reference to the situation in Havana many eminent men, according to the report of Colonel Alban (Chap. XXII) believed that the yellow fever there was fostered in the foul, offensive water of the harbor. On November 15, 1878, Dr. Jose de Argumosa presented a motion to the council of the city in regard to the cleaning of the harbor by two artificial canals. In presenting the motion the doctor claimed that two problems would be solved by it --"a considerable diminution in yellow fever and maybe its extinction as an epidemic in Havana", and preservation of the harbor which was filling up. "All the doctors who have practiced here a few years agree in sustaining the opinion that from the emanations of the putrid waters of the harbor proceeds the deleterious course of yellow fever."

The conclusions of the Havana Yellow Fever Commission were summed up in the following quotation:

"It is concluded that the origin of yellow fever is no more within reach of scientific research than is the origin of living organism, and that the true field of research designed to control the poison is to determine the conditions requisite for its propagation." 52

At a meeting of the Royal Academy of Havana Dr. Carlos J. Finlay, a Cuban physician, on August 11, 1881, read a paper bearing the title "The Mosquito Hypothetically Considered as the Agent of

Transmission of Yellow Fever." The tragedy of Finlay's life was that, though he had struck upon one of the greatest discoveries of the age, he never succeeded in demonstrating its truth.

There are about 700 species of mosquitoes and Finlay had picked out the stegomyia as the guilty agent. He had reached this conclusion by studying the peculiarities of yellow fever and the habits of this particular insect. Between the two he had detected certain suggestive coincidences. This mosquito lived only below a certain elevation. Yellow fever prevailed at the same elevation. The temperatures best suited to the existence of the mosquito were likewise those where the disease thrived best. The literature of yellow fever also disclosed to Dr. Finlay the important truth that mosquitoes were always abundant where an epidemic of yellow fever prevailed. Nevertheless he did not succeed in demonstrating the correctness of his theory. The proved production of a single case of yellow fever by the bite of a mosquito would have been sufficient proof. He made more than a hundred experiments, but did not bring forth one case that could stand the scientific test.

It was later discovered that a period of from ten days to two weeks intervened between one case of yellow fever and another apparently derived from it. The first experiments had ignored the factor of "extrinsic incubation". The particular mosquito Dr. Finlay had selected was the infecting agent, and the only one.<sup>33</sup>

Legislation attending the organization of the National Board of Health, as well as publications of the board itself, occasioned some discussion of cholera. In his speech in defense of the quarantine law of 1878 Mr. Felton referred to the theory that cholera was caused by the access of a specific organic poison in the alimentary canal, which poison was developed spontaneously only in certain parts of India. Science, it was asserted, had located the disease, and demonstrated that it never appeared spontaneously outside well defined boundaries. This well established fact encouraged the hope that an efficient and uniform system of quarantine might in time shut out the disease.

The board of health report of 1893 contained an article on "The Probabilities of Cholera in Europe," which, in view of the widespread interest in cholera and the means relied upon for its prevention, reproduced a free translation from <sup>the</sup> Gazette Hebdomadaire des Sciences Medicales de Bordeaux of July 29 of a recent discourse by M. Fauvel. This gentleman summed up his remarks in the following manner:

"Judging from the course of the present epidemic it is probable that the disease will have disappeared within five weeks. By that time danger will be lessened and protection will be easier. If then Europe escapes the disease for four or five weeks longer there is little to be feared. It may be said that the Asiatic cholera which is now raging in Egypt was brought from India. Europe is gravely menaced by the disease but the efficient measures of

defense adopted by nearly every country make it probable that the disease will be confined to Egypt, and there is good ground for hope that it will soon be extinguished there and Europe freed from danger."

In his report on cholera in Shanghai, (1862-1863) Dr. Edward Henderson makes some interesting statements in regard to the disease and the quarantine necessary for it: Asiatic cholera has an incubation period, which may certainly last for ten or twelve days, and there are well attested cases where it lasted for twenty days. It is the calculation of this period which determines the duration of the quarantine imposed on the healthy who have been brought immediately into contact with the sick. Cholera, it would seem, can be communicated by persons who are themselves but slightly affected by the disease and can readily escape detection on board vessels. <sup>34</sup>

During 1880 local epidemics of smallpox broke out in New York, Michigan, Indiana, Illinois, Iowa, Minnesota and Wisconsin. On June 29-30, 1880, the health authorities of those seven states met in Chicago to consider what measures should be taken to prevent further importation of the disease and to stamp out the existing local epidemics. It was conclusively shown that the disease was for the most part introduced by emigrants from Europe taking passage at ports where it was known to exist and where, consequently, persons coming in from the interior were exposed to the contagion in cheap lodging houses immediately before sailing. Owing to the

length of the period of incubation, the disease was seldom manifested until after the emigrants had passed quarantine inspection at the ports of arrival and proceeded to their destination in the Western states.

This conference passed a resolution calling upon the authorities in conformity with the provision of the act of June 2, 1879. A meeting of the board was held in order to revise rules and regulations and to make them available for preventing the introduction of smallpox into this country. A new rule required the vaccination of all unvaccinated immigrants about to embark for the United States, from any foreign port or place in which smallpox exists.

On September 29 the President was respectfully requested to approve a draft of "additional rules and regulations to supplement the defective rules of local boards of health in respect to the measures to be adopted at the home ports for preventing introduction of smallpox into the United States." These rules required the vaccination of unprotected immigrants arriving at any of the ports of the United States from places where smallpox existed, or, in the contingency of their refusal to be vaccinated, their detention in quarantine until sufficient lapse of time after their exposure to insure freedom from contagion.

The foregoing requirements were among the recommendations which the National Board of Health made to President Arthur

March 10, 1882. A special message transmitting these suggestions to Congress was sent on March 16. The following May the immigration inspection service, under the supervision of the National Board of Health, was inaugurated.

From the report of Dr. J. H. Rauch, supervising inspector for the National Board of Health (in 1882), it was learned that a little more than one half (52.5 per cent) of the immigrants who arrived in this country during the inspection season -- June 1 to December 31 -- were satisfactorily protected against smallpox. During this period the West and Northwest received by way of Indianapolis, St. Louis and Chicago 54,628 immigrants direct from smallpox-infected centers. Of this number, 28,408 were vaccinated at seaboard quarantine or by inspectors in the Western district. The figures showed that no matter how efficient a health department might be within its own limits large cities, such as Chicago, must be protected from without against defects in seaboard quarantine in order to escape the effects of continuous importations of foreign contagion. Inspection began in Chicago June 3. Before the inspection began there was an average decline in number of cases of 12 per cent. After the beginning of inspection the average decline was 78 per cent.<sup>35.</sup>

In his report of the smallpox epidemic of 1880-82 Dr. Rauch stated that the immigrant was a prime factor in the origin

and continuance of smallpox in the United States. In the years of large immigration, he pointed out, smallpox figures were larger; when there was a small immigration, figures for this disease were smaller. Local effort and expenditure were inadequate. A continuous sanitary surveillance of immigrant travel from the port of arrival to the point of ultimate destination was essential to supplement whatever preventive measures could be secured before embarkation, during the voyage, and at the port of arrival.

In its report for 1879 the National Board of Health recommended the establishment of three quarantine stations, at a cost of about \$100,000. Each state would be a protection for several states. This plan would prove practicable, it was thought, provided the state and local authorities would require all infected vessels to report to one of these national quarantine stations for inspection and treatment before attempting to enter the ports of destination.

Ship Island in the Mississippi Sound was established by the National Board of Health at a cost of \$ 30,000. Other stations planned were to be at Hampton Roads in Virginia; at Sapelo Sound on the Georgia coast, and in Galveston Bay, Texas. The estimated costs of construction and maintenance for a year were submitted to Congress but did not receive the approval of that body, which appropriated only one-third of the amount recommended by the

board. The board then decided to operate, besides the Ship Island station, the Sapelo Sound station with the imperfect machinery already there, and to hold the hospital tug at Norfolk.

The river and railroad inspection service was another part of the work of the National Board of Health. The report of the board of 1879 advised the establishment of inspecting stations for river boats. A small and fast steamboat, to be used as a patrol boat, was also requested. This service seems to have become unusually successful in a short time. In the report of the board for 1881 is included a report from Dr. F. W. Reilly, the inspector of the board, in which Dr. Reilly stated that there had been a marked improvement in the sanitary condition of the river boats. Public confidence in the service was great and the inspectors received cordial cooperation and assistance from health and municipal authorities along the river. They also received cooperation from the state boards of health and the masters of the vessels.

In 1881 the sanitary fleet consisted of one sanitary patrol steamer, three steam launches, three hospital barges, one disinfecting barge, and one sanitary store-boat. By 1881-82 the health authorities of Mississippi, Arkansas, Tennessee, Illinois and Missouri had passed ordinances prohibiting the landing of either freight or passengers from New Orleans at the principal towns and cities on the river, within a specified time, unless accompanied by a certificate from an inspecting agent of the National Board of Health at

New Orleans. Inspection should be repeated at Vicksburg and Memphis. The board of health of Louisiana united in the request for this service. By this means the inspection service was able, while guarding against transmission of disease, to prevent obstructions to commerce, which saved many millions of dollars a year.

The board claimed no independent authority to compel masters of vessels to comply with the regulations for inspection and disinfection. All police power remained with state and local health authorities, who gave public notice that no vessel coming from below should be allowed to dock or to land freight or passengers within their respective jurisdictions, unless it exhibited a certificate from an inspector of the National Board of Health that the vessel was free from suspicion of infection.

No objections were made to the proposed inspection by the owners and masters of river craft or by the superintendents of railroads. The railroad authorities were so anxious to have guarantee of unimpeded commerce which the certificates of the inspectors secured, in fact, that they themselves agreed to pay the salaries of the inspectors, if the National Board of Health would appoint and duly commission them.

The projects undertaken by the National Board of Health indicated a broadening view of the field of service. The term public health was no longer limited to the subject of quarantine. The activities engaged in also showed that a large amount of cooperation with

state boards of health and noted sanitary experts was being obtained. Some of the important and forward-looking activities of the board were:

The appointment of a commission to investigate yellow fever in Cuba.

Collection of information with regard to the sanitary condition of some of the principal cities and towns in the United States.

An investigation as to the best method of determining the amount and character of organic matter in the air (Prof. Ira Remsen of Johns Hopkins University).

An investigation as to the effect of disinfectants, especially of those used in disinfecting closed places (under direction of Dr. C. F. Folsom, secretary state board of health of Massachusetts.)

An investigation as to the composition and merits of the various patent disinfectants (Prof. F. Chandler of Columbia College, president board of health, New York City.)

An investigation as to the prevalence of adulterations in food or drugs in the United States (under direction of Dr. H. A. Johnson, member National Board of Health).

An investigation of the flow of sewers in relation to their size and gradients. (This work was under the direction of Col. A. E. Waring, Jr., of Newport, Rhode Island, and was undertaken

With a view to determining the most efficient form of sewers. With the aid of the resulting report the committee charged with the sanitary survey of Memphis recommended a scheme for the sewerage of that city for \$225,000, whereas all previous estimates had been \$500,000).

An investigation as to the hygiene of the merchant marine and what legislation is necessary to improve its condition (by Surgeon P. H. Baithalle, U. S. M. H. S. ).

An investigation by Dr. Elisha Harris of New York upon diphtheria as it occurred in Vermont.

An investigation by Professor Raphael Pumpelly of the United States Geological Survey upon the influence of various soils upon sanitation, especially with regard to drainage and methods of disposal of excreta.

Experimental investigation by George M. Sternberg, Surgeon U. S. A., relating to the etiology and nature of malarial fever.

Investigation of the etiology and nature of diphtheria by Dr. H. C. Wood and Dr. H. F. Tormal of Philadelphia.

An investigation by Professor Ira Rensen in relation to carbonic oxide as a source of danger to health in apartments heated by cast iron stoves or furnaces.

An investigation by Mr. Ernest W. Bowditch, sanitary engineer of Boston, on the sanitary condition of summer resorts.

An inquiry into the causes and nature of malaria, with special reference to the conditions of its recent prevalence in the states of New York, Connecticut, Rhode Island and Massachusetts, was commenced with the cooperation of the health boards of the states. It was abandoned for lack of appropriation.

One of the important services undertaken by the board was the collection of vital statistics. The registration of deaths and their causes and thereby the localization of insanitary conditions have been of great aid to modern science. The sanitary authorities are also promptly informed of the existence of diseases which may be arrested by prompt and efficient application of sanitary measures, thus saving human life and averting losses of the productive energies of the people. In the annual report of the board for 1882 it was estimated that this service need cost the general government no more than \$25,000 a year. In its report of 1883 the board emphasized the importance of assisting the states to establish a uniform system for the registration of births and deaths as they occurred.

The board of health reports mentioned at least twenty-two investigations begun by it, about half of which were left unfinished because of lack of funds. About half of them were completed during the years 1879-1883.<sup>56</sup>

One of the duties of the National Board of Health assigned

by the act of March 3, 1879, was the collection of information and advice from the principal sanitary organizations and sanitarians of the United States as to the best plan for a national public health organization.

The American Public Health Association met in Nashville, Tennessee, November 18-21, 1879. This convention passed a number of resolutions in regard to the National Board of Health, to the general effect that the board had been of great service. The stand taken was that the board needed no suggestions as to the plan of its organization, but that the investigations it had undertaken should be approved; that the board should undertake the study of other diseases, as well as yellow fever; that Congress should appropriate sufficient funds to enable the board to carry on work in the best manner possible, and that the quarantine laws of the United States should be under the control of the National Board of Health, which was considered the most competent body to advise rules with reference to quarantine. The calling of an international congress to discuss quarantine was advised.

The National Academy of Science recommended about the same steps as the American Public Health Association; also that \$30,000 be annually allowed for investigations, and that the board should try to secure a uniform method of collecting vital statistics.

On April 30, 1879, was organized the Sanitary Council of the Mississippi Valley, embracing every state of the valley from

Minnesota to Louisiana. Resolutions pledging its cooperation with the National Board of Health were passed.

Upon the beginning of the river and railroad inspection service the Louisiana board requested inspection of both river craft and railroads and cooperated with the National Board of Health until the last week of June, 1880. Soon thereafter occurred an incident which caused unnecessary alarm. The ship *Excelsior* arrived at New Orleans after twelve days' detention at its quarantine station; a fatal case of yellow fever had occurred among its crew, the ship had been ordered back to quarantine, where four more cases developed, two of which proved fatal. The situation was complicated by the fact that the ship carried a cargo of coffee, part of which was unloaded at New Orleans and distributed before the vessel was sent back to quarantine.

The foregoing facts were recited at a meeting of the Louisiana State Board of Health on July 12. The New Orleans newspapers also published these facts, which led to prompt action on the part of the health authorities of Tennessee and Mississippi, and eventually to a disturbance of the amicable relations between the National Board of Health and the Louisiana state board, which was assumed to have advised the proceedings.

The Valley states were not likely to forget that the boat *John D. Porter*, which left New Orleans July 18, 1878, had on board 26 cases of yellow fever, 14 of which resulted fatally, between New Orleans and Gallipolis, Ohio. The great additional

devastation attributed to the boat was registered by Port Gibson and Vicksburg, Miss., by Hackman, Ky., and by Gallipolis. <sup>37.</sup>

Tennessee and Mississippi shut off commerce with New Orleans, unless the ships or cars had certificates from an officer of the National Board of Health. This action was not designed to stop commerce but to regulate it, and was in accordance with the principles of the Sanitary Council of the Mississippi Valley. The Louisiana board now called the rules of the sanitary council "unnecessary, unwise, ungenerous and unconstitutional."

The National Board of Health had also given offense by refusing a request for aid to be expended on the quarantine stations of Louisiana. The board took the stand that, except in very exceptional cases, it was not justified in expending the funds under its control for repairs to buildings of a permanent character which were not the property of the United States.

The orders issued by the Mobile board and by the Mississippi board were promulgated by Dr. Rice, an agent of the National Board of Health. The national board supported Dr. Rice although making an emphatic disclaimer of any purpose or desire to exercise authority in the matter of shipping coffee, or any other freight, by railroad or river at New Orleans. Dr. Rice wrote a letter to the governor of Louisiana making these statements but the explanation was not accepted by the state board.

The president of the National Board of Health wrote to the governor of Louisiana (May 17, 1881) asking permission to place

an inspector of the national board at New Orleans. He also stated that the national board desired to maintain at Endsport an inspecting station, with authority to prohibit passage up the river of infected vessels until they should have undergone suitable and adequate disinfection at Ship Island. It was not proposed to apply these measures to other than infected vessels, the proportion of which to the rest of the shipping was so small that there would have been no serious interruption to commerce.

The Louisiana state board took a very different view, stating that if the foregoing plan were adopted "Louisiana would no longer need any protection. It would be entirely ruined and would soon disappear from the family of states."

It was shown in an official report by Dr. S. E. Chaille that in 1880 not a single vessel, nor in any one year more than six vessels, had been required to go to Ship Island. No further steps were taken in the matter, as the consent of the state boards was necessary for carrying this proposal into practical effect.

Louisiana persisted in its refusal to send infected vessels to Ship Island for Quarantine. On April 21, 1881, the Sanitary Council of the Mississippi Valley passed a series of resolutions to the effect that in the event of failure on the part of the sanitary board of Louisiana to act in good faith toward inspectors the boards of health represented in this council would be compelled to take into

their own hands the protection of the health of the people. These resolutions also recommended that all vessels from ports where yellow fever exists should not be allowed to pass Port Ends without certificates from the national board inspector at Ship Island.

On April 2, 1861, the New Orleans Auxiliary Sanitary Association warned the people of the state that the Sanitary Council of the Mississippi Valley would meet April 20 and that "We are positively assured that at this meeting, unless the Louisiana State Board of Health shall in the meantime revise its former action and grant without reservation the reasonable request which has been made, a measure of self protection will be recommended to the respective states and New Orleans will in all probability be isolated during the whole ensuing summer by a most effective system of quarantine."

The points of controversy between the National Board of Health and the Louisiana state board were summarized by Dr. S. E. Chaille, supervising inspector for the National Board of Health at New Orleans (1862), in his report, as follows:

"These measures have caused all of the dissension between the Louisiana state board and the National Board of Health.

The National board requested:

1. "Refusal of the Louisiana board to permit infected vessels to enter the Mississippi River until a certificate of disinfection should be presented from the quarantine refuge station at Ship Island.

2. "Permission to assign to duty at the Mississippi quarantine station an inspector of the National Board of Health as a sentinel to give warning of any danger of infection observable at this most important outpost.

3. "The assurances of the state board that it would furnish promptly the agent of the National Board of Health at New Orleans with full information in regard to all cases of yellow fever, including suspicious cases, to the end that the inspection certificates should be trustworthy and that everything possible should be done to protect the health and commerce of all the states."

The first measure was rejected by this state board in 1882, as in 1880 and 1881. The second measure met with marked disapproval but, as it had been referred to the governor of Louisiana by the state board as outside its jurisdiction, his excellency granted the permission. Only the third measure was accepted by the board. The effectiveness of the Ship Island quarantine station was greatly impaired by the refusal of the Louisiana state board to concede the first request. 38.

The act creating the National Board of Health expired by limitation June 2, 1883, and the property of the board passed to the Marine Hospital Service. Many sanitary organizations and sanitarians passed resolutions and presented petitions in regard to the work of the National Board of Health. 39.

On October 1882, the American Public Health Association passed ten resolutions taking the stand that there is work to be done by such a board which cannot be done by any local or state board; that confining the work of the board to cholera, yellow fever and smallpox was believed to be injurious in the highest degree; that the board should have powers for investigating all preventable diseases conferred upon it by its constituting act; that funds should be granted for such investigation, and that this should be done irrespective of the action which might be taken with regard to quarantine. The members of the association pledged their individual cooperation in endeavoring to secure national legislation to enable the board to carry on its work.

On April 4, 1883, the Sanitary Council of the Mississippi Valley recommended, for the guidance of the health organizations of the valley, the system of inspection, isolation, disinfection and quarantine theretofore prescribed by the National Board of Health.

In a memorial to the President of the United States the council expressed the opinion that the National Board of Health is a body that "can give confidence to the people of the valley as to the necessary precautions and safeguards yearly demanded by the exposure of our Southern ports to the ravages of yellow fever. Their inspection stations and the mode their officers have adopted in isolation and disinfection, establishing quarantine only when emergency or occasion demands it have earned for the National Board of Health a degree of confidence that, of itself alone, is worth millions of

dollars to the commerce of the country." This memorial was signed by the delegates from twelve states, including Louisiana.

Petitions and memorials for the continuance of the National Board of Health were sent to the President from the state boards of health of New York and Alabama. Boards of health of Illinois, West Virginia, Michigan, Wisconsin, South Carolina and Tennessee adopted resolutions favorable to the National Board of Health. The Medical Society of New York and the College of Physicians of Philadelphia, the Medical Association of South Carolina and the Florida medical association also adopted favorable resolutions.

"The experience of nearly four years has satisfied the board that it is neither necessary nor desirable to clothe the central authority with quarantine powers in order to obtain a reasonable security against the invasion of foreign epidemics. The argument that quarantine can only be effective when regulations are uniform is deceptive. The public health may be as efficiently protected under the cooperation of the national and state boards of health as under a national system of quarantine which would supersede or interfere with state authority."

This was the opinion of the president of the National Board of Health as stated in his report of 1892. The substitution of federal for state authority seemed undesirable for the following reasons:

1. It was doubtful whether the exercise of the authority to regulate quarantine would not be in conflict with a decision of

the Supreme Court in the case of *Gibbons v. Ogden*.

2. If the power ~~did~~ exist it would not be expedient to use it on account of the opposition of the commercial centers of the country.

3. Any such assumption and exercise of power by the general government would involve the necessity of absolutely uniform regulations for all ports of the United States. The Constitution requires that no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another. This uniformity would not be practical since different conditions prevail at the various ports.

4. Such a system would almost certainly lead to the establishment of an extensive bureau with no better results as to the protection of public health than under the system of cooperation between national and state boards of health. In order to fully perfect this system a few more refuge stations needed to be erected.

In his report of 1883 the president of the National Board of Health stated that, with the exception of Louisiana, the rules and regulations of the National Board of Health were promptly accepted by the health authorities of nearly every port in the United States, promulgated by them as their own, and were in force even then, after the law under which they were drawn had expired.

Health authorities in the interior communicated with the board in sanitary matters of current interest, furnishing weekly

returns of deaths and, in the event of the appearance of contagious diseases, special reports. The board organized a protective system against smallpox which would not have been effective, except for its cooperation and supervision. Public health associations, medical and sanitary societies, and individual sanitarians watched the work of the board with interest and were ever ready to support it in its efforts on behalf of public welfare.

PART III

FEDERAL QUARANTINE

## Chapter 9

### Development of National Quarantine 1885 - 93.

An act of March 27, 1890,<sup>1</sup> was for the purpose, as stated in its title, "to prevent the introduction of contagious diseases from one state to another and for the punishment of certain offenses." This was an effective measure in the direction of interstate control of disease. It provided that whenever he deemed it necessary the President could cause the Secretary of the Treasury to promulgate necessary rules and regulations to prevent the spread of cholera, yellow fever, small pox and plague from one state or territory into another. These regulations were to be made by the Supervising Surgeon General of the Marine Hospital Service, and the Secretary of the Treasury was authorized to employ such inspectors as might be necessary to enforce the regulations.

Violation of the regulations made in accordance with this act was made a misdemeanor, punishable by fine or imprisonment. The act did not confer general interstate quarantine authority. The diseases for which quarantine might be declared were cholera, yellow fever, smallpox and plague.

An amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor was passed March 3, 1891.<sup>2</sup> This act took effect April 1, 1891. It prohibited the admission, among others of "idiots, insane persons . . . persons likely to become a public charge, (and) persons suffering

from a loathsome or a dangerous contagious disease." It was provided that medical examinations should be made by surgeons of the Marine Hospital Service; but if the services of a surgeon of the service could not be obtained without unreasonable delay the inspector could cause the examination to be made by a civil surgeon, whose compensation was to be fixed by the Secretary of the Treasury. Competent assistants were to be sent on board each vessel to inspect all such aliens, or the inspection officers might order a temporary removal of such aliens for examination at a designated time and place and there detain them until a thorough inspection was made.

In 1892 cholera had spread widely over Europe. The disease had appeared at the New York quarantine and in New York, so that there was a great deal of anxiety as to conditions during the coming summer. The interest in this danger was so great that the newspapers were filled with the opinions of sanitary experts, physicians and health officers, who agreed as to the seriousness of the threatened danger.

The situation was further complicated by the plans for the World's Columbian Exposition, which was to be opened in Chicago in May, 1893. This would be the cause of a large number of visitors and importations of merchandise from portions of Europe likely to be infected. If cholera should break out in Chicago or in any port of the United States it would seriously affect, if not actually ruin,

financially, the enterprise in which large sums of money would be invested. It was feared that the financial failure of the enterprise, coming at a time of great business depression throughout the country, would create a general financial panic.

One of the chief sources of danger appeared to be the immigration to the United States. The Senate Committee on Immigration, being empowered by a resolution of the Senate to investigate the workings of the immigration laws of the United States, included within its inquiry the subject of suspension of immigration for one year, and called before it a number of prominent physicians and sanitarians for expressions of opinion as to the character and extent of the danger of the advent of cholera, particularly through immigration, and the measures for its prevention. As a result of this apprehension and the widespread discussion of the matter in the public prints, Congress passed the Quarantine Act of 1893.

The act of February 15, 1893,<sup>3</sup> was for the purpose of "granting additional quarantine powers and imposing additional duties upon the Marine Hospital Service." The Secretary of the Treasury was authorized to make rules and regulations to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one state or territory or the District of Columbia." The Marine Hospital Service was required to assist local health boards in enforcing quarantine rules, but in the event of their failure to do so the President could execute and enforce the quarantine

rules and regulations, detailing officers for the purpose.

The act made it the duty of the Supervising Surgeon General of the Marine Hospital Service, under the direction of the Secretary of the Treasury, to perform all the duties in respect to quarantine therein provided for. Sanitary reports were to be made to the Supervising Surgeon General by the consuls in ports from which contagious diseases were likely to be transported. The Supervising Surgeon General was required to make abstracts of the reports of sanitary conditions in both the United States and at foreign ports, and to send them to customs collectors and local health officials; also to make an annual report to Congress. All vessels were to be inspected on arrival and not to be permitted to enter except with the health officer's certificate.

The President was given authority to suspend immigration during such periods as he might think necessary to stop the introduction of epidemic diseases.

Provision was made that whenever the proper authorities should surrender to the United States the use of buildings at state quarantine stations, the Secretary of the Treasury was authorized to receive them and to pay for them if he thought them necessary to the United States. Probably it would have been impossible to prohibit states from maintaining quarantine stations, and this act made it possible for them to turn such stations over to the federal government when such action better served the public need.

This act formally abolished the act creating the National

Board of Health.

When the quarantine law of 1893 was under discussion in the Senate a long protracted argument took place over the question as to whether the power to make such rules and regulations as were provided for in the bill should be vested in the Secretary of the Treasury or in the Surgeon General of the Marine Hospital Service. The debate over this question grew to be at times personal and bitter, and claims were made that in vesting the power in the Secretary of the Treasury there was a reflection on the Marine Hospital Service. <sup>4</sup>

During the entire discussion of the bill there seemed to be question of national quarantine; that was taken for granted. The fear of the opponents of the bill was voiced by Mr. Call of Florida who, after stating that he was willing to have a national quarantine if necessary - that he was even willing to have the power of Congress to regulate commerce extended to the point of prohibiting it as a means of protection against disease - maintained that the authority ought to be carefully limited and used only on the recommendation of competent medical opinion. <sup>5</sup>

Mr. Harris of Tennessee, who reported the bill, stated in his speech in its defense, that there was scarcely a sanitary organization in the country which had not urged the necessity of a uniform and efficient quarantine system. There were some exceptions to

this opinion, from a few local boards who were jealous of their powers. He based his defense of the bill on the commerce clause. After stating that the power of Congress to regulate commerce was not denied, he said:

"Every power granted in this bill is the exercise of that Constitutional power to regulate commerce with foreign states and among the several states. The question before the Senate is, Shall we have one uniform and efficient system of quarantine regulations throughout the whole country or shall we have forty-four different systems of commercial regulations? The whole theory of the argument of the Senator from Louisiana is that the federal government should ignore its power to control these questions and allow forty-four states each to have its own system of regulation."

Mr. Harris further said that his own state twice had suffered (in the epidemics of 1873 and 1878) from yellow fever allowed to slip through the quarantine at the port of New Orleans. He stated that scientific investigators had asserted that neither yellow fever nor cholera originated in this country. He also recommended the establishment of a national board of health in the Treasury department.

The Senator from Louisiana to whom Senator Harris referred was Mr. White, who moved to amend the bill under consideration by providing that the act expire January 1, 1895. In his speech in favor of his amendment Mr. White voiced the fears of those who objected to giving so much power to the national government as was granted by the act contemplated. He claimed that not all the powers included in the bill were necessary for national quarantine.

"Admit", said Mr. White, "necessity for national quarantine, admit its constitutionality, admit its wisdom, admit

its expediency; are we going to adopt a national quarantine bringing in provisions which are fatal to local self government from one end of the country to the other when these provisions are not necessary for national quarantine.

"The power to stop infection is the power to go into the house and home of every man in this land. It is the power which, if the bill passes, is going to be exercised. It is a power which is going to follow every man here in his home for the rest of his days. It is the power which is going to sow the dragon's teeth of centralization. Cholera is the nightmare and bugbear held out to frighten people out of their elementary conception of liberty -- to invade their rights." 7

The gentleman claimed that his amendment was good whether the act was good or bad. If it were bad it would save the people from a struggle to repeal it. If the act was good the amendment did not prevent them from continuing it.

The amendment did not prevail. The quarantine act of 1893 was passed February 15.

## Chapter 10

### The Marine Hospital Service 1863 -- 1893.

After the control of quarantine was restored to the Marine Hospital Service on June 2, 1863, sanitary inspectors were stationed at Havana, Vera Cruz, London and Liverpool, to give notification of the sailing of vessels likely to carry infected passengers or goods. Havana and Vera Cruz were important centers of yellow fever infection. London and Liverpool were in danger of cholera through goods from the East transshipped at English ports.

The expenses of the service until 1884 were paid from the proceeds of the hospital tax on seamen, supplemented by specific appropriations. The act of June 26, 1884<sup>8</sup> which took effect July 1, 1884, repealed all acts levying a hospital tax and provided that the expenses of the Marine Hospital Service be paid from the proceeds of the tonnage tax imposed on vessels from foreign ports entering the United States. The receipts from these duties on tonnage were made a permanent indefinite appropriation for the use of the Marine Hospital Service. In some later years the proceeds of the tax were insufficient to support the service, and deficiency appropriations were made.

In August, 1887, a bacteriological laboratory was established at the marine hospital in New York. This laboratory was maintained in New York until 1891, when it was moved to Washington.

In 1867 the service resumed the publication of the Weekly Abstract of Sanitary Reports, which had been discontinued in 1879 when quarantine control was vested in the National Board of Health.

The Act of January 4, 1889,<sup>9</sup> provided that all medical officers of the service should be appointed by the President. Original appointments could be made only to rank of assistant surgeon and after an examination before a board of medical officers of the service in accordance with rules prepared by the Supervising Surgeon General and approved by the Secretary of the Treasury and the President. Lengths of service required for promotion were also provided for in this act.

Some idea of the work of the Marine Hospital Service was furnished by its exhibit in the World's Columbian Exposition of 1893. The exhibit was divided into three classes : (1) the Marine Hospital Service; (2) quarantine service; (3) laboratory. Diplomas were granted the Marine Hospital Service on the following exhibits: (1) surgical instruments; (2) hospital furniture; (3) quarantine apparatus; (4) bacteriological laboratory and display of bacteria; (5) cooling cabinet for use in the investigation of cholera; (6) statistical sanitary publications of great value.

At its founding in 1798 the Marine Hospital Service was for the sole purpose of furnishing medical relief to merchant seamen. In 1893 the service was still furnishing such relief but

in addition was engaged in numerous related activities. Among these were the conduct of a laboratory, the study of diseases (including tuberculosis), the supervision of marine hospitals and eight quarantine stations, and the publication of special medical and surgical reports. The Marine Hospital Service was also furnishing aid to the life saving service, to the inspection service of steamboats, to the Revenue Marine Service and to the Immigration Service. <sup>10</sup>

CONCLUSION

The growth of federal control is reflected in the successive quarantine acts.

1796

Be it enacted etc.: "That the President of the United States be and is hereby authorized to direct at what place or station in the vicinity of the respective ports of entry within the United States, and for what duration and particular periods of time, vessels arriving from foreign ports and places may be directed to perform quarantine." 11.

1878

Section 5 of the quarantine law of 1878 stipulated that the provisions of the acts should not be construed to prevent state health or quarantine measures, "but any local law or regulation interfering with or obstructing due execution of the national rules and regulations as approved by the President under this act shall be null and void."

Section 2 read: "The Surgeon General of the Marine Hospital Service shall, under the direction of the Secretary of the Treasury, be charged with the execution of the provisions of this act, and shall frame all needful rules and regulations for that purpose, which rules and regulations shall be subject to the approval of the President, but such rules and regulations shall not conflict with or impair any sanitary or quarantine laws or regulations of any state or municipal authorities, now existing or which may hereafter be

enacted," <sup>12.</sup>

1879 (June 2)

Section 3 of the act of June 2, 1879, <sup>13</sup> provided: "That the National Board of Health shall cooperate with and, so far as it lawfully may, aid state and municipal boards of health in the execution and enforcement of the rules and regulations of such boards to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one state from another; and at such ports and places within the United States as have no quarantine regulations under state authority where such regulations are, in the opinion of the National Board of Health, necessary to prevent the introduction of contagious and infectious diseases into the United States from foreign countries, or into one state from another; and at such ports and places within the United States where quarantine regulations exist under the authority of the state, which, in the opinion of the National Board of Health, are not sufficient to prevent the introduction of such diseases into the United States, or into one state from another, the National Board of Health shall report the facts to the President of the United States, who shall, if, in his judgment, it is necessary and proper, order said Board of Health to make such additional rules and regulations as are necessary to prevent the introduction of such diseases into the United States from foreign countries, or into one state from another, which, when so made and approved by the President, shall be promulgated by the

National Board of Health and enforced by the sanitary authorities of the states, where the state authorities will undertake to execute and enforce them; but if the state authorities shall fail or refuse to enforce said rules and regulations the President may detail an officer or appoint a proper person for that purpose."

1890

The stated purpose of the act of March 27, 1890,<sup>14</sup> was "to prevent the introduction of contagious diseases from one state to another and for the punishment of certain offenses." It provided that whenever he considered it necessary the President could cause the Secretary of the Treasury to promulgate rules and regulations for preventing the spread of cholera, yellow fever, smallpox and plague from one state or territory into another. The Secretary was authorized to employ such inspectors as might be necessary to enforce the regulations.

1893

Section 3 of the quarantine law of 1893<sup>15</sup> provided that where there were no regulations or where the regulations were insufficient, the Secretary of the Treasury was authorized to make additional regulations, which must operate uniformly and in no manner discriminate against any port or place. These regulations were to be enforced by the states, but if the states failed or refused to enforce them "the President shall execute and enforce the same and adopt such measures as in his judgment shall be necessary to prevent the introduction or spread of such diseases, and may detail or appoint officers

for that purpose."

Section 7 reads: "That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera or other infectious or contagious diseases in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding this quarantine defense this danger is increased by the introduction of persons or property from such country that a suspicion of the right to introduce the same is demanded in the interest of public health the President shall have power to prohibit in whole or in part the introduction of persons and property from such countries and places as he shall designate and for such period of time as he may deem necessary."

The foregoing extracts set forth the principal legislative steps in the evolution of the federal control of the Public Health Service from 1796 to 1893. But these steps are of greater significance than strictly as a part of public health control. They represent the tendency of the federal government to extend its activities.

In 1796 the first section of the bill giving the President authority to direct quarantine measures was objected to with great earnestness on the ground that it gave the President entirely too much authority. This section was stricken out by a two-to-one vote.

Section 5 of the quarantine bill of 1878, which provided that in case of conflict between state and federal quarantine laws

the federal law should have precedence, was not even favored by the supporters of the bill. When the bill was reported from the committee on commerce by Mr. Felton he moved, on advice of the committee, to strike out this section of the bill "that the right of the states may not even apparently suffer encroachment." 16.

In Section 2 of this bill of 1878 the Surgeon General was empowered to make rules and regulations for the execution of the act, but these rules could not conflict with local quarantine laws made by local authorities. This bill passed, but Congress failed to make an appropriation for the execution of the law.

The act of June 2, 1879 to prevent the introduction of contagious or infectious diseases into the United States provided that the National Board of Health, so far as lawful could aid state and municipal boards of health in executing their regulations, with respect to not only foreign commerce but to interstate commerce. Where there were no quarantine rules, or where the board judged them to be insufficient, it could report the fact to the President, who might order the boards to make suitable rules and regulations. These the states might enforce, but if they were not willing or able to do so the President could appoint an officer to carry out the rules. This act was a quarantine law giving additional duties to the National Board of Health, but which did not give it police power. How far it might lawfully aid the local boards was a question lending itself to many interpretations.

The first effective act in the direction of interstate control of disease was that of March 27, 1890, "to prevent the introduction of contagious diseases from one state to another and for the punishment of certain offenses." This act provided that whenever it was deemed necessary the President could cause the Secretary of the Treasury to make rules and regulations necessary for carrying out the purpose of the law. He might employ agents to enforce the regulations. The powers of the act were limited to the control of cholera, yellow fever and plague.

Section 3 of the quarantine law of 1893 provided that where quarantine regulations were insufficient or lacking the President could not only make new ones but, if the local authorities failed or refused to enforce them, carry them into effect through national machinery. By virtue of Section 3 the federal government not only controlled seaport quarantine, <sup>but included its powers to interstate quarantine</sup> and to the quarantine protection against all contagious or infectious diseases.

Under Section 7 of the quarantine law of 1893 the President was given authority to exclude persons or property from the United States, when there is danger of introducing contagious diseases, for as long a period as he deems necessary.

The national principle in quarantine contained in Section 1 of the bill of 1796 and struck out on account of states' rights --- the principle condemned by Marshall in a supreme court opinion -- was thus enacted into a law, which not only protected the people from foreign infection but reached into the field of interstate control.

## Part I

## State Quarantine

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2. Cong. Record Vol.24. Part 1. pages 391 - 473.
3. Walter Tompson, Federal Centralization N. J. Harcourt, Brace and Co. 1923.
4. Debates in Annals of Congress Vol. 5, pages 1347-1360; National Board of Health Report for 1883. pages 20-21.
5. U. S. Statutes at Large, page 474.
6. James Wilson's address and the Pennsylvania Convention. Eliot's Debates II, p.424.
7. Lawrence F. Schmeckbier. The Public Health Service: its history, activities and organization. Service Monographs of the U. S. Gov. Baltimore: John Hopkins Press 1923. A fuller treatment of the administration of the Marine Hospital Service.
8. Register of Debates in Cong. Vol. 13, pages 690-691.
9. see note 8.
10. 9 U. S. Statutes at Large, page 354.
11. Executive Doc. 2 session 33rd Cong., page 18.
12. 11 U. S. Statutes at Large, page 256.
13. Cong. Globe Vol. 44, page 841.
14. 76 U. S. Statutes at Large, page 169.
15. 20 U. S. Statutes at Large, 619.
16. Debates on bill, Cong. Debates Vol. 8, p. 2446, ff.
17. 14 U. S. Statutes at Large, page 351.
18. Debates on this resolution. Cong. Globe Vol. 70, pages 1541 ff.
19. see note 18.
20. see note 18

21. Cong. Globe Vol. 84, page 415.
22. 17 U. S. Statutes at Large, 396.
23. Quoted in National Board of Health Report for 1883 page 22.
24. 9 Wheaton, pages 12-14.

Part II

Concurrent Quarantine

1. 20 U. S. Statutes at Large, 37.
2. Cong. Record, Vol 7, Part 3, page 2075.
3. National Board of Health Report for 1880
4. For Debates on this bill: Cong. Record Vol. 7., Part III, pages 2074-2082.
5. Sec. 7 not important for our discussion.
6. See note 4.
7. See note 4
8. See note 4.
9. National Board of Health Report for 1879.
10. Cong. Record Vol. 8, Part 1, pages 277-280
11. For Debates on this bill see Cong. Record Vol. 8, parts II and III, pages 1826-1858.
12. See note 11
13. See note 11
14. See note 11
15. See note 11
16. See note 11.
17. See note 11.
18. See note 11.
19. See House Journal 2d session, 1879 for history of this bill.
20. 20 U. S. Statutes at Large 484.
21. 20 U. S. Statutes at Large 38.
22. For Debates - Cong. Record Vol. 9, Part I pages 1006-1552.

23. See note 22.
24. See note 22.
25. See note 22.
26. 20 U. S. Statutes at Large 266, 415.
27. National Board of Health Report for 1882
28. National Board of Health Report for 1883. page 88
29. Cong. Record Vol. 9, Part I pages 1006-1552. One of the speeches of Mr. Morgan.
30. Speech of Mr. Felton - Cong. Record, Vol. 7 Part III, Pages 2074-2082.
31. See note 30
32. Report of Havana Yellow Fever.
33. Marie Doughty Gorgas and Barton J. Hendrick "Yellow Fever Meets Its Master" - A chapter from the life of Wm. Crawford Gorgas. World's Work, April 1924 - Doubleday Page and Co.
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Part III

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2. 25 U. S. Statutes at Large, 1084.
3. 27 U. S. Statutes at Large, 449.
4. For Debates see Cong. Record Vol. 24, Part 1. Pages 391-473.
5. See note 4.
6. See note 4.
7. See note 4.
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