A CONSTITUTIONAL HISTORY OF THE AMERICAN PEOPLE 1776 — 1850

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Illustrated with Maps

IN TWO VOLUMES

VOLUME ONE

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". . . The form of government which prevails is the expression of what cultivation exists in the population which permits it. . . . The history of the State sketches in coarse outline the progress of thought and follows at a distance the delicacy of culture and aspiration."

EMERSON, "Essay on Politics."

PREFACE

This work contains the evidence of changes—and, it is believed, of progress—in the ideas and opinions which the American people have held respecting the principles, the organization, and the administration of their civil institutions. It is a record of the evolution of government in this country since the Revolution, and it rests upon authorities hitherto almost entirely disregarded. Constitutional history is the history of a constituency, which, consciously or unconsciously, is ever striving to promote its own welfare. A constitutional history deals primarily with persons, not with documents. Laws and constitutions, written or unwritten, are the evidence of the efforts of a constituency to secure its ends. The development of constitutional government consists, essentially, in the definite limitation of authority, in order to accomplish purposes either implied or specified. These purposes are constant demands upon the constituency, but the means adjudged reasonable or necessary for securing them are as constantly changing. The process is from things to persons; it is progressive because it is dynamic.

No one can go over the evidence which this work presents and have his confidence shaken in the fact that American civil institutions are an enduring monument to the general amelioration of the conditions of human life which characterizes modern civilization, and particularly the civilization of the last century and a half. Yet, when we reflect on the humanity of government in our day, we realize that we are startlingly near the age that interpreted criminal law to be for the purpose of exterminating, not of reforming, evil-doers—an age which felt compelled to include in its written constitutions of government the provision that excessive bail should not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Public opinion to-day is the living law whose mercy seasons justice.

There is another, perhaps a more impressive, proof of the general amelioration of men, manners, and laws — namely, the gradual growth of the national idea—that is, the gradual disappearance of isolated, petty, and antagonistic communities, and the slow but sure recognition of the presence of an organic and moral person which we call the Nation. It is yet but a partly discovered country, but every voyage of social and industrial effort uncovers its farther shores. Our constitutional history, like that of every other people, is a history of the evolution of religious, of political, and of industrial rights. The steps in all this progress are recorded in the results of many struggles. Among these are the struggles

for the extension of the suffrage, for the equitable apportionment of representation, for the abolition of discrimination on account of race or of previous condition, for the organization of systems of education free to all, for the separation of the state from questionable practices, and for the establishment of government directly upon the will of the people. Incidental to these processes has been the slow definition of the functions of the state, of its rights as a moral person in coordination with the rights of the individual and of its powers and their fields of operation—executive, legislative, and judicial. And, finally, the evidence suggests, what seems to escape the attention oftentimes not merely of individuals, but also of masses of men—that government is made for man, and man not merely for government.

The evidence enables us to deduce, with approximate accuracy, the principles on which government in America rests. The peculiar claim of popular government to universal authority is its identification with the great principles of civilization. It claims to be founded upon the rights of man and the principles of human nature. Popular government is still on trial. Its principles are simple and profound, and often seem lost in a mass of legislation, judicial decision, executive action, and popular agitation. It is possible to know its facts and miss its principles. If the evidence here presented shall lead the reader to the consideration of these principles, the purpose for which this history has been written will have been accomplished.

The principal authorities upon which the evidence rests are the laws and constitutions of the country, and the journals, proceedings, and debates of constitutional conventions. The constitutional convention originated in America, and is a recognized political institution in modern government. Perhaps it might be called the principal contribution of America to the political agencies of the world. It is a grand committee of the constituency authorized to submit a plan of government. Its discussions have hitherto been neglected as evidence of the nature of American civil institutions and of their trend and administration. The traditional distinction between State administration and national government has done much to establish a popular notion that they rest on different principles. The history of our institutions confirms the contrary idea, that government in this country rests upon principles broad and general, and that the idea of union is as scientific as it is legal.

A word may be added on the method of treating the subject. Government rests on ideas and ideals. These, in so far as unfolded at the organization of the American commonwealths in the eighteenth century, are traced, some to their origin and all to their end, in the earlier chapters of the first volume. An examination of the constituency follows—the people in their local civil organization and also in their racial and social relations. Our dual system of government—State and national—sooner or later compelled issues involving

the question of sovereignty. In one form the issue is stated in 1798 and compromised in 1820. The constituency itself is constantly changing and rearranging the political estate. This calls for some account of the franchise—its basis and its growth. The extension of the franchise to free negroes involves the fate of slavery. This is more clearly seen about the time of the Missouri Compromise. From that time immigration and migration into the West rapidly enlarge the field of controversy, and more sharply define the incongruous elements in our political institutions. The spirit of democracy seizes the constituency, and a general demand is heard that the appointive system be abolished and the elective system be substituted. This demand, active after 1820, leads to a reorganization of government in America. The process characterizes political action for the next thirty years, and appears on party records as a series of reforms in the franchise, in representation, in legislative functions, in judicial organization, in public finance, in local government, and in provisions for free schools.

By 1850 the first wave of population had passed across the continent from the Atlantic to the Pacific, and the public domain was under local civil government. The complexity of the changes wrought during seventy-five years is suggested by the extension of the Union westwards, from thirteen States to thirty-one States and six Territories. The extension was in two columns, a Northern and a Southern, whose elemental differences were

clearly defined. Between extremes lay a borderland—the Border States. It is necessary, therefore, to record three phases of civil evolution, and, again, a fourth phase, because, in the far West, men of the North, of the South, and of the Border States, united to found the first commonwealth on the Pacific coast. The nature of the civil process during all these years is best understood by examining somewhat in detail the work of constituencies in the North, in the South, in the East, in the West, and at the Border. This examination is begun in the first volume and is continued in the second. The time is from 1845 to 1850, and the constituencies are Louisiana, Kentucky, Michigan, and California. The principles of government in America are here again examined, and the experience of more than a half-century enables the people to apply these principles in new directions, and, sometimes, in new ways. America in 1850 differs from America in 1776. The concept of the State and its functions has greatly changed. Civil relations are seen in a new light. Citizenship is defined anew. The co-ordinate branches of government are conceived not only under revised relations, but as under a stricter accountability to the people. Representative government sits more firmly in its continental seat; the anxieties and strivings of the early years of the republic are gone; the people seem not only poised, but aggressive and almost proselyting in their political confidences. The democratic spirit has permeated the land—local government in towns, cities, and

counties feels its power. Democracy has so revised its ideals that it seems to have passed through a peaceful revolution. The details of this revolution are recorded in the later chapters of the second volume. An examination of the evidence there presented shows the truth and the insight of Emerson's observation, that society is ever in a state of flux. Constitutions and laws, usually placed as permanent landmarks on the civil estate, appear and disappear like the species in the organic world. Even our constitutions of government prove the law of evolution.

Many concepts of the Fathers have been revised; some have been abandoned. It is a wise generation that knows itself and its own. From the evidence presented in these volumes it must be admitted that the changes wrought in American civil life during these seventy-five years indicate that the American people became liberal and altruistic as they became a power among the nations of the world, and that our constitutional history is of a constituency that has grown humane as it has become conscious of its responsibilities.

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VOL. I

A CONSTITUTIONAL HISTORY OF THE AMERICAN PEOPLE

CHAPTER I

THE STATE

In the evolution of democracy in America two large processes were to be worked out—the utilization of the resources of nature and the organization of civil affairs by means of a government adapted to such a country as ours. The industrial process has been co-ordinated with the civil, and democracy in America is the result. In Europe, since the heraldic summons of the Reformation, which came hard after the Columbian voyages, and in America, with the coming of the seventeenth century, the principles of government have shown a democratic application. It might be expected that Europe would anticipate America; that in the deep mine of Indo-European experience there should be worked out some of the principles of civil society as defined more clearly by modern tests; it might be expected that the toiler in the mine might miss the principles,

though contributing by his labor to their definition in a later state of society, organized on an industrial and civil basis such as has been built upon in America. The thought of More, of Milton, and of Locke, of Montesquieu and of Penn, generalized upon the labor done in that mine, and grew into political systems, which, though differing from one another as widely as their authors, agree in placing a free man at the centre. It was too soon to find in any political system that modern correlative—free labor. The contradiction was sophistically avoided by denying manhood to the slave. The slave was a beast of burden. But there are those who consider the end. It is the function of the political philosopher, in the social economy, to anticipate results. Thought outruns performance. So Montesquieu anticipates the democracy of to-day, Hume anticipates the French Revolution, and Franklin the modern age of administration in government. Franklin finds the theory of the state made up, and devotes himself to the next problem—its administration. At times, from the close of the seventeenth to the close of the eighteenth century, the theory of the state was set forth, and the definition, modified by another century's experience, remains in the dictionary of politics essentially unchanged. It was made by successive processes in the evolution of democracy. Its elements are the individual, and that aggregate of individuals which we call the community or state.

The history of that definition is a chapter in the history of the evolution of democracy. Rome evolved the idea of a legal body called a corporation; itself a fiction, but a useful legal convention. This legal fiction was the chief discovery in government for twelve hundred years. It was a legal device capable of a various civil application. While it was reaching perfection in southern Europe among the Greco-Latin peoples, the Teutonic peoples in northern Europe were yet uncivilized. Communal and individual interests were at war in all that region north of the Roman world. Communal interests were there subordinate to individual. Between the Roman and the Teuton was the Celt, who adjusted himself to the military form of the Roman state and laid the foundations of feudalism. He divided the land into counties, and rudely began that communal organization which has survived in our local and county government. It was the Celt who first applied the Roman military idea in local government. It was the Celt who first applied the administrative principles in the modern state, and his experience, chiefly military, bred in him slight respect for the form of government. Hence in the Celtic political economy arose a system of administrative law. A king is as dear to him by any other name, but he prefers the other name. His idea of the administration of government is military: the citizen is first a soldier. The rude and individualistic Teuton saw in the Roman corporation not merely a legal fiction, but a civil

opportunity. Why not view that burdensome but necessary relation between individual and individual, between one and many in the state, as a compact? Why not conceive of the state as the civil resultant of these two factors — making the many a corporation, and yet not diminishing the rights of individuals? Between these legal parties a contract could be made, or be conceived as made. By the terms of this contract civil rights should be guaranteed; the soldier should first be a citizen. Rome gave the world order without liberty. The Celt administers government with occasional sacrifice of order to license. The Teuton conserves liberty and order.

Democracy in America is the resultant of Roman, Celtic, and Teutonic ideas. It is a civil composite. Its evolution is recorded in a series of political adjustments. Political adjustments constitute the administration of government. It is that of which Franklin, Jefferson, Hamilton, and Lincoln frequently speak. It is a practical affair. It is the other half of the apple of civil discord, as for ages the first half had been the theory of the state.

Democracy in America is but slightly original. It was latent in European life long before the colonization of America; but the adjustment of local and general interests in the state has developed before our eyes in this country, and therefore it seems new and peculiarly our own. So the fruit on the tree is the farmer's; the flower on the bush the gardener's. Each wrought in

sincerity, but the seed was before flower or fruit.

In the search after the genesis of government in America, it is difficult to distribute the shares of influence equitably among the contributing nations. It is the present that is hard to see. No new theory of the state distinguishes the political philosophy of the nineteenth century. Philosophically, it is a century with a backward look. It explores the past to as great a distance as it anticipates the future. It sets in order the genesis of our civil institutions, and resolves us all into heirs-at-law. We have applied the past while working in the present. The style of the tool changes; but frost and rain and earth are, and weeds grow in spite of botany. The apple on the tree, however, is larger, fairer, and pleasanter to the taste than the wild apple; the flower on the stalk is the history of generations of gardeners. Flower and fruit are come from fruit and flower, and their changes register an evolution hastened by intelligent culture. The free man is a part of the system. At one time he was of opinion that he was at the centre of the universe, but a bit of glass and the fall of a Newtonian apple put him in his true place. He has his place in nature, not in the worst rank, but he is a means of adjustment rather than a creator.

Democracy in America is another chapter in the history of that adjustment. There is no break in the continuity: Roman, Celt, Teuton, American, each in his time. No American colony broke

wholly with the past. The necessity for unrestricted labor compelled a democracy. Had the vast area now comprised within the United States been occupied, at the time of its discovery by Europeans, by a wealth-accumulating people, however civilized, who permitted European conquest, the conquerors would not have set up a democracy; the Mississippi valley would have repeated the story of Mexico and Peru. Had gold or silver abounded in New England, Pennsylvania, or Virginia, the evolution of democracy on the Atlantic seaboard would have been retarded for centuries. Had the mechanical devices familiar now in lumbering, in mining, in manufacturing, and in agriculture been familiar to the world at the opening of the seventeenth century, democracy in America would still be a matter of political speculation.

It was the necessity for labor that dethroned the king and enthroned the people in America. But the king is not dead. He never dies. We believe that we have crowned ourselves. We are Celtic yet. Our democracy, however, is not wholly of our own having. It is our political weather. It does not give universal satisfaction. We have had it long enough to tire of some of its virtues, and, if not acquainted with some of its vices, to be suspicious of their existence. The foundation of democracy is the necessity for free labor. If that ceases or is circumscribed, democracy will cease, or will be circumscribed. The fate of democracy hangs on free labor. As long as the

free man can labor and satisfy his wants in this country, democracy is a condition as well as a consequence of his labor. Remove the field or withhold the rewards of his labor, and democracy will disappear. It will become despotism, and it will go the way of other despotisms.

Its fall will be hastened by its complexity. Democracy is not so simple as monarchy. It was long ago pointed out by Montesquieu that in a democracy there is need of more virtue than in a monarchy; for a democracy depends upon the virtue of its citizens, while a monarchy depends upon the virtue of its ruling house. There is essentially the same requisite in both: those who rule must be virtuous. But virtue in a democracy lies close to industry. The state cannot get away from the mine, from the factory, from the soil.

The crisis in the history of democracy turns on industrial adjustments. The American Revolution was a war for free labor; its political purposes and effects were secondary. The political rights of our grandfathers were scarcely changed by Saratoga and Yorktown; these contributed to secure their industrial rights. The civil war was a process of industrial adjustment. A democracy must consist wholly of free men; the old idea of free states and free men must be realized. America was not a democracy until slavery was abolished. If it exists to-day in any form in the United States, then democracy does not obtain among us.

There is a record of the evolution of democracy in America which seems to escape common at-

tention. It is a record written by hard experience. It is found in the declarations of rights of our five-and-forty State constitutions, and in the amendments to the "supreme law of the land." For instance, the thirteenth, fourteenth, and fifteenth amendments to the national Constitution were necessitated by the industrial effects of the civil war. They record the national adjustment towards the close of the nineteenth century. Though recorded in political form, they mean an industrial and an anterior fact. They are beyond repeal, just as the steam-engine and the printing-press are beyond repeal. Politics writes after them that their sanction is in Congress, which has power to enforce them by appropriate legislation. This power is of vast import and is to be exercised according to the necessities of industrial life. The necessary blending of industry and politics in a democracy is illustrated in the fundamental laws of the local governments, the constitutions of the States. These are the most reliable history extant of democracy in America. One hundred and sixteen of these constitutions have been adopted since June, 1776. In the only one of the eighteenth century which continues in force, that of Massachusetts of 1780, the state is declared to be a contract, that the government "may be a government of laws, and not of men." William Penn conceived of the state as a compact, but the government was to be a government of men, and not of laws. The evolution of these two ideas is the history of American politics.

Democracy in America records the contest between laws—a conventional system of politics—and men struggling for industrial freedom. This is shown in the history of the franchise.

Experience in administration has passed over into formal statements in bills of rights. These clauses, brief in 1776, have grown into a treatise on civil principles in the present constitutions. Industrial life wrought this change. The provisions in these bills are the generalizations on industrial data which record the evolution of democracy in all ages.

Whatever discord may at present rage in the state, it is but the continuation of the old discord between desire and performance, between conditions in the evolution of government and the selfishness of men. But in the industrial world, as in politics, liberty may run into license. That world has its order and its chaos, its desire and its performance, its theory and its administration. Perhaps it is unfortunate for the fate of democracy in America that we have always attempted to interpret it politically. Our books represent it as a political device. It has become almost axiomatic with us to seek the solution of problems in the state by a political agreement rather than by a better industrial organization. Politics and labor are the democratic team; but politics leads. The state, if corrupt, is regarded as politically corrupt. Industry has been the shuttlecock of politics, and those who labor have been viewed as the beneficiaries of the state, and not truly as its

essential elements. The industrial discontents which characterize the present cannot all be rightly charged against democracy. They exist independent of the form of government. It was long thought that political equality would secure industrial equality, but the effort to read industrial equality into life has not yet been an unqualified success. At present, the theory is winning popular support that the government—the public business of the state—should be made an industrial, as long ago it was made a political, copartnership. Democracy is now construed towards communism, towards a labor copartnership. The political copartnership, on the basis of equality, has failed to make each citizen rich, and those who have not suspect those who have to be robbers, and look upon the state as the chief robber of all. In other words, democracy in America is showing its material side. Men are not content with the mere blessings of political liberty; they demand wealth wherewith to enjoy the blessings. In a democracy Nemesis is active. The privileges of democracy breed discontent. Whatever the form or the idea of the state, man cannot get rid of himself. His philosophy, his vagaries, his stomach, are always with him. Democracy is not an insurance against the consequences of being born into the world. It is no panacea. It has been quite a fashion, in this country, to maintain that our political institutions are a Providential device for "redressing the wrongs of the Old World." There can be no such device. The state is no better

than the men and women in it; it can do no more than they.

A sound statesmanship starts with a sound man. If no such man exists, then he must develop before the healthy state can come. And the people know this; whence their lack of reverence for the state. It is a thing which they made, and they know its imperfections. "Vanitas vanitatum!" They have made nothing. Did the farmer make the apple, or the gardener the flower? It is not only political but industrial honesty that we need. The coin that is current in a sound state has two faces. If on the one side there is to be read, "Man has by nature a political life," on the other it reads, "and an industrial also."

Two centuries ago democracy was necessitated by forests to be cleared, mines to be worked, fields to be ploughed, things to be made, social relations and functions to be determined. This was at the threshold of a material age in the evolution of democracy. Some rude adjustments must be expected in politics, while yet the industrial apparatus of the people is rude. The intricacies of democracy do not disclose themselves at first view. It is the administration of government in a democracy that tests its strength. An untouched continent afforded the material opportunity of the modern world. That opportunity was America. Now that the plough has furrowed across the continent, that the primeval forest has been cut down, that the first output of the mines has made their operation more difficult and less remunerative, an

industrial adjustment is thought necessary. The process of that adjustment is complicated, because it involves both the politics and the labor of men. It demands political recognition. Labor calls upon the state for a guarantee. Labor seeks a political formula by which every man may gain wealth. There is no doubt that this condition implies changes in the state. Is the state hereafter to be defined as an industrial corporation, a copartnership of men for things? Is the state to be conceived in this material philosophy as a factory for the general welfare? Is it a device to assist those to acquire wealth who are incapable themselves of acquiring it? Is society to be divided into two groups: first, the state and the poor; second, the rich? Or is the state, like war, to be the "corrector of enormous times," and the enormity of the times to be wholly adjudged by those who wage the war and who expect to profit by it? Is democracy in America, like monarchy and aristocracy in Europe, to develop class interests, those of the house of Have and those of the house of Want?

Our democracy is evidently in a rudimentary stage. In spite of our suspicions of its defects, we like the reformers and their reforms no better. We are certain of one error, the opinion that our democratic institutions would correct the ills of mankind. Now we cry to the oppressed of mankind, "Stay at home and endure your oppressions; we have our troubles, also."

Wealth brings leisure, and leisure breeds criti-

cism and discontent. A portion of our discontent arises from our limited notions of democracy. It consists of more than meat and drink and a ballot. The whole man is involved in it. He is somewhat more than an economic integer. His world is also moral and metaphysical. Material results will never satisfy him. The range of his activities is beyond the merely industrial treadmill. Our boasted mechanical devices are in vain if the gain by them is merely more material. Moses and Newton got on well without the steam-engine or the telegraph. Comforts, wearily won, are quickly forgotten when the only capacity is for "more, more."

Democracy has for its ultimate that with which it begins—man. It is doubtless productive of unexpected results, but in its evolution it must include the whole interest of man. Every actual state, says Emerson, is corrupt. The element of decay in our democracy is the cheapness at which it holds man. This evil has long been known. It was apprehended by the most democratic of American colonizers more than two centuries ago. William Penn had learned from Sidney, and Locke and Montesquieu had learned from Penn. "The great end of all government," Penn declares, in his frame of government of 1682 for Pennsylvania,* is "to support power in reverence with the people, and to secure the people from the abuse of power, that they may be free by their just

* *Charter to William Penn and Laws of the Province of Pennsylvania* (Harrisburg, 1879), p. 93.

obedience, and the magistrates honorable for their just administration; for liberty without obedience is confusion, and obedience without liberty is slavery. To carry this evenness is partly owing to the constitution" (that is, the theory of the state), "and partly to the magistracy" (that is, the administration of government). "Where either of these fails, government will be subject to convulsions; but where both are wanting, it must be totally subverted; then where both meet the government is likely to endure."

The convulsion of 1861 was an instance in which one of these failed. It proved that American democracy could not be longer administered with its growth retarded by "obedience without liberty." Experience alone can correct the evils in the state. With the leisure of the twentieth century there come its political convulsions. If, in some way, men and women of leisure could see the necessity for labor, in order that government of a democratic kind may endure, they would find fields for their best efforts all about them. Municipal evils are not all in the city-hall. Public charity is self-defence in disguise. If they who have amassed wealth desire its safety, it is better to make the use of that wealth a matter of public concern by bringing to its defence those who might destroy it. Time is the best friend of democracy. The canal-boy of to-day is the President of to-morrow. The daughter of old Scrooge founds a hospital or endows a school. Labor will have its own. In the evolution of democracy in

America industry shall receive its own, and politics shall have its own, and no more. The administration of government is the chief public concern. But in that administration man must be credited his full estate. Man, the citizen, must reckon with himself, and face his own destiny. Though crafty devices may seem to shift the burden of citizenship, the burden will always be found in the ever-increasing wants of the citizen himself. In democracy, as in other forms of the state, it is government of man for man that is wanted. Though the state be convulsed, though it be subverted, man will remain. The evolution of man is the hope of the state. In a democracy it is better to have a government of men rather than a government of laws. Then, whatever the forms of the state, the great end of all government will be secured.

My theme is a history of the evolution of democracy in America; and by the term democracy is to be understood the form of government, not the doctrines of a political party. The civil institutions of a free people are composite. Those of America are both a survival of the past and a promise of the future. A determining factor in the development of government in Europe was feudalism. In America feudalism was transformed rather than obliterated. In place of the feudal system was substituted a system of checks and balances in government, by means of which the integral parts of civil society were duly functioned and the unity of the whole preserved. At least, this is the theory which American democ-

racy sets forth at the time when, colonialism having been transformed into continentalism, continentalism was again transformed into nationality. Little is heard in our day of that favorite device of American statesmen of the eighteenth century: the device of checks and balances. And chiefly for this reason: that the test of government in our time is its administration, not its theory. A history of the development of constitutional government in America is a history of political theories, political principles, and political administration. If democracy as a form of government is worthy of the support of mankind, it must rest upon political principles, and the history of the interpretation and application of these principles will be the history of the evolution of popular government. Although our constitutional history apparently involves elaborate analysis of many laws and constitutions, yet the principles upon which our political institutions are founded are few. I know of no better formulation of these principles than that made by Webster.* Popular government rests on the basis of representation; the will of the majority is the force of law; the law is the supreme rule in the government of all; the supreme law is declared in written constitutions; public education is the diffusion of true morality. Webster's inclusion of education as a paramount factor in the

* Address at the laying of the corner-stone of the addition to the Capitol, July 4, 1851. See also Plymouth oration, December 20, 1820; Bunker Hill oration, June 17, 1843; and argument in Luther *vs.* Borden, January 27, 1848.

state was made before a system of public schools, supported by public taxation, had been adopted in any American commonwealth. Webster to the end of his life showed the effect of social conditions which prevailed in America in his earlier years. Then it was commonly believed that political privileges could safely be intrusted only to those who proved themselves worthy by possessing property, usually realty, and by professing belief in a religious creed. Property and religious qualifications were thought to be the guardians of public safety. The elector, therefore, was required to comply with them, and the elected not only to profess his belief in a prescribed creed, whether fixed by law or by public opinion, but also to possess a greater amount of property than that required of the elector. Since Webster's time, public opinion has changed, and in place of property and religious qualifications it has substituted manhood suffrage. Webster's grouping of the principles on which government in America is founded differs in language rather than in thought from doctrines made familiar to the world largely through the instrumentality of Thomas Jefferson and his disciples—the social compact, the equality of man, the right of revolution. Neither science nor experience sanctions the doctrine of the equality of man; yet this unscientific and *a priori* idea must unhesitatingly be accepted as one of the paramount forces in American democracy. It is a doctrine which depends for its significance largely upon popular enthusiasm. Yet so effective has it

proved in practical administration that it must be recognized as a permanent element in the evolution of our civil institutions. Because of this doctrine the full significance of the transition from a military to a civil basis in government in America may be measured. And undoubtedly because of this doctrine there will be measured hereafter the true meaning of the transition now going on from a military to an industrial type of society.

During the seventeenth century the colonists worked out, perhaps unconsciously, a practical definition of many civil rights of man. Yet several of these rights were to be worked out at a later day: as the right of freedom of speech, freedom of the press, and exemptions from unwarrantable searches and seizures. The period of this evolution may be said to terminate with the closing years of the seventeenth century, and the year 1689 may be named as the time when this phase of the evolution of American democracy closed. With the opening of the eighteenth century popular government, though as yet latent in the bud, rapidly evolved in measures of administration, both colonial and imperial, until at length antagonistic interpretations of civil administration precipitated the American Revolution. That Revolution, which gave us our independence as a nation, was not fought to prove a theory. Rather was it the natural, though painful, conclusion of many matters which had long been in civil litigation. It was a revolution which affected England

quite as much as America: for the resolution of civil affairs after 1776 was more liberal throughout the entire English-speaking world. It was a deadly blow to feudalism, and particularly to that cruel form of feudalism, the mercantile theory. At first reading the Revolution seems to have been a blow struck against the Crown. It was, indeed, a blow, and the Crown typified the object against which it was levelled, but the type was tyrannical industrially quite as much as politically. It must not be forgotten that government is a natural product. It is a phase of the evolution of civilization. When events have resolved themselves into historical perspective the truth of this is evident. Our fathers builded wiser than they knew, for they builded for all time. They who build in harmony with the natural development of civil institutions are building just as wisely. Each generation thinks itself face to face with a crisis, but the crisis passes away, leaving many of the old problems still unsolved. The literature of America at the time of the Revolution of 1776 is a literature of reason and expostulation. It is a literature whose content is the accumulated wisdom of man. It is composite, comprehensive, and prophetic. Yet the true character of the democracy of the eighteenth century is probably clearer to us now than to those who lived then. Political enfranchisement was practically concentrated in the closing years of the eighteenth century, and it signified a reorganization of the state rather than any discovery or in-

novation in civil affairs. The cardinal doctrine of the time was that of the equality of men; a doctrine which is profoundly ethical, but not profoundly intellectual. The democracy which evolved from that germ has applied political idealism to the state. For this reason American democracy is measurable not by its forms and varied functions only, but by its social efficiency. For this reason the national is paramount to the commonwealth idea. If the Americans possess political genius in any degree it is for adapting old institutions to new wants. They do not tear down the political edifice, but rather make such additions and repairs as seem necessary from time to time. Yet behind the mere mechanics of democracy a true organic development is recognizable. American democracy, like Greek poetry, is the presentation of the whole estate of man. A history of the evolution of democracy in America must be limited to particular phases, such as the literary, the ethical, the industrial, or the constitutional. These elements, and others that might be mentioned, are co-ordinate and comprise the grand theme. The historian shrinks from attempting to trace the record of democracy in all its phases. He must be satisfied, and indeed thrice happy, if he is able to trace, even imperfectly, the record of a single phase.

It is my purpose to record some constitutional phases of the development of American democracy. This record, fortunately, is accessible in forms of indisputable value and worthy of our

faith. Among these are the organic laws—that is, the body of American constitutions of government, which begin with the charters in the earlier years of the seventeenth century and continue in the written constitutions of our own time. Yet these do not contain the whole story. There are other laws, the work of Legislatures, and also treaties and agreements between America and other nations. Running through all these acts is an unbroken course of political thought, a commentary, as it were, on principles upon which the integrity of our institutions depends. These principles appear in different aspects at different times. Thus, at the close of the eighteenth century they are conspicuous in bills of rights and the first written constitutions of the country. Later they appear in the effort to administer the government of the United States and of the commonwealths, and especially in the discussions in State Legislatures, in political conventions, in Congress, in the courts, and in conventions which have given us the later constitutions of government. The history of American democracy, therefore, is a history of political thought rather than of individuals. If it lacks feudal interest, it possesses the charm of civil equity. It is a history of the development of equal social opportunities. It is, indeed, an industrial history in a political form. Looking backward now, we see how the crises in American affairs have terminated in a new enlightenment of public opinion and in a more perfect understanding of the powers, the privileges, and the duties

of men. Democracy must be distinguished from ochlocracy. Popular government does not signify the passions of a mob. If four centuries of civilization in America have any meaning, it is that popular government is conscious of its solemn responsibilities. This consciousness is suggested in many ways, and perhaps in none more persuasively than in the sensitiveness of American democracy to suffering and wrong, as the numerous benevolent institutions of the land testify. Few, if any, of these existed before the Declaration of Independence. They were founded in great numbers after 1850. At some time during this three-quarters of a century the transition was made, in this country, from ancient egoism to modern altruism. Under the old regime the only ties held sacred were the ties of blood; under the new, the ties of humanity are equally sacred. In the normal development of our institutions, these ties will be venerated in equal degree. Already the military type has almost disappeared from our institutions, and with the ascendency of the civil power the whole people have been enfranchised. No evidence of this enfranchisement is of profounder significance than the extinction of slavery, which, delayed for centuries, but swift at last, was an altruistic process, and one inevitable in a democracy like our own. Ancient legislation knew little of the individual except as he was a member of the most favored class. Modern legislation emancipates individuals with impartiality. The record of this benevolence is clearly marked in the evo-

lution of American democracy. And it is to be found in places in which many might not at first search for it. Our national government has long attracted and concentrated the attention of our own people, and, to some extent, of the people of other lands; but our national government is only a part of our democracy. The commonwealths are in many respects closer to us than the nation, and do not so widely differ one from another as to preclude tracing the principles on which the institutions of each are founded. The colonial era, the beginning of government in America, may be said to cease with the treaty of Paris of 1763, when the North American continent came practically under the control of the Anglo-Saxon race. From the treaty of Paris to the Declaration of Independence was a brief interval of continentalism, during which public opinion was for the first time formulated under a dominant idea. With the Declaration there also went out to the world the first constitutions of the States in which the best of colonialism survived, and the transition to a more perfect form of commonwealth organization was effected. These, being imperfect, soon made way for a second group, and with this came the national Constitution, itself a composite, and the survival of earlier ideas of union. For nearly one hundred and fifty years before the making of the national Constitution, the people of America had been tending towards industrial and political union. Although no perfect union was effected, many attempts were made, beginning with the union of the four New

England colonies in 1643, and concluding with the Articles of Confederation of 1781. These attempts record the evolution of the national idea, and are the parent of the Constitution of 1787. Parallel with this growth of national ideas was the development of the more perfect commonwealth, beginning with the charters and concluding with the first State constitutions in 1776. Dual political ideas thus grew up in the land, and their duality became a characteristic of democracy, plainly recognized after the treaty of Paris, and duly functioned in the organic laws of the States in the concluding years of the eighteenth century. This was a century of political theories and definitions set forth in bills of rights which remain almost unchanged to our own day, and probably will continue to be recognized on this continent as the accepted statement of political and civil rights. Their chief quality is their recognition of the rights of the individual. They made the free man the centre of the civil system. Every bill of rights of the eighteenth century emphasized him as the chief element in society to be conserved. If we look for some formula for the conservation of the state, we shall not find it in the eighteenth century. A century later, a constitution commonly sets forth some rights of society, of the community, of the state. Another characteristic of eighteenth-century political thought was its emphasis of political theories. This was inevitable. Theory precedes practice, especially in affairs of state, and colonial practice in government had been efficient

chiefly in the evolution of bills of rights. The difference between theory and practice in government is well illustrated by comparing the national with any of the earlier State constitutions. The national Constitution originally contained no bill of rights. It was intended to be administrative, not theoretical, in character. It contains no definition of nationality; no definition of what is meant by "We, the people of the United States"; no definition of the exact relation between the Union and the States; no definition of the precise limits of State or Congressional legislation. Indeed, it is an instrument conspicuously lacking in what many might seek in the supreme law of the land. The omission of definitions has proved the wisdom of its makers and the opportunity of posterity. It has given ample scope to the American people to exercise their political genius in adjusting themselves to new industrial and political conditions. The Constitution never laid down hard and fast lines of civil procedure. Yet, chiefly because such fundamental provisions were lacking, the conduct of national politics fell inevitably into the hands of political parties, and government became an affair of administration. Parties did not exist in colonial times, and they are yet in the infancy of their power. They afford full opportunity for the genius of individuals, and are the responsible means by which a conscious people adjust themselves to changing conditions.

A constitutional history of democracy in America is, therefore, a history of political and civil

adjustments, usually recorded in laws and constitutions. The industrial and social forces which have determined the development of our institutions have determined the character of the law of the land. The first group is continental, comprising the constitutions of the Revolutionary era, coinciding nearly with the last twenty-five years of the eighteenth century. During the first half of the nineteenth century appear another group of constitutions, which record the first efforts of the American people to administer their theories of government in the light of a wider experience and under the compulsion and opportunities of a new industrial life. During this half-century the contending political systems of the country were exhaustively formulated, and attempt was made to solve in the forum problems later solved on the battle-field. From 1850 to 1876 was the era of a counter-revolution, during which public opinion formulated the thought of the new nation. Later constitutions are a recognition, by the people of the United States, of the true character of social efficiency of a national type. The people applied their notions not only by amending the national Constitution, but also by changing the constitutions of many of the States. After 1876, and during the remaining years of the nineteenth century, industrial reforms were attempted through the agency of these supreme laws. Industrial enfranchisement compelled a reorganization of the state, which was carefully recorded in its supreme law. Democracy is equally interested in the state and in


Eastern Part of
Map of
NORTH AMERICA
Published by act of Parliament
10 June 1775.
by R. Sayer and J Bennett
No 53 Fleet St.
AMERICA
CANADA
ESKIMAUX
SIOUX or NAUDUSSA
LOUISIANA
NEW MEXICO
PADUKAS
APACHES
BISCAY
NEW LEON
GULF OF MEXICO
Gulf of Florida
PENSYLVANIA
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
WEST FLORIDA
EAST FLORIDA
NEW YORK
NOVA SCOTIA
CHEROKEES
CHIKASAWS
CHACTAWS
CREEKS
DELAWARES
TWIGTWEES
ILINOIS or CHIKTAGHKS
the climate of this Land is a great deal more temperate than that of Hudsons Bay
the Lands Height
L. Mishigan
L. Hurons
L. Erie
L. Ontario
Upper or Lake Superior
Algonkins or ADIRONDAKS
Missouri R.
Ilinois R.
Ohio or Fair River
Rio Colorado or
Rio Bravo or Rio del Norte
Sta Fe
Extensive Plains
St Augustin
Philadelphia
Boston
Long I.
C Cod
St Georges Bank
I. Nantuket
Bay of Fundy
C Sable
Sable I
Gulf of St Lawrence
R St Lawrence
Quebec
Montreal
Albany R.
Rupert R.
Moose Fort
Meadows L
Winipig L.
Cinaloa
St Miguel
Rio Bravo
Charleston
Port Royal
C Hatteras
C Lookout
Cape Fear
Bahama
Lucayo
Lucayos Is
Alabaster I
Cat I.
Tortugas
C Canaveral
Pensacola
New Orleans
Missi Sipi
Balise
Iron Mine
Lead Mine
Copper Mine
Mohurgona R.
Red R.
Fort Pitt
Annapolis
Williamsburg
James Town
Roanoke R.
Chesapeak B.
Delaware R.
Hudson R.
Connecticut R.
Penobsco
Casco
Tadoussac
Temiscaming
Michipicoton Bay
L. Alemipigon
Rain L.
Red L.
L. Nipisong
St Johns R.
St Anns L.

the citizen. Until recent years it seemed interested in the citizen only. It tolerated the state as an evil necessary for his welfare. The history of democracy is, therefore, chiefly of the citizen: his theories, his complaints, his political strivings, his victories, his disappointments. The important chapters in that history are on the franchise, on representation, on the powers of public servants. The state, until recent years, has been conceived as a creation rather than an organism; as a compact rather than as an entity. Its functions are largely a discovery of the nineteenth century. Some may say that the modern state is not so much a discovery as a new resolution of social forces. Whatever be the form in which we cast the thought, the fact remains—and, in this country, is evident—after comparing the last State constitutions with the first. If the change be evolution, it is from citizen to society; from the concept of government, as established solely for the benefit of the individual, to the concept of the community, the state as a being responsible to every citizen and to society. The state has rights which the individual is now bound to respect. Like him, it is, or should be, altruistic. As the centuries pass, the American commonwealths will revise their constitutions. Thus far there has been, on the average, a new State constitution every year since 1776. Propositions for new ones have been more frequent; amendments, a common occurrence. The ease with which amendments, revisions, or even new constitutions are secured, suggests that

the people, like Jefferson, regard a constitution as of little higher authority than an act of the Legislature.

Every political campaign in which great issues are involved has led to some change in State constitutions, and not infrequently to new ones. This was conspicuous between 1830 and 1840, when franchise reforms that had been agitated for a generation were embodied in constitutional revision; again, from 1860 to 1870, when reforms in the franchise and in the basis of representation were carried into every constitution in the country; and again from 1889 to 1895, when economic reforms affecting labor, transportation, capital, and the franchise, were embodied in the constitutions of the Northwestern States. Other changes have during the century been made affecting the powers of the Legislature and of Governors, the manner of choosing judges, the organization of the administrative department, finance, education, and local government.

As has been said of the state, so may it be said of all these changes—they were once a private thought. It is the purpose of a history of democracy to make the state a private thought again.

CHAPTER II

THE FORM OF DEMOCRACY IN THE EIGHTEENTH CENTURY

In the closing years of the seventeenth century North America gave little promise of becoming a continent of commonwealths.* Along the Atlantic coast extended the English colonies, inhabited

* The principal authorities for this chapter are the State constitutions and laws, 1775–1800, and the proceedings of conventions during this period:

Maryland.—*Proceedings of the Conventions of the Province of Maryland, held at the City of Annapolis in 1774, 1775, and 1776.* Baltimore: James Lucas & E. K. Deaver. Annapolis: Jonas Green, 1836, 8vo, 378 pp.

Massachusetts.—Journal of the Convention for Framing a Constitution of Government for the State of Massachusetts Bay, from the Commencement of their First Session, September 1, 1779, to the Close of their Last Session, June 16, 1780, Including a List of the Members. With an Appendix—containing: 1. The Resolve for Ascertaining the Sense of the People on the Subject of a New Constitution. 2. The Form of Government Originally Reported by the General Committee of the Convention. 3. The Address to the People. 4. The Constitution as finally Agreed upon by the Convention, and Ratified by the People, with the Amendments since Adopted. 5. The Rejected Constitution of 1778. Published by Order of the Legislature. Boston: Dutton & Wentworth, Printers to the State, 1832, 8vo. 264 pp.

New Hampshire.—Journal of Colonial Congress, December 21, 1775, to January 5, 1776. *Historical Magazine*, October, 1868, pp. 145–154. *Collections of the New Hampshire Historical Society*, Vol. iv. State Papers of New Hampshire, Edited by Albert Still-

by about three hundred thousand people, Anglo-Saxon stock predominating—a smaller population than may now be found in some Congressional districts. England claimed territory to the South Sea,

man Batchellor, Vols. xx., xxi., xxii. Provincial Papers of New Hampshire, Vols. vii., viii. Journal of the Convention which Assembled in Concord to Revise the Constitution of New Hampshire, 1791–1792. Edited by Nathaniel Bouton, D.D. Concord: Edward A. Jenks, State Printer, 1876, 8vo, 198 pp.

New Jersey.—Extracts from the Journal of Proceedings of the Provincial Congress of New Jersey, held at Trenton in the months of May, June, and August, 1775. Published by Order. Burlington: Printed and Sold by Isaac Collins, MDCCLXXV., Woodbury, N. J. Reprinted by Order. Joseph Sailer, Printer, 1835, 8vo, 241 pp. Journal of the Votes and Proceedings of the Convention of New Jersey, Begun at Burlington, the tenth of June, 1776, and thence continued by Adjournment at Trenton and New Brunswick to the twenty-first of August, following. To which is annexed Sundry Ordinances, and the Constitution. Published by Order. Burlington: Printed and Sold by Isaac Collins, MDCCLXXVI. Trenton: Reprinted by Order. Joseph Justice, Printer, 1831, 8vo, 100 pp. Eumenes, being a Collection of Papers, written for the Purpose of Exhibiting some of the more prominent Errors and Omissions of the Constitution of New Jersey, as Established on the Second day of July, one thousand seven hundred and seventy-six; and to prove the necessity of Calling a Convention for Revision and Amendment. Trenton: Printed by G. Craft, 1799, 8vo, 149 pp.

New York.—Journals of the Provincial Congress, Provincial Convention, Committee of Safety, and Council of Safety of the State of New York, 1775, 1776, 1777. Albany: Printed by Thurlow Weed, Printer to the State, 1842, Vol. i., Large Folio, 1196 pp. See also some account of the making of the New York Constitution of 1777 in pp. 691–696 of Reports of the Proceedings and Debates of the Convention of 1821, Assembled for the Purpose of Amending the Constitution of the State of New York: Containing all the official Documents Relating to the Subject, and other valuable matter, by Nathaniel H. Carter and William L. Stone, Reporters; and Marcus T. C. Gould, Stenographer. Albany: Printed and published by E. & E. Hosford, 1821, 8vo, 703 pp.

but was not in possession beyond the Alleghanies. From these mountains westward farther than any white man had explored, was New France, comprising the vast region drained by the rivers St. Law-

North Carolina.—The Journal of the Proceedings of the Provincial Congress of North Carolina, held at Halifax, the twelfth day of November, 1776, together with the Declaration of Rights, Constitution, and Ordinances of Congress. Newbern: Printed by James Davis, 1777, Small 4to, 84 pp. (Sabin, 394, c. 55,632).

Pennsylvania.—The Proceedings Relative to Calling the Conventions of 1776 and 1790, the Minutes of the Convention that formed the Present Constitution of Pennsylvania, together with the Charter to William Penn, the Constitutions of 1776 and 1790, and a View of the Proceedings of the Convention of 1776, and the Council of Censors. Harrisburg: Printed by John S. Wrestling, Market Street, 1825, 8vo, 384 + iv. pp. Minutes of the Convention of the Commonwealth of Pennsylvania which commenced at Philadelphia, on Tuesday the twenty-fourth Day of November, in the year of our Lord one thousand seven hundred and eighty-nine, for the Purpose of Reviewing, and if they see occasion, Altering and Amending the Constitution of this State. Philadelphia: Printed by Zachariah Poulson, Jr., in Fourth Street, between Market Street and Arch Street. MDCCLXXXIX., folio, First Session, 147 pp.; Second Session, 147–222. Minutes of the Grand Committee of the Same, folio, 107 pp.

Tennessee.—Journal of the Proceedings of a Convention Begun and Held at Knoxville, January 11, 1796. Knoxville: Printed by George Roulstone, 1796. Nashville: Reprinted by McKennie & Brown, *True Whig* Office, 1852, 8vo, 32 pp.

Vermont.—Vermont State Papers, being a Collection of Records and Documents connected with the Assumption and Establishment of Government by the People of Vermont, together with the Journal of the Council of Safety, the first Constitution, the early Journals of the General Assembly, and the Laws from the year 1779 to 1786 inclusive. To which are added the Proceedings of the First and Second Councils of Censors. Compiled and published by William Slade, Jr., Secretary of State. Middleburg: J. W. Copeland, Printer, 1823, 8vo, 567 pp. Collections of the Vermont Historical Society, Vol. i. Montpelier: Printed for the Society, 1870, 508 pp. Vol. ii., Id., 1871, 530 pp. In Vol. i.,

rence and Mississippi and their tributaries. Farther southward and westward lay New Spain, greater in area than New France. The English feared two foes—absolutism and the papacy, and were on the defensive. The struggle which for centuries had raged in the Old World between absolutism and democracy broke out in the New at the close of the seventeenth century. Antagonistic systems of government were contesting for the possession of America. In the English colonies were the germs of representative government and free commonwealths. The fate of half the globe depended on what victories might be won in the Ohio Valley. In decisive results, Wolf's victory on the Heights of Abraham was to take rank with Marathon and Cannæ. Probably, the pioneers who, during the long campaign from Braddock's defeat to Yorktown, won America for liberty

the Conventions of 1776–1777. In Vol. ii., Vermont as a Sovereign and Independent State.

Virginia.—The Proceedings of the Convention of Delegates for the Counties and Corporations in the Colony of Virginia, held at Richmond Town, in the County of Henrico, on the 20th of March, 1775. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond: Richie, Trueheart & Du-Val, Printers, 1816, folio, 54 pp. The Proceedings of the Same on Friday, the 1st of December, 1775, and afterwards by Adjournment in the City of Williamsburg, Id. and Ib., folio, 116 pp. The Proceedings of the Same in Williamsburg, on Monday, the 6th of May, 1776, Id. and Ib., folio, 86 pp. Ordinances Passed at a General Convention of Delegates and Representatives from the several Counties and Corporations of Virginia, held at the Capitol in the City of Williamsburg, on Monday, the 6th of May, Anno Dom., 1776. Reprinted by a Resolution of the House of Delegates, of the 24th February, 1816. Richmond, supra, folio, 19 pp.

never compassed the magnitude of the drama in which their sufferings and their victories were early scenes. They were men much like ourselves, and the emotions that stirred their lives, the services they rendered, the ideas for which they contended, the record which they made in founding new States and a new nation are elemental forces in democracy in America to-day. They bequeathed to us the heritage of representative government.

Time has obscured their action, as it obscures the deeds of all men. But the political institutions which sprang up after them, though feeble and isolated at first, unwelcome to the governments of the Old World, and, when by necessity acknowledged as a new power, coldly received into the family of nations, were destined to overspread a continent and to demonstrate, for the first time, the vitality and efficiency of popular government on a vast scale. During the seventeenth century, and the greater part of the eighteenth, the colonies prospered under charters granted by the Crown and in substance differing little one from another. The charter to Penn contained a unique provision recognizing the right of Parliament to levy a tax on the colony.* Most fateful for the colonies was the privilege of the Assemblies to pass laws that should conform as nearly as possible with the laws of England. Here was the entering

* Charter to Penn, March 4, 1681, sec. 20. Proceedings of conventions of 1776 and 1789. Pennsylvania, Harrisburg, 1825, p. 16.

wedge of democracy in America. Gradually, and it may be said naturally, the Assemblies assumed the right to judge when a law should be more American than English. This claim of right was the foundation of American independence.

From their incorporation, therefore, the colonies, though fairly uniform in general character, tended to differ among themselves in local government. The local spirit was from the first stronger than the continental, and doubtless would have prevailed had not James the Second attempted to merge the colonies into groups, each having its civil system, with ultimate merger in a government whose executive and judiciary should be appointed by the Crown; whose common Assembly, though elected by the people, should be stripped of all discretionary authority. To the colonists this was absolutism, and, consciously or unconsciously, their opposition to it awakened a continental spirit, the parent of the national idea. Thus, before the close of the seventeenth century America was at the threshold of a new civil experience, the distinguishing feature of which was the formulation of the "ancient and undoubted rights of the people of the colonies." A like process was going on in England. The famous Bill of Rights of 1688 is contemporaneous with like measures in the colonies. Americans are more familiar with the political speculations that dominated the country in 1776 than with those, equal in influence, that dominated it nearly a century earlier. One clause of the English bill of 1688 survives in its original form in the

Constitution of the United States,* and in many State constitutions; but it was not accompanied in the seventeenth century by those provisions with which it is now associated. Freedom of worship, freedom of speech, and freedom of the press are rights which were worked out in this country—that is to say, they were worked out in that Anglo-Saxon world which is divided into two parts—England and America. They are rights which in no sense are of Celtic or Latin origin. On them, and those soon worked out with them, rests all constitutional government in America. The New York Assembly in 1689, in spite of the opposition of the Crown, set forth for the first time in a formal bill on this continent those rights which became the foundation for political ideas involved in the American Revolution.† This Assembly was the parent of that portion of the American constitutions of government which we call the Declaration of Rights—the most permanent part of our civil system. The ideas involved in them were the issue in the struggle of England, France, and Spain for the possession of America. The first phase of this struggle was international, and closed with the treaty of Paris and the disappearance of New France from the map of America. Thirteen years passed and a new name appeared — the

* Art. viii.

† In most of the charters; those of Virginia (1606) and Massachusetts (1629) are typical. The Assemblies early began to "confirm the charters"—*i. e.*, Magna Charta and the Charter of the Forest — as in Rhode Island, 1663; North Carolina, twenty-five times, etc. See Martin's Laws, North Carolina, 1792.

United States. Colonies had become commonwealths, organized on the basis of these ancient rights which, save in Rhode Island, had been formally adopted as the essential part of a written constitution. Each proposition recorded a victory of democracy over monarchy — of individualism over absolutism. Therefore every clause is a survival, in brief, of struggles that go back well towards the earliest moments of recorded time. Bills of rights, the portion of the supreme law which seems to many trite, if not superfluous, are the summary of ages of struggle for human rights. In America, the Virginia bill, compiled chiefly by George Mason, records the close of an initial chapter in the history of democracy. We shall see, later, how the chapter has been continued, and from what sources it is derived. Each generation of Americans has added to it. Individualism—and, later, communalism—are there. In our day the grinding necessity of industrial morality is adding clauses of a nature undreamed of when the New York Assembly enacted its epoch-making bill, or when, a little less than a century later, Mason wrote the Virginia Declaration. In the State constitutions many provisions respecting the legislative, the executive, and the judiciary prove to be temporary. Nearly every provision in the various declarations of rights has proved to be essential to the stability of representative government. The growth of our bills of rights is, therefore, indexical of the charter of the American state.

As France and Spain, in turn, retired from

North America, the English-speaking race was left with a continent on its hands whereon representative government might freely develop. This opportunity of democracy is without parallel in history. For the first time, as events proved, popular government on a vast scale was to be put to the test. When the transition from colonies to commonwealths came, it seems, at first glance, almost instantaneous. The State constitutions of 1776 seem struck off at a single stroke in a sense that is not true of the national Constitution. A little reflection, however, will demonstrate that the constitutions, State and national, which distinguish America during the last quarter of the eighteenth century are in no sense political miracles or the product of chance or sudden ideas. These instruments must be taken, in the aggregate, as the written form of a political organism long growing and essentially homogeneous. They give the political fabric a common pattern. They register the civil experience, not of the colonists only, but of the people of other and earlier times. They may be called chapters in the Bible of politics contributed by democracy in America. Therefore, they must be considered together as a political unit, whose details are local applications of a few common principles contained in the bills of rights.

These constitutions have a common origin in experience and speculation—the experience chiefly that of the colonists themselves; the speculation that of a few philosophers, of whom Montesquieu

was most influential. Gradually the ancient civil rights of Englishmen, made familiar by charters, came to be considered as natural. Long exercise of charter rights made the notion easy—however unphilosophical. Colonial isolation compelled a liberal interpretation of the clause in the charters permitting Assemblies to pass laws as nearly as may be in conformity with the laws of England. There could be but one consequence—the Americans would ultimately claim that their own Assemblies possessed the exclusive right, constitutionally, to impose taxes, and that local circumstances forbade colonial representation in Parliament.

The Americans had a century and a half of experience in popular government when the first State constitutions were made. During this time they worked out the principles embodied in their first bills of rights, and accumulated an administrative experience which they reduced to three working formulas: the articles on the legislative, on the executive, and on the judiciary. These articles are essentially a political photograph of the colonial governments in those last days, just before transformation into States. But it must not be forgotten that the photograph was corrected, as it were, by adding ideals. Compared with constitutions made at the close of the nineteenth century, these of the eighteenth seemed colonial rather than commonwealth in character.

In as far as they departed from colonial experience, they show the influence of Montesquieu. His *Spirit of Laws* was published in 1748, and its

influence on America was like that of Aristotle's *Politics* on the institutions of Europe. The commonwealth constitutions of the eighteenth century were made, nominally, by conventions, though in many instances by Legislatures. It may be said that the twenty-six constitutions of the period were thought out by about the same number of men—the most eminent Americans of the age. Most of these met in the convention that made the national Constitution. They had already participated in a similar work for their own States, and some of them assisted in revising their State constitutions after the national Constitution was adopted and the new government was established.

To these men the *Spirit of Laws* was a manual of politics powerfully contributing to a general unity of sentiment in the State instruments, and particularly in the Constitution of the United States. In spite of popular disbelief, it is the philosophical thinker who regulates the form of the state. He works out a civil economy, which, corrected by popular experience, at last becomes the form of government in the state. Of less, though of great influence on American institutions, were Milton, Hobbes, Locke, Sidney, Harrington, and Penn. The best of their political speculations became the common intellectual property of thoughtful Americans, and in political form were incorporated in the constitutions of the eighteenth century, and, slightly modified, are found in all that have been adopted since.

Twenty-five years later than Montesquieu's

Spirit of Laws, appeared Blackstone's *Commentaries*—destined at once to become the principal legal text-book of the English race. In spite of its ultra-monarchical ideas, it profoundly influenced American political thought.* Montesquieu was speculative; Blackstone, practical and definitive. The *Commentaries*, as did no other book, assisted American statesmen in giving legal form to democratic ideas of government. The American Revolution would have wholly miscarried had its principles failed to attain expression in legal form: so much are men controlled by appearances. This is well illustrated in a statement in the Declaration of Independence, and repeated in every State constitution, that the people have the right to alter or abolish any form of government that they judge destructive of their rights. All the eighteenth-century writers emphasize the importance of the form of the government; the form is considered as essential to the right exercise of civil functions. Though acknowledging the right of the people to change the form, neither the constitutions of the period nor the writers upon them hint at any right to alter or abolish the principles on which the form rests. That the monarchical Blackstone so practically contributed to the establishment of democracy in America is a paradox not without parallel in history.

Two other English philosophers whose works

* The first American edition, in four volumes, was brought out in Philadelphia, by Robert Bell, in 1771.

appeared with Blackstone's, at the outbreak of the Revolution, profoundly influenced American institutions. Hume anticipated both the French and the American revolutions, and Adam Smith* anticipated the economic course of American life. The most subtle influence on America was wielded by him, to whom, says Lowell, "more than to any other one man we owe it that we can now think and speak as we choose."† Voltaire's influence was that of an institution rather than that of an individual. It largely contributes to that secularization of the state which distinguishes government in America from all other governments, ancient or modern.

America was not lacking instruction from a philosopher of native birth, Franklin, who was scarcely less influential than any of his contemporaries.‡ The characteristic of the political thought of the age was individualism. The state was called into existence to protect the individual. This is the dominant idea of every bill of rights of the eighteenth century, and indeed of all until recent years. The state is not described at that time as having "ancient and undoubted rights" which the

* Washington annotated his copy of Smith, showing careful reading. It now belongs to Joseph Wharton, Esq., of Philadelphia. For an estimate of the influence of *The Wealth of Nations*, see Lecky's History, Vol. iv., p. 328.

† *Latest Literary Essays* (*Gray*), 1892, p. 12.

‡ Smith read chapters of *The Wealth of Nations* to Doctor Franklin, as it was composed, for his criticism. This may explain the numerous allusions to America in the work. See Watson's *Annals of Philadelphia*, Vol. i., p. 533.

individual must respect. He was the centre of the political system. The altruistic function of the individual citizen which is implied and occasionally expressed in the later constitutions was not thought of in Franklin's day, and it was a long day from the accession of Queen Anne to the death of Franklin. His ideas are characteristic of a century later, in that he emphasized the administration rather than the theory of government. His oft-quoted speech in the Federal Convention, in which he said that there is no form of government that may not be a blessing to the people if well administered, suggests the test to which every political proposition must at last be subjected. It is the test which best discloses the difference between the American and the French constitutions of government. Ours rarely contains a definition, and more rarely political speculation, but is practical and administrative in character. Because of this quality, the national Constitution has survived the fiercest test to which it is possible to submit a political system, the ordeal of civil war. Had it been a document abounding in political speculation it would now be known only to the collector of curious schemes of government. Franklin's individualism ultimately found political application in the essential doctrines of that great party of which Jefferson is commonly called the founder. His influence for this reason has been, and to this day is, confounded with that of Jefferson and Voltaire. It differed from theirs in being more conservative. Its conservatism consisted

in its sanity. His conception of government was one based on experience and "adapted to such a country as ours." The import of Franklin's emphasis of the administrative test is seen in the constitutions adopted after 1850, in which the administrative gradually appears as a separate article. After 1876 it begins to be recognized as the fourth department of government, ranking with the legislative, the executive, and the judiciary. The history of this new department is one of civil adjustments. To ascertain, readily, the important changes in our political institutions since 1776, one must turn to the administrative provisions of State constitutions last adopted and trace their growth from constitution to constitution during the intervening years.

In later years, when the very form of a State constitution became a party question, the influence of Jefferson largely dominated American thought. He stood for the rights of man as these were expressed in the Declaration of Independence, or were read into it by party interpretation. During the eighteenth century his influence fell far short of what it became after the party he was instrumental in organizing obtained possession of the national government. During the half century following his death, when in one form or another slavery and State sovereignty were national issues, and the extension of the franchise and the change from property to persons as the basis of representation were State issues, Jefferson was idealized as the political philosopher and reformer,

and his ideas, as interpreted by a powerful party, were of paramount influence in many States. But his influence was always strongest in the newer parts of the country. The Declaration of Independence was almost immediately accepted as a national bill of rights; it was cited in several State constitutions, and was prefixed without change to the constitution of New York of 1777.

The Revolution was a reconstruction of the theory of the state. Henceforth the rights of men should be considered to be natural and inherent, and not, as before, a grant from the Crown. In England, the Revolution of 1688 resolved the state into a constitutional monarchy; in America, a century later, it was resolved into a representative democracy. The change implied a far-reaching reorganization. The concept of sovereignty was shifted to new ground. The common law was inapplicable to the new order. Written constitutions and statutes were necessary to give legality to the new concept. Had there been no change in the idea of sovereignty, there would have been no written constitutions in America. The bills of rights settled the question of sovereignty. The will of a majority of the electors became the American sovereign. The written constitution was devised to secure the new dynasty and prevent an interregnum. Primarily the purpose was to preserve the authority of the majority, and constitutions prescribed the conditions for belonging to the new sovereignty by defining the electorate; they also regulated the general conduct of the

sovereign by defining the basis of representation and the function of the executive and the judiciary.

The change from monarchy to democracy involved the adoption of legal fictions as dynastic facts. It compelled the adoption of what was familiarly called, in the eighteenth century, the system of checks and balances. The government —the state—must be secured against the folly, the designs, the passions of those who compose it. As was said—the people must be protected against themselves. The twenty-six constitutions of the eighteenth century were made, therefore, to be independent of political parties. They should be administrable with advantage to the state whatever party might be in power. This accounts for the silence as to parties in all the eighteenth-century conventions. We know little of what was done and less of what was said in the State conventions of that time. The debates in the federal convention, as they have come down to us, contain scarcely a reference to political parties. But there is abundant evidence that all the conventions sought to conserve government by an elaborate system of checks and balances in a written constitution. John Adams, in his exhaustive discussion of the American constitutions, makes the device of checks and balances the chief merit of the American system of government. Hamilton, Madison, and Jay, in *The Federalist*, exalt the device as the guarantee of republican government. The same idea is elaborated later by Marshall,

Webster, and Calhoun. After 1850 less is heard of checks and balances in our government, and in our day the phrase is not in use among the people and has dropped out of the vocabulary of politics. The men who made the first constitutions emphasized the device because they were compelled to adopt a substitute for administrative experience. The new constitutions were at best only experiments. None of them worked wholly as was anticipated. It is only necessary to cite in illustration the electoral college and the original, unlimited grant of power to the State Legislatures. But even the exception proved the rule, and the constitutions proved on the whole administrable and satisfactory. The State has been conserved, and the purposes for which the constitutions were framed — typically set forth in the preamble to the national Constitution—have been fairly well realized. Statesmen of the eighteenth century would impute this to the efficacy of the system of checks and balances. By this they meant the distinct functions of the executive, the legislative, and the judiciary; the different ways in which they are chosen; the different times when they hand over their power to their successors; the peculiar combination of the legislative and the executive in the administration of government, and the ultimate responsibility of all public servants to the electors.

This correlation of parts and functions is the peculiarity of the American system. Though arbitrary and ever subject to modification at the

will of the people, the system has been tried with success, has never departed from the principles on which it was founded, and has strengthened the conservatism which ever underlies American politics.

One commenting on government in America to-day would not be likely to call attention to, much less to emphasize, the system of checks and balances. He would attribute the virtue of our institutions to economic and sociological causes. He would dwell on the people, not on the system. He would analyze political parties, public opinion, and our social institutions. He would not be likely even to use the term checks and balances. In the eighteenth century government was conceived as a device; in our times it is thought of rather as an organism. It is the content, not the language, of the Constitution that has changed. The supreme law, as time goes on, is given more and more an economic interpretation. If adapted to the wants of the country, such interpretation becomes a party doctrine, and if adopted by the majority, it becomes an administrative measure. If it is believed to involve essential rights, it may become a part of a revised constitution. Thus, at last, the constitutions become the depository of settled politics and the register of the growth of the State.

The basis for legal defence of the Revolution was the claim by the Americans that King George had violated the compact to which he and the colonies were parties. It was first broached in 1774

in the Suffolk Convention,* and was quickly recognized by Adams and Otis as the place of beginning in establishing legal boundaries for the Revolution. It in great measure explains why American constitutions began with this definition of the state as a social compact. Coupled with the doctrine of natural rights, the social-compact theory proved administrable. On these two ideas government in America, both State and national, rests. When the transition from colony to commonwealth was effected, two years later, and the first constitutions were made, these two ideas became the nucleus of government. In this way the Americans succeeded, at least to their own satisfaction, in putting the King in the wrong. They declared that he had violated the compact, and therefore all political connection with Great Britain was dissolved. The colonies claimed that, thus left in a state of nature, they were free to organize governments to suit themselves. If not sovereign, they were free and independent. New Jersey, the first to adopt a constitution, and South Carolina, made provision that if Great Britain adjusted colonial differences, their constitutions should be of no effect.† With these two exceptions, the colonies entered upon the organization of State governments. The permanent features

* Journals, Provincial Congress, Massachusetts, p. 601; and, specially, of the Hampshire Convention, p. 619. For definition of the "social compact" see Constitutions, Massachusetts, 1780; Maryland, 1776; Kentucky, 1792, 1799.

† New Jersey, South Carolina, New Hampshire, 1776; all conditional constitutions.

of these constitutions were their declarations of rights and the threefold division of government. In the aggregate, the declarations comprise about one hundred provisions, all of which are not found in any one constitution. The typical declaration is that of Virginia of 1776, which, by repeated adoption, has long since become common, civil property.* It consists of sixteen articles, all of which rest for authority on the doctrine of natural rights proclaimed in the opening clause. Men cannot be deprived of their rights, nor can they deprive their posterity of them; all power is vested in the people, and is derived from them. Consequently, their representatives are their trustees and servants, and at all times amenable to them. As government is instituted for the common benefit, it must be organized in the form that is best "capable of producing the greatest degree of happiness and safety, and is most effectually secured against the dangers of maladministration." It follows that, if the form of the government does not subserve this end, the "majority of the community have an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it in such manner as shall be judged most conducive to the public weal." No man can be conceived to be "entitled to exclusive or separate emoluments or privileges from the community

* See Grigsby's Virginia Convention, 1776; Richmond, 1855; also Joint Resolution of Virginia Legislature accepting manuscript of this Declaration of Rights in Mason's handwriting, and depositing it in State archives, February 15, 1844.

but in consideration of public service." The same doctrine also compels the conclusion that official emoluments and privileges are not descendible, and that the office of magistrate, legislator, or judge cannot be hereditary.

The doctrine of natural rights applied in administration compels the separation of legislative, executive, and judicial powers. Elections must be frequent that the sovereign people may the more perfectly express their will in the choice of public servants. There must be rotation in office. In order to secure equity in the administration of the government, elections must be free and the electorate accurately defined; but the Virginia declaration went no further than to include in it all men having sufficient evidence of permanent, common interest with the community, and attachment to it: by which was meant a property qualification. These are entitled to the right of suffrage. No man can be taxed or deprived of his property for public uses without his own consent or that of his chosen representatives. The doctrine of the right of revolution was carried further than to-day—that none are "bound by any law to which they have not in like manner assented for the public good." A relic of the revolt from executive tyranny in colonial times was preserved in the clause that all power of suspending laws or their execution by any authority without the consent of the representatives of the people, is injurious to popular rights. Yet it is somewhat difficult to conceive how any authority in a democracy founded on

the doctrine of natural rights could thus injure the rights of the people, for by this doctrine the executive, the legislative, and the judiciary are of equal rank. The long struggle for the right of trial by jury culminated in the insertion in each of the constitutions of a provision for the trial according to the law of the land of a person accused of capital or criminal offence, giving him the right to demand the cause and nature of his accusation, and to be confronted by his accusers and their witnesses, empowering him to call for evidence in his own favor, and entitling him to a speedy trial by a competent jury of the vicinage. No eighteenth-century constitutions permitted any other than the unanimous verdict of a jury of twelve men—a requirement from which later constitutions have freely departed.

Among the complaints of the American people formally set forth by Jefferson in the Declaration of Independence, is that of unwarrantable searches and seizures made by British officers. So palpable a violation of feelings and rights was the immediate origin of clauses in the bills of rights declaring such searches and seizures under general warrant unconstitutional.

It would be expected that a people who based their political fabric upon the doctrine of natural rights, and who were accustomed freely to express their individual opinions on all subjects, would declare freedom of the press to be one of the bulwarks of liberty and a constitutional right.

Among complaints of long standing in Amer-

ica at the time of the Declaration of Independence were the treatment of the colonial militia by the British government, and particularly the discrimination in favor of royal troops. For more than a century the Americans had claimed that by their charters they were empowered to protect themselves — an idea out of which evolved the political doctrine set forth in the declarations of rights, that the natural and safe defence of a free state is its militia, composed of the body of its people trained to arms. The doctrine is the application to the state of the individual's right of self-defence. The old controversy between King and colonists over the relative rank of the civil and the military power was forever settled by the common provision that the military should always be under strict subordination to the civil power. Lest the doctrine of natural rights should be made to prove too much and become the authority for anarchy, the Virginia bill declared that the people had "a right to uniform government; and therefore that no government independent of the government of Virginia ought to be erected or established within the limits" of the State—a provision found in no other constitution. This doctrine, which is essentially that of the centralization of civil authority, stands in strong contrast with the later doctrine of secession. Common to all the constitutions was a statement of the necessity of "a frequent recurrence to fundamental principles"; which may be interpreted to mean practically a campaign of political edu-

cation. There is a touch of Franklin's philosophy in the provision that these principles can be preserved only "by a firm adherence to justice, moderation, temperance, frugality, and virtue." Probably that spirit which moved the authors of the association of 1774 to advise their countrymen to discountenance and discourage extravagance and dissipation caused the several conventions to include this provision in their declarations of rights.

Religion was defined as "the duty which we owe to our Creator; and the manner of discharging it can be directed only by reason and conviction, not by force or violence"—a broad application of the doctrine of natural rights, whence it was concluded that all men were equally entitled to the free exercise of religion according to the dictates of their conscience. All the constitutions were made under the influence of the Christian religion. In Massachusetts, Church and State were in a degree united and religious organizations of a lawful character were entitled to support from taxation.* In New Hampshire, public "Protestant teachers of piety, religion, and morality" were to be supported by the several towns, parishes, bodies corporate, or religious societies within the State, according to law; but the union of Church and State was feeble. Maryland protected in their religious liberty all persons who

* The Episcopal was made the State Church in South Carolina by its first constitution, 1776.

professed the Christian religion, and the Legislature at its discretion could lay a general and equal tax for its support. Soon, however, the demand for religious toleration transformed the commonwealths into secular bodies. Religion was considered a deterrent of crime—an idea that accounts for the brief union of Church and State in some commonwealths. In order to secure the equal rights of its inhabitants in the administration of justice, the Maryland amendment of 1795 empowered members of the Society of Friends and others who were "conscientiously scrupulous of taking an oath," but were otherwise "qualified to vote or to be voted for," to substitute affirmation for the oath; and three years later the constitution was again amended so that the affirmation of persons was considered "of the same avail as an oath to all intents and purposes," thus permitting them to be witnesses in court.

Vermont alone of the commonwealths applied the doctrine of natural rights to all men irrespective of race or color, providing that no male person born in America, or brought from over sea, could lawfully be held to serve any person "as a servant, slave, or apprentice" after he arrived at the age of twenty-one years; nor a female, in like manner, after she arrived at the age of eighteen; unless such persons were bound by their own consent after arriving at age or were bound by law for the payment of some obligation.* This clause

* Vermont, 1777, 1786, 1793.

may well be called epoch-making, for it was the first antislavery provision in an American constitution, the precedent for a similar clause in the constitutions of Ohio* and Illinois,† and, in modified form, in two constitutions of New York.‡

In their bills of rights the commonwealths from the first illustrated the two sets of ideas which have divided the country. The Virginia bill was not common to the Northern States, the Massachusetts bill was not common to the Southern, and the difference was intensified as new constitutions were adopted. The New England provisions became the precedent for later constitutions of Northern States and followed the movement of population westward to the Pacific. The Virginia bill became the precedent for States to the south and west, and, with modifications and additions, is now in force there. Only three States claimed to be sovereign, and these were in New England,§ but the doctrine of residuary State sovereignty prevailed. This unphilosophical notion was advanced in the federal convention, was made a political doctrine in *The Federalist*, and was adopted for a time by the Supreme Court of the United States. The idea was not disposed of till 1868.‖

A working principle of representative government was embodied in the claim of the State to a

* 1802. † 1819. ‡ 1821, 1846.

§ Connecticut, 1776, Act of Assembly; Massachusetts, 1780; New Hampshire, 1784. The Connecticut provisions do not occur in the constitution of 1818. The Massachusetts remains; it was evidently taken from Art. ii., Articles of Confederation.

‖ In Texas *vs.* White.

portion of the labor, and, if need be, of the services of the individual—the first general formulation of the popular idea of a tax. The right of the citizen to the due course of law—a phrase traceable to the Great Charter—was commonly set forth with the addition of his right to a verification of the facts in the vicinage in which the act was committed. Four States made it unconstitutional to try a man twice for the same offence.* Three construed the right of petition as empowering the people to instruct their representatives.† As incident to the right of the people to an untrammelled expression of opinion through their representatives, these were given privileges and immunities not enjoyed by other citizens. When we reflect on the superfluous legislation of our own times, a provision for frequent sessions of the Legislature strikes us, at first, as evidence of inexperience in government. It is evidence of the persistence of colonial habits.

During the colonial period the annual session of the Assembly was the only check which the people had on the executive. The idea was perpetuated in the Constitution of the United States. One commonwealth now retains its annual Legislature, and it is the only one that has continued its eighteenth-century constitution.‡ It is doubt-

* New Hampshire, 1784; Pennsylvania, 1790; Delaware, 1792; Tennessee, 1796.

† Vermont, 1777, 1786, 1793. North Carolina, 1776. Pennsylvania, 1776, 1790.

‡ Many features of the first constitutions of New Hampshire,

ful whether a convention called at the present time to make a national Constitution would provide for annual sessions of Congress.

The principle which in large measure has regulated the business transactions of the people was embodied in the provision forbidding the enactment of *ex post facto* laws, or laws impairing the obligation of contracts. Four States thus established a precedent for the national Constitution.* The States guarded carefully against the confusion of functions, and protected the citizen against the usurpation of the judicial by the executive or the legislative. Two complaints, long heard during colonial times, were ended by the provision against forcibly quartering troops on citizens in time of peace, and by that recognizing the civil authority as paramount in the state. No bill of rights was arranged in strictly philosophical order nor was free from irrelevant matter, as illustrated in the bills of rights of three States, which declare that an independent judiciary is essential to the stability of the commonwealth.† The silence of the others on this point merely signifies that they sought to secure an independent judiciary

Vermont, Delaware, North Carolina, Kentucky, Tennessee, Pennsylvania, and New York, remain in the present constitutions of these States. Massachusetts has amended hers thirty-three times. New York, New Jersey, and Delaware still have annual sessions.

* Maryland, North Carolina, 1776; Massachusetts, 1780; New Hampshire, 1784.

† Maryland, 1776; Massachusetts, 1780; New Hampshire 1784, 1792.

through legislation. The comparatively slight intimation of the importance of an independent judiciary contained in the first State constitutions hardly prepares us for the elaborate application of the idea in the Constitution of the United States and its defence in *The Federalist*.

The defects of colonial government were intimated in the provision forbidding judges to hold other offices during their terms of service, or to receive fees in addition to their salaries; and for the first time judges were subject to removal by the Governor on recommendation of two-thirds of each House.* An administrative measure of this kind would scarcely be sought among the clauses of a bill of rights. It illustrates what is not rare in constitutions, how a provision transferred to the bill of rights from its normal place in the article on the legislative, executive, or judiciary, in order to emphasize its importance and to secure it from amendment, is placed in the most permanent part of the instrument.

The influence of Blackstone may be detected in the language of two constitutions, which, in applying the theory of compact, declared that men surrender some of their natural rights when they enter society.† The clauses on freedom of worship recognized the rights of conscience, and public opinion was sufficiently sensitive to the rights of those who had scruples against bearing arms—

* Maryland, 1776.

† New Hampshire, 1784, 1792.

and these were chiefly of the Society of Friends—to allow them to substitute a money equivalent.

A provision destined to be claimed later in support of State sovereignty was adopted by two Northern and two Southern States, reserving to them the exclusive regulation of their internal police.* The constitutions adopted since 1870 have been criticised as partaking too much of the character of a code. Some of the first are open to the same criticism.† It is a wise convention that knows the difference between a constitution and a code. The last quarter of the eighteenth century was an era of transition and reforms, some of which are pushed forward in these early organic laws. The common-law maxim, "The greater the truth the greater the libel," was changed, and the jury with the evidence before it should determine both the facts and the law. Another reform changed the principle long made familiar by the saying, "Once an Englishman, always an Englishman." Henceforth the right of emigration, and, as a consequence, in later times the right of expatriation, should be accounted natural and inherent.‡

* Pennsylvania, Maryland, and North Carolina, 1776; Vermont, 1777, 1786, 1793.

† Maryland, 1776; Vermont, 1777, 1786. Probably due to the fact that these constitutions were made by the Legislatures acting as conventions.

‡ States having boundary disputes, Vermont, 1777, 1786, 1793; Pennsylvania, 1776, 1790; Kentucky, 1792, 1799.

CHAPTER III

THE FIRST ORGANIZATION OF GOVERNMENT IN THE STATES

THOUGH freedom in religion was a characteristic reform of the times, the freedom was relative: great if one looked backward, slight if he looked forward. There was still a predominant disposition to disqualify the non-religious part of the community from voting and from office. By the non-religious was meant all who did not formally and publicly accept a prescribed creed or a theological system. This disqualification was the first to disappear in the struggle for the extension of the franchise which began about 1795 with the Democratic party. But the religious disqualifications were less rigorous than during colonial days. Suffrage extension was a reform destined to agitate the public mind down to our own time. Another was a step towards the abolition of imprisonment for debt;* another, that the estates of suicides, traitors, and persons killed by accident should not be forfeited to the commonwealth, but descend to the heirs in the usual

* Pennsylvania, 1790; traceable to Penn's Frame of Government, April 25, 1682; to the Laws Agreed Upon in England, May 5, 1682; to Charter of Privileges, 1701.

manner:* a clear abolition of the common-law provision.

It was to be expected that the new democracy would provide against hereditary emoluments and distinctions and titles of nobility, and that a precedent would be established making it unconstitutional for a citizen to accept a gift from a foreign power without the consent of the State. What a democracy would not accept it could not well grant itself, and the state was made incapable of bestowing titles. It is now quite forgotten that social distinctions were sharper then than now. Jefferson and his party made political capital out of the aristocratic ways of the Federalists, and the wave that later swept Jackson into the Presidency engulfed for two generations at least the pretensions of the class described by John Adams as "the well born." Missouri and Arkansas were commonwealths before the levelling spirits were quieted. The crest of the anti-nobility wave was always along the frontier. Jefferson affected negligence, and made political capital out of dishevelled dress. Political campaigns are still conducted on home-spun tactics. The one great triumph of the Whig party was won when it abandoned federal traditions, identified itself with the people, and had monster meetings and ox-roasts.

Though the States guarded the obligations of contracts entered into by citizens, only two† de-

* Pennsylvania, 1790; Delaware, 1792; Kentucky, 1792, 1799.

† Delaware, 1792; Tennessee, 1796, limited the right to its own citizens.

clared themselves suable at law, and one of these limited to its own citizens the right to bring the suit. The first, Delaware, adopted the provision two years before the great case* was decided that led to the eleventh amendment; the second, Tennessee, two years after. Though all the constitutions provided executive terms, only one prescribed a geographical rotation in the executive office. The Governors of Maryland for three quarters of a century came alternately from the eastern and the western shore. This commonwealth was the first to proscribe monopolies, in language now familiar to the States of the new Northwest. The proscription of 1776 began the industrial campaign that is still going on.

Colonial experience and the political philosophy of the day combined to declare the provisions in the bills of rights inviolable, or, as the phrase went, "beyond constitutional sanction." Each convention sought to perpetuate its work. Yet the sixteen States that comprised the Union in 1800 had adopted twenty-six constitutions in twenty-four years. This activity was engendered by the incompleteness of those made amid the stress of war. It is somewhat paradoxical that constitutions, like governments, change most in times of peace. From these first declarations the commonwealths have departed but little. This was inevitable. The doctrine of natural rights, of the social compact, and of popular sovereignty could

* Chesholm *vs.* Georgia, 2 Dallas, 419.

not be abandoned. The chief source of the declarations was the experience of Englishmen in England and America. There is no close relation between the colonial charters and these constitutions. What Americans read into them and out of them was now for the first time formulated in the foundation of the State. One phrase found in several of the later charters was elaborated into a new principle. Colonists who, by royal charter, were said to have all the liberties and immunities of free and natural subjects of Great Britain, could, without great intellectual effort, at least in the eighteenth century, when accusing the King of violating the social compact and leaving them "in a state of nature," claim that their rights were natural. This may be said to be the fundamental doctrine of democracy in America.* All the provisions in the American bills of rights, then and now, were once administrative measures. They are past politics gone to seed, the mature experience of men in social relations. If government were not a matter of administration, there would be no bills of rights. These need not necessarily be written. They may be secured in the customs or traditions of a people. From their nature they tend to lengthen. Perhaps the best illustration of the manner of their coming is afforded by the amendments to the national Constitution, which are the

* It was stated for the first time in a constitution by New Jersey—Constitution 1776, Clause 1. As there given, it states the whole case of the American Revolution—the transition from monarchy to democracy.

national bill of rights. The first ten were common to the first State constitutions; the remaining five were added to make secure administrative measures accepted as final at the time of their adoption.

In later years the Declaration of Independence and the bills of rights were often called "glittering generalities."* As a people, we have become more or less familiar with the privileges and immunities which they were intended to protect, and therefore the provisions themselves seem superfluous. We cannot conceive of a republican form of government without them. The States were making the first attempt in history to define civil functions by means of a written constitution. Theoretically, the division was complete; practically, incomplete, and the incompleteness was admitted. The cause of the difficulty is the impossibility of fixing the administrative relations of the three, so called, powers—the executive, legislative, and judiciary. Baffled by the problem for three centuries, democracy in recent years has attempted to solve it by organizing the administrative as a fourth power. This attempt at solution explains why the later constitutions resemble a code.

The normal organization of the Legislature was in two branches, which prevailed, except in three States for a short time.† The division was not an inheritance from England, except as to form.

* Rufus Choate gave the phrase currency. See an article on the Declaration, by Moses Coit Tyler, in the *North American Review* for July, 1896.

† Pennsylvania, Vermont, Georgia.

Functionally the two Houses in America differ widely from the English, as was thoroughly understood in the eighteenth century. The life-tenure, the membership by inheritance, the landed interests of the House of Lords have no place in the American Senate. The functions which the English system secures we secure by a conventional arrangement of elections, terms, tenure of office, and prescribed powers. In similar manner we established a Lower House with functions analogous to those of the Commons. Not much importance is to be attached to variation in legislative titles.* The terms Senate and House were sufficiently common to give title to the branches of the national Legislature, and since 1787 titles have been uniform. The Houses together were uniformly styled the General Assembly. Annual elections of the House prevailed and continued till their expense and the superfluous legislation they engendered compelled their abandonment. The change extends over the nineteenth century. Only one State—Massachusetts—continues the old practice. Representation in the House was variously apportioned. The basis was property, civil corporations, taxable inhabitants, electors, population, or some combination of these elements. In all States the basis was the white race. The "federal number," as the provision for representa-

* House of Representatives in Pennsylvania, Delaware (1792), Georgia, Kentucky, Tennessee, New England; Assembly in New Jersey, New York, Delaware (1776); House of Commons, North Carolina (1776).

tion of three-fifths of the slaves was called, was adopted in only one State,* though proposed in several in later years.

In States having cities containing a large proportion of the population, a struggle early began between rural and urban interests† which has continued to the present and has affected their successive constitutions. In every instance the rural interest has triumphed and the city has been denied the proportion of representation to which its population has entitled it. The custom early began of fixing the minimum and maximum number of both House and Senate. Changes in population were usually provided for by a sliding scale of representation based on a census. As in later times, the practical definition of a district proved a difficult problem. Its solution could be at best only approximate and temporary. In some States towns were older than counties;‡ in others counties were older than towns.§ The representative district as we know it was not yet worked out. The unit of measure was various—the town, or the parish, or the county. Gradually the predominating basis of local government became the basis of representation—the town or township in the North, the county in the South. Usually the apportionment was loosely fixed in the first constitution of a State. Later apportionments were left to the Legislature. There was sure to remain

* Georgia, 1798.

† Massachusetts, New York, Pennsylvania, Maryland, Virginia.

‡ Massachusetts, Virginia. § The newer States.

a fractional population in the districts which, in the aggregate, constituted more than the ratio of representation. It was early attempted to recognize this remainder.* Neither then nor since has the attempt given satisfaction, though successive conventions have wrestled with the problem. The demand for equitable representation has been one of the chief causes of new constitutions. As no official census enabled the first conventions to apportion representation equitably, their work was speedily revised. This accounts for the number of constitutions before 1800. Population during the eighteenth century was relatively stationary. A native migration soon began, the effect of which quickly transformed great portions of the Northwest and of the Southwest into States. Their admission was contemporaneous with the arrival of the advance guard of European immigrants, who, to the number of nearly seventeen millions, have contributed to make the problem of apportionment one of the most difficult which the commonwealths have had to solve.

Though the fundamental notion of eighteenth-century democracy was equal rights, the constitutions carefully discriminated who among the population were qualified to vote and to hold office. The voters were a small fraction of the people; and those qualified for office a small fraction of the voters. The Representative was required to be of a certain age, to have resided in the State or

* Kentucky, 1799.

district a certain time, to possess a certain amount of property, principally in land; to profess a certain religious creed, and to be native-born, or a citizen at the time when the constitution was adopted. Only white men were eligible to office. As the qualifications were carefully detailed in the constitution, they must be interpreted as expressing public opinion. In few instances were they left to the discretion of the Legislature. They show what were considered the guarantees of public safety. Men possessing them were accounted as having "a permanent, common interest with the community." The following Table specifies the qualifications required from candidates in some of the States, according to their constitutions:

THE QUALIFICATIONS OF REPRESENTATIVES PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM, LIMITATIONS
N.H.	1776*	(21)	.....	.....	.....	.....
"	1784	(21)	For two yrs. inhabitant of town, parish, or place chosen to represent.	Estate of £100, one-half to be freehold in that town.	Protestant.	Annual election.
"	1792	(21)	" "	" "	"	" "

* In New Hampshire a Representative was a freeholder. See Acts and Laws, New Hampshire, Portsmouth, 1771, p. 3. In Rhode Island he was an elector (see Table of Qualifications). The oath of an Assemblyman in Connecticut was: "You, A. B., do swear by the name of the ever-living God that you will be true and faithful to the State of Connecticut, as a free and independent State, and in all things do your duty as a good and faithful subject of the said State, in supporting the rights and privileges of the same." (Assembly, second Thursday of October, 1777.) The Representative was qualified as an elector. For the oath required in 1776, see Acts of 1776, p. 451.

New York was districted, March 4, 1796, into four "great districts"—Southern, Middle, Eastern, and Western, following the grand division of that for Presidential Electors, April 12, 1792 (repealed November 19, 1792). See Constitution, 1777.

In New Jersey, Assemblymen, members of Legislative Council, sheriffs, and coroners

THE QUALIFICATIONS OF REPRESENTATIVES PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.—*Continued.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM, LIMITATIONS
Vt.	1777	21	1 yr. in State.	.....	Belief in one God; inspiration of the Scriptures; profess the Protestant religion.	Annual election.
"	1786	"	" "	.....	" "	" "
"	1793	"	2 years in State, 1 yr. of which (the last) in the town he represents.	.....	" "	" "
Mass.	1780	(21)	1 yr. in town he represents.	Freehold of £100 in town he represents, or ratable estate of £200 in that town.	Christian religion.	" "
N. Y.	1777	(21)	.....	.....	.....	" "
N. J.	1776	(21)	1 yr. inhabitant of county he represents.	£500 real and personal estate in that county.	No Protestant denied the right of candidacy on account of religious opinions.	
Pa.	1776	(21)	2 yrs. in city or county he represents.	Taxpayer.	Religion as in Vermont.	Annual election. Not oftener than 4 years in 7.

were nominated by nomination tickets, made by the electors, sent to the town clerks. From this list, published by the clerks, the electors chose on the second Tuesday of October. Act of February 22, 1797.

Pennsylvania was districted (apportionment of Representatives) September 4, 1779.

In Virginia, by one of the ordinances, passed July, 1775, the Senator was included among the officers of the State to be qualified as a freeholder.

In South Carolina, by act of Assembly, April 7, 1759, a member was required to be a Protestant, to have resided one year in the province, to possess five hundred acres of land and twenty slaves, or £1000 clear in realty.

In States whose constitutions did not specify the age of the Representative, custom or law fixed it at twenty-one years. In the table these are distinguished by placing the number in parentheses, thus (21).

THE QUALIFICATIONS OF REPRESENTATIVES PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.—*Continued.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM, LIMITATIONS
Pa.	1790	21	Citizen and inhabitant of the State 3 yrs.; the last year of it in city or county he represents.	Taxpayer.	The qualification is in the negative: no person who acknowledges the being of a God and a future state of rewards and punishments to be disqualified	Annual election.
Del.	1776	(21)	Residence in county represented.	Freehold.	Belief in the Trinity and in the inspiration of the Scriptures.	" "
"	1792	24	Citizen and inhabitant of the State 3 yrs.; the last year in county.	Freehold in county.	.....	" "
Md.	1776	above 21	1 year in county represented.	£500 real and personal property, above.	Christian religion.	" "
Va.	1776	(21)	Reside in county.	Freeholders in same.	.....	" "
N. C.	1776	(21)	1 year in county.	100 acres for life or in fee (possessor thereof for 6 mos. before election) in the county represented	Protestant.	" "
S. C.	1776	(21)	.....	.....	.....	Chosen biennially.
"	1778	(21)	3 yrs. in State	£3500 (currency) in real estate.	Protestant.	" "
"	1790	21	" "	500 acres, freehold and 10 negroes, or of £150 clear.	.....	Free white man.

THE QUALIFICATIONS OF REPRESENTATIVES PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.—*Concluded.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM, LIMITATIONS
Ga.	1777	21	12 mos. in State, 3 months in county.	250 acres of land or £250.	Protestant.	Annual election.
"	1789	21	7 yrs. citizen of U. S.; 2 yrs. inhabitant of the State, and an inhabitant of the county represented.	200 acres land or $150.	.....	" "
"	1798	21	The same as in 1789.	250 acres, or taxable property worth £500 in the county.	.....	Chosen on the federal basis—"three-fifths" clause.
Ky.	1792	24	2 yrs. citizen of the State; last 6 mos. of county.	.....	.....	Chosen ann'lly.
"	1799	24	Citizen of U. S., 2 yrs. in State; last year in the town or county represented.	....	.....	" "
Tenn.	1796	21	3 yrs. in State; 1 year in county.	200 acres, freehold.	.....	Biennial.

Centuries of practice in legislation had worked out a procedure in the British Parliament, and the substance of it was embodied in these constitutions. The provisions regulated the quorum, the election of members, their official conduct, their privileges, and the power of the House or Senate over them. This portion of our supreme law well illustrates the origin of constitutional provisions.

From the State constitutions the federal convention made up the analogous part of the national Constitution. They were construed as checks and balances in legislation.

If the test of sovereignty, at this time, be the oath of allegiance, the States were sovereign, as Representatives and other State officials did not swear allegiance to the United States, but to their own commonwealth. The requirement intimates how slight men considered their obligation to the national government. The national idea which now prevails was then unheard of. Speeches without number have been made, and books without number written, to prove that the national government, paramount and sovereign, began on the 4th of March, 1789. Since the civil war, almost unconsciously, national sovereignty, as now understood, has been freely imputed to the United States in the eighteenth century. Two things must be remembered. The Constitution was ratified with the understanding that a residuary sovereignty was left in the States; the present idea of national sovereignty was evolved by more than a century of administration. In other words, we have learned by experience that it is impossible to administer a general government that is not sovereign. Necessity made the Constitution originally, and necessity has worked out the idea of national sovereignty. Too often ideas are imputed to "the fathers" which it was impossible for them to hold. If the federal government had been commonly recognized in the

eighteenth century as sovereign, the oath of allegiance would not have been limited to the State. With one exception, the State constitutions now in force accord with public opinion on national sovereignty. The excepting constitution—that of Massachusetts of 1780—is in this particular a solitary survival of the eighteenth century, and it practically conforms by statute with the other forty-four. The growth of the idea of national sovereignty kept pace with the degree to which the general government identified itself with the interests of the people. At first the States did the more for them. As soon as the States began to fall behind, the idea of national sovereignty developed. The State constitutions kept pace with the idea, and gradually prescribed allegiance to both governments.

Education at public expense, which now constitutes an element so essential to the general welfare, was quite unthought of in the eighteenth century.* The need of schools was felt, and was met in part. The silence on the subject, at the time, should not be construed as evidence of wilful neglect of learning. The States were poor and deeply in debt. Individualism ruled the hour, and

* Massachusetts Constitution, 1780. Pennsylvania, 1790—the provision was put in to protect the then newly established College of Philadelphia; Art. vii., Sec. 3, was inserted to protect the old college, whose charter had been attacked by the Legislature. See Stone's edition of Wood's History of the University; third edition, Philadelphia, 1896. Five States made the support of schools obligatory on the Legislature — Pennsylvania, Vermont, New Hampshire, Massachusetts; Georgia, 1798.

it was not thought to be a function of the State to do for a citizen what he ought to do for himself. We defend public education as the fathers defended property and religious qualifications—as a deterrent of crime. A slight change in the phrase, "Education, the cheap defence of the nation," puts us in touch with eighteenth-century thought.

John Adams was the father of the public school, the State university, the State college, and the normal school. He realized when he inserted the educational clauses in the constitution of Massachusetts that he was departing from precedent and feared lest all would be struck out.* Save in New England, the idea lay dormant until the national government began to make donations of public lands exclusively for school purposes. The State constitutions then introduced an administrative article on education. This act of the general government strengthened the national idea. In our day, the right to education, in popular estimation, ranks as a civil right.

Temporary features are found in all constitutions; those in the first refer chiefly to pending questions of boundary — settled later by surveys, although nearly every commonwealth is still vexed by some boundary dispute. Traces of abuses in legislation that still survive are found, such as filibustering and the granting of gratuities. Legislatures acted under a free, general grant of powers. The exceptions scarcely suggest the later almost

* *Life and Works of John Adams*, Vol. i., p. 24.

tropical growth of provisions against special legislation. The first limitation of this kind was a rather feeble attempt to regulate divorces.* Incompatible offices were defined; clergymen were disqualified from civil office, not so much to separate Church and State as to improve the profession.† The compensation of members was a *per diem* allowance, regulated in some States by the constitution, in others by the Legislature. A member was disqualified by receiving fees or by loss of property. The House possessed the exclusive right to originate money bills. Tennessee ‡ inaugurated the change which after 1800 was gradually to overspread the country, that the bill may originate in either House.

Departure from English precedent was inevitable, as the Senate, being an elective body like the House, was responsible to the same constituency: a condition that never prevailed in England. It was a case of *cessat ratio, cessat lex.* The change begun in 1796 intimated that others might be expected, bringing the Legislature into the condition —practically set by the later constitutions—of one body differing only by tradition from the other. The House was the chief heritage from colonial times. It was the assembly to which for a century and a half the people had turned for protection and relief. It preserved many colonial tradi-

* Georgia, 1798.

† New York, 1777; North Carolina, 1776; South Carolina, Georgia, Kentucky, 1799; Tennessee, 1796.

‡ Tennessee, 1796.

tions and practices, of which the distinguishing one was its exclusive powers of taxation. The Senate was a product of the times, springing into existence when colonies became commonwealths. Its origin is suggested by the name it bore in several States—the Legislative Council.* This original must not be confused with the Executive Council which for a time also existed in most of the States and survives in three.† The Senate sprang from an idea, embodied in the New England charters, that, in addition to the colonial Assembly, Assistants to the Governor should be chosen. As the theory of checks and balances took possession of the public, the Senate as we now know it was devised as a set-off to the House. It was the most artificial part of the new civil system, and its functions have never been as distinct, in the popular mind, as those of the House. It is not strange that the proposition to dispense with it has been made from time to time. As its functions become identical with those of the House, its existence becomes precarious. It seems to weaken as the administrative strengthens, but the House has weakened also at the same time. It would seem, previous to experience, that the Senate would be strengthened by being em-

* Delaware (1776), called Council of the General Assembly; New Jersey, South Carolina (1776), Legislative Council; New Hampshire, The Council; Connecticut, Rhode Island, The Governor and Assistants. Until 1790 there was no Upper House in Pennsylvania, nor in Vermont till 1836.

† Maine, New Hampshire, Massachusetts. Efforts have been made to abolish it, especially in Massachusetts (1880–1895).

powered to originate money bills. On the contrary, the idea has strengthened that the dualism is superfluous, and that the junior body should be permanently dissolved. The fate of the State Senate is a problem for the future.

The original, advisory functions of the Senate are now performed largely by commissions, administrative boards, and individuals, who, in theory, are experts. All this body of administrative agents was wanting in the first constitutions, excepting a few military, fiscal, and land officers. The Executive Council was an illustration of the popular distrust of Governors. The Crown was not yet forgotten.

THE QUALIFICATIONS OF SENATORS AS PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM	REMARKS
N. H.	1776	....	Inhabitant.	Freeholder.	.....	1 yr.	This upper branch (temporary), was chosen by the lower, and called the Council.
"	1784	30	7 years inhab. State and of dist. at time elected.	Freehold worth £200.	Protestant	1 yr.	
"	1792	"	" "	"	"	"	
Vt.	1777	....	.....	.....	.....	.....	Vermont had a Council, but no Senate.
"	1786*	....	.....	.....	.....	.....	
"	1793	....	.....	.....	.....	.....	

* Vermont had no Senate until 1836.

THE QUALIFICATIONS OF SENATORS AS PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.—*Continued.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM	REMARKS
Mass.	1780	....	5 yrs. inhab. of State, inhab. of dist. represented.	£300 in freehold, or £600 in personal estate.	.....	1 yr.	
N. Y.	1777	....	.....	Freeholder.	.....	4 yrs.	
N. J.	1776	....	1 yr. county	£1000 proclamation money, if real and personal estate.	Same as Assemblymen.	1 yr.	The Upper House was called the Legislative Council.
Pa.	1776	....	.....	.....	.....	....	No Upper House.
"	1790	25	Citizen of State 4 years; the last of the dist. represented.	Taxpayer.	Same as for Representatives.	4 yrs.	
Del.	1776	25	Reside in county.	Freeholder.	.....	3 yrs.	Called the Council.
"	1792	27	Citizen of State 3 years; the last of the county.	200 acres freehold, or real and personal property worth £1000.	.....	3 yrs.	
Md.	1776	25	3 yrs. residence in State.	£1000 real and personal.	As members of House.	5 yrs.	Chosen by electors.
Va.	1776	25	Resident in district.	Freeholder.	"	1 yr.	
N. C.	1776	....	1 year in county.	300 acres in fee.	"	1 yr.	
S. C.	1776	....	.....	.....	.....	....	Chosen by the Assembly from its own body, and called the Legislative Council.
"	1778	30	5 years in State.	£2000 settled freehold estate.	Protestant	1 yr.	

THE QUALIFICATIONS OF SENATORS AS PRESCRIBED BY THE STATE CONSTITUTIONS, 1776–1800.—*Concluded.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM	REMARKS
S.C.	1790	30	5 years in State.	£300 sterling, settled freehold. If a non-resident in the district, an estate, freehold, of £1000, clear of debt.	.....	4 yrs.	
Ga.	1777	....	.....	.....	.....	....	No Upper House.
"	1789	28	9 years inhabitant of U. S., 3 years of State, 6 months, county.	250 acres freehold or property worth £250.	.....	3 yrs.	
"	1798	25	Same as in 1789, except 1 year in county.	Freehold worth $500 or taxable property worth $1000.	.....	1 yr.	
Ky.	1792	27	2 years in State.	.....	.....	4 yrs.	Chosen by electors specially elected.
"	1799	35	U. S. citizen, 6 years in State, last in district.	.....	.....	4 yrs.	
Tenn.	1796*	21	3 years in State, of which 1 yr. in county.	200 acres in freehold.	.....	2 yrs.	

The compensation of members of the two Houses was usually the same; but the Speaker of the House received more than any other member of it,

* In Tennessee the qualifications for Senators and Representatives were the same until 1834.

and the President of the Senate received the same as the Speaker of the House. Thus, in 1797, the Speaker and the Vice-President of the Council, in New Jersey, received 20 shillings a day; the councillors and members, 17 shillings; in Pennsylvania, 1777, the members received 15 shillings, the Speaker, 20 shillings. In 1791, in Pennsylvania, the two presiding officers, 22 shillings and 6 pence; the Senators and Representatives, 15 shillings and 9 pence, mileage. In Virginia, in 1779, each Assemblyman was paid 50 lbs. of tobacco daily, and 2 lbs. additional as mileage; by the act of 1780, the grand jury was required, at each of the four sessions of the general court, to estimate the money value of tobacco as a basis for the wages of members of Assembly.

Senatorial apportionment differed from that for the House. It was by groups or masses of population rather than by single towns or counties.* The basis was property; that of the House, though varying, was persons, or persons and property. The district came into existence in the attempt to establish a basis for Senatorial apportionment. To secure all the benefits of the Senatorial device, the retiring clause was worked out by which democracy secured a changing body and a permanent one at the same time. The State thus established the precedent for the nation. The Senate was a smaller body than the House, chosen for a longer term, and the qualifications for its members were a little more exacting. The Senator was an older, and in some States a richer, man.† A body as conventional in origin would be expected to illustrate temporary expedients or schemes of election. Of these, most noticeable was the Electoral College, the prototype, if not the precedent, for the Presi-

* Virginia, New Jersey, 1776; Massachusetts, 1780; Georgia, 1789; Pennsylvania, 1790; New Hampshire, 1793.

† New Jersey, Maryland, Delaware, North Carolina, 1776; New York, 1777; Massachusetts, 1780.

dential Electors. The States speedily abandoned the College—Maryland, in which it originated, and Kentucky, which took it from Maryland and the Constitution of the United States. The idea early took root that each county should have one Senator. But the theory of equal representation compelled a recognition of the more populous counties and increased the difficulties of apportionment. Various devices were tried to keep the membership of the Senate in ratio with population, but none gave full satisfaction. The functions of the Senate were in part copied from those of the House of Lords, as that of a court of impeachment or a court of law, but in part conventional, as that of electing the Governor.* In some States the House participated in this election.† The first led to confusion of legislative and judicial functions; the second was soon recognized as undemocratic. Gradually, before the century closed, the Senate came to be recognized as representing the property, the House the persons, in the State. But the idea was at best conventional. For this reason democracy set about destroying the first basis and strengthening the second, and the functions of the Senate were viewed in a new light. It gradually became a democratic body. The old distinction was for half a century a political issue. But the democratic character of

* Georgia, 1789. As a court, New Jersey, New York, Connecticut, Rhode Island.

† In the Southern States usually by joint ballot. In Georgia, 1777, the House alone elected him.

the Senate was not established until after 1820. Together, House and Senate comprised a working Legislature whose methods of procedure remain essentially as when they were first established. The constitution held the two branches together. As a device, the Senate was almost a discovery in politics. It illustrates how democracy utilized political mechanics in working out a substitute for an ancient branch of the Legislature which hitherto had consisted of a landholding class—lawmakers by accident of birth. There was nothing accidental in the substitute. Every quality and function was fixed by the logic of the political situation. It is in this sense only that the State Senate is one of the natural flowers of democracy.

QUALIFICATIONS OF GOVERNORS. STATE CONSTITUTIONS, 1776–1800.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM	REMARKS
N.H.	1776	....	.....	.....	.....	....	
"	1784	30	7 years in State.	£500, one-half in freehold.	Protestant.	1 yr.	Styled the President.
"	1792	30	" "	" "	"	"	
Vt.	1777	....	.....	.....	"	"	
"	1786	....	.....	.....	"	"	
"	1793	....	4 years in State.	.....	.....	"	
Mass.	1780	....	7 years in State.	£1000 freehold.	Christian.	"	
N.Y.	1777	....	.....	Freeholder	.....	....	

* The Governor of Rhode Island was a freeholder, and elected annually; so of Connecticut. In New York, act of March 27, 1778, the elector voted *viva voce* for Senators and Assemblymen, but by ballot for Governor and Lieutenant-Governor. In New Jersey the Governor's salary, by act of December 23, 1784, was £550; November 7, 1797, £750; November 7, 1798, £700; November 11, 1799, $1866.67. In Virginia, his salary, act of May, 1779, was £4500. In Kentucky, act of January 22, 1798, £400, also fuel, stationery, and postage. In Tennessee, October 23, 1796, $750. In all the States, no man other than a freeholder was chosen Governor; nor any man who had not long been a resident of the State. In States whose constitutions did not specify the age qualification, it may be put at thirty years. A person not professing the Christian religion was not likely to be mentioned as candidate for Governor; exceptions will occur—as that of Jefferson in Virginia.

Gubernatorial Qualifications

QUALIFICATIONS OF GOVERNORS. STATE CONSTITUTIONS, 1776–1800.

STATE	CONST.	AGE	RESIDENCE	PROPERTY	RELIGION	TERM	REMARKS
N. J.	1776	....	.....	.....	Protestant.	1 yr.	
Pa.	1776	....	.....	.....	"	"	President.
"	1790	30	7 years in State.	.....	.....	3 yrs.	
Del.	1776	....	.....	.....	.....	3 yrs.	Ineligible for 3 years. Styled the President.
"	1792	30	12 yrs. U.S., last 6 years State.	.....	.....	"	
Md.	1776	25	5 years in State.	£5000, of which £1000 is freehold.	Christian.	"	Ineligible for 4 years.
Va.	1776	....	.....	.....	.....	"	" "
N. C.	1776	30	5 years in State.	£1000 freehold.	Protestant.	1 yr.	Ineligible 3 years in 6.
S.C.	1776	....	.....	.....	.....	....	Temporary gov't.
"	1778	....	10 years in State.	£10,000 freehold.	Protestant.	2 yrs.	Ineligible till 4 years.
"	1790	30	10 years in State.	£1500 settled estate, clear.	.....	"	" "
Ga.	1777	....	3 years in State.	.....	.....	1 yr.	Eligible 1 yr. out of 3.
"	1789	30	12 yrs. citizen of U.S. 6 years of State.	500 acres land, freehold, or £1000 other property.	.....	2 yrs.	
"	1798	30	" "	500 acres, freehold, or $4000 in other property.	.....	2 yrs.	
Ky.	1792	30	2 years citizen of the State.	.....	.....	4 yrs.	
"	1799	35	Citizen of U.S., 6 yrs. resident of State.	.....	.....	4 yrs.	Ineligible for 7 yrs.
Tenn.	1796	25	4 years citizen of the State.	500 acres, freehold.	.....	2 yrs.	

Distrust of executive power and fear of executive usurpation characterize democracy at this time. Executive, like legislative, titles varied among the States. The oldest working charter called the executive the President,* a title destined to highest dignity in the country. The Governor had been the most important man in the colony, and by tradition was the most important in the State. Democracy is forced to fall back on ceremony to take the place of the halo that hedges kings, and the early Governors were dignitaries such as Presidents became in later years. But the dignity of office is at last measured by the real power that accompanies it, in spite of the aristocratic airs and fine dress of a Governor or the title by which the constitution requires us to address him. The unwritten law of official life has at last given all Governors the title prescribed in the constitution of Massachusetts. After much discussion, the federal convention decided to give no title to the national executive other than the name of the office; whence it has come that the executive of a commonwealth is addressed as "his Excellency"—and the executive of the nation simply as "the President." Where democracy was strongest and most experienced—as in New England—a Governor might be re-elected at the will of the people; elsewhere constitutional limitations more or less affected the choice.† Executive qualifica-

* Charters, 1606, 1609.

† Pennsylvania, 1790, "nine years in twelve"; Delaware, 1792, "three years in six"; South Carolina, 1778, 1790, "two years in

tions were more discriminating in degree than those laid down for Senators—he must be longer a resident of the State and be possessed of a greater amount of property. The office in some States was accessible only to the few having strong family influence. United States citizenship was not a common requisite, as now, for legislators, governors, judges, and minor officials. The Governor was chosen by the Legislature, except in New England and New York, where he was chosen by the electors. Not until Jacksonian democracy revised the State governments was the Governor chosen by popular vote throughout the Union. During the intervening years the manner of choice was a transition from the old method by royal appointment to the new one by popular election. In case of failure to elect by popular vote, the choice was made by the Legislature, as at present.

The Governor was a military rather than a civil officer. His military duties were quite carefully outlined; his civil functions were obscure. He shone in the splendor which now clothes his staff. His civil functions now almost wholly obscure his military. The difference was carried to practical ends. The pardoning and the veto power were not freely given to him. In popular fancy he was the man on horseback. To-day he is the man

six." Annual elections in New England, New Jersey, South Carolina, 1776. Biennial in New Hampshire, 1784, 1792; South Carolina, 1778, 1790; Georgia, 1789, 1798; Tennessee, 1796. Quadrennial in Kentucky, 1792.

with the quill. It was a military period, and the soldier rather than the civilian was hero. It is a paradox of modern times that when standing armies have become an institution the civilian, not the soldier, the Iron Chancellor, not Von Moltke, is the hero. In America it was the age of captains, as eighty years later was the age of colonels. The state was conceived as a military rather than an industrial machine. The concept was antithetic to that of the rights of man. As yet there were few offices and no civil service. The gentle art of creating offices was not yet discovered. Few were the Governor's appointments, and chiefly in the militia. He could not, unaided by his council, nominate judges or the few civil officers which the State required—such as the attorney-general or the sheriff. His compensation was variously described as honorable, reasonable, and adequate. Perhaps the amount was omitted from the constitutions and left to be fixed by the Legislature because of the fluctuation in the paper money of the times. A salary of nine thousand pounds* seems princely till we learn that it was in fiat money.

His function in legislation was also obscure. Popularly, he was supposed to execute, not to make, laws—or, as in our day, to unmake them. He was expected to send an annual message to the Legislature in which he pointed out the needs of the State.† For a time Legislatures seem to have

* South Carolina, 1776.

† Pennsylvania, the first State to follow the national Constitu-

taken these messages literally. In our day they are consigned to a committee and forgotten. The messages of the early Governors remain a fair index of early legislation. As long as this state of things continued, it was unnecessary to limit the power of the Assembly and increase that of the Governor. He was conceived to be the head of the State. That his office was considered one of great dignity is illustrated by the early history of the national government. Men preferred the office of Governor to that of Congressman or United States Senator, cabinet minister or federal judge. John Jay resigned the office of Chief Justice of the United States to become Governor of New York. It was a sign of the times. The State offered more than the United States to him who sought a political career. To become Governor was to reach the summit of political grandeur.

Every system of government must be planned to provide against an interregnum. The State is by nature perpetual; offices must not stand vacant; civil functions must be performed. A Lieutenant-Governor—or, as he was styled by some, a Vice-President — was provided for. The succession was indirect in some States.* The Governor

tion *in re* the message. It originated in New England. (See Massachusetts Constitution, 1780.)

* In New England and New York, the Lieutenant-Governor; but in New Hampshire, 1784, to the senior Senator, and in 1792 to the President of the Senate; so Georgia, 1789, 1798, following New Hampshire; to Speaker of the Senate in Pennsylvania, Delaware, North Carolina, Kentucky, Tennessee.

was impeachable.* Confused functions seem to invite impeachment, as in some States he acted as judge, legislator, and executive. The clearer definition of the powers exercised by the President were imitated in constitutions adopted after 1789.

Of the executive council—thought at this time essential to the protection of the people—little survives. Its original function in provincial times was to control the administration. It was never a cabinet. In the first constitutions it represented popular distrust of the Governor of the State, as in earlier times it represented royal distrust of the Governor of the colony. The growth of administrative offices later meant the decay of this council. For a time it stood for the civil side of executive power, as the Governor stood for the military. Chosen usually by the Legislature, it began to change in political character when the members were elected in districts. Before it had disappeared, it exercised executive, legislative, and judicial functions. Clearly the Governor was a military figure intrusted with few powers. It is rather curious that though he has increased in authority, he is less conspicuous in public affairs than he was a hundred years ago.

The State courts, like the colonial, followed the English type; but a distinct State government required appropriate courts. The county courts were continued, a new court was created, and the two sets were distinguished as the inferior and the

* New York, Virginia, by Assembly; North Carolina, "or by presentment of grand jury."

superior, or supreme. The *nisi prius* system was about to be changed. Superior courts exercised both a law and an equity jurisdiction. There were courts of chancery. Judges were appointed by the Governor or chosen by the Legislature,* usually for the term of good behavior. The unreasonableness of the age limit† on judges was proved by the appearance of Kent's *Commentaries*, after their author had been retired on account of constitutional disqualifications to continue a judge in New York. Judges were removable. As to-day, the jurisdiction of the superior courts was final in all cases; thus appellate jurisdiction was regulated in each commonwealth by law. Not infrequently the judge was *ex officio* a justice of the peace. The superior courts were too numerous and their jurisdiction too various to be easily classified. They were largely the creatures of the Legislature. Their titles help to indicate their character: probate, admiralty, orphans', chancery, common pleas, oyer and terminer. Their jurisdiction was original, but not final, and was both civil and criminal.

Judicial functions were slightly confused with executive. Many rules which had grown up in practice found their way into the constitutions. Georgia began the innovation of defining jurisdiction by specifying the money value involved in a case:‡ a precedent since freely followed. The

* New Jersey, Virginia, South Carolina, 1776; Tennessee, 1796; chosen by joint ballot: elsewhere by Governor.

† New York, sixty years; New Hampshire, 1792, seventy years.

‡ Georgia, 1777.

courts met much as at present, the number of sessions being regulated by law. Clerks were appointed by the judges. All writs ran in the name of the commonwealth, as previously in the name of the King. As at present, litigation went on chiefly in justices' courts, and these were the object of constitutional care. The justice was appointed by the Governor or elected by the Assembly. Democracy had not yet secured control of any part of the judicial system. The justice was a local dignitary who wrote Esquire after his name, and was commonly called the 'Squire. Usually he continued in the office for life and prospered on his fees. Never were a people more given to litigation than the Americans in the last century. The Revolution bred innumerable lawsuits and an army of lawyers ranging in ability from John Marshall to Andrew Jackson.

Best known in each county was the sheriff, whose office was the first in importance after the Representative, to be filled by popular election. No other official was closer to the people, and none was of greater antiquity. His duties, it was thought, as now, could not be safely intrusted to any man save for a short time, and not for successive terms. This limitation was due to the composite character of the office. He was collector, assessor, executor, treasurer, comptroller, police, keeper of the poor, and sheriff—all in one. It was his function as custodian of public and private money that forbade re-eligibility till the lapse of years and his successor had, as is now said, "gone

over the books." The office was in a state of transition at this time. As under English law, the sheriff was appointed in some States by the executive; in others he was chosen by the electors. He was the second officer of the court. The jury system was as yet unshaken, and no hint given of its impending dissolution. The right of trial by jury ranked high among the fresh rights of man. Therefore the jury of twelve men and the grand jury of nearly twice the number were conceived to be pillars of the State. A unique provision which has not become a precedent made the Supreme Court in one State, Massachusetts, an advisory council to the Governor and Legislature. Common law practice was yet distinct from equity practice, and the technical difficulties of real actions, pleadings, and chancery procedure made the practice of the law a mystery.* England soon after this began the simplification of practice, and America has followed; but the abolition of distinctions in actions which characterize practice to-day was unthought of at this time. Not until after the federal judiciary act of 1789 did the State systems bend towards uniformity. They were less responsive than the executive or the legislative to constitutional revision; yet, judicial reform of some kind has usually been proposed by a convention, and in one instance only the judicial article in a proposed constitution escaped defeat at the polls.†

* Maryland, 1776, contains many provisions, essentially only rules of court.

† New York, 1868.

These early courts were the precedent for the federal judicial system, and their virtues survive there in the circuit court and the life-tenure of the judges —the one bringing the courts to the people, the other securing an independent judiciary.

Slavery was not an aggressive element; one State forbade importation;* two others,† cruel, treatment of slaves, and the latter provision became a precedent in the South. A Representative in Congress from South Carolina must have been qualified by the ownership of ten negroes, and the requirement was in force three-quarters of a century — till abolished by the thirteenth amendment. Delegates to the Congress of the Confederation were chosen by the Legislatures, and subject to recall. Like Governors and members of the General Assembly, they were required to be freeholders. No State constitution before 1789 suggested the idea of nationality. Later ones of the period, like their successors, were silent respecting United States Senators. Their election has always been regulated by law. Persons of foreign birth were as yet few in number, but immigration from the West Indies and the British provinces made necessary some provision for naturalization.

The electors were free white men. A few electors, North and South, were free persons of color. Their inclusion in the electorate in New Jersey and North Carolina was doubtless an oversight.

* Delaware, 1792.

† Georgia, 1798; Kentucky, 1799.

That colored men voted in New Hampshire, Massachusetts, and New Jersey is unquestionable.* In a few years public opinion, except in New Hampshire and Massachusetts, kept them from the polls. The majority of white men were disqualified from voting. The qualifications for electors were less exacting than those for office-holders. A shorter residence and less property were required.

* In New Jersey the right was taken away from them, from aliens, and from females—*inhabitants*—by the Constitution of 1776, by act of Assembly, November 16, 1807. See debate on "abrogating the right of free persons of color to vote;" Proceedings and Debates of the Convention of North Carolina Called to Amend the Constitution of the State, which assembled at Raleigh, June 4, 1835, to which are subjoined the Convention Act, the Amendments to the Constitution, together with the Votes of the People. Raleigh, 1836, pp. 351, *et seq.* See also Curtis's dissenting opinion, Scott *vs.* Sandford, 19 Howard, 393. There is no evidence that free persons of color voted in colonial times.

QUALIFICATIONS OF ELECTORS PRESCRIBED BY THE CONSTITUTIONS 1776–1800.

STATE	CONST.	AGE	RESIDENCE	PROPERTY	TAXATION	RELIGION*	SEX	RACE	NATIVE OR NATURALIZED
N. H.	1784	21	Town.	Having town privileges, freehold.	Poll-tax.	.....	Male	....	.....
"	1792	21	Town.	Freehold	.....	.....	Male	....	.....
Vt.	1777	21	1 year in State.	.....	.....	.....	Male	....	Foreigner after 1 year's residence.
"	1786	21	"	.....	.....	.....	Male	....	"
"	1793	21	"	.....	.....	.....	Male	....	.....

* In New Hampshire, Massachusetts, Connecticut, and Vermont in the eighteenth century, most of the electors were church members.

QUALIFICATIONS OF ELECTORS PRESCRIBED BY THE CONSTITUTIONS 1776–1800.—*Continued.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	TAXATION	RELIGION	SEX	RACE	NATIVE OR NATURALIZED
Mass.	1780	21	1 year in town.	Freehold of annual income of £3, or estate of £60.	.....	.....	Male	....	.....
N. Y.	1777	21	6 mos. in county.	Freehold of £20 or paying rent of 40*s.* Freehold of £100 to vote for State Senator.	Taxpayer, or freeman of Albany or New York City.	.....	Male	....	.....
N. J.	1776	21	12 mos. in county.	Estate of £50.	.....	.....	Male or female	White or black	.....
Pa.	1776	21	1 year in State.	.....	Taxpayer.	.....	Male	....	.....
"	1790	21	"	.....	State or Co. tax.	.....	Male	....	.....
Del.	1776*	...	.....	.....	.....	.....	....	....	.....
"	1792	21	2 years in State.	.....	State or Co. tax.	.....	Male	White	.....
Md.	1776	21	1 year in county.	Freehold of 50 acres or property of £30.	.....	.....	Male	....	.....
Va.	1776*	...	.....	.....	.....	.....	....	....	.....
N.C.	1776	21	12 mos. in county.	Freehold in county of 50 acres for 6 mos. before election may vote for State Senator.	Paid public taxes, may vote for member of H. C.	.....	....	....	.....

* Qualifications "as fixed by law," see Table, p. 96.

QUALIFICATIONS OF ELECTORS PRESCRIBED BY THE CONSTITUTIONS 1776–1800.—*Concluded.*

STATE	CONST.	AGE	RESIDENCE	PROPERTY	TAXATION	RELIGION	SEX	RACE	NATIVE OR NATURALIZED
S. C.	1776*	...	.....	.....	.....	.....	....	....	.....
"	1778	21	1 year in State.	Freehold of 50 acres or town lot or paid taxes equal to tax on 50 acres.	.....	Acknowledges the being of a God and a future state of rewards and punishments.	Male	White	.....
"	1790	21	2 years citizen of the State.	Same as in 1778.	If not freeholder, has paid tax of 3*s.* sterling.	.....	Male	White	.....
Ga.	1777	21	6 months in State.	Property of £10 or being of a mechanic trade or a taxpayer.	.....	.....	.....	....	.....
"	1789	21	6 mos. in county, citizens and inhabitants of the State.	.....	.....	.....	.....	....	.....
"	1798	21	"	.....	Taxpayer.	.....	.....	....	.....
Ky.	1792	21	2 yrs. in State or 1 yr. in county.	.....	.....	.....	Male	....	.....
"	1799	21	"	.....	.....	.....	Male	White	.....
Tenn.	1796	21	6 mos. in county.	Freehold	.....	.....	Male	....	.....

* Qualifications "as fixed by law," see Table, p. 96.

THE QUALIFICATIONS OF ELECTORS AS PRESCRIBED BY LAW.

STATE	DATE OF LAW	AGE	REQUIREMENTS
Mass.	March 23, 1786	....	Freeholders who pay one single tax, besides the poll, a sum equal to two-thirds of a single poll-tax.
R. I.	1762	21	Inhabitants. £40 in realty, or 40*s.* per annum rent, or eldest son of freeholder.
Conn.	1715	21	Realty—40*s.* per annum, or £40 in personal estate.
N. Y.	March 27, 1778	....	Every mortgagor or mortgagee in possession, and every person possessed of a freehold in right of his wife, vote *viva voce* for Senators and Assemblymen; by ballot for Governor and Lieutenant-Governor.
N. J.	Feb. 22, 1797	21	Free inhabitants having £50 property, and 12 mos. in the county. Women, aliens, and free negroes, thus qualified, voted.
Pa.	Feb. 15, 1799	21	Citizen of State 2 years, paying State or county tax 6 mos. before the election; sons of electors vote "on age"; *i. e.*, at 21, without payment of the tax.
Md.	{ Oct., 1785 / Dec. 31, 1796 }	....	Free negroes not to be electors.
Va.	Law of 1762–69	....	Free negroes and women not to be electors; an elector a freeman having 500 acres of land unsettled, or 25 acres settled, having thereon a house 12×12. Elector voted in the county in which the greater part of his land lay, if it lay in two counties.
"	Law of 1781	....	Poll-tax—½ bu. wheat, or 5 pecks oats, or 2 lbs. sound bacon. Repealed November, 1781, and made 10*s.*
S. C.	Oct. 7, 1759	....	Elector—free white man possessing settled freehold estate, or 100 acres unsettled, or £60 in houses, or paying a tax of 10*s.*

Neither by the Constitution nor the law were free negroes (males) denied the right to vote in New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, or Tennessee. There is evidence that they voted in New Jersey from 1776 to 1807 (see act of November 16, 1807, limiting the right to vote to free white male citizens); in New York (acts of March 27, 1778; April 11, 1815; April 19, 1822); in Pennsylvania under Constitution of 1776 (see debate on inserting the word "white," as descriptive of the elector, in the report of the Constitutional Convention of 1838); in North Carolina (see debate on "abrogat-

ing the right of free persons of color to vote," under Constitution of 1776, in debates of the Constitutional Convention of 1835); in Tennessee, from 1776 to 1834 (see Caldwell's *Constitutional History of Tennessee*, p. 93, and compare the qualifications of the elector under the two constitutions). In New England, if the town-meeting admitted the free negro to a citizen's rights, he could vote. Public opinion in Rhode Island refused him admittance (see Constitutional Convention, 1818, Art. vi., Sec. 2; and of Rhode Island, 1842, Art. ii., Secs. 1, 2). It was not an established right in law, in 1842, that a person having African blood in his veins could be a citizen of the United States; he could not become such by naturalization, as the law restricted naturalization to white men. Free persons of color were denied the right to vote in New Jersey, by act of Assembly, in 1807; in Tennessee, by the Constitution of 1834; in North Carolina, by constitutional amendment, in 1835; in Pennsylvania, by the Constitution of 1838. Thus, of the States that originally allowed them the right, New Hampshire, Vermont, Massachusetts, and New York never withdrew it.

One trial was made of compulsory voting, and abandoned. It is impossible to know accurately the number of electors. It may be estimated at not more than one hundred and fifty thousand in a population of five millions. Had the suffrage of to-day prevailed, there would have been during these twenty-five years, at any election, not fewer than seven hundred thousand nor more than one million voters.

The landless man, it was thought, could not be trusted. Universal suffrage, as we know it, was not thought of. The voters and office-holders comprised a landed aristocracy. Property was the basis of government, and continued to be, in the older States, for more than fifty years. But the struggle for the extension of the franchise began before the century was over, and won its first victories when new States were admitted early in the nineteenth century.

The men who made these early instruments

realized that they might prove only temporary, and provided for their amendment and revision. To the Legislatures was left the initiative. Pennsylvania and Vermont created a Council of Censors to guard the constitution and suggest changes.* To prevent hasty ones, some States made it possible to make periodical revision. The electors were not consulted in making many of these constitutions; but amendments and revisions were usually made with their consent. In some States changes were difficult to make, the elements necessary to effect them not being likely to work harmoniously at one time. Gradually the process of amendment became simpler, and to the electors the Legislature submitted changes and the question of calling a convention. Gradually, also, the practice prevailed of submitting the work of the convention to the electors that it might receive their ratification. This has become the normal procedure.

What, then, were the distinguishing features of this body of eighteenth-century supreme law? Not least in importance was its civil character: it departed from feudal precedents and organized government on a peace footing. Unlike the early, and some later, constitutions of the South American republics, and the written constitutions of the continent, it contained no provisions that can be called military in character. Political and civil

* Report of Pennsylvania Censors in Proceedings of Conventions of 1776, 1789, Harrisburg, Part iii. The Reports of the Vermont Censors are in some twenty volumes, down to 1870.

rights were stated as their own best defence. American democracy thus made a unique contribution to the social evolution of the race. These constitutions, and the national — adopted amid and largely from the earlier of them—proclaimed that a new political opportunity had come. It was equality of the eighteenth-century kind, but purer and more accessible than before. In spite of the confusion of functions, the constitutions worked. Henceforth the people should rule by divine right. It is safe to smile at the idea now—as the heresy was promulgated long ago. But amid our smiles and disappointments we still cling hopefully to the heresy, believing that it is not too good to be true. Universal suffrage looks back, with some impatience and more pity, wondering that the fathers applied the theory of equal rights so badly. Theirs was the age of things—ours of persons. The basis of government has changed. The privileges of caste have been thrust back by the forces of universal suffrage.

Many seeds of rivalry were sown in these constitutions. England was the land of privileges of birth and property, and the Americans were Englishmen of yesterday. It was an age of theories in government; ours is one of theories in economy. Debating clubs discussed propositions then that we hold as political axioms now. Running through the whole political estate was individualism, the dominating notion of the times. Reading between the lines—or, to speak more truly, reading later experience into them—we detect ideas

which were the political straws left on the field after the harvest of independence. Whatever we may think of the new governments, they fixed the ancient landmarks, which have never been removed.

CHAPTER IV

THE TRANSITION OF INDEPENDENT STATES

The colonization of America, as carried on by Englishmen, proceeded according to feudal notions. To individuals and companies the Crown granted charters as to feudal chiefs. Raleigh dreamed of a profitable tenantry and a long rent-roll in America. All the companies were close corporations, animated by much the same spirit as Raleigh. A continent in a state of nature produces democracy. The economic schemes of feudalism failed; but the system took political possession of the country, and held on until democracy dislodged it within the memory of the living. The tenacious grasp was clear in the first State constitutions, and is traceable in those of our own times.* All government emanated from the Crown. The idea is still good in politics, and was long paramount in law. Charter privileges, in the early days, were exclusively for the members of the corporation, but immigration speedily compelled a change. The corporation was enlarged. This was the first reform in representation, the first extension of the

* The principal authorities for this chapter are the proceedings of the Legislatures and conventions referred to. See note, p. 29.

suffrage. The record of it fills the early annals of Massachusetts. It was typical of that going on in one form or another in all the colonies, and continued long after they became States. It is a present issue.

The unit of political measure was the town in the North; in the South, the county. Some old towns claimed an equal right of representation with counties. For a time it was granted them.* Colonial isolation compelled representation in local government, and ultimately in federal. Much of the emphasis which has been put upon the right of representation is rather due to the economic character of the constituencies. Social efficiency was feeble. Self-protection compelled resort to some system of representation. The Virginia General Court of 1619, with which our Legislatures begin, exercised the functions of a judicial body and some functions of a legislative. It is not clear that James the First intended to establish an American Parliament. The House of Stuart was not in the habit of laying such democratic foundations. Nor is it probable that the King called the House of Burgesses into being merely to vex the posterity of his enemies. The Virginia Assembly was a necessity, and the charter was interpreted accordingly. It was an early instance of the administrative making the constitutional. The men who managed what were called

* As in Virginia. The towns or *boroughs* preponderated in 1619, whence their delegates gave the name *House of Burgesses* to the Assembly.—*Stith's Virginia*, p. 160.

in the seventeenth century the "adventures to America" had their goal in gain. Therefore they courted immigration. History, we are told often, and incorrectly, repeats itself. History simply records that the principles of human action remain the same. When, two hundred and fifty years after Captain John Smith and the Pilgrim Fathers, foreign immigration poured into the Far West, under the stimulus of the great railroad companies, the tactics of the directors of the London Company of 1611 were repeated. To induce population, the corporations and proprietaries of colonies offered rare privileges to all who would come, and the Crown, yielding to influence, permitted political privileges, of which the most important was the right to choose a colonial Assembly. Thus representative government in America owes much, if not all, to the love of gain. Until the excuse became a travesty—and the farce ran on for more than a hundred years—colonization was carried on for the purpose of propagating the Christian religion among the Indians and bringing them "to human civility and to a settled and quiet government." When the last piece of colonization was attempted the purpose was no longer veiled; the people of Georgia were to destroy the savages and increase the trade, navigation, and wealth of the realm.*

American colonization was primarily a commercial venture, and the price paid for it was repre-

* Charter, 1732.

sentative government. The few who, in some colonies, sought "freedom to worship God" soon caught the infection of the age, and as time passed developed a masterful leadership in trade and commerce. Written in the light of results, the history of the colonies is economic, and the ecclesiastical is not the controlling element. It was found that they could not prosper unless political privileges demanded by the people were granted. The three Virginia charters illustrate this.

Political organization took a form tending to the democratic. In Massachusetts the corporation was a distinct class. Only after great compulsion did it consent to receive new members, and these of its own choosing. It set qualifications which still kept the mass of the population out of the political organization. Necessity dictated reform. If it were denied, the reformers would emigrate and establish a new colony. The struggle began in 1633, and was the beginning of that for the extension of the suffrage and for equitable representation. Roger Williams grounded his demands on economic equities, long familiar to later generations in the saying that taxation and representation go together. Rhode Island was as much the fruit of this doctrine in the seventeenth century as American independence in the eighteenth. In granting the reform, Massachusetts prescribed conditions which may be called the first American electoral qualifications. They regulated the political life of the province. The conditions, some-

what modified, continued until 1820, and, further modified, to the present time.

In attempting to measure the forces which have shaped democracy in this country, that of individualism must be assigned perhaps the first rank. It has dominated our laws and constitutions. It was bred by the economies of colonial life. Provincial Assemblies legislated in its interest. That each must protect his own was the dominating spirit of colonial life. Eventually the idea got in the saddle, became the controlling principle of a political party, and overran the laws and constitutions of the country.

By 1640 the idea of representation was well established in Massachusetts, and the rights of individuals and of towns were the two halves of the political idea. The town idea was communal. This early division has continued to our own times, and in its history worked out two groups of political thinkers: one basing government on persons; the other basing it on corporations. The idea has had many applications. That of greatest moment has emphasized the national as distinguished from the commonwealth idea: the nation being founded on individuals, as intimated in the phrase "we the people of the United States"; the commonwealth being a political corporation. Under the charter of 1629 there grew up in Massachusetts three political groups — first, the executive, comprising, by the terms of the charter, the governor, the deputy-governor, and the assistants; secondly, these persons and the deputies

from the towns, together constituting the general court, or Legislature; and, thirdly, the freemen, who participated at regular times in the town elections. Of these groups, the first and second represented the qualified electors, or freemen. At first the governor, deputy-governor, and assistants were chosen at the town elections, but when the charter was vacated the executive became a Crown officer. There was no effort in Massachusetts to copy after the British Parliament. The assistants were not analogous to the Lords, neither were the deputies chosen out of analogy to the members of the House of Commons. Nowhere in the colonies did the analogy prevail. Not as yet was there an equitable apportionment of representation. No clear idea of proportional representation was evolved in England or America during the seventeenth century. After the adoption of the national Constitution it became necessary to work out the idea, and it remains a permanent though a partly solved problem.

Not until the seventeenth century was almost over did the Crown fully recognize the right of the colonies to choose representatives to their local Assemblies. It was specifically acknowledged in the Connecticut charter of 1662, in the Rhode Island charter of the following year, and in the Massachusetts charter of 1692. It was recognized because the Revolution of 1648 in England had demonstrated that there were constitutional limits to executive authority, and the Crown realized that a monarchical form of government could not be

administered in England without a formal recognition of them. Experience in the administration of government both in England and America led to the formal recognition, by the British Crown and Parliament, of the ancient and undoubted rights of Englishmen to choose their own representatives. In England these were the members of the House of Commons; in America, of the General Assemblies.

In the earlier part of the seventeenth century the Governor and his council or assistants and the deputies of the towns met in the same room. The first meeting of the House of Burgesses of Virginia was with the Governor. The beginning of the bicameral system in this country was in Massachusetts, where as early as 1635 there arose a difference of opinion between the assistants and the deputies of the towns, respecting the request of some inhabitants of Newtown who wished to migrate into Connecticut. This led to the separation of the assistants and the deputies, which was essentially the formation of the two Houses of the Legislature. In 1644 the two groups, assistants and deputies, agreed in enacting a law that thenceforth they should sit apart as co-ordinate bodies. Evidently the bicameral system thus begun was quite as much of native origin as a copy of the home government. Thirty-four years later the two parts of the Connecticut Assembly were recognized by law, and before the century closed custom there compelled the Governor and council to submit their several propositions to the entire legis-

lative body for approval. In October, 1698, the council in Connecticut was for the first time styled the Upper House and the deputies the Lower.

Thus almost coincident with the time when the New York Assembly set forth the principles of the bills of rights, the bicameral system was established in America. In the New England colonies the democratic element was stronger than in any to the south; for the first charter of Massachusetts and those of Connecticut and Rhode Island formally recognized the right of freemen to participate in the government. In the proprietary and royal colonies no such right was recognized by charter, although it came to be recognized by custom. To this Pennsylvania was an exception. Penn planned from the first a government democratic in form, promising his people that they should have law-makers of their own choosing and laws of their own making; but the system of the referendum which he attempted to introduce, by which the Governor and council were to submit laws to the representatives of the people, proved cumbrous and unsatisfactory. The recognition which Penn gave to the rights of the people forever settled the question of free government in his province.

Three years before Penn inaugurated his "holy experiment," a royal commission provided that the Governor of New Hampshire should himself prepare the laws, with the approval of his council and the deputies of the people; but in 1680 a law of New Hampshire provided that no executive

ordinance should go into effect unless it had been made by the deputies of the people and approved by the president and council. Thus the order of the initiative in legislation was reversed and distinct functions recognized in the two branches of the Legislature—one comprising the deputies, the other the Governor and council. This reversal in New Hampshire was made necessary by the conditions of colonial life. The Governor could have no peace if he attempted to govern in any other way. This was the experience of all the royal governors. Pennsylvania and Georgia throughout their colonial history had but one legislative House. The executive council, though not nominally exercising the functions of a separate House, was one in fact; the council was more numerous than in other colonies and showed no marked antagonism to the more popular branch.

From the democracy of the colonial era evolved the later civil functions of the commonwealths.* Of these the legislative was of greatest importance and destined to continue, with slight modifications, to the present time. Though the Legislature in eleven colonies consisted of two Houses, it was the Lower House—the deputies—which developed as the central authority in the colony. This House was the voice of the politically quali-

* The principal authorities for the account, in this chapter, of the transition from colonies to commonwealths are the journals and proceedings of the first State constitutional conventions, and Provincial Congresses. See note, p. 29. The bibliography is nearly complete in the State Library Bulletin, additions No. 2. Albany (November), 1894, pp. 266–277.

fied freeman. It was the only part of the colonial government directly responsible to the people. The Upper House in Rhode Island and Connecticut was similarly constituted, but in the other colonies, excepting Pennsylvania and Georgia, the council was appointed by the executive and assisted him in executive, judicial, and administrative duties. The colonial Governor, except in Connecticut and Rhode Island, was appointed either by the Crown or the proprietary, and was a foreign element in the colonial organization. The meeting of chief importance to the freemen was the annual or semi-annual election at which deputies were chosen. With slight exception, the right to vote was limited to persons possessing a prescribed amount of real estate who also were members of a religious sect. They also were required to reside for a prescribed time in the town in which they voted, although this was of less importance than now, as there was relatively little change of residence in colonial times. The principal difference between the qualifications of the elector and the elected was in the amount of property required.

In May, 1775, while yet the Continental Congress was in session, the Provincial Congress of Massachusetts asked for advice respecting the reorganization of the government of the province. Already the Revolution had almost transformed the colonies into commonwealths. The complete transition was comparatively easy. At the present time, a region is set off by Congress as a Terri-

tory, in expectation that it will in due time apply for admission to the Union as a State on an equal footing with the older States. The proceeding throughout is regulated by the Constitution and the laws. No analogous regulation existed when the petition of Massachusetts was made to the Congress of 1775. That body had no authority to prescribe any procedure, and no precedent for one existed. Yet the request of Massachusetts was soon followed by similar ones from New Hampshire, Virginia, and South Carolina, and the course of events compelled reply. To Massachusetts, Congress replied in June, recommending its provincial convention to request the several towns entitled to send deputies to the General Court to choose them in the usual manner and to instruct them, when convened in Assembly, to choose the colonial councillors as provided for in the charter of 1692. This advice was followed, and the government thus established in Massachusetts continued until supplanted by that of 1780. To the requests of the other colonies Congress replied, on the 3d and 4th of November, 1775, but only by way of advice, urging them to summon a free representation of the States in order to establish "such a form of government as in their judgment will best promote the happiness of the people and most effectually secure peace and good order in their colony during the continuance of the dispute with Great Britain." Congress was unwilling even to give this somewhat evasive advice. Public sentiment

had so profoundly changed that the transition from colonies to commonwealths could be more easily made than many in Congress realized. These were Revolutionary times; public sentiment was changing from day to day, and the true status of public affairs was difficult of definition. Yet the colonies were not without means of guidance. The civil organization with which each was best familiar was a sufficient basis for a new one. The Lower House of the General Assembly was the nucleus for a reorganization of the government. It is clear enough now that the normal procedure would have been for the Assembly in each colony to provide for the election of delegates to a constitutional convention which should formulate a plan of government, and submit it to the qualified electors. If approved by them it should become the supreme law of the State. This procedure, however, was almost out of the question in most of the colonies. John Adams had declared in Congress that the work of organizing the commonwealths on the basis of colonies "could be done only by conventions of representatives chosen by the people in the several colonies in the most exact proportions." But Adams was ahead of his time. It was not until the 10th of May, 1776, that Congress adopted the decisive resolution, recommending "to the several Assemblies and conventions of the United Colonies" where no government sufficient to the exigencies of their affairs was established, to adopt one "best conducive to the happiness and safety of their con-

stituents in particular and America in general." This involved the independence of the United States, and was opposed by all who still trusted in a reconciliation. It would appear from the language of the resolution that the work of reorganization was to emanate from the colonial Assemblies, or their successors, known in some colonies as the Provincial Congress or colonial convention. Times were pressing, and it seemed advisable to reorganize the colonial governments as soon as possible. This may extenuate the fault, if there be any, in the advice which Congress gave. Doubtless it seemed unadvisable that the organization of representative government should be delayed in any colony by the mere preliminary procedure necessary to the calling of a normal constitutional convention. The precedent which this Congressional resolution suffered to be set up may be said to have dominated the States during the eighteenth century, for during the years from 1775 to 1800 it was the exception when a State followed what later times recognize as the normal course to obtain a constitution.

Within two weeks NewHampshire followed the advice of Congress. Its Assembly, which called itself a provincial convention, decided that a new convention should be summoned. For this purpose a census of the inhabitants was taken and the delegates chosen were apportioned to the number of electors in the colony, and empowered to exercise the functions of government for one year. They met on the 21st of December at Exeter,

and made the first constitution for that State.* They called their body a Congress and assumed other functions than that of making a State constitution. The convention took unto itself the title and authority of a House of Representatives, and, following the advice of Congress, elected twelve persons to be Councillors and to comprise the other House. The form of government was intended to be only provisional. Had peace between Great Britain and the colonies been restored, the government thus inaugurated would have been dissolved and the colonial organization restored. The convention, therefore, was not a normal constitutional convention, but a composite body, of revolutionary character, chosen under peculiar circumstances and exercising functions which in times of regular civil administration are never exercised by the same authority; for this convention exercised executive, legislative, and judicial functions. The Upper House, or Council, being a creation of the Lower, the traditional division of the Legislature into two branches can hardly be said to have been followed.†

* Most of the towns of the State were represented by the seventy-six delegates to the Exeter Congress. Matthew Thornton was one of the signers of the Declaration of Independence; three members were delegates to the Continental Congress — these three and one other to the National Congress. Two committees were appointed to bring in a constitution; that of *five* consisted of Matthew Thornton, Meshech Weare, Ebenezer Thompson, Wyseman Cloggett, Benjamin Giles. The original draft is said to be in John Hurd's hand. General John Sullivan, though not a member, had made important suggestions. Weare became Governor in 1776; Sullivan, in 1790. See Provincial Papers, vii.; State Papers, viii.

† New Hampshire Provincial Papers, Vol. vii., pp. 644 *et seq.*

It was not long before the autocratic character of the new government caused popular dissatisfaction, and on the 10th of June, 1778, there assembled at Concord another convention, which continued in session nearly a year, during which time a new constitution was drawn up and submitted to the several towns for approval. This constitution was rejected, and on the second Tuesday of June, 1781, a third convention assembled at Exeter, continuing in session two years and a half. A new constitution was made during its nine sessions. Massachusetts, meanwhile, had adopted a constitution, which was closely followed by New Hampshire. At last, approved by the people in their town-meetings, the new constitution was duly inaugurated with much ceremony on the 2d of June, 1784. It has been observed by legal writers that the New Hampshire conventions of 1778 and 1781 were strictly constitutional conventions, because they were summoned in due form by the authority of the existing government of the State; their delegates were duly chosen for a specific purpose, and, met in convention, they formulated a plan of government which, having been submitted to the electors in their several town-meetings, was duly ratified.

On the 1st of November, 1775, the Provincial Congress of South Carolina proceeded to frame the first constitution of that State, adjourning on the 26th of March of the following year. This Congress originated as a committee of the colony, a body distinct from the colonial Legislature.

Like the first constitution of New Hampshire, this of South Carolina was to exist until a reconciliation between Great Britain and the colonies should be made. The precedent for South Carolina was obviously the analogous parts of the British government. The procedure in South Carolina was abnormal. The convention was revolutionary in character and originated not in any direct act of authority of the government of the colony, but in the advice of Congress.* The constitution thus framed was not ratified by the electors and did not give general satisfaction, though acquiesced in during the stress of Revolutionary changes. On the 5th of January, 1778, the General Assembly, though not specifically chosen to make a constitution for the State, promulgated one. Between the meeting of the first and the second conventions of South Carolina, the Declaration of Independence had been issued, and, chiefly in consequence of this act and all it implied, the people of the State acquiesced more willingly in this second constitution. But it was of no greater validity than an act of Assembly, and was so held by the Supreme Court of the State. Obviously those who made it did not comprise a constitutional convention, for they lacked the

* The classic treatise on *Constitutional Conventions, their History, Powers, and Modes of Proceeding*, by John Alexander Jameson, LL.D., late Judge of the Superior Court of Chicago, Illinois; Chicago, Callaghan & Co. (fourth edition), 1887, remains the first and best authority on the subject. I have used its conclusions without hesitation. Before his death Judge Jameson conveyed his library to me, which, with my own collection of Conventions, Debates, and Proceedings, has enabled me to consult most of the material on the subject in existence.

authority delegated to such a body. However, this second constitution, made in the council chamber, continued in force until 1790, when a convention assembled at Columbia on the 3d of June and promulgated a constitution, which, several times amended, continued in force until 1865.

The next State to act was Virginia, which, in April, 1776, elected forty-five delegates to a provincial convention.* They met at Williamsburg

*The Proceedings of the Convention of Delegates held at the Capitol, in the City of Williamsburg, in the Colony of Virginia, on Monday, the 6th May, 1776. (Reprint) Richmond, 1816; 86 pp.; Ordinances, 19 pp. See also The Virginia Convention of 1776, Grigsby, Richmond, 1855. No other convention assembled to make a State constitution has enrolled so many eminent men. Of the one hundred and twenty-three members, Jefferson was soon to write the Declaration of Independence, and, with him, Richard Henry Lee, Benjamin Harrison, Thomas Nelson, and Chancellor Wythe were to be signers. Lee, Harvie, and Banister were to sign the Articles of Confederation; Patrick Henry, Edmund Randolph, John Blair, George Mason, Chancellor Wythe, Richard Henry Lee, Thomas Nelson, and Madison were to be chosen delegates to the Federal Convention; Henry, Nelson, and Lee refused to attend; Randolph and Mason refused to sign the constitution; Wythe was absent on the day when it was signed; Blair and Madison signed it. Nineteen of the members served as delegates to the old Congress, and twenty-one became members of the national Congress. Richard Henry Lee and Henry Tazewell became Senators of the United States; Henry, Jefferson, Nelson, Harrison, Randolph (Edmund), and James Wood became Governors of the State; Jefferson and Madison became Presidents twice; both served as Secretary of State, and Randolph as Attorney-General; Blair was appointed by Washington an Associate Justice of the Supreme Court. Nine were subsequently chosen Presidential Electors—Henry, Harvie, and Wood, in 1789; Blair, Wythe, and Page, 1801; Read, Wythe, and Page, 1805; Page and Harrison, 1809; Richard Henry Lee, Harrison, and

on the 6th of the following May, and on the 29th of June promulgated the first constitution of the commonwealth. This convention, like that of South Carolina of 1778, was a Revolutionary gathering, chosen to supplant the ancient House of Burgesses, and to establish a government that would organize all the forces of the State in opposition to Great Britain. It was not specifically empowered to make a constitution. The frame of government it adopted was destined, however, to continue in force until 1830. This constitution is famed for its bill of rights, drawn up by George Mason.

When Congress gave the general advice to the colonies to organize State governments, New Jersey was already under the control of political committees and a Provincial Congress. On the fourth Monday of May, 1776, representatives were chosen throughout the State, to the number of sixty-five, equally distributed among its thirteen counties. They assembled at Burlington on the 10th of June.* They acted as a General Assembly rather

Page, in 1813. The majority of the members were conspicuous in the government of Virginia as legislators, judges, and county officials.

* See its Journal, Trenton, 1831. Witherspoon, Hart, and Clark were among the signers; and Witherspoon signed the Articles of Confederation. Paterson signed the Constitution of the United States. He was nine times Governor of the State; Washington appointed him an Associate Justice of the Supreme Court. Eleven were delegates to the old Congress, and twelve to the national. Paterson, Dickenson, and Frelinghuysen became United States Senators (1789–1799). Two became Presidential Electors—Dickenson, in 1793, and James Mott, in 1809.

than a convention to frame a new plan of government, but the functions of both were probably in the mind of the electors when they were chosen. They exercised both functions, and, on the 2d of July, promulgated the first constitution of the State. Their work, like that of similar bodies in New Hampshire and South Carolina, was declared to be temporary and provisional. If a reconciliation should take place, this charter—for so the Burlington convention styled its work—should be null and void. Otherwise it should be "firm and inviolable."

The course of the people of Delaware in securing a constitution conformed with the suggestion of Congress, and with normal requirements. The Delaware House of Assembly in July, 1776, passed a resolution in accord with the Declaration of Independence; and, further, provided for a special election, on the 19th of August, of a constitutional convention, to consist of thirty persons, ten from each county in the State. These were to assemble at Newcastle on the 27th of the month, "and immediately proceed to form a government on the authority of the people of this State." During a session of twenty-eight days they adopted the first constitution of Delaware. This was the first constitution in the country made by the representatives of the people chosen for the express purpose, and the first convention that was normal in all respects.*

* The Delaware Convention consisted of thirty members.

The Pennsylvania Assembly was superseded in July, 1776, by a provincial convention composed of representatives chosen from the counties of the province through the instrumentality of the county committees. The resolution of Congress of the 10th of May led to the meeting at Carpenter's Hall, Philadelphia, on the 18th of the following June, which was attended by the leaders of the Revolutionary cause in the city and the adjoining counties. At this meeting it was decided that a provincial convention should be called "for the express purpose of forming a new government for this province on the authority of the people only." But the meeting proceeded to fix the requirements of those entitled to vote at the coming election of delegates, prescribing the qualifications which were incorporated in the first constitution of the State. A new apportionment of representation was agreed upon, and the election was fixed for the 8th of July. A convention assembled a week later at Philadelphia, and adjourned on the 28th of September, having promulgated the first constitution of the commonwealth.* It assumed the functions of a legisla-

George Read, one of the signers both of the Declaration of Independence and of the national Constitution, was president. Read, Van Dyke, McKean, and Evans, were members of the old Congress; Van Dyke, McKean, and Dickinson signed the Articles of Confederation, Five became members of the national Congress—Read and Richard Bassett as Senators; Bassett also signed the national Constitution. McKean became Chief Justice of Pennsylvania; Sykes, a Presidential Elector in 1793.

* The Proceedings of this Convention, and that of 1790, Harrisburg, 1825. It had ninety-six members. Franklin was presi-

tive body, choosing delegates to Congress and appointing a council of safety with executive powers, thus combining double functions, as did the conventions of New Hampshire and South Carolina. Thus it was not a constitutional convention of the normal type.

In North Carolina, as in South Carolina and Virginia, the movement to reorganize the colonial government originated in a provincial convention which had taken the place of the General Assembly. This decision was made at Halifax early in April, 1776, and the work of preparing a constitution was given to a committee, but the committee, owing to the shifting state of affairs in the colony and of its own opinions, accomplished nothing, and the government of the colony was placed for a while in a commission consisting of leading patriots. These took the initiative in reorganizing the government by calling an election of delegates to a congress to assemble at Halifax on the 12th of November, with power both to legislate and to frame a constitution. Thus elected and

dent. Five of the members were signers—Franklin, Clymer, Smith, Wilson, and Ross. Four signed the national Constitution—Franklin, Mifflin, Clymer, and Wilson. Four others, also, were members of the old Congress—Matlock, M'Clean, Samuel and Thomas Smith. Ten became members of Congress. Franklin and Mifflin became Governors of the State. Wilson was appointed Associate Justice of the Supreme Court by Washington, and was a Presidential Elector in 1789. His decision in Chisholm *vs.* Georgia (2 Dallas, 419) ranks among the great decisions. It is only within recent years that Wilson's greatness has been discovered, although Washington declared him to be the ablest constitutional lawyer in the Federal Convention.

chosen for a particular purpose, it prepared a declaration of rights and promulgated a form of government, having first ratified it, "in open Congress," on the 18th of December, 1776.* Thus this body, like the New Hampshire and New Jersey conventions, performed a double function. The constitution which it framed continued in force until 1835 without amendment; as amended then, and again in 1854, it continued in force until 1863.

As early as January, 1775, the Provincial Congress of Georgia organized; and, in conformity with the recommendation of the Continental Congress, it adopted a temporary form of government on the 15th of April, 1776, similar to that first formed in New Hampshire. It continued until the promulgation of the constitution of 1777. The convention which made this instrument consisted of delegates elected in the parishes and districts of the State, from the 1st to the 10th of September, 1776. The election had been called by the Presi-

* The Journal of this Convention in Colonial Records of North Carolina, Vol. x., pp. 913–1013. It consisted of 172 delegates—Richard Caswell, president; William Harper and Joseph Hewes were among the signers; Cornelius Harnett signed the Articles of Confederation. Ten of the members became delegates to the old Congress, and sixteen to the national; Samuel Ashe became Governor of the State. The constitution is said to be the work of Thomas Jones, Thomas Burke, and Richard Caswell. Charles Robeson, John Carter, and John Haile, were from Watauga (Tennessee). Six members had signed the Mecklenburg Resolutions (Wheeler, Vol. i., p. 85). Memucan Hunt signed the treaty with Texas, April 25, 1838. Samuel Ashe was a Presidential Elector in 1805 and 1809.

dent of the commonwealth by proclamation. The chief purpose of the proclamation was to put the colony in a more perfect state of military defence. Thus the body which framed this constitution assumed the functions of a Legislature as well as of a constitutional convention. Eleven years' experience demonstrated its defects, and when the ratification of the national Constitution was in progress in the State, the opportunity was taken to amend it. A convention, consisting of three delegates from each county, assembled at Augusta on the 24th of November, 1788, and undertook to amend the State constitution and to consider the Constitution of the United States, which had just gone forth from Philadelphia. The State constitution made by this convention was itself submitted to a second convention for ratification, which met at Augusta on the 4th of January of the following year, and suggested changes in the constitution which it was called to consider; a third was summoned and met on the 4th of May, 1789, and two days later ratified that known as the constitution of 1789. This instrument continued in force nine years, when another convention assembled at Louisville on the 8th of May, and on the 30th promulgated the third constitution of the State. It took effect on the first Monday of October of that year, and, several times amended, continued in force until 1865.

In New York, as in New Jersey, there was a strong anti-revolutionary party, which for a time delayed the formation of a State government.

Delay was due to the better organization of the opposition rather than to public sentiment. On the 31st of May, 1776, the Congress of the colony, the successor of several congresses unfriendly to a change of government, provided for the election of another, which should be empowered to institute a new government. On the 9th of July the convention met at White Plains.* It formally adopted the Declaration of Independence, and attempted to make a constitution. On the 10th the body changed its title from "Provincial Congress of the Colony" to "The Convention of the Representatives of the State of New York," and agreed that the subject of a new form of government should be taken up on the 16th. When this day arrived the British had entered New York, and legislative business was so pressing that the consideration of a constitution was postponed until the 1st of August. All magistrates and civil

* Some account of the convention is given in the appendix to the Proceedings and Debates of the New York Convention of 1821. Albany, 1821. The ninety-six delegates did not all attend at one time. Philip Livingston and Lewis Morris were among the signers; James Duane and William Duer signed the articles; Gouverneur Morris also signed the articles, and, as a delegate from Pennsylvania, the Constitution of the United States. The constitution was adopted (substantially as John Jay wrote it) "on the evening of Sunday, the 20th of April." Sixteen of the members became delegates to the old Congress; and to the national Congress, John Sloss Hobart, and Gouverneur Morris, of the Senate. Jay became the first Chief Justice of the United States and afterwards Governor of New York; Taylor also became Governor; Duane and Hobart became United States District Judges; Yates and Veeder were Presidential Electors in 1793; Lewis Morris and Ten Broeck, in 1797.

officers well affected towards the cause of independence were urged meanwhile, by resolve of the convention, to continue the exercise of their duties until they should receive further orders. The only change made was in the style of judicial business. Processes henceforth should issue in the name of the State of New York. When the 1st of August came, a committee of thirteen was appointed to prepare and report a constitution. To this committee several eminent men belonged, among them John Jay, Gouverneur Morris, R. R. Livingston, and Robert Yates. The report of the committee was delayed from time to time by the condition of public affairs. Not only was the committee unable to perform its duty, but the convention itself was frequently interrupted and compelled to change its place of meeting. Thus at one time it assembled at Harlem; at another at Kings Bridge; at another at Odell, in Philip's Manor; and later at Fishkill, at White Plains, and at Kingston. At one of these meetings only three members were able to attend. The convention, therefore, was a committee of safety exercising legislative and administrative functions. On the 6th of March, 1777, at Kingston, the committee formally appointed to prepare a constitutional form of government was directed to report six days later, and on that day the draft of a constitution, written by John Jay, was read. It was discussed until the 20th of April, when the convention, still being in session at Kingston, adopted it unanimously. But the

form of government adopted, though not submitted to the people for ratification, met with general approval. It was amended in 1801, and continued in force forty-four years.

No State was more peculiarly situated during the Revolution than Vermont. Its territory was claimed by Massachusetts, New Hampshire, and New York. Territorial disputes engendered by these hostile claims raged through the period of the Revolution. The State, meanwhile, effectually maintained its autonomy and independence. It was among the first to respond to the recommendation of Congress, and its patriot leaders assumed the responsibility of initiating a new form of government by issuing letters, which served as writs of election, to the different towns, urging them to choose delegates to assemble at Dorset on the 24th of July, 1776.* The questions of independence and of a new government were before this convention, and were postponed until January of the following year, when the convention assembled at Westminster and declared

* See Vermont Historical Society Collection, Vol. i., and Slade's State Papers, *passim*. This convention had fifty members—including Ira Allen, the historian of the State; H. Allen, later member of the national Congress; Thomas Chittenden, later Governor of the State; also, Matthew Lyon, whose vote made Jefferson President. He was convicted, fined $1060.90, and imprisoned, under the sedition law; but on July 4, 1840, twenty years after his death, Congress ordered the fine to be repaid to his heirs, with interest from February, 1790. This convention reassembled at Dorset, September 25th, with fifty-eight members—among whom were H. Allen, Ira Allen, Thomas Chittenden, and Moses Robinson; the latter became Governor of the State in 1789.

Vermont a free and independent State.* On the 2d of July of that year it reassembled at Windsor† and continued in session six days, during which time it formulated the first constitution. This was not submitted to the people for ratification, but, as promulgated, was approved by the Legislature in 1779 and again in 1782, by which act it became the law of the State. As is well known, it closely followed the lines of the first constitution of Pennsylvania, chiefly through the efforts of Thomas Young, a citizen of Philadelphia, who, on the 11th of April, 1777, had published an address in which he urged the independence of the State and the election of a convention to form a constitution. The constitution of Pennsylvania had just been adopted, and was suggested as a suitable model for Vermont.‡ This convention assumed both legislative and constitutional functions. In 1786, as provided in the constitution, a slight revision was made by the council of censors, an interval of seven years having elapsed, and the revised instrument was again adopted by the Legislature and declared to be

* Westminster, October 30, 1776; seventeen members; the session, beginning January 15, 1777, had twenty-one members, among them Thomas Chittenden, H. Allen, and Ira Allen.

† Windsor, June 4th; seventy-two members, including Thomas Chittenden, Ira Allen, H. Allen, G. Olin, and Israel Smith—the two latter members of Congress under the Constitution. It reassembled at Windsor, July 2d, with twenty-four members, among them Thomas Chittenden.

‡ The Pennsylvania sources of the Vermont Constitution are shown in The Constitution of the State of Vermont, etc. Brattleborough, C. H. Davenport & Co., 1891. pp. 40–44.

a law of the State. In 1793 the council caused another revision, the convention which made it adjourning on the 9th of July. This revision was formally adopted by the Legislature on the 2d of November and declared to be the supreme law of the State. It was not again altered in the eighteenth century, but in the nineteenth was four times amended, chiefly in its administrative provisions. The council of censors, which by the terms of the constitution of Vermont was empowered to call a convention once in seven years, was suggested from the constitution of Pennsylvania; and the conventions which have been thus called, though more numerous than found in any other commonwealth, have convened under the authority of the government of the State.

The change from colony to commonwealth was effected in Connecticut by act of the General Assembly that met on the 10th of October, 1776. King George had "unjustly levied war against this and the other United States of America," had "declared them out of his protection, and abdicated the government of this State," thus absolving its people from allegiance to the Crown of Great Britain. As the Representatives of the United States in General Congress assembled had declared that "these United States are and of right ought to be free and independent," therefore all political connection between the people of Connecticut and Great Britain was totally dissolved. The form of civil government continued as established by the

charter received from Charles the Second, so far as an adherence to the charter was "consistent with an absolute independence of this State of the Crown of Great Britain." All officers, civil and military, already appointed by the State, continued in office, and the laws of the colony remained in force until otherwise ordered. The change was not formally ratified by the people, either in convention or at the town-meetings. However, it was supported by public opinion. In no State was the change from colony to commonwealth made an issue at the polls.

In Rhode Island the change was effected as in Connecticut. The General Assembly, on the 4th of May, passed an act discharging the people of that colony from allegiance to the King. Somewhat curiously the vote was unanimous in the Upper House, but not unanimous in the Lower, six of the sixty members present voting in the negative. It is not improbable that more than one-tenth of the electors in both States disapproved of the act of separation. The change from colony to State was not overwhelmingly popular anywhere. Though constitutional forms were followed, the change was accomplished by the few who were leaders of the people. It was a representative, not a democratic, act. Not until the nineteenth century was well begun were constitutional changes submitted to the test of popular vote, and not until the nineteenth century was half gone did it become customary to submit proposed constitutional changes, as separate proposi-

tions, for the approval of the electors, either at regular or special elections.

Though Massachusetts was the first colony to apply to the Continental Congress for advice respecting a change in government, it was the last of the original States to adopt a constitution. Its constitution may be said to have been in progress nearly four years. On the 5th of May, 1777, the Massachusetts Assembly recommended that the people in their several town elections should choose representatives to the next General Court fully empowered to form a constitution of government for the State, but this should be submitted to the electors for ratification, and unless approved by two-thirds of them should be considered as rejected. In June a committee of twelve was appointed to prepare a constitution, and it reported in the following January. The draft received the approval of the General Court on the 28th of February, 1778, and was submitted to the people on the 4th of March. Not more than one-fifth of the electors voted for this constitution, and many towns made no return whatever. The chief objection to the instrument was an indirect one—that it had not been made by proper authority. On the 20th of February of the following year the General Court, profiting by recent experience, submitted two questions to the electors of the towns—whether they desired a new constitution, and whether they would empower the members of the General Court to call a convention for the sole purpose of forming one. By large majorities

the people returned affirmative answers, and on the 17th of June the General Court provided for an election of delegates to a convention to meet on the 1st of September. Assembling in Boston on that day, it appointed a committee of thirty to formulate a declaration of rights and a constitution of government, and adjourned until the 28th of October, principally because several towns in the State were not yet represented. The Committee of Thirty began its work at once and delegated to John Adams the preparation of a declaration of rights, and to him, together with James Bowdoin and Samuel Adams, the formation of a draft of a constitution. The subcommittee, however, referred the entire matter to Adams, just as the committee on the Declaration of Independence, four years before, had referred its preparation to Jefferson. Adams thus wrote the entire instrument.* On reassembling, on the 28th of October, the report of the Committee of Thirty was accepted by the convention, which proceeded to discuss the report. It adjourned on the 11th of November until the 5th of January, 1780, in order that there might be a better attendance. Not until the 27th of the month were there sufficient members present to proceed to business. The discussions continued until the 2d of March, when the convention adjourned to the first Wednesday

* For John Adams's account of his part in preparing the Massachusetts Constitution of 1780, see "Life and Works of John Adams," *The Model*, Vol. i., p. 287; Vol. iv., p. 215–267; Vol. v., p. 463.

of June, having provided that the opinion of the people should be taken on their work in the interval. Reassembled on the 7th of June, and with official evidence from the returns that the whole constitution had been approved by more than two-thirds of the electors, the convention on the 16th officially proclaimed the instrument "to be the constitution of government established by and for the inhabitants of the State of Massachusetts Bay"; and further declared that the new constitution thus formed contained all the principles of representative government in America. Its excellence has been attested by its continuation in force until the present time.* Though amended thirty-four times, the changes have not affected the principles on which the plan rests, but are chiefly administrative in character.†

* See Journal, Boston, 1832; also Convention of 1820, Journal, pp. vi.–vii.

† The convention had 320 members. Of these John Adams, Samuel Adams, John Hancock, and Robert Treat Paine were signers; John Hancock, Samuel Adams, and Samuel Holton signed the Articles of Confederation; Gorham signed the Constitution of the United States. John Hancock, Samuel Adams, Increase Sumner, James Sullivan, Caleb Strong, and Levi Lincoln became Governors of the State—Strong and Lincoln each twice. William Cushing declined the office of Chief Justice of the United States, and Levi Lincoln that of Associate Justice. John Lowell became United States District Judge. Theophilus Parsons was for a short time Attorney-General of the United States under John Adams. Ten of the members became delegates to the old Congress and twelve to the national—of these George Cabot, Benjamin Goodhue, and Caleb Strong were Senators (1789–1803). Seventeen of the members became Presidential Electors (1789–1821).

CHAPTER V

THE CONSTITUTIONAL ELEMENTS

When the territory south of the Ohio was organized by act of Congress on the 26th of May, 1790, the people of Kentucky were already asking for admission to the Union. As early as 1784 they had sought separation from Virginia, had met twice in convention at Danville, and formulated petitions to the Virginia Legislature asking for separation. A third convention unanimously voted independence. The cession of western lands by Virginia solved the problem of the independence of Kentucky, and removed the last obstacle in the way of the organization of a State government. On the 1st of June, 1792, the State was received into the Union "as a new and entire member of the United States of America." Another convention had assembled at Danville on the 2d of April, 1792, and in seventeen days had made a constitution.* It was not submitted to

* The Kentucky convention of 1792 had forty-five members. George Nicholas is said to have been the principal author of the constitution. He, John Campbell, and Matthew Walton became members of Congress. Isaac Shelby became the first Governor of the State. The vote on the pro-slavery clause in the constitution stood twenty-six for, sixteen against. Among the sixteen

the people for ratification. The population of the State came chiefly from Virginia, and the new constitution closely resembled that of the parent State. It continued in force seven years. Its defects were chiefly in the organization of the legislative and judiciary, and in the provisions for the apportionment of representation. On the 22d of July, 1799, a constitutional convention met at Frankford and continued in session until the 7th of August, at which time it promulgated a new constitution, to take effect on the 1st of January, 1800. This second constitution of the commonwealth, remedying the defects of the first, continued in force fifty years.*

were six ministers—John Bailey, Benedict Swope, Charles Kavenaugh, George Smith, James Crawford, James G. Garrow. Robert Breckinridge was a member of this convention. Five served as Presidential Electors—Benjamin Logan (1793), Shelby (1797, 1801, 1805), Hubbard Taylor (1805, 1809, 1813, 1817, 1821, 1825), Matthew Walton (1809), Richard Taylor (1813, 1817, 1821, 1825). For a list of the members of this convention I am indebted to Hon. R. T. Durrett, of Louisville, and to Mr. W. D. Hixson, Librarian, Maysville, Kentucky.

* The Kentucky convention of 1798–99 consisted of fifty-seven members. A. S. Bullitt (president), John Adair, Richard Taylor, Thomas Clay, Samuel Taylor, William Steele, and Caleb Wallace were members of the convention of 1792. William Logan, Henry Crist, Thomas Sandford, and John Rowan became members of Congress, and John Adair, John Breckinridge, and Buckner Thruston, United States Senators (1801–11). Harry Junes became United States District Judge. Breckinridge, one of Jefferson's intimate friends, became Attorney-General of the United States under him. Felix Grundy became Chief Justice of the State; later, having removed to Tennessee, member of Congress (1811–14), United States Senator (1829–38), Attorney-General under Van Buren (1838–40), and again Senator (1840)—the year of his death. William Irvine became a Presidential Elector in 1805

At the time when North Carolina ceded her western lands to the United States a portion of them, known as Washington County, was already occupied and called East Tennessee. The North Carolina Assembly showed little disposition to part with this territory, and repealed its act of cession in the year in which it was passed. Meanwhile the people of Tennessee had assembled in convention at Jonesboro and attempted to organize an independent State government. The repeal of the North Carolina act caused a second convention at Jonesboro, which voted independence and gave to the State the name Franklin, or Frankland; both titles being used. The Jonesboro convention assembled in December, 1784, had agreed on a constitution, and had submitted it for popular approval. It provided that before the year closed the people should choose a second convention for the sole purpose of ratifying the constitution, or amending it as public opinion might demand. This ratifying convention met at Greenville on the 14th of November of the following year. The opinions respecting the constitution laid before the convention were so various that it was found quite impossible to harmonize them. After much debate a committee was appointed to prepare and submit a form of government. It based its work on the constitution of South Carolina, though deriving help from other Southern

and 1809. The list of members was sent me by Hon. R. T. Durrett, Louisville, and by Mr. W. D. Hixson, Librarian, Maysville, Kentucky.

constitutions. Thus its work was in a measure composite. The convention, organized as a committee of the whole, immediately rejected the report of the committee, whereupon, with equal haste, the constitution of North Carolina was read, approved, and adopted. To this decision there was strong dissent, especially from the members of the late committee, whose objections and those of other members of the convention were formally set forth in the journal. A State government was, however, organized, and official notice was sent to the Governor of North Carolina, informing him that the inhabitants of Franklin had declared themselves a free and independent State. The rejection of the composite plan reported by the committee led to the formation of a North Carolina party in Franklin, and for a time great disorder prevailed. As early as 1785 a delegate was sent to Congress to present to that body a memorial for the admission of Franklin as a State of the Union. It was not until 1790 that Congress accepted Tennessee as a cession from the State of North Carolina. For nearly six years Franklin existed as a quasi State, although it was not recognized by Congress or by the other States.

The organization of the territory south of the river Ohio in 1790 made it possible for Tennessee, like Kentucky, to proceed normally in its course for admission, and six years later, on the 11th of January, a convention assembled at Knoxville, continuing in session until the 6th of Feb-

uary, when it promulgated a constitution.* This was followed by the admission of the State on the 1st of June. The constitution thus approved continued in force until 1834.

These conventions enrolled many eminent men. If the federal convention be included, five men afterwards Presidents of the United States assisted in the work. Washington and Madison, and Gerry, the fourth Vice-President, belonged to the federal convention; John Adams to the Massachusetts convention of 1779. Jefferson was chosen a delegate to the Virginia convention of 1776, but was represented by an alternate. As the author of the Declaration of Independence he was, in a sense, a member of all the conventions, for it became the common bill of rights. Andrew Jackson was a member of the Tennessee convention of 1796. Jay, Ellsworth, and Rutledge became, in turn, Chief Justice of the United States: the first was a member of the New York convention of 1777, the second and third, of the federal convention. Seven

* See Journal of this convention, Knoxville, 1796; reprint, Nashville, 1832. It consisted of fifty-five members. William Blount, the president, had signed the Constitution of the United States as one of the delegates from North Carolina; John Adair became Governor of the State (1820–24). Eight of the delegates became members of Congress, and of these four were United States Senators—William Cocke (1796–97, 1799–1805), Andrew Jackson (1797–98, 1823–25), William Blount (1796–97), Joseph Anderson (1797–1815). Tradition says that the State was named Tennessee on motion of Andrew Jackson. W. C. C. Claiborne was a delegate. The original draft of the constitution is said to have been made by Charles McClung. See also Caldwell's *Studies in the Constitutional History of Tennessee*, Cincinnati, 1895, Chap. v.

delegates became associate justices of the court. Nine were cabinet ministers. The members, in the aggregate, numbered about seventeen hundred, of whom upwards of three hundred served in Congress — the greater part under the Constitution. The State Legislatures enrolled more than Congress. Some became Governors, and a greater number became members of the State judiciary. Twenty-seven were signers of the Declaration of Independence; fourteen, of the Articles of Confederation; and of the thirty-nine who signed the Constitution of the United States, one-third were members of State conventions. Witherspoon signed the Declaration, the Articles of Confederation, and the constitution of New Jersey. Franklin and George Clymer were signers of the Declaration, the Constitution of the United States, and the first constitution of Pennsylvania; Franklin was president of the convention which made it. By a curious coincidence, George Read signed the first constitution of Delaware, as president of the convention, and, with Franklin, the Declaration and the Constitution of the United States. James Wilson was a signer of the Declaration, the national Constitution, and the second constitution of Pennsylvania. Gouverneur Morris signed the constitution of New York, the Articles, and the Constitution of the United States. Roger Sherman, who has the unique distinction of signing our three great state papers — the Declaration, the Articles, and the Constitution—was a member of Congress when the Connecticut Legislature

adopted the bill of rights of 1776. Thus it appears that no one signed these great papers and a State constitution also. Richard Henry Lee might have stood in that unique place in history. He signed the Declaration of Independence, the constitution of Virginia, the Articles of Confederation, and was elected a delegate to the federal convention, but declined to serve.

To these men was given the unparalleled opportunity of establishing a republican form of government in the new world. When one reflects on the momentous consequences of this act, he may, in some degree, measure the importance and success of their labors. Happy for America that she had such men at so critical a moment in her history. A hundred and fifty years of colonial experience in the elements of representative government contributed to train those whom posterity will always call The Fathers. In ancient times codes and constitutions were associated with the names of individuals — a Draco, a Lycurgus, a Solon. Three Americans must henceforth take rank among the law-givers — Thomas Jefferson, author of the Declaration of Independence; John Jay, author of the New York constitution of 1777; and John Adams, author of the Massachusetts constitution of 1780. Each derived some help from precedents and the suggestions of colleagues. If we knew as much about the genesis of ancient codes as about that of the American constitutions, Draco, Lycurgus, and Solon might divide their honors with forgotten contempora-

ries. Codes and constitutions are naturally composite in their origin. Other forces than the varied membership of a convention helped to work out these constitutions. One constitution influenced another, as Massachusetts influenced New Hampshire; Pennsylvania, Vermont; Virginia, Kentucky; North Carolina, Tennessee—as the fifteen State conventions adopted before 1787 influenced that of the United States, and as this, in turn, influenced all which the commonwealths have since adopted—nearly a hundred in number. From 1776 to 1800 interstate influence was feeble. The survival of what is supposed to be the fittest makes such instruments composite, and has already transformed some into small treatises on government.

All the States had constitutions. South Carolina, New Hampshire, and Vermont had two each before the national Constitution was made. Rhode Island and Connecticut had unwritten constitutions, for they had outgrown their charters, though nominally organized under them. The federal convention made abundant use of this mass of precedent. It cast the supreme law of the United States into the form prevailing in the commonwealths, dividing the powers of government into legislative, executive, and judicial, and, with few exceptions, making the grant of power general. State precedents were followed in calling the national Legislature the Congress, with two branches, styled the Senate and the House of Representatives, also in calling the executive President, and

the courts supreme and inferior. The title President ran back to the first charter of Virginia. The regular retirement of a portion of the Senate, the provision for a census, the right of the House to originate money bills, the President's message, his oath of office, his power to veto, to pardon, to fill vacancies, and to command the army and navy, and the Presidential succession were all suggested from the States. The basis of representation in Congress—that of the States for the Senate and districts for the House—had precedents in the method of choosing the two branches of the Legislature in Virginia and Massachusetts. The Vice-President was a State suggestion. As we have seen, the manner of choosing the Governors varied, being direct in the North and indirect in the South. The convention, therefore, had a fair field for compromise, and fell back on special electors. Maryland, alone of all the States, had an Electoral College, which chose its State Senators. It has been said that this was the model for the Presidential Electoral College. If true, the convention failed to copy the first quality of the precedent. Maryland consists of two parts, the eastern and the western shore, having little in common. To give them an artificial bond and hold the commonwealth together by stronger ties, the Annapolis convention of 1776 devised the choice of the State Senate by an Electoral College. The voters in each county chose two electors every fifth year to meet at Annapolis. Twenty-four constituted a quorum, and were empowered to choose fifteen Senators

"either out of their own body or the people at large." Had the federal convention strictly followed the Maryland precedent, Presidential Electors would vote, not by States, but as an electoral convention, similar to that which nominates the national ticket. Evidently the framers did not aim at consolidation —the dominant idea in the Maryland precedent. It was left to political parties to make the Presidential Electors a unifying body, but in doing so parties have stripped the electors of discretionary power and reduced them to a registering machine. The Maryland method of choosing Senators was really no precedent, except for the mere word— "electors." The device adopted in 1787 for choosing the President was original with the convention, was not founded on experience, and has failed to work as planned.

The clause for the rendition of fugitives from justice was a transcript from the New England Confederation of 1643, and conformed with colonial legislation. Provision for the admission of new States was an obvious necessity, and followed a specific clause on the subject in the Ordinance of 1787. To the national judiciary the States contributed the life-tenure and the circuit system, though these had long been the practice in England. Had the commonwealths made judicial offices elective, and the occupancy running for years, and abolished the circuit system, the national Constitution would undoubtedly have done the same. The national Constitution profited by the experience of the commonwealths in legisla-

tive procedure; in fixing the incompatibility of certain State and federal offices; and, most marked of all, in soon responding, in the adoption of the first ten amendments, to the powerful precedents of State bills of rights. The original features of the national Constitution consist in the composition of provisions rather than in their novelty. As it approached novelty it entered debatable ground. Organically, as well as lawfully, the commonwealth constitutions are a part of the national, and the latter is a part of them. It was in a large degree a generalization of experience under the first ones, and has strongly tended to bring to a common form all the constitutions proposed and adopted since 1787. It effected little of this in the eighteenth century. The changes made in State constitutions from 1789 to 1800 were chiefly in recognition of the existence of a federal government; in a few clauses providing for the apportionment of representation on the basis of the federal census; in prescribing the qualifications of Congressmen; and in defining what State and federal offices are incompatible. Not until political parties were in full swing did the national Constitution enter upon an administrative change. Eventually, political administration wrought amendments which are recorded in the text of the supreme law of the Union and of the several States. But mere verbal changes only intimate this revision of ideas. The unwritten law itself has been revised. The question, What is constitutional? is answered by what

practical politics may succeed in reading into a constitution. There is no standard dictionary of politics. Textual definitions count for little in government. The various meanings which now for more than a century have been read into the national Constitution by successful political parties have been crystallized, for a time, in the constitutions of the commonwealths. The supreme law of the land thus becomes an inconstant quantity. Its variations are made evident only after time has set them in perspective.

The boundaries of the United States agreed upon in the treaty of peace of 1782 remained unchanged, except in the Oregon country, for twenty years, and to this day constitute portions of the boundaries of twenty-nine commonwealths. Many years passed before these were surveyed. During these twenty years the States ceded their western lands to the national government and took their present boundaries. On the 13th of July Congress passed the act familiarly known as the Ordinance of 1787, by which the cession north of the Ohio was organized as the Northwest Territory, in one district, divisible at the discretion of Congress. The laws of inheritance operated without discrimination—the estates of resident and non-resident proprietors in the Territory who died intestate descending in equal parts to the heirs. Wills were attested by three witnesses, and conveyances of real estate by two. An exception was made in favor of the French and Canadian inhabitants settled at Kaskaskia, St. Vincents, and

the neighboring villages, who professed to be citizens of Virginia. To them the laws of Virginia applied respecting wills and deeds. The Governor was appointed by Congress for three years, but might be removed sooner by the President. He resided in the Territory, and owned within it a freehold estate of one thousand acres of land. Congress also appointed a secretary, commissioned by the President, for four years. He was required to reside in the district and own a freehold estate in it of five hundred acres. The court consisted of three judges, two of whom might form a court. Each judge was a resident, possessed of a freehold estate of five hundred acres in the Territory. The court exercised a common-law jurisdiction. The judges were in commission during good behavior. A peculiar provision in the act determined the early laws. The Governor and the judges might adopt such laws of the original States, criminal and civil, as in their judgment seemed best suited to the circumstances of the Territory. They reported these laws to Congress, and, unless disapproved, they continued in force.* The Territorial Legislature might change these laws later if it saw fit. The Governor was made commander-in-chief of the militia of the Territory, with power to appoint all officers below

* Many of the early laws of the Territory were adopted from the State codes, especially from Pennsylvania, New York, Massachusetts, Virginia, New Jersey, and Kentucky. See Laws of the Territory of the United States Northwest of the Ohio, Cincinnati, W. Maxwell, MDCCXLI., pp. 225. ("Maxwell's Code.") Facsimile Reprint, Robert Clarke & Co., Cincinnati.

the rank of general officers; these were appointed and commissioned by Congress. He also appointed magistrates and civil officers in each county or township. It was also made his duty to lay out the district, or those portions of it in which Indian titles had been extinguished, into counties and townships, but this provision was subject to future legislative changes. As soon as the Territory contained five thousand free male inhabitants of full age, Representatives from the counties or townships were chosen to the General Assembly, one Representative for every five hundred free white males until the number of Representatives amounted to twenty-five, after which the apportionment was regulated by the Legislature. No person was eligible to the Assembly unless he had been a resident of the district three years, and a citizen of the United States for an equal time, and possessed two hundred acres of land in his own right. In order to be an elector of a Representative, every person was required to own fifty acres of land in his own right in the district, to have been a citizen of one of the States, and a resident of the district; or, having the requisite property qualification, to have had a two years' residence in the district. Members of the Assembly were chosen for two years. In case of a vacancy by death or removal, the Governor issued a writ for a new election.

The General Assembly consisted of the Governor, the Legislative Council, and the House of Representatives. The Council consisted of five members,

chosen for a term of five years, unless sooner removed by Congress. Three of the Council constituted a quorum. The manner of choosing a Council was a survival from colonial times. Every five years, as soon as the Representatives had met in regular session, it was their duty to nominate ten persons, residents of the Territory, and possessed of a freehold estate in it of five hundred acres each, and return their names to Congress. From the ten thus nominated Congress chose and commissioned five to serve as Councillors. In case of a vacancy in the Council, the House nominated two persons, qualified as before, for each vacancy, returned their names to Congress, which appointed and commissioned one of the nominees for the remainder of the term.

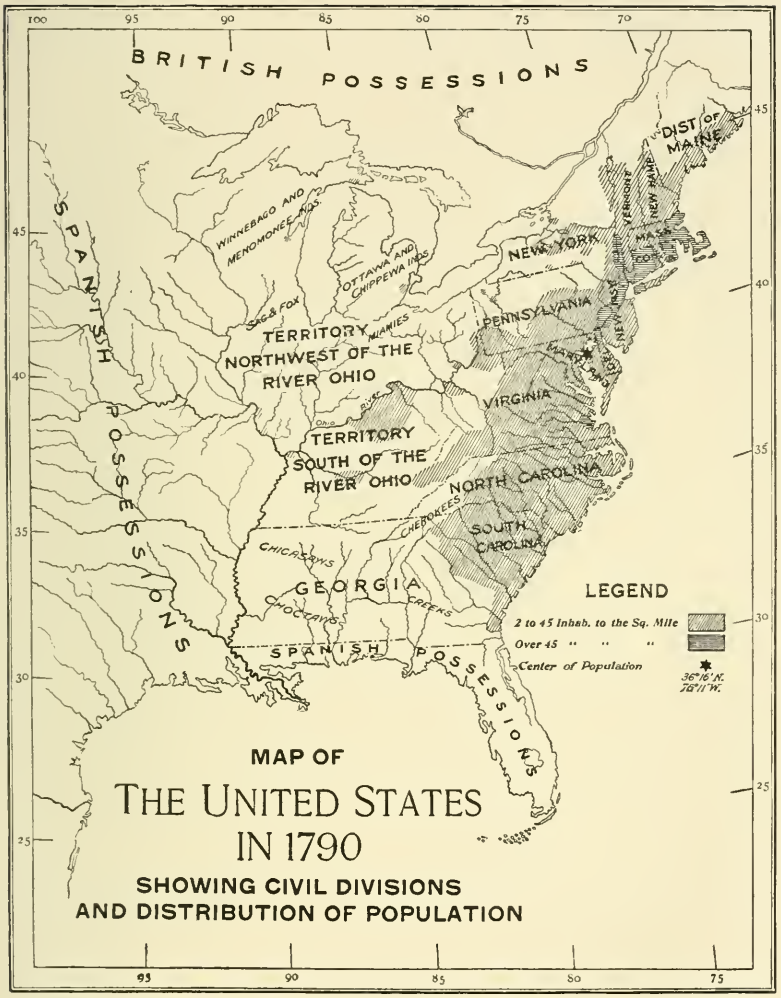
The powers of Governor, Council, and House were limited. The limit on the powers of the legislative, chief in importance, as time soon disclosed, was the celebrated sixth article forbidding slavery and providing for the return of fugitive slaves. But the five articles were also limitations in the nature of a bill of rights. The first secured religious freedom. The second made secure the *habeas corpus*, proportionate representation, the course of the common law, the right to bail, the right to moderate fines and exemption from cruel and unusual punishments, the rights of property, and the inviolability of private contracts. The third article, which is justly entitled to as great fame as the sixth, made it obligatory upon the Legislature to maintain schools; "religion, moral-

ity, and knowledge being necessary to good government and the happiness of mankind"—a provision echoing the sentiment of the educational clauses in the constitution of Massachusetts of 1780, from which doubtless it was taken. The same article also made the observance of good faith towards the Indians obligatory. Their lands and property should never be taken from them without their consent; their property rights and liberty should never be disturbed unless by just and lawful wars authorized by Congress; and in all their dealings with the Indians the whites should observe justice and harmony. It is somewhat curious that one article should contain provisions, as was soon proved, so hopelessly discordant. The Territory, and the States which might be formed in it, were forever to remain "a part of this Confederacy of the United States of America." Its inhabitants were to pay their portion of the federal debt. The Territorial Legislature, and the Legislatures of new States that might be created, could never interfere with the primary disposal of the soil by the United States. The lands and property of the United States were exempted from taxation, and in no case could non-resident proprietors be taxed higher than resident—a provision destined to be adopted in later years in every State constitution west of Pennsylvania. The navigable rivers of the Territory were declared to be common highways, forever free to all citizens of the United States. The entire territory northwest of the river Ohio, by the fifth article, was ultimately to be formed into not

fewer than three nor more than five States. Their boundaries were defined by the article, a provision of slight importance, as they were alterable by Congress. Five new States might be formed out of the Territory, and be admitted to the Union whenever Congress might decide that they had sufficient population. They should be admitted on an equal footing with the original States and form permanent constitutions and State governments. One condition only was prescribed—that the constitution and government should be republican in form and in conformity with the principles of the Ordinance, meaning especially the celebrated sixth article on slavery. If Congress deemed it expedient, a State might be admitted with less than the prescribed population. In the following year, on August 7th, the Assembly of Virginia formally ratified the Ordinance as a "compact between the original States and the people and States in the territory northwest of the Ohio River."

The territory of the United States south of the river Ohio was organized on the 26th of May, 1790, as one district, for the purpose of temporary government. The act conferred upon the inhabitants all the privileges and benefits set forth in the Ordinance of 1787 for the government of the territory northwest of the river. There was, however, one exception, of far-reaching importance, expressed in the act of Congress of the 2d of April, by which Congress had accepted the cession of the claims of the State of North Carolina to the district known as Tennessee. The act of

acceptance contained ten conditions, of which the most important provided that the laws in force and in use in the State of North Carolina at the time Congress accepted the cession should continue in force within the Southwest Territory until repealed or otherwise altered by the legislative authority of the new Territory. As North Carolina was a slave State, and as slavery had already extended into the Southwest Territory, by this condition slavery was forever practically established there. At least, that portion of the Ordinance of 1787 by which slavery was prohibited in the Northwest Territory could never apply to the territory southwest of Ohio as long as the Legislatures of the Southwest Territory chose to enact slave laws. This condition, limiting the power of Congress and making it dependent upon the will of a Territorial Legislature, or its successors—the Legislatures of Kentucky and Tennessee—was the first of its kind in our constitutional history. It made the Ohio River the permanent boundary line between free and slave soil, and was a limitation which, during the next sixty years, was continually returning to vex Congress. It was a condition which has largely escaped the notice of historical writers. Writers and speakers have often described the Northwest Territory as having been made permanently free soil by the Ordinance of 1787, and the Southwest Territory slave soil by the Ordinance of 1790, omitting to explain that slavery was established by Congress in the Southwest Territory as a condition dependent upon the


BRITISH POSSESSIONS
DIST. OF MAINE
VERMONT
NEW HAMP.
MASS.
CON.
RHODE ISL.
NEW YORK
PENNSYLVANIA
NEW JERSEY
DELAWARE
MARYLAND
VIRGINIA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
WINNEBAGO AND MENOMONEE INDS.
OTTAWA AND CHIPPEWA INDS.
SACS & FOX
MIAMIES
TERRITORY NORTHWEST OF THE RIVER OHIO
TERRITORY SOUTH OF THE RIVER OHIO
CHEROKEES
CHICKASAWS
CHOCTAWS
CREEKS
SPANISH POSSESSIONS
SPANISH POSSESSIONS
LEGEND
2 to 45 Inhab. to the Sq. Mile
Over 45 " " "
Center of Population
39°16' N.
75°11' W.
MAP OF
THE UNITED STATES
IN 1790
SHOWING CIVIL DIVISIONS
AND DISTRIBUTION OF POPULATION

will of its local legislative authority. Slavery southwest of the river Ohio was a victory over national sovereignty, and the result of surrender of the powers of Congress to a Territorial Legislature. However, its establishment was considered just and equable. The States which had ceded the Southwest Territory were slave-holding States; those which ceded the Northwest Territory, except Virginia, were free soil. By excluding slavery from the Northwest and permitting it in the Southwest, it was supposed that all political and ethical equities would be realized, and that the progress of the country would be harmonious, if not homogeneous.

In order to adapt the Ordinance of 1787 to the Constitution of the United States, the first Congress at its first session re-enacted and modified it by providing that the Governor and all the other officers of the Territory hitherto appointed by Congress should be nominated by the President and appointed with consent of the Senate. This act was further modified on the 8th of May, 1792, authorizing the Governor and judges of the Territory northwest and in that southwest of the river Ohio to repeal any laws which they had made. The Secretary of State was instructed to provide proper seals for all the public offices in the two Territories, and any supreme or superior court judge in them was authorized to hold court in the absence of the other judges. Before the spring of 1800 population had flowed into the Northwest Territory so as to make its subdivision into

separate governments desirable; and on the 7th of May Congress provided that after the 4th of July of that year that part of the Northwest Territory lying to the westward of a line beginning on the Ohio opposite the mouth of the Kentucky River, and a line thence to Fort Recovery, and thence north until it intersected the boundary line between the United States and Canada, should constitute the Territory of Indiana. Its civil government was organized under the Ordinance of 1787. As soon as its Governor should receive satisfactory evidence that it was the wish of the majority of the freeholders to elect an Assembly, although there might not be five thousand free male inhabitants of full age in the Territory, an Assembly should be chosen. Until that number should be attained, the number of Representatives to the Territorial Assembly should not be fewer than seven or more than nine, and be proportioned by the Governor according to the number of free males of the age of twenty-one years and more which the counties might respectively contain. Chillicothe was made the capital of the Territory northwest of the river Ohio, and St. Vincents of the Indiana Territory.

On the 4th of March, 1791, Vermont was received into the Union "as a new and entire member of the United States of America," the first addition to the original thirteen. Kentucky was admitted on the first day of June, 1792, and Tennessee just four years later.

On the 7th of April, 1798, the fifth Congress,

at its second session, provided for the establishment of a government in the Mississippi Territory, and also for the amicable settlement of the limits of the State of Georgia. The domain between the Mississippi River and the western boundary of Georgia, as it exists to-day, was claimed by that State. Perhaps no other part of the country had been claimed by so many nations and commonwealths. By the act of the 7th of April, Congress inaugurated a peaceful settlement of the dispute by empowering the President to appoint three commissioners to meet those appointed by Georgia for the purpose of determining the claims of the United States and of Georgia to the territory lying west of the river Chattahooche, north of the thirty-first degree of north latitude—the old boundary between the United States and West Florida determined by the treaty of 1783 with Great Britain—and south of Tennessee. The area bounded on the west by the Mississippi, on the north by a line to be drawn due east from the mouth of the river Chattahooche, on the east by that river, and on the south by the thirty-first degree of north latitude, was organized into one district and called the Mississippi Territory. Over this district the President was authorized to establish a government in all respects similar to that northwest of the Ohio, excepting the article respecting slavery, and he was further authorized to appoint all necessary officers for the new Territory. At the discretion of Congress it might later be divided into two districts, with separate governments. The

establishment of this new government in no wise impaired the right of the State of Georgia, or of any citizen therein, to the jurisdiction of the soil of Mississippi Territory. All rights and privileges granted to the people of the territory of the United States northwest of the river Ohio by the Ordinance of 1787 were to be fully possessed and enjoyed by the people of Mississippi. As soon as the new Territorial government was established no person could bring any slave into Mississippi from any place without the limits of the United States; every person convicted of the offence was required to forfeit for each slave so imported the sum of three hundred dollars, of which one-half was to go to the United States, and the other to the informer. Every slave brought in should receive his freedom. A supplemental act was passed on the 10th of May, 1800, by which so much of the Ordinance of 1787 and of the act of 1789 providing for the government of the territory northwest of the river Ohio as related to the organization of the General Assembly and prescribed its powers took effect in Mississippi, but until the number of its free male inhabitants of full age amounted to more than five thousand not more than nine Representatives were returned to its General Assembly. By this act provision was first made for the apportionment of representation in the Territory and for the election of a General Assembly. Provision was also made for the settlement of the disputed boundary between Georgia and the United States

before the fourth day of March, 1803. These organic acts somewhat changed the map of the United States, but the changes affected only Territorial and commonwealth boundaries.

Meanwhile an important discovery had extended our national domain. On the 29th of April, 1792, Robert Grey, captain of the ship *Columbia*, which had left Boston on the 30th of September five years before, entered the mouth of the great river which drains the Oregon country, and which now is known by the name of his ship. For nine days he explored it, and thus established the claim of the people of the United States to the vast area drained by the Columbia and its tributaries. The country formed no part of the area claimed by France or Spain, for it constituted an entirely distinct basin, bounded on the French and Spanish sides by highlands, and drained by rivers hitherto unknown to Europeans. The law of discovery, which gave to France, England, and Spain their possessions in the New World, gave the Oregon country to the United States. Nearly a century after its discovery it became three commonwealths.

The analogy between these Territorial acts and the constitutions of the eighteenth century is obvious. Qualifications for electors and office-holders like those in the States were re-enacted. Except the religious qualification, all the old ones were retained in kind, and, nearly, in degree. Future Western States were thus laid, for a time at least, on Eastern foundations. As yet there was

slight suggestion of the triumphant democracy. The Ordinance of 1787 had the qualities of a constitution in its bill of rights and its provisions for the three departments of government. Its anti-slavery clause was destined to affect every new commonwealth, and, after seventy-eight years' trial, to become a part of the national Constitution—having first become part of seventeen State constitutions. Before the century closed, the national domain was nearly equally divided between States and Territories. As it is a principle in law that everything capable of ownership must have an owner, so is it in politics that every region capable of government must be subject to civil authority. To this last the Indian lands were an exception. The tribes were treated as hostile nations. They were close neighbors to the settlements. The frontier was not more than fifty miles from the Ohio, in the Northwest Territory, and about the same distance from the Savannah in the south. Kentucky, with Tennessee, was an oasis of civilization in a desert of savagery. The settlements in the Cumberland Valley comprised Tennessee. Fear of the Indians still kept the whites penned between the Atlantic and the Appalachian highlands. Pontiac had conspired to accomplish what the French had failed to do. Not until Wayne's victory and the treaty at Fort Greenville, in 1795, did Indian hostilities cease in the Northwest Territory and immigration to the West begin. Within seven years from the close of his terrifying campaign, the population west of Pennsylvania

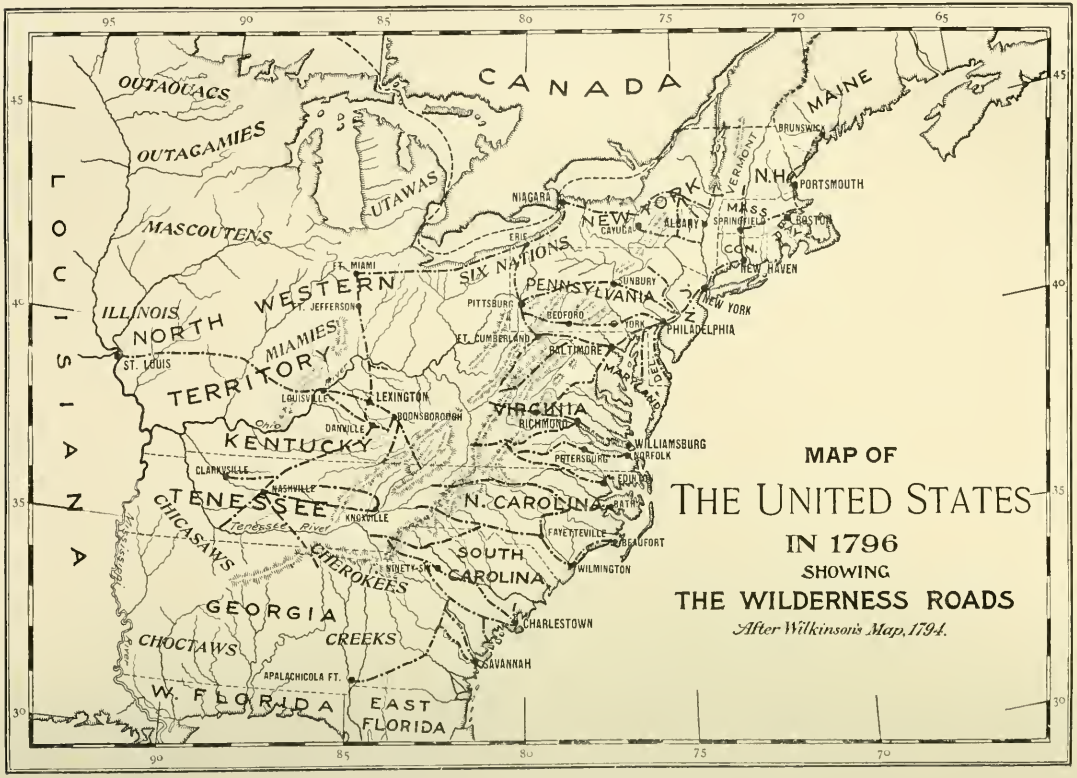
was sufficient to organize the State of Ohio and the Territory of Indiana. But no similar campaign was undertaken against the even fiercer tribes in the Southwest, and for nearly twenty years longer they served as an impassable barrier to immigration. The effect was to turn the tides of population northwestward and to carry into Ohio and Indiana hundreds of families who otherwise would have settled in Mississippi. But population always moves in the line of least resistance. Into the Western country the Ohio River was the natural highway. It ran out of New York, Pennsylvania, and Maryland, and lapped their population. Had it not been for the Choctaws and Cherokees, the migrating spirits of Kentucky would have turned southward. The southern part of Indiana Territory was quickly taken up by settlers from Virginia and Kentucky. Into northern Ohio poured the overflow from New England, New York, and Pennsylvania; the western reserve was New Connecticut. Thus North and South met for the first time in Ohio and Indiana. Thirty years after Wayne's victory, when Ohio had a population of six hundred thousand souls, its General Assembly disclosed, in the nativity of its members, the composite character of the State. Of a hundred members, only one was a native of Ohio.

Before the century closed three lines of migration extended along the wilderness roads into the West. The northern began at Albany and extended to Detroit along the forty-third parallel.

From Albany to Black Rock it was a wagon-road. There it divided. Some immigrants went by boat, others by wagon, to the Ohio country. Gradually a permanent population was established along this route, constituting a peninsula of civilization extending from New England to the head of Lake Erie. The central line was older. It began at Philadelphia and reached to Pittsburgh and the Ohio River. It was the artery that fed central Ohio with some of the best blood of New Jersey, Pennsylvania, and Maryland. The southern line was the Virginian, which turned by many divisions through the valleys into the Southwest and across the mountains into Kentucky and Tennessee. Over it passed many settlers from the Carolinas. In after times the New York and Pennsylvania routes became transcontinental, and to-day comprise two vast railroad systems which, with their connections, make the people of all the commonwealths neighbors. The Virginia route has developed into the transportation system of the South Atlantic seaboard, with connections in the Gulf States and westward to California. The beginnings of these three systems date from the early movements of population into the West and Southwest.*

As the century drew to a close it was found that a vast wave of population had overspread the settled area, moving the frontier westward forty-one miles. Isolated settlements were made

* The railroads do not coincide with the early wilderness roads; these led across streams and over mountains; the railroads run in the valleys, and follow the banks of rivers.


MAP OF
THE UNITED STATES
IN 1796
SHOWING
THE WILDERNESS ROADS
After Wilkinson's Map, 1794.
CANADA
MAINE
OUTAOUACS
OUTAGAMIES
MASCOUTENS
UTAWAS
LOCISIAZA
ILLINOIS
NORTH WESTERN TERRITORY
MIAMIES
SIX NATIONS
NEW YORK
VERMONT
N.H.
MASS.
CON.
NIAGARA
ERIE
CAYUGA
ALBANY
SPRINGFIELD
BOSTON
PORTSMOUTH
NEW HAVEN
NEW YORK
PHILADELPHIA
PENNSYLVANIA
SUNBURY
PITTSBURG
BEDFORD
YORK
FT. CUMBERLAND
BALTIMORE
MARYLAND
VIRGINIA
RICHMOND
WILLIAMSBURG
NORFOLK
PETERSBURG
KENTUCKY
LOUISVILLE
LEXINGTON
BOONSBOROUGH
DANVILLE
CLARKSVILLE
NASHVILLE
TENESSEE
KNOXVILLE
Tenessee River
N. CAROLINA
EDENTON
BATH
FAYETTEVILLE
BEAUFORT
WILMINGTON
SOUTH CAROLINA
CHEROKEES
CHICASAWS
GEORGIA
CHOCTAWS
CREEKS
CHARLESTOWN
SAVANNAH
APALACHICOLA FT.
W. FLORIDA
EAST FLORIDA
ST. LOUIS
FT. MIAMI
JEFFERSON
95
90
85
80
75
70
65
45
40
35
30

fully fourteen hundred miles from the Atlantic—at Prairie du Chien, St. Louis, and Natchez, on the Spanish frontier. In twenty-five years population had so increased that, evenly distributed over the country, there would have been seventeen persons to the square mile. Syracuse, Rochester, Buffalo, Cleveland, Pittsburgh, and Cincinnati were only hamlets. Nine cities could boast, each, more than eight thousand people. Of these Charleston had eighteen thousand; Boston, twenty-five; Baltimore, twenty-six; Philadelphia, forty; and New York, sixty. The commonwealths were agricultural, and twenty-nine people in thirty lived in the country. For this reason the constitutions made slight provision for local government. Four of the large cities caused difficulties in the apportionment of representation, and were the subject of special constitutional provisions.* Otherwise the States were governed as rural communities. America had not yet entered the manufacturing age. Public interests were homogeneous, and, largely for this reason, few limitations were placed on the powers of the Legislatures. As yet the population was chiefly native-born. About one-fifth of it was slave, almost wholly in Southern States. Forming so large a proportion, one might

* Constitutions of Maryland, 1776, Art. vi., and Amendment of 1799; 1851, iii., Secs. 2, 3. Of South Carolina, 1776, xi.; 1778, xii., xiii., xxiv.; 1790, i., Secs. 3, 7, and Amendment of 1808. Of Pennsylvania, 1776, Sec. 19; 1790, i., Secs. 4, 5, 7; Amendment of 1857, i., Secs. 2, 4. Of New York, 1777, iv., vii., xii.; Amendment of 1801, iii., iv.; of 1821, i., Sec. 4, and Amendment of 1833; 1846, iii., Secs. 3, 5; vi., Sec. 14; x.; of 1894, iii., Secs. 4, 5.

expect to find slavery a larger element in the constitutions of the South. With the exception of the provisions in two States* requiring merciful treatment of slaves and regulating their emancipation, the laws and constitutions of the commonwealths, North and South, were almost alike in excluding them from the basis of apportionment, and also in excluding free negroes from the franchise.

Looking backward, we detect little in the civil institutions of the commonwealths then that presaged the America of our own times. Individualism dominated the life of the people. Democracy was yet many years in the future. The masses were controlled by a small party of men, leaders in opinion. Savagery lay close to civilization. There were not a hundred men of great wealth in the country. Yet life was clean, robust, and, for most of the population, comfortable by their standard, but meagre, narrow, and colorless by ours. The State was not yet conceived as having those functions which are now commonly called "duties." The constitutions of the eighteenth century lacked the features which distinguish those of to-day. Fundamental to them all was the idea that the basis of government is property.†

* Kentucky, 1792, ix.; 1799, vii.; Georgia, 1798, iv., Sec. 2.

† The most complete record of the debate on the "Basis of Government—Property or Persons?" is found in the Journal of Debates and Proceedings in the Convention of Delegates Chosen to Revise the Constitution of Massachusetts, Begun and Holden at Boston, November 15, 1820, and Continued by Adjournment to January 9, 1821. Reported for the Boston *Daily Advertiser*,

Boston, 1821, 8vo, 292 pp. Among the delegates were Daniel Webster, Joseph Story, Levi Lincoln, ex-President John Adams, Josiah Quincy, and Joseph B. Varnum. See Webster's speech on the subject, a week later, December 15, repeated and elaborated in his "Plymouth Oration."

Proceedings and Debates of the Virginia State Convention of 1829–30. Richmond, 1830, 8vo, 919 pp. See, especially, the speeches of Madison and Monroe *in re* "Property the Basis of Government." Among the delegates were John Marshall, Philip P. Barbour, Abel P. Upshur, Governor William B. Giles, William P. Taylor.

CHAPTER VI

THE FIRST STRUGGLE FOR SOVEREIGNTY

No American constitution has defined sovereignty. Intentionally or not, the idea has been left to develop through administration. Throughout colonial times there raged a struggle between Assemblies and royal Governors, precipitated chiefly by the independence of the Governors and the obligation imposed on the Assemblies to grant them supplies. Before a pacific compromise was worked out, American independence made the legislative and the executive alike responsible to the electorate. For a time, while the colonies were inchoate States, the executive was almost in abeyance. The Assemblies took the initiative and organized new governments. Thus it came to pass that most of the early constitutions were the work of Legislatures. It has already been pointed out that in these new governments the function of the executive was military rather than civil. The legislative, the Lower House in particular, was the depositary of authority. The States began with a weak executive.

Meanwhile another Legislature, and ultimately another executive, were exercising a quasi-continental authority. New-born enthusiasm called the

Congress of the Confederation into being, and for about eight years supported it. Its members were delegates from the States, chosen by their Legislatures, and responsible to them only. They were subject to recall, and were paid by vote of the Legislatures, if paid at all. From the relation thus established sprang the idea that the Continental Congress was the agent of the States. For a time it exercised authority as if it were original; and, under the pressure of war, was sustained by public opinion. But as the struggle became a drain on the resources of the people, it was less enthusiastically supported. Congress had no popular constituency. It was the creature of the States. The sentiment of union which had flickered for more than a century and a quarter burned for a time with brighter light when the colonies decided to declare their independence.

On the day when the committee was appointed to prepare a Declaration of Independence, another was named to report Articles of Confederation. In twenty-three days the first committee completed its work. It was unanimously adopted and given to the world. On the 8th of July the second committee reported a plan of union; it was destined to a different reception and a far different fate. For a year Congress discussed it, in desultory fashion, and then sent it to the Legislatures, before whom it dragged along, under more or less hostile discussion, for nearly five years. It was not adopted by the requisite number of States until the 1st of March, 1781. The Decla-

ration defined the States as free and independent; the Articles of Confederation declared that each State retained its sovereignty, freedom, and independence, and every power, jurisdiction, and right not expressly delegated by the Confederation to the United States in Congress assembled. The new government had no popular constituency. It represented States. Meantime the power of the Assemblies had not lessened. They rested on industrial foundations, they could levy taxes, they could compel the execution of their own laws. Thus established, the States prospered, but the Confederation fell into decay. While the Articles were on the circuit, some States were making their first constitutions; and when finally the Articles were adopted, Massachusetts, the last State to adopt a constitution, was assembled in convention for the purpose. Thus it happened that one clause in the Articles was copied, with slight verbal change, into the Massachusetts constitution of 1780, declaring the State "free, sovereign, and independent," and that it could exercise every power not expressly delegated to the United States. The next constitution to be adopted was in New Hampshire, in 1784, and it copied the clause from the Articles, just as Massachusetts had done. Eight years later it was repeated in the second New Hampshire constitution.

But the word sovereign had been applied by a State before the Articles were written. On the 10th of October, 1776, the Connecticut Assembly, by a legislative act, declared the State "free, sov-

ereign, and independent." This act may be said to be the parent of the idea of State sovereignty. Save by these three New England commonwealths, the word sovereign was not used in a State constitution of the eighteenth century. When Connecticut adopted a constitution in 1818, the word sovereign was not used, nor was State sovereignty claimed. New Hampshire dropped the word and the idea from its constitution in 1876. The Massachusetts provision has never been modified, and is probably the only portion of the Articles of Confederation that survives in a State constitution. Two years after the adoption of the Articles, on the 3d of September, the treaty of peace was signed. It mentioned the thirteen States severally by name, called them the United States, and declared that the King treated with them as free, sovereign, and independent States.

Reluctantly, and after necessity forbade longer delay, the Legislatures of twelve States elected delegates to the federal convention. Its proceedings were unknown except to its members, and these were pledged to secrecy. Distrust of democracy defeated every effort in the convention to have its work submitted to popular vote. There was even greater distrust of the Legislatures. To insure the Constitution fair treatment, it was referred to special conventions chosen by the electors. The word sovereign does not occur in it, but the idea is conveyed in those general affirmative passages vesting supreme legislative, executive, and judicial authority. The question of sov-

ereignty was discussed in the convention, though not at great length. Randolph, in opening the business before it, spoke of the jealousy of the States with regard to their sovereignty.* It may be inferred, therefore, that the claim of the three New England States to sovereignty was unwritten law in all the other commonwealths. At least, no State disclaimed sovereignty. Johnson, of Connecticut, described the Virginia plan, which Randolph proposed and which ultimately developed into the Constitution, as one not destroying the individuality of the States, but charged with such a tendency. Paterson, the author of the New Jersey plan, which was a slight amendment of the old Articles, defended it because it would establish a Confederation. "A Confederation," said he,† "supposes sovereignty in the members comprising it, and sovereignty supposes equality; if we are to be conceived as a nation, all State distinctions must be abolished." To this Wilson, of Pennsylvania, replied‡ that a State could as little retain its sovereignty, on becoming a member of a federal government, as a man could retain his equality on becoming a member of civil government. The current of opinion in the States was hinted at by Lansing, of New York, who assured the convention§ that his State would never have consented to send deputies if it had supposed that the deliberations were to turn on "a consolidation of the States and a national government," which he im-

* Elliot, Vol. v., p. 127.
† *Id.*, p. 176.
‡ *Id.*, p. 177.
§ *Id.*, p. 193.

puted to be the purpose of the Virginia plan. Hamilton, his colleague, admitted the sovereignty of the States, traced to it their power over the people, and expressed his opinion that they had shown a disposition to regain the powers they had delegated to the Confederation, rather than to part with more or to give effect to those already granted.* Johnson, referring to this speech, said,† a little later, that Hamilton, alone of the members of the convention, held these opinions. Hamilton elaborated his idea, in a prophecy, as it has proved, of the character of the national government in our day, saying that "a complete sovereignty should be given to the general government such as will turn all the strong principles and passions of men on its side."‡ This led King, of Massachusetts, to say§ that the words federal, national, sovereignty, and States, had been used inaccurately in the discussions. The States were not sovereign in the sense contended for by some. They did not possess the peculiar features of sovereignty; they could not make war, nor peace, nor alliances, nor treaties. A union of the States was a union of the men composing them, whence a national character resulted to the whole. Congress could act alone without the States, and its acts would be binding against the instructions of the States. No acts of the States could vary the situation or prevent the judicial consequences. If the States, therefore, retained some portion of their sovereignty,

* Elliot, Vol. v., p. 200.
† *Id.*, p. 220.
‡ *Id.*, p. 201.
§ *Id.*, p. 212.

they had certainly divested themselves of essential portions of it. If they formed a confederacy in some respects, they formed a nation in others. Martin, of Maryland, would not agree to any diminution of the equal sovereignty of the States, and insisted that the general government to be formed should be only to preserve the State governments, not to govern individuals.* He insisted that "the language of the States being sovereign and independent was once familiar and understood, though it seemed suddenly to have become strange and obscure."† This was said after Elbridge Gerry, of Massachusetts, had asserted that the States had never been independent, and never could be, on the principles of the Confederation. "The States, and the advocates for them," said he, "are intoxicated with the idea of their sovereignty."† Twenty-five years later, when Gerry was elected Vice-President with Madison—another triumph for "the good old republican doctrine of '98," the doctrine of the celebrated "Virginia Resolutions" of that year and of "Madison's Report" of '99—he himself had drunk of that spirit which, in the convention, he said had intoxicated the States. *Mutatis mutandis*—Gerry was not alone.

Ellsworth, of Connecticut, wished to maintain the existence and agency of the States, and to ingraft the general government upon them;‡ and his idea prevailed, not so much by express provision of the Constitution as by its actual working as a political

* Elliot, Vol. v., p. 249. † *Id.*, p. 259.
‡ *Id.*, p. 240.

mechanism—as in its method of choosing the President, by electors chosen by the States; in that of choosing Senators, and of apportioning Representatives by States. "The equal vote in each State," wrote Hamilton in *The Federalist*,* "is at once a constitutional recognition of the portion of sovereignty remaining in the individual States and an instrument for preserving that residuary sovereignty"; and with the understanding that the residuary sovereignty of the States was unimpaired, the Constitution was ratified by a narrow majority.

Popular sentiment in the rural districts and along the frontier was strong against the plan; in the small towns it was divided; in the commercial centres it was favorable. With only one hundred and fifty thousand voters out of a population of three millions and a half, the country presented the anomalous spectacle of a democracy in which the disqualified were in the majority, and formed the tumultuous mass along the edge of the electorate, with feelings hostile to restrictions on individual liberty, or to any form of government, especially a new one, that was likely to multiply taxes. The right to vote was exclusively in control of the States. During the twelve years since the Declaration of Independence there had been a slight extension of the franchise here and there, chiefly by act of Assembly. Whatever reforms

* No. lxii. See also Mason's remarks in the convention. Elliot, Vol. v., p. 415.

were desired in social or commercial conditions, long habit pointed to the Assemblies as the source of the authority, and as the paramount democracy that could grant them. What, it was asked, is the new government but the agent of the States? Scarcely was it inaugurated before the old struggle broke out along new lines. The hated executive of colonial times was now become the United States government—new, untried, its powers undefined. The Assemblies which opposed it of old were now the States—ancient as the Virginia House of Burgesses, experienced, organized, their powers unlimited by constitutions or laws. This all meant a political opportunity, and it was quickly improved.

During the winter of 1797, Jefferson, then completing his first year in the Vice-Presidency, was lodging at Francis's Hotel, long famed as the Indian Queen, on Fourth Street, Philadelphia. Hither, after the inaugural ceremonies in the State House, Washington and a throng of people had accompanied Adams and Jefferson. Standing on the steps of this hotel, and struggling in vain to control his feelings, Washington bade farewell to the people he had served so long and so faithfully. The hotel was the headquarters of politicians, and was much affected by Jefferson's friends. Many chapters of the political history of the country for the next half-century were here planned. The substance of many conversations is recorded in a letter by Jefferson of the 12th of February, 1798, to John Wise, a Presidential Elector from Virginia

in 1793. In a letter to Jefferson, fifteen days before, Wise complained that, as he had lately learned, Jefferson had spoken of him "as of Tory politics," and he inquired "as to the fact and the idea to be conveyed." Jefferson, "with frankness," wrote a full reply, which may be accepted as one of the earliest authoritative descriptions of political parties under the Constitution. "It is now understood," so runs this letter,* "that two political sects have arisen within the United States—the one believing that the executive is the branch of our government which more needs support; the other, that, like the analogous branch in the English government, it is already too strong for the republican parts of the Constitution; and therefore, in equivocal cases, they incline to the legislative powers: the former of these are called Federalists, sometimes Aristocrats or Monocrats, and sometimes Tories, after the corresponding sect in the English government of exactly the same definition: the latter are styled Republicans, Whigs, Jacobins, Anarchists, Disorganizers, etc.; these terms are in familiar use with most persons, and which of those of the first class I used on the occasion alluded to I do not particularly remember; they are all well understood to persons who are for strengthening the executive rather than the legislative branches of our government; but probably I used the last of these terms, and for these reasons: both parties claim to be Federalists and Republicans, and I believe, in

* Manuscript letter.

truth, as to the great mass of them, these appellations designate neither exclusively, and all others are slanders, except those of Whig and Tory, which alone characterize the distinguishing principles of the two sects as I have before explained them, as they have been known and named in England for more than a century, and as they are growing into daily use here." This reads as if party principles were already well understood, and party organization well under way. But Jefferson was looking into the future. Party material was abundant. It needed shaping into coherence and efficiency. All was not raw material, because Jefferson had been at work upon it since the day he entered Washington's cabinet, eight years before. Every important act of Washington's administration, Jefferson believed, consolidated authority in the federal government, or, as he expressed it in his letter, strengthened the executive at the expense of the legislative—that is, the nation at the expense of the States. For the nation stood the Federalists —the Tories; for the States the Republicans— Disorganizers, or, as they soon came to be called, Democrats. It was the national party against the State party. With their contests the administration of the new Constitution began. The instrument was now to be interpreted. When Jefferson wrote this letter the new government was entering its second decade. At its inception public opinion had not rallied enthusiastically about it, and Washington had found difficulty in inducing proper men to accept office. Had he refused the

Presidency, the national government might have failed for lack of men.

It is difficult for us to-day to understand how feebly the sense of national responsibility and obligation rested on the people of the country at the close of the eighteenth century. Independence had not been won, so thought the masses, in order to establish a costly, a powerful, a complex national government, but to secure to every person in the country his ancient and undoubted rights and liberties. Not satisfied with liberty, a few designing men, as Lansing had expressed it in the convention, and as many others had repeated it in the ratifying conventions, had devised a consolidated government, dangerous alike to the States and to individuals. Were not the bills of rights and the State constitutions enough? Certainly they were older and of greater authority than this Constitution lately made in Philadelphia. Englishmen had long enjoyed the right of trial by jury, the right of petition, the right of *habeas corpus*, and the right of exemption from unusual fines and cruel punishments. America had added to the list the right of freedom of speech, freedom of worship, freedom of the press, exemption from unwarranted searches and seizures, and the right of representation.

Any legislation, or any exercise of authority by the national government that could be construed as violating one of these rights, would at once precipitate an opposition which, if well managed, could be organized as a political party. The pop-

ular interpretation of the Declaration of Independence made it the authority for exaggerated ideas of personal liberty—tending to take the form of individualism gone mad. At the commercial centres this idea was nursed in political attics, but in the rural districts and along the frontier it possessed the streets. At the crest of the Alleghanies the West was supposed to begin, but it lay as far East as Francis's Hotel. Central and Western Pennsylvania, Virginia and the Carolinas, Ohio, Kentucky, and Tennessee were the paradise of individualism. Law and order were in this vast region, but not the law and order known in Boston, in New York, in Philadelphia, and in Charleston. This ingenious and picturesque individualism of the West was not crass ruffianism, for it possessed communities composed in large measure of the younger sons of the best families of the older States. But in their passage into the Northwest the natives of New England, New York, Pennsylvania, Maryland, and Virginia suffered a political change such as came over the younger sons of Virginia and the Carolinas who had settled in Kentucky. Federalism was left behind. The conditions of Western life were not a favoring soil. There the State, not the nation, was the chief political thought. The government of the United States was far away. Had it not neglected the West? More than this, had it not refused to let the West manage its own best interests? Had it not interfered, with masterly incompetency, in the Indian affairs of the South-

west, and left Tennessee unprotected against the most powerful and most brutal tribes east of the Mississippi? Matters were little better in the Northwest. There the government of the United States was commonly thought to be pursuing a policy which, if not changed, would ruin or estrange the West. A frontiersman put Federalists and Indians in the same class. Others who had given more thought to the subject varied the comparison by substituting the federal policy for the Federalists, and contrasting it with that of the States — or what would be that of the States if not prevented by the federal government. By whatever path the comparison was approached, it was sure to bring Western travellers to a point from which the federal government would be viewed as the aggressor. Opposition was concrete, as it were, in the West; abstract in the East. A great field for political operation was, therefore, awaiting ownership. Indians and excises raised the issue in the West. In the East it was Jay's treaty and Citizen Genet; but, East and West, the masterpiece of federal offence was the Alien and Sedition laws. Opposition to these proved the first political cement that held East and West together.

When a new party is planned its projectors immediately search for a foundation in legal decisions and political precedents. Administrative blunders furnish campaign cries, but principles, and the interpretation of the Constitution by the courts, furnish arguments. Every party that has

arisen in America has claimed a foundation in some decision of the Supreme Court.

While Jefferson and his political colleagues were organizing the new party, a case reached the court involving the obscure question of sovereignty. In 1793 one Alexander Chisholm, a citizen of South Carolina, brought suit against the State of Georgia.* John Jay, one of the authors of *The Federalist*, was Chief Justice. Wilson, Blair, and Paterson, lately members of the federal convention, and James Iredell, foremost in defending the Constitution in the ratifying convention of North Carolina, were Associate Justices. Randolph, the reputed author of the Virginia plan, was Attorney-General of the United States. "I acknowledge," said he, in his argument to the court, "that the States are sovereignties"; but "the limitations which the federal government is admitted to impose upon their powers are diminutions of sovereignty." Chisholm's case involved two questions: Could Georgia be sued, like an individual? Did the judicial power of the United States extend over the case?

Wilson, in an elaborate opinion, which Jay supplemented by another, gave the decision of the court. "As to the purposes of the Union," ran the decision, "Georgia is not a sovereign State." Like an individual, it could be sued, and the case fell properly within the judicial power of the United States. The Chief Justice, after giving

* 2 Dallas, p. 419.

an elaborate review of the political history of the country from a time prior to the Revolution, concluded "that the sovereignty of the nation is in the people of the nation, and the residuary sovereignty of the State in the people of each State." From these opinions Iredell dissented. He, too, traced the history of the country from an early day. The States were successors to the Crown, and inherited whatever sovereignty it once possessed in the country. Like the King, they could be petitioned, but not sued. After a careful analysis of the principles of the common law, he concluded: "Every State in the Union, in every instance where its sovereignty has not been delegated to the United States, I consider to be as completely sovereign as the United States are in respect to the powers surrendered. The United States are sovereign as to all the powers of government actually surrendered; each State in the Union is sovereign as to all the powers reserved." Georgia could not be sued; the United States should dismiss the case for want of jurisdiction.

Georgia accepted Iredell's as the opinion of the court. The Jeffersonians welcomed it as the true interpretation of the Constitution. On the day following the decision, Sedgwick, of Massachusetts, in the House, moved a resolution preliminary to an amendment to the Constitution that should carry out Iredell's interpretation and protect the States. Congress took no immediate action, but the spirit of Sedgwick's resolution rapidly overspread the country. It was welcomed and encouraged by

Jefferson and his friends. On the 5th of March, 1794, Congress submitted the eleventh amendment to the States, and it was in course of ratification during the next four years. On the 8th of January, 1798, just thirty-four days before Jefferson wrote the letter to Wise defining political parties, President Adams announced the adoption of the amendment. The doctrine of residuary sovereignty was made secure. The States had won a most important victory at the very beginning of their struggle with the national government. Iredell's opinion became at once the constitutional corner-stone in the political structure which Jefferson and thousands of his countrymen were raising. The doctrine of State sovereignty from this time had constitutional standing, and derived additional force from its interpreter. Had not Iredell been the foremost Federalist in North Carolina and dictated terms to its ratifying convention? Had he not been rewarded by an appointment to the Supreme Court? But when a great constitutional question came before them he could not support high Federalism. He was an honorable man and a supporter of republican government. Refusing to follow Jay and Wilson in their abstractions, by sound legal reasoning he had dissented from them and had saved the commonwealths. The State party was, therefore, the one true to republican principles. Let Federalists take warning. The liberties of the country would soon be in the hands of patriots.

Though Washington's personal popularity suf-

fered little during his two terms as President, his administration was not popular with the country. The Alien and Sedition laws dissipated the little popularity with which Adams's administration began. He and they had defenders, and among them were some of the ablest men in the country. But an unpopular law is rarely preserved by reasoning and argument. The people in Adams's time were far more excitable, severe in criticism, and radical in character than they are to-day. Social efficiency, economic association, nearly all the ameliorating influences which distinguish the life of the nation now were lacking then. Government in a democracy at the close of a war for independence is likely to be relatively feeble. Adams's whole policy was pilloried by the opposition as a monarchical attack on the liberties of the people. However conservative and constructive as a national policy, it was construed as fatal to the rights of man. It, therefore, served to unite the discontented, those whom Jefferson styled the "Republicans, Whigs, Jacobins, Anarchists, Disorganizers." These awaited the skilled hand, the masterful policy of a genius for political organization; and then—farewell Adams and the Federalists. No one understood this radical, destructive, individualistic element better than Jefferson. He knew, probably better than Emerson did afterwards, that the State was once a private thought. On this axiom he organized a party destined to control American democracy for sixty years and to affect its course to the latest generation.

His plan was simple, effective, and popular. During the Revolution the organs of public opinion were partly old, partly new. The people had been familiar with town meetings, county meetings, and Assemblies for more than a century and a half. The Revolution brought forth the committees of correspondence and public safety, the caucus and the convention. During the excitement over Jay's treaty and Citizen Genet the political mass-meeting came in vogue. Jefferson's method was cumulative. He began with individuals, and, judging from the mass of his correspondence that remains (and he ranks among the world's voluminous letter-writers), his ideas reached every county in the Union and permeated many of them. He chose to follow the successful methods of the Revolution. A few were admitted into his fullest confidence. These he met at his lodgings in Philadelphia and at Monticello. Among them were Madison and Gallatin; Levi Lincoln, of Massachusetts; Nicholas and Breckinridge, of Kentucky; Robert Smith, of Maryland; and Gideon Granger, of Connecticut. But his lesser friendships ran into every city and town and among men of all occupations and professions. Local committees were organized, political committees were summoned, and resolutions, carefully prepared beforehand, were adopted. A favorite time for meeting in the South was on court days at the county seats when the bar assembled; the resolutions could be discussed and appropriately amended, and then be sent up to

the Assemblies. These must be won at any cost. Ultimately all were won. The State Legislatures secure, Congress would be compelled to respond to State sentiment. Ultimately, would not the new party gain control of the federal government itself?

Jefferson's constructive, unifying method had been in operation some nine years when the Alien and Sedition acts brought public matters to a crisis.* Scarcely less odious to him were other federal measures—the stamp tax, the house tax, the naturalization law, the law increasing the number of federal courts, and the cost of the army and navy. Did not all these prove that the American Tories were of the hated British type, and were "bent on strengthening the executive rather than the legislative branches of the government?"

Congress was in session till the 16th of July, 1798, and long before this time Jefferson and the few to whom he confided his most critical measures had perfected a plan of campaign. As each federal measure passed, the alarm was sounded over the country, and local opposition was stirred. The Alien act, passed on the 25th of June, empowered the President, at his discretion, to expel from the country any foreigner whom he judged "dangerous to the peace and safety of the United States," or whom he suspected to be "concerned

* For the Alien acts, see Statutes at Large, Vol. i., pp. 566, 570, 577; for the Sedition law, *id.*, p. 596.

in any treasonable or secret machinations against the government." Were not the alien enemies of the President and his party the alien friends of the opposition? Who determined citizenship? The States. What right had the President, then, to order citizens to leave the country? The law was a palpable violation of the rights of the States.

This was followed, nineteen days later, by the Sedition act, which, the opposition at once said, was levelled against them and designed to perpetuate the power of the Federalists. If an American presumed to speak of either House or of the President in a way displeasing to some Federalist, he was liable to a suit for libel, to a fine of two thousand dollars, and to imprisonment for two years. Should he meet with his fellow-citizens to discuss public measures, he might be indicted for conspiracy against the government, be fined five thousand dollars, and be imprisoned five years. The truth might be given in evidence, the jury was judge of both law and fact, and the law was to cease on the 3d of March, 1801; but what did these matters signify save that the country was fast settling towards monarchy? Certainly a free man had a right to tell what he thought of the government. When the States ratified the Constitution, had they not with one accord insisted on amendments, which were adopted, and of which the very first forbade Congress to pass any law abridging the freedom of speech or of the press?

The opposition felt that they were on firm ground—that the federal acts were clearly uncon-

stitutional. Early in August signs of public sentiment began to appear in the newspapers. In the Kentucky *Gazette*, George Nicholas, soon to deliver a great speech in Congress for the repeal of the Sedition law, now published his political creed and an opinion pronouncing the law unconstitutional. At this time he was professor of law in the Transylvania University, was known as the intimate friend of Jefferson, had an extensive law practice throughout the Southwest, and possessed more influence in Kentucky than the whole Federal party. Public meetings in Kentucky and Virginia formulated similar sentiments. Resolutions, carefully planned, if not carefully drawn, were sent up to the Legislatures in such number as to appear to be the spontaneous and unanimous sentiment of the people of the two States. In both, copies of expostulatory resolutions, drawn from a high source, had been carefully distributed. Faithful hands had copied them. Safely packed, with other briefs, in the saddle-bags of trusted partisans, they found their way over the circuits and were brought home to every constituency.

In Kentucky none were more influential or more active than John Breckinridge and George Nicholas. A young Virginian, Henry Clay, fresh from the law office of Chancellor Wythe, began a political career, lasting over a half century, in a speech at Lexington denouncing the unpopular acts. On the 7th of November, Breckinridge presented a set of resolutions to the Kentucky Legislature condemning the acts. The Governor was

outspoken in their favor, and, on the 16th, after a week's debate—which consisted of a series of professions of political faith on the part of the members rather than an argument against the acts, the resolutions passed.* Jefferson was the author of these resolutions.

In Virginia a similar set, written by Madison, at Jefferson's request, was presented to the Legislature by John Taylor on the 13th of December, and adopted eleven days later.† Verbal, and some have claimed doctrinal, differences distinguish these two manifestoes, known as the Kentucky and Virginia resolutions of '98. Whatever differences may have been found in them at a later day, they were originally intended to form a unit of political propagandism, and in that sense were the appeal of a new party to the States as sovereignties.

The character of the resolutions is easily understood. Those of Virginia declared that its Assembly viewed the powers of the federal government, as resulting from the compact to which the States were parties, as limited by the plain sense and intention of the Constitution, as no further valid than authorized by the grants enumerated in the compact; and that in case of a deliberate, palpable, and dangerous exercise of powers not granted, the States, who were the parties to the compact, had the right and were in duty bound "to interpose for arresting the progress of the evil." The Assem-

* Elliot, Vol. iv., p. 540. † *Id.*, p. 528.

bly complained that the federal government manifested a spirit "to enlarge its powers by forced constructions of the constitutional charter which defines them," "so as to consolidate the States by degrees into one sovereignty, the obvious tendency and inevitable consequence of which would be to transform the republican system of the United States into an absolute, or at best a mixed, monarchy." The Kentucky resolutions of '98 set forth the same doctrine of compact and of limited powers of the federal government, and entered at length into a proof of the unconstitutionality of the Alien and Sedition acts as violating the express provisions of the constitutions and bills of rights. "The acts, unconstitutional and obnoxious," should be at once repealed. In the second Kentucky resolutions,* also written by Jefferson and concurred in the 22d of November, 1799, the doctrine was more clearly stated: "The States that formed the Constitution, being sovereign and independent, have the unquestionable right to judge of its infraction," and "a nullification by those sovereignties of all unauthorized acts done under color of that instrument is the rightful remedy." In brief, the Kentucky and Virginia resolutions denied sovereignty to the federal government and claimed it for the commonwealths. From this claim of State sovereignty came the claim of right to nullify federal laws, and, ultimately, to secede from the Union. The idea of State sovereignty

* Preston's Documents, p. 295.

was now fairly launched. The Virginia resolutions, like those of Kentucky, pronounced the obnoxious laws unconstitutional. But Madison emphasized the rights of the States. His resolutions were a protest against consolidating them by degrees into one sovereignty. The federal Constitution was a compact expressly defining and limiting the powers of the general government. The States must decide whether it had been violated at any time. Accompanying the resolutions there went an address to the people as the guardians of State sovereignty. Copies of the resolutions were sent to the executives of the other States, to be submitted to their Legislatures.

By the 1st of November seven States had formally replied.* Some defended the Alien and Sedition laws. Delaware thought the Virginia resolutions an unjustifiable interference with the powers of the general government. Massachusetts and Vermont denied the right of a State Legislature to usurp the powers of the federal courts. Pennsylvania, Maryland, the Carolinas, Georgia, and Tennessee kept silence; but the opinions of the seven States gave no welcome to the "doctrine of '98." So serious a repulse was not expected.

The replies were referred to a committee of the House of Burgesses, of which Madison was chairman, and he wrote a report which, taking up the original resolutions article by article, defended

* The answers of the States are given in Elliot, Vol. iv., p. 532, etc.

them, and at great length analyzed the Constitution for the purpose of proving that the resolutions were in conformity with its express provisions.* Disclaiming any intention of the Legislature to diminish in any degree "mutual respect, confidence, and affection among the members of the Union," and pledging it "to maintain and defend the Constitution" and "to support the government of the United States in all measures warranted by their Constitution," Madison argued that the federal government resulted from a compact to which the States were parties; that federal powers were derivative, not original; that the term States signified the people of the particular governments, in their highest, sovereign capacity, and that in that capacity, each, acting for itself, sanctioned the Constitution. Therefore no tribunal above their authority existed which could decide, in the last resort, whether the compact was violated. With this idea as a principle of interpretation, he went through the Constitution, examining and expounding all its phrases bearing on the subject. He cited the history of the country in refutation of the idea of national sovereignty. It was not granted by the Constitution; it did not exist by the common law, because the United States had no common law. The States, on the other hand, were a permanent and necessary element. They could propose and alone could ratify amendments. In the subdivision of a State its Legislature acted

* The report is given in Elliot, Vol. iv., p. 546 *et seq.*

conjointly with Congress. They remained as they originated; they were the creators of the general government. It was their agent. Therefore, the Virginia Legislature adhered to its resolution and continued its protest.

But in this exhaustive report Madison in no way referred to nullification as the ultimate resource of a State. To what extent it was inferential would depend on what measure of residuary sovereignty one might demand for a State, and what degree of "palpable violation of the rights of a State" would be suffered. Nullification, like the idea of sovereignty, was left to be worked out in the practical administration of the governments.

The century was closing while this interpretation of the doctrine of '98 was in progress. The silence of Pennsylvania, and of all the States south of it, save Delaware, was only negative testimony. But no State sent out a report on the sovereignty of the United States. Many party questions were already involved in the definition of sovereignty thus far made. National sovereignty, if clearly grasped by the leaders, was not thought of among the people. Everywhere among the people the idea prevailed, though more or less cloudy, that the general government was a common agent of the States. In democratic matters they had the right of way; over foreign matters they had ultimate control. The States were united; the general government was thought of as a political compound—not as an organism.

The doctrine of '98 won in the election of 1800. The Democratic party was put in possession of the government. Instead of nineteen Federalists and thirteen Democrats in the Senate, there were now nineteen Democrats and thirteen Federalists. In the House the new party gained twenty-three members, and had a majority of eighteen. On the thirty-sixth ballot it chose Jefferson as President. Thus the man who made the doctrine of State sovereignty a principle in the creed of a great party was the first to be chosen to the Presidency by the House of Representatives voting as States. He wished the Kentucky and Virginia resolutions added as an amendment to the Constitution, but the addition seemed superfluous. The party that believed in them was in possession of the government, and, by their interpretation of the Constitution, would practically make the resolutions a twelfth amendment. Little did they dream that their lease of power should run sixty years; that during this period there was to be but one Congress—the twenty-sixth—in which they should not have a majority in one House. Of that Congress, their opponents should control both Houses; but John Tyler was then to be President. Little did they dream that, later, he, alone of all the Presidents, was to put the idea of State sovereignty to the test by adhering to Virginia when she seceded, and by becoming a member of the Confederate House of Representatives. Whether State sovereignty is a true idea is one question; whether it prevailed in the eighteenth

century is another. The triumph of the doctrine of '98 indicates the dominant political creed of the times. A new party came in with the new century. The truth and value of their doctrines could be tested only by administration.

CHAPTER VII

THE POLITICAL ESTATE AT THE OPENING OF THE NINETEENTH CENTURY

A GOVERNMENT must be judged by the condition of the people who support it. If they are happy, prosperous, and contented, the mere form of the government is of little account. If their opinions, aspirations, and wants are ignored, a revolution is at hand. Some form of government will emerge from the political cataclysm, but only to be tested, like the old.

We are prone to think that the American Revolution—with accent on the American—righted all political wrongs, and put the political estate in trust, much as we have it to-day. Was it not a triumph of the rights of man? Did not Great Britain long deny them? Did we not establish free governments, with laws of our own making and lawmakers of our own choosing? Indeed, were not the days of the fathers better than our own? He who knows least about the matter will doubtless answer "Yes" to all these queries. He who knows most will not regret that his lot is cast at the close of the nineteenth century rather than in the years when the fathers are supposed to have straightened out the rights of man.

It is written in the records of New Hampshire

how, on the 4th of November, 1775, its Provincial Congress adopted a resolution that delegates should be chosen by the electors, and not by the value of their estates.* This was revolution. Who in America had ever presumed to participate in the choice of delegates or select-men, or county commissioners, without first being qualified to have an opinion because he owned a freehold estate? The landless man was the tramp of colonial times. He was not anchored to the State. Property, not men, voted. Fifty years before the Revolution the New Hampshire Assembly had refused to allow any person to vote who was not a freeholder, owning land of the value of twenty pounds; and any person coming to reside in a town in the province, unless he was a freeholder, or a native of the town, or had served his apprenticeship in it, could not be an elector until he had first obtained the consent of the select-men.† In August of the last year of the seventeenth century, he who would vote in New Hampshire was required thenceforth to own land of the value of fifty pounds sterling.‡ Three years before,§ in the neighboring province of Massachusetts, he only was permitted to vote who was a church-member in full communion, a householder, twenty-four years of age, with an income yearly of

* Provincial Papers, Vol. vii., p. 644. The principal authorities for this chapter are the colonial laws.

† New Hampshire Laws, 1726, p. 120. Printed by B. Green, Boston.

‡ New Hampshire Acts and Laws, Portsmouth, 1771, pp. 3, 4.

§ Massachusetts Laws, December, 1686. Boston, 1814, p. 42.

at least ten shillings; and this had been essentially the requirement since 1631. Time did not greatly ease the burden, for in 1692 the freeman was required to be worth twenty pounds in land. Three years passed and a rude attempt at apportionment was made. Every town of forty freeholders might elect a member of the General Court, and a town having one hundred and twenty freeholders might send two. Towns having fewer than forty might combine, each paying its share of the expense of maintaining a delegate; or each town might elect and support its own.* At the time of the Revolution a town having two hundred and twenty freeholders could send three delegates; and one with a hundred more, four.† The admission of freemen, at least in New England, was a local matter, resting with the towns. Rhode Island, as early as 1663, adopted the rule.‡ A century wrought a change in the method of registration. The secretary of the colony kept the roll of the inhabitants, and he who owned real estate worth forty pounds, or that rented for forty shillings a year, and who had been proposed as a freeman three months before the election, might vote.§ Exception was made for a freeman's eldest son. He voted, "being the son of his father." But the lot of the freeman was not always a happy one. Connecticut, whose election laws were like those of Rhode Island, required, in 1715, that the freeman possess a certificate, signed

* Massachusetts act, confirmed August 22, 1695.
† Massachusetts act of November 29, 1775.
‡ March 1st. § Act, 1762.

by the select-men, showing him to be "a person of a quiet and peaceable behavior and of civil conversation."* In law at least, those who, as the oath of a freeman described them, were "by the Providence of God inhabitants within this His Majesty's Colony of Connecticut," and bore a satisfactory reputation, were entitled to vote according to their conscience, "without respect of persons or favor of any man."† Strongly democratic in opinion, the people of New Hampshire, when the colony became a State,‡ abolished the old franchise qualifications, and, with almost unparalleled liberality, required of the voter only that he be a taxpayer, duly enrolled in a town. In this respect New Hampshire widely departed from Massachusetts, though freely adopting many provisions of its constitution. Provincial traditions were too strong in Massachusetts to trust the political estate to any inhabitants who were not owners of real estate of the annual value of three pounds, or of an estate worth sixty, and who had not resided for a year in the town where they wished to vote.§ It may be said that throughout colonial times an estate worth less than forty shillings a year did not count in politics. Its owner was excluded from the list of voters.

Yet there were freemen and freemen. He who

* Acts and Laws, Connecticut, p. 40. New London, T. Green, 1715.

† Laws of Connecticut, 1750, p. 175.

‡ Act of September 11, 1776.

§ Constitution, Massachusetts, Chap. i., Sec. 3, Art. iv.

lived in the City of New York in the middle of the seventeenth century and was not to the manner born, paid a various price for his political estate. If he was a merchant, a trader, or a shopkeeper, he paid five pounds; if a tradesman, twenty shillings; if he had served his apprenticeship in the city, or was native born, he paid one pound. In addition, each paid sundry little fees, familiarly known as tips in our day—six shillings to the Mayor and six to the Recorder; seven-and-six to the clerk, and ninepence to the bell-ringer and crier, "for wild riot"; and yet some people in New England said New York was a wicked town. When the last fee was paid, the enfranchised one made solemn oath to the King, and swore obedience to the Mayor and to the ministers of the city and to its franchises and customs, and promised that he would contribute, to the city, tallage, lot and scot and taxes, and obey all summonses and watches, and warn the Mayor of gatherings, conventicles, and conspiracies; and then the oath came to an end, and the men of fees disappeared and the new freeman wondered whether he had not sworn away even more than he had, including his liberty.* But it was a great privilege to be a freeman, what with the taxes and the conspiracies and the lot and scot and the fees. *They* would not have to be paid again. And this was about a dozen years before the great Declaration

* Laws, Statutes, Ordinances, etc., of the City of New York. John Holt, 1763, p. 23.

and "life, liberty, and the pursuit of happiness." Just sixteen years after these things, and when the State of New York was a year old, there was a reform. Henceforth every man in possession of land in right of his wife might vote—though she could not. And if he would vote for Senator or Assemblyman, he must vote in his own district, and *viva voce*, but by ballot if he voted for Governor or Lieutenant-Governor.* With what pride he "abjured the Crown" in the new oath, and swore allegiance to "the free and independent State" of New York.† Was not this ample compensation for additional taxes?

Before the century closed New York was divided into four great districts,‡ and Senate and House were all nicely apportioned and all the new counties in the western part of the State were clamoring for a reapportionment. But the four divisions — Southern, Middle, Eastern, and Western — were the four continents of the new political world, and the sea of change must not be suffered to wash them away. The spirit of democracy was abroad and insisted in participating in the reform of representation. When, in 1801, the Assembly yielded to public clamor and called a convention, the election of delegates was to last three days, and "all free male citizens twenty-one years old" might vote.§ This, too, was revolution, for by the constitution of the State no man

* Act of March 27, 1778.

† Act of March 26, 1781.

‡ By the constitution of 1776; also see act of March 4, 1796.

§ Act of April 6, 1801.

could vote save he who possessed a freehold of the value of twenty pounds, or rented a tenement worth forty shillings a year, or who, in Albany or New York, had been admitted a freeman.

In New Jersey the political estate was more difficult to acquire. There the freeholder had long been required to own one hundred acres of land, or real and personal property of the value of fifty pounds,* and this continued to be the requirement when the colony became a commonwealth.† By the constitution of 1776 a duly qualified inhabitant might vote, and straightway women, aliens, and free negroes having the requisite property voted—in five counties—by ballot. Members of the Legislative Council, Assemblymen, sheriffs, and coroners were first nominated to the clerk of the court, in writing or personally, by the electors. The nomination list was advertised for two weeks before the election, when the final choice was made by the ballots of the electors.‡

In Pennsylvania, in the seventeenth century, the political estate was in the exclusive keeping of the freeholders.§ An estate of fifty acres was equivalent to one of fifty pounds. A taxable was a voter, but not all taxables were voters, for the franchise was granted only to free white males. Just as the eighteenth century was closing, the democratic spirit gained strength enough in the State to require only manhood suffrage—

* Acts of April 4, 1709; December 16, 1783.
† See Constitution, 1776.
‡ Act of February 22, 1797. § 4 Annae, 1705.

the voter paying a State or county tax, or if voting on age—that is, for the first time—no previous tax was required.* Delaware was long a part of Penn's province, and its early laws closely resemble those of Pennsylvania.† So, too, did the laws of Maryland. But in Maryland fifty acres of land and property of the value of at least thirty pounds were equivalents.‡ The freeman who possessed either had part in the political estate.

No province began on a more liberal theory than Virginia. At first all freemen voted, but a few years' experience led to limitations. The voter must be a freeman,§ a householder, as in Massachusetts—and a freeholder, as was common in New England. Moreover he had to make oath that he was a freeholder. In the year when Pennsylvania exacted a suffrage qualification of fifty acres of land,‖ Virginia required the elector to own "real estate for his own or another's life, or in fee," but did not fix the amount. Women, infants, and popish recusants were excluded from the electorate by the law of 1699, the earliest on the subject in this country. Thirty years' trial of the law requiring the voter to be a freeholder led to the act of 1736, fixing the amount at one hundred acres, or twenty-five acres "with house and plantation in his possession." If the estate lay in two counties, the owner voted where the greater part lay. The requirement was too heavy, and in

* February 15, 1799.
† Delaware, act of 1741.
‡ Constitution, 1776.
§ Acts of 1654–55–66.
‖ 1705.

1762 was cut down to fifty acres, "unsettled," or twenty-five having a house twelve feet square. The act of 1769 excluded women and free negroes from the suffrage. War compelled taxation. A poll-tax, in kind, was imposed in 1781—a half-bushel of wheat, or five pecks of oats, or two pounds of sound bacon; but later in the year the tax was fixed at ten shillings.

Election by ballot was established by the North Carolina Assembly in 1743, and the political estate was given into the keeping of freeholders possessing each fifty acres of land and three months inhabitants of the county and six months of the province. The constitution of 1776 lengthened the time in the county to six months and in the State to twelve. A free male person thus qualified could vote for Senator. One paying "public taxes" could vote for a member of the House of Commons. Thus, free negroes possessed the constitutional right to vote.*

In 1721 South Carolina gave the right to vote to free whites professing the Christian religion, who resided one year in the province, and owned fifty acres of land, or paid a tax of twenty shillings. Sixty years before the Revolution the right to vote was given to free white men who had resided six months in the province, who were worth realty to the value of thirty pounds, current money, and who professed the Christian religion.† Ten years

* For a discussion of this point, see debates in North Carolina Constitutional Convention, 1835.

† Act of December 15, 1716.

later the requirement was changed to fifty acres of land or the payment of taxes on a fifty-pound valuation; the religious qualification was as before. In 1745 the property qualification was raised to a freehold estate in a settled plantation, or three hundred acres of unsettled land, or taxed property worth sixty pounds.* Fourteen years later the alternative was allowed—an estate of sixty pounds in houses, or a tax of ten shillings.† This was the law when the province became a State. Its first constitution omitted to prescribe qualifications for the elector. In its second, 1778, he was defined as a free white man, and no other, who acknowledged the being of a God, believed in a future state of rewards and punishments, who had attained the age of twenty-one years, had resided in the State a year before the election, possessed a freehold estate of fifty acres or a town lot for six months at least before the polls, or had paid a tax equal to the tax on fifty acres. The third constitution, 1790, modified the alternative to a tax of three shillings sterling. The qualification at the opening of the nineteenth century was, therefore, but little changed from that under the act of 1721.

Georgia, the last of the colonies, was founded as the poor man's paradise. A white man worth ten pounds and a taxpayer, or "of any mechanic trade," could vote, by the constitution of 1777. The constitution of 1789—with great liberality for the age

* May 25, 1745. † April 7, 1759.

—required only the payment of taxes and a residence of six months in the county. Kentucky, making both her constitutions almost at the close of the century, and free from colonial traditions, made the qualifications of the elector liberal. A free white man who had resided in the State two years, or for one year in the county in which he offered to vote, was an elector by the first constitution—and also by the second, which specially excluded negroes, mulattoes, and Indians. In Tennessee—or, as it was originally called, Washington County, or District—the laws of North Carolina in force in 1795, when the new State was organized, were formally readopted with few exceptions.* The elector was, therefore, required to be a freeman and a freeholder, and for six months an inhabitant of the county in which he sought to vote. North Carolina traditions influenced Tennessee. Virginia traditions in Kentucky were not suffered to encumber the political estate. The new West was essentially democratic, as the first constitutions of Kentucky and Tennessee attest. But their democracy must be measured by the aristocracy that had so long prevailed in Virginia, the Carolinas, and Georgia, and not by the democracy that developed in the country after 1800.

In no State was democracy further advanced than in Vermont. There the political estate was committed to freemen who had resided in the

* Scott's Laws, 2 vols., Knoxville, 1821.

State one year, and who would take the oath to vote conscientiously and without fear or favor of any man.* This was manhood suffrage, the most liberal that had been granted in America thus far. The liberal States of the eighteenth century were New Hampshire and Vermont in the North and Georgia in the South.

But there were other tests required of those whom the Revolution put in the place of the King. Not merely by the possession of property, nor by residence, nor because of age and racial advantage, were men made trustees of the political estate. A religious qualification was required. This, too, was a survival. For a century and a half, "being in church fellowship" had meant in Massachusetts membership in the Congregational Church. The Church of England was established in South Carolina by act of Assembly at the opening of the eighteenth century,† and its second constitution—1778—while granting religious toleration, declared "the Christian Protestant religion" to be the established religion of the State. Connecticut and New Hampshire resembled Massachusetts in their provisions respecting church-membership as a political qualification; Virginia resembled South Carolina. But resemblance is not identity. In other States religious sects abounded and multiplied till public opinion resembled that which ruled in the federal convention when the qualifi-

* See Constitution, 1777.

† See acts of November 4, 1704; December 18, 1708; April 8, 1710.

cations for office were under consideration; no religious qualification could be adopted that would please all the States; therefore all were abandoned. South Carolina, in its third constitution—1790—abandoned its State religion, and granted freedom of worship to all sects whose practices were not inconsistent with the peace or safety of the State.

The religious qualifications, so strong in some colonies for a time, in as far as they affected the voter, may be said to disappear with the abandonment of the first South Carolina constitution in 1790. The constitution of Massachusetts did not require church-membership. For a time public opinion did, but this encumbrance on the political estate may be said to have been fully satisfied before 1820.* The office-holding class was not exempted so early. Governors and legislators must give security, and none other was thought equal to the property and religious qualifications. No man known to be irreligious could have been chosen Governor of Rhode Island or Connecticut in colonial times. In public opinion this was an unwritten qualification. Had the office been elective in other colonies, probably the result would have been similar. The colonial period was one during which property, integrity, and religion were inseparable in the public mind. It may be said now that church-membership is no longer conclusive evidence of probity or integrity. A man is

* Amendment, Art. vii. (proposed by constitutional convention, 1820; ratified April 9, 1821). See also Amendment, Art. xi., ratified November 11, 1833.

not defeated at the polls, as he would have been during the greater part of the eighteenth century, simply because he is not a church-member. Is it not fair to conclude that the people of that time had no other equally good test? Or, at least, that they thought so?

In 1705—and the law was re-enacted thirty-six years later in Delaware—a member of Assembly in Pennsylvania was required to profess faith in the Trinity and the inspiration of the Scriptures. It was proposed to incorporate the same oath in the constitution of the State in 1776, and to have it apply to the electors and all officials. Franklin, the president of the convention, succeeded in limiting the oath to members of Assembly and in modifying it merely to a declaration of belief in God, the inspiration of the Scriptures, and a future state of rewards and punishments. The change in public opinion respecting requirements of this kind is recorded in the constitution of the State, of 1790, in which the old provision barely survives in negative form, that no person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold office in the State. And this provision is repeated in the constitutions of 1838 and 1873. In 1704, the year before the Pennsylvania act, the South Carolina Assembly had passed one of stricter ecclesiastical tenure. Members of Assembly who, within twelve months, had not received the sacrament, were required to take it according to the Church of England; and, in

open Assembly, to deliver proper certificate to the fact, signed by the minister, or to prove the fact by two witnesses on oath. It is not strange that the first constitution of the State, seventy-two years later, should contain some survival of a public opinion that could dictate such a law. The New England States, New Jersey, and North Carolina, either by law or in their constitutions, limited office-holding to Protestants.* In North Carolina the qualification at last led to the calling of the convention of 1835 to modify the phrase. Jews were practically excluded from public office everywhere, and Roman Catholics also, except in New York and Maryland. These sects were not numerous in the country in the eighteenth century, but they existed in numbers sufficient to prove a powerful accessory to the political party that should first declare for reforms in the franchise. They were joined, of course, by that increasing number of non-church people who considered all religious qualifications a violation of human rights.

In 1800 there were one hundred and eight thousand free persons of color, and eight hundred and ninety thousand slaves. The slaves counted as five hundred and thirty-five thousand persons in the apportionment of representation in Congress. The free negroes were in an anomalous condition, and were politically a people without a country.

* By the constitution of 1780 the candidate for Governor of Massachusetts was required to be worth £1000 and "to declare himself to be of the Christian religion." The religious test was abolished in 1821, and the property qualification in 1892.

In ten years their number had nearly doubled. Of their number, in the aggregate, during colonial times, there is no reliable record, but the record of their relations to society is ample and mournfully uniform.

Negro emancipation had never been encouraged in the colonies. The young and the old could not be emancipated,* and, usually, he who set a negro free was required to give a heavy bond† to provide against his becoming a charge on the public.‡ The freedman was hedged about by limitations. His certificate of emancipation must be recorded, and without it he could not safely travel within the county in which he lived,† nor leave it save at peril of being sold into slavery.§ He could not be a witness against a white man.‖ If he neglected to work, he and his children could be bound out to labor.§ In Virginia, until the constitution of 1776, no negro could be set free unless for meritorious service,¶ and then only with the consent of the Governor and Council. On training-days and at musters, the free negro, in Massachusetts**

* Those sound, from twenty-one to forty years old; act of New Jersey, March 14, 1798. In Maryland, not if above fifty years of age; act of June 23, 1752.

† New Jersey, act of March 14, 1798.

‡ Virginia, 1691; emancipator to pay for his transportation out of the colony.

§ New Jersey, act xii., George I., 1725.

‖ Maryland, acts of June 8, 1717; December 31, 1796.

¶ In Virginia, in 1779, a negro, Kitt, obtained his liberty for discovering a gang of counterfeiters. The State bought him for £1000 and set him free.

** Massachusetts, act of 1699; confirmed, May 28, 1707.

and Virginia* alike, must appear, without weapons, and do whatever menial service was required of him. He might be allowed to serve as drummer or trumpeter, but usually he was found about the officers' quarters at servile labor. An act of the Virginia Assembly of 1777 emancipated a negro woman and her child whom one Barr had emancipated by will, with which the royal Governor had refused to concur; but the act concluded in the usual form—"not to be construed as a precedent."

Every precaution was taken to prevent the social meeting of free negroes and slaves. North Carolina explicitly forbade it "on Sunday, or between sunset and sunrise."† For the first offence the penalty was twenty shillings, and twice the amount for every subsequent one. South Carolina and New York were in contrast in their dealing with the subject. New York was friendly to emancipation, provided proper bond was given; and in 1792 empowered the State treasurer to pay to the overseers of the poor in various towns money sufficient to support manumitted slaves who had become a public charge. Vermont was the first State to apply the doctrine of human equality to negroes, its law declaring, tersely, that "the idea of slavery is expressly and totally exploded from our free government."‡

The constitutions of the eighteenth century are silent respecting free persons of color. They were not included in the political estate. Virginia and Maryland had each twenty thousand; Pennsylvania,

* Virginia, 1755. † North Carolina, 1727.
‡ Vermont, 1787.

fourteen thousand; New York, ten thousand; Delaware, eight thousand; Massachusetts and North Carolina, about seven thousand each; Connecticut, five thousand; New Jersey, four thousand; Rhode Island and South Carolina, each three thousand; Georgia, one thousand; New Hampshire, eight hundred; Kentucky, seven hundred; Vermont, five hundred; Tennessee, three hundred; about five hundred were living north of the Ohio; eight hundred in the district of Maine; and less than two hundred in what was soon to be known as Mississippi.

Whether in New England, the Middle States, or the South, the free negro found every man's hand against him. In New Jersey and North Carolina the constitution did not forbid his voting, but public opinion was an unwritten constitution. He was an outcast; overlooked by the tax-gatherers, refused admission to the schools, denied entrance to the trades, dwelling on the thorny edge of village life, doctored by charity, watched by a slave-holding democracy, rejected from the society of the white race and forbidden to mingle freely with his own. Yet the function he served was a sort of political metaphor. How could slavery be the African's "natural and normal condition," and there be free persons of color? At the opening of the nineteenth century more than a hundred thousand persons were embodiments of the paradox. Would the time ever come when they would form a part of the political estate? If any commonwealth chose to admit them to citizenship, what effect would it have on interstate re-

lations? What interpretation would be put on the words of the national Constitution, that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"? What conflict was latent in the fact and the condition of free negroes? American democracy, at the opening of the nineteenth century, gave little sign that it was conscious of the impending changes in the political estate which were to be effected in recognition of the rights of free persons of color. As yet no political party intimated that such persons had rights which democracy was bound to respect.

From this brief survey of one aspect of the political estate at the opening of the new century, it appears that government, in American democracy, was at this time in the hands of the few who were conventionally restrained from political wrong-doing by social, religious, and property qualifications. The mass of the population was excluded from the estate. Yet few escaped taxation. The value of property, not the votes of electors, controlled the democracy of the day. Property was the electoral check and balance.

What did the State do for the people? It is easier to tell what it did not do. It did not give them free schools, free hospitals, or free asylums. Its penal code was punitive, not remedial, save in Pennsylvania. Commerce, trade, and transportation were monopolized by individuals, and, as yet, competition but slightly benefited the public. The poor-house was the common receptacle for

the insane, the imbecile, the orphan child, and the aged and decrepit pauper.

Government of this kind fostered streaks of class and petty social distinctions. The landless, the laboring class, the mechanics, and the young apprentices were at the bottom; the landholders, the well-born, the merchants, the doctors, the ministers were high in the scale. The new wine of democracy was flowing over the country and a counter-revolution was at hand. Who was to gather together the masses and consolidate the disaffected into a powerful party? Who would advocate the extension of the suffrage, the abolition of property and religious tests? How long before democracy, the masses, would be demanding a share in the political estate?

Thus, as the new century opened, though the power of property was in the saddle, the democracy of men was at hand. Unless America should be a government of men, the theories of the eighteenth century would have to be abandoned, and the new governments, in nation and commonwealth, would fail for lack of men. If all men were created equal, then the mass of provincial legislation which the commonwealths inherited must be in large measure discarded. New laws, consistent with the dominant ideas of democracy, must be made. The resolution of the New Hampshire Congress, eight months before the Declaration of Independence was written, was a hint of the way men were going and of impending changes in the organization of society.

CHAPTER VIII

THE FIRST MIGRATION WEST

Among the fireside stories of the old Northwest none is more frequently told than that of General Wayne's victory over the Indians at Maumee,* his treaty with them at Greenville,† and how the defeated savages were forced to give up their lands to the whites. From that day the Western country could be travelled in safety, and immigrants could take up lands. For nearly a century and a half England and France had struggled for this region, and their struggle came to a strange ending. The brooding mind of Pontiac, "King and lord of all the Northwest," had conceived the terrible plot, only twenty-two years before, to drive the English over the Alleghany Mountains, and destroy every white person found west of Chautauqua Lake. Traditions of Pontiac's conspiracy still linger in the Northwest.

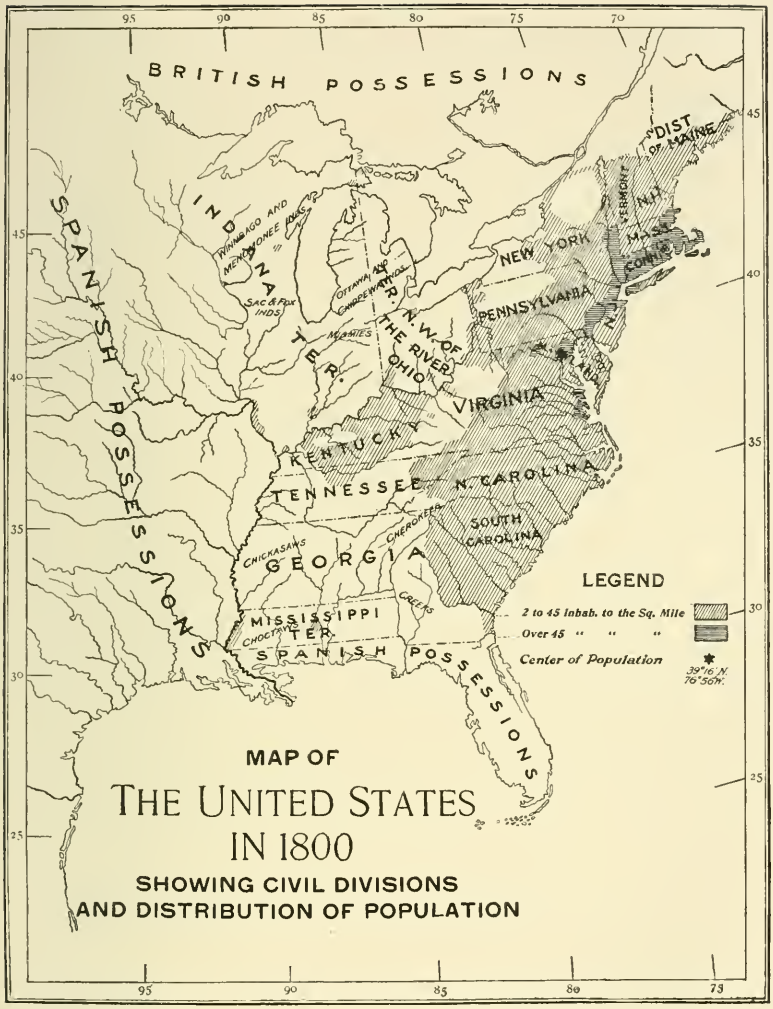
From the day of Wayne's victory Indian attacks were no longer feared in Western Pennsyl-

* August 20, 1794.

† The treaty at Greenville, August 3, 1795, opened to settlement the country from Cleveland westward and southwestward, within the "Wilderness Road" shown on the map of the United States, 1796. See Map opposite p. 158.

vania and in Eastern Ohio. Beyond Fort Wayne the country was infested by hostile tribes, and other victories must be won before it could be open to settlement. Wayne's victory was speedily followed by the settlement of the lake shore from Black Rock to Detroit. Western New York and the greater part of the Triangle in Pennsylvania were claimed by the Holland Land Company. Speculation in land was one of the chief vices of the time. Individuals and companies expected to reap fabulous wealth from the rise in land values. Before the eighteenth century closed every acre of land which Wayne's victory had brought within reach of immigration was entered in some scheme of speculation. Of the best of these companies the Harrisburg and Presque Isle was a type. It was formed on the 13th of August, 1796,* by ten men, who, under a written compact styled a constitution, agreed to pay, severally, the sum of two hundred pounds, as common stock, to be expended "in the purchase of in and out lots in the towns of Erie and others, and of lands in the State of Pennsylvania, north and west of the Ohio and Alleghany rivers." The purchases were at Erie, Waterford, and Franklin. In Erie the company paid from three to eighteen dollars for lots on Holland, German, State, French, and Parade streets, below Seventh; for the corner lot at Second and German, and for the opposite corner, "on the road to the Fort," two hundred and sixty

* See Forster's Manuscript Letter-book for account of this company.



MAP OF

THE UNITED STATES IN 1800

SHOWING CIVIL DIVISIONS AND DISTRIBUTION OF POPULATION

dollars each. For five-acre out-lots the price ranged from thirty-three to sixty-nine dollars. Fifty-five dollars were paid at Franklin for an in-lot at the mouth of the French Creek, and from fifteen to fifty-nine dollars for in-lots at Waterford, which, at this time, promised to be at the head of navigation in this part of the Ohio Valley. A portage to Erie, fifteen miles to the north, would make the great lakes and the Ohio a commercial highway. Washington had a similar dream of uniting them by a canal from Chautauqua Lake to Lake Erie.

The company originated at Harrisburg, and rated its shares at fifty dollars each. Profits were expected from sales of lands incident to immigration, also from a grist-mill which the company proceeded to erect at Erie. Milling supplies were hauled by wagon from Harrisburg. The road was fairly passable as far as Pittsburgh, but from that point to Erie was for long distances scarcely more than a bridle-path. In summer, at low-water, much of the journey could be made over the bed of the French Creek. The journey from Harrisburg consumed nearly four months.

Three other "population companies" were speculating at this time in Pennsylvania lands; Aaron Burr, with others, had devised the Pennsylvania Company, received a charter from the Legislature in 1793, and purchased land-warrants covering nearly the entire Triangle. To encourage immigration, this company offered to give one hundred acres to each of the twenty families that should

first settle "on Lake Erie territory." The settler was to clear ten acres, erect a comfortable dwelling-house, and live in it two years—"unless driven off by Indians." The time during which the Indians might drive him into involuntary exile was not to be counted against him, and his heirs were privileged to continue his claim.

Two streams of population were at this time converging at Erie—one from Pennsylvania, Dauphin County, chiefly; the other from New England, and, principally, Connecticut and Eastern New York. The Pennsylvania stream was reinforced in Alleghany and Westmoreland counties, and consisted chiefly of people of Scotch-Irish stock. The New England migration was of English stock. Nearly all were farmers, and, as was often the case, neglected, or were unable to secure, good land-titles. Some held from one company, some from another; some from individuals; and many had title only by possession. The first crop was, therefore, one of lawsuits. A test case at last reached the Supreme Court, and John Marshall sustained the claims of the Holland Land Company.* In consequence, many pioneers were forced to pay for their land again or lose it. Some preferred to abandon their claim and take up cheap government land in Ohio. Others, at great sacrifice, paid the second time. They "went sailing on the lakes"; they made pearlash; they

* See Huidekoper's Lessee *vs.* Douglass, 3 Cranch, pp. 3–73; the case gives much information regarding the condition of the Chautauqua country from 1792 to 1800.

raised a few "extra head" of cattle; they hired out their labor. The evil reputation which the Triangle got among immigrants from the East, on their way to the Ohio country, helped some Pennsylvania farmers who were struggling to pay again. Farm-houses were converted into temporary inns, and, by entertainment of man and beast, the owners gathered a little silver money.*

Similar were the difficulties in Western New York; but for these the settlers themselves were chiefly to blame. Many relied on mere possession to give title. Some claimed under bargains with the Indians. Some had bought of the Holland Company and defaulted payment. News, more or less exaggerated, of cheap lands in the West kept the Chautauqua country in unrest, and was made an excuse for unsettled payments. Not until 1835 were the disputes ended—when William H. Seward, then a young lawyer from Albany, appeared at Westfield as the agent of the Holland Company.† By judicious compromises he secured title for the farmers, quieted the angry spirit of the region, and by his integrity and administrative skill laid the foundation of his popularity in Western New York. His pacific settlement of the land troubles contributed largely to his election as Governor of

* My knowledge of early life along the Lake Shore from Buffalo to Cleveland has been principally derived from information contained in the letters of early settlers, from conversations with many of them, from the Forster manuscripts, and from early newspapers, especially the *Buffalo Gazette*.

† His land-office, a low, one-story brick building, was standing in 1885.

the State in the following year. It was this election that opened the way to a national career.

In 1799 the Northwest was erected into a revenue district, with Presque Isle as the port of entry. Adams appointed Thomas Forster collector, and he held the office for thirty-eight years—the longest service of the kind in our history. The first entry was an open boat, called the *Schenectady*, with a cargo valued at $811.85. Its invoice shows the demands of the country in 1801.* There were muslins, and cotton shawls at $3.75 apiece; green cloth and blue at $3 a yard; elastic stripe at $1.25; spotted kerseymere of American manufacture at $1.40 per yard; men's stockings at $1 a pair; worsted caps for men and women at 25 cents each; watch-chains at 34 cents, and watch-keys at 15 cents; two dozen crooked combs at $1 each; penknives at $1.50; tin snuff-boxes at 5 cents; glass pendalls at 34 cents; bridle-bits at 54 cents; golosh shoes at $2.25; almanacs; pistols at $7; weaving-reeds; and needles at $2 a thousand.

The *Prince* brought puncheons of spirits, bags of cocoa, and hogsheads of molasses; the *Neptune*, chests of hyson; the *Tulip*, silk shoes and china-ware; the *Dauphin*, claret, spermaceti candles, cases of jewelry and plated ware, and bandana handkerchiefs; the *Wilkinson*, bound for Detroit, carried cannon, shot, wine, muster-rolls, candles, and carriages. But the goods entered at the port were a small part of the merchandise imported

* Custom-house records, Erie, Pennsylvania.

into the country. Every large creek along the south shore of Lake Erie concealed smugglers. The collector was distracted by conflicting reports. Some one had seen a coat made of broadcloth on the back of a man from Ashtabula; another had seen lights at the mouth of the Twelve-mile Creek; a third had seen new goods exposed for sale at Freeport; a fourth had seen the sloop *Good Intent* off shore, and Master Lee, as everybody knew, was a bold smuggler.*

Jefferson's policy of non-intercourse was not successful or popular in the Northwest. Smuggling increased daily. In vain did Gallatin complain and Forster report. Not a vessel could leave Presque Isle "without the special permission of the President." Gallatin instructed Forster that while temptation to import every species of merchandise contrary to law might exist, the collector would only have to encounter "the common acts of smuggling, and not the interests and prejudices of the community." Gallatin little understood the pioneers along the great lakes. Smuggling might be an offence, but certainly not a crime. They thought themselves entitled to the privilege of purchasing goods at the lowest possible price. The United States government was a thousand miles away.

At this time the settlers living in Westfield were compelled to go to Canada to have their

* Custom-house records, Erie, Pennsylvania. Also Forster's letters.

grain ground, and the farmers in Erie County went to Pittsburgh. Money was so scarce as to be a curiosity. Settlers were coming in daily. They had been three months on the way from New England; they had come in ox-carts. At night they had stopped with some of the numerous tavern-keepers along the way, paying sixteen pence for lodging and the use of the fireplace—for they brought their food and cooking utensils with them. When the immigrant had located his claim, he at once began underbrushing and logging. His house was of logs saddled and notched; the roof of bark, kept down by weight-poles. The square chimney of sticks, cob-laid, was plastered on the inside with mud mixed with chopped straw. The "door-cheeks" were puncheons, and the door swung on wooden pins. Many cabins had only blanket doors. The windows were of paper, or, in rare instances, of panes of glass four by six inches. The bedstead was of poles; the table was the blue chest brought from New England. A few teacups, saucers, wooden or pewter plates, an iron pot, a spider, a bake-kettle, a cotton or tallow dip, or a turnip lamp; a rude shelf supporting the Bible, a copy of Allen's *Alarm*, or *The Pilgrim's Progress*, or Baxter's *Saint's Rest;* a gun across two pegs; skins stitched and tacked to the logs; a few three-legged stools and a gourd dipper, completed the furniture. Near the house a similar building sheltered a cow, a yoke of oxen, and a litter of pigs.

With the heaps of glowing ashes the pioneer paid for his land. The first patent granted by the United States was for an improvement in the manufacture of pearlash. At first the black salts brought only two or three cents a pound; but the price advanced until 1825, when above five hundred tons were shipped from Westfield, and more than forty-five thousand dollars were paid to the farmers of Chautauqua County. The early settlers had not even hand-mills, but were compelled to extemporize a substitute—as a spring pole, with a suspended stone or cannon-ball, and the concave surface of a hickory stump.

The loom was soon set up, for the flax had been sown. The entire manufacture of cloth and clothing for the household was done by the women. Linen sheets, counterpanes, and handkerchiefs were woven in white and blue. As soon as the farm was stocked with sheep, woollen goods were woven, and men and boys wore butternut suits of linsey-woolsey. While working in the clearing or in the field the men sometimes wore leather breeches, and a common clause in the early wills of the region is the devise of the father's leathern clothes to his eldest son.

From an early day the teachings of Calvin gave character to the people in the scattered settlements of Upper Buffalo, Conewango, Chartiers, Meadville, Erie, and Cleveland. The Presbyterian faith prevailed. The early ministers were circuit-riders, New England licentiates, and preachers duly ordained. They came chiefly from Con-

necticut or central Pennsylvania, and many were bred in the divinity school at Yale. A single sermon fed the entire circuit, which extended from Albany to Cleveland, from Presque Isle to Pittsburgh.

Armed with his Bible and his rifle, the preacher traversed the wilderness and passed his years in a life of rude romance. Overtaken by night and storm, he stopped at some friendly cabin, or, turning his horse loose, slept for safety in the crotch of a tree. He shared the rough life of the times. The news of the world travelled with him, and his saddle-bags contained the closely written and firmly sealed letter from the mother in the East to her children in the West. With day's labor the pioneers had built the meeting-house of logs and bark and puncheons. The seats were logs, the pulpit the stump of a tree. The house had neither fireplace nor stove. On the day appointed for service, people came with provisions to last a week. Fires were kindled, kettles were swung, food was unpacked, rude tables were spread, the hum of voices and the shouts of new arrivals filled the air. The lonely meeting-house suddenly became the centre of a camp-meeting. The preacher arrived in company with one of the elders, at whose house he had spent the night. After many greetings and inquiries, the service began out-of-doors, for the meeting-house was too small to hold the people. At the sound of the conch-shell, order and silence reigned, and the preacher began by lining a psalm from Rowe's

version. The melody was a minor rondo or a familiar Scotch tune. Oftentimes the only hymn-book was the minister's memory. The prayer was a sermon in itself; the sermon would make a book. All the way from Connecticut the sermon had been gathering length and strength. It abounded in exciting personal experiences, thrilling illustrations, and fearful warnings.

On the fourth day the communion-tables were prepared, the seven deadly sins were reviewed, the tables were "fenced," and the leaden tokens were distributed to communicants. The sacrament was solemnly observed. With a wondering look, the Indian, hidden from view, beheld a strange sight in his native woods.

About the opening of the second decade of the century a few Methodist preachers ventured into the land; but they were suspected of heresy and were unwelcome. The severe Presbyterian held such itinerants as Lorenzo Dow in horror, and classed the British, the Indians, and the Methodists together.

The first stores in the country would now have the interest of a museum. Into one place were gathered for trade and for barter dry-goods and wafers, dyestuffs and sand, boxes, quills, and hardware, drugs and medicines, boots and shoes—which were neither rights nor lefts—molasses and whiskey; loaf-sugar at three shillings a pound, hyson-skin tea at fourteen, pins at two-and-six the paper, powder at eight shillings a pound and shot at two, unbleached cotton at fifty-five pence

the yard, satinet at twenty-seven and sixpence, maccoboy snuff at eight shillings a pound, coffee at five, writing-paper at four shillings a quire, whiskey at twelve shillings a gallon, Webster's spelling-books at three shillings each, ginger at six shillings a pound, flour at eighteen dollars a barrel, salt at twenty-two—and Colonel Forster might tell the purchaser that, during the six years closing with 1805, to Erie City alone fifteen thousand barrels had been brought from Salina, first by wagon to Black Rock and thence by the lake. Cheese stood at two cents a pound, butter at seven, pork at two, wheat at three shillings a bushel and oats at one, calico at six-and-six the yard, and broadcloth at ten dollars.

Shoemakers, tailoresses, school-masters, pack-peddlers, and doctors comprised almost the whole of the travelling population. The doctor had learned his art in a practitioner's office "down East." Patients were bled, purged, and buried. A favorite prescription of Dr. Prendergast* was "2 oz. val. sylv. and caskarel† and epispastic," for which the patient or his estate paid one pound four shillings. The fever-stricken were denied water, but fed bounteously with calomel; the windows in the sick-room were carefully sealed, in order to prevent draughts. Frequent epidemics of small-pox or typhus overran the country.

The school-master was an incipient preacher or physician. In the hollow square of the school-

* Of Fredonia, New York. † Probably castor-oil.

room there raged a perpetual battle between the "master" and the larger boys. The windows were of larded paper, and the puncheon seats kept the children's feet just off the floor. Daball's arithmetic, Webster's spelling-book, the English reader, and quill-pen copies constituted the material for the curriculum. Educational literature did not exist. Seldom were two scholars in the same book or at the same lesson; children were sent to school to learn to read, to write, and to do sums. Schools were maintained by a rate-bill, which might be diminished by boarding the teacher. In the evening he was expected to help the children at their sums, to amuse the household, and, later, to sleep in a frosty bed.

The century was six years old before a court was held in Erie. Judge Yates, as was the custom among members of the State Supreme Court at that time, travelled over the circuit on horseback. In Chautauqua County the foreman and the secretary of the grand jury paid each a bottle of brandy for the honor of his seat. Taverns were thickly sprinkled over the principal roads, and tavern-keeping was the most profitable business in the country. Strange stories are told about some of these taverns, and the tragedy at Button's Inn has gone into literature.

Erie was made a post-office town in 1798, and the quarterly returns for April, 1805, were sixteen dollars and twenty-eight cents. Between New Amsterdam (now Buffalo) and Erie the road was almost impassable, and the mail, at regular inter-

vals, was carried in a handkerchief by a horseman. Two years later—1807—mails once a fortnight between Erie and Buffalo were carried by a horseman for one hundred and forty dollars a year. In 1811, John Gray agreed to carry the mail from Buffalo to Cleveland, once in two weeks, for three years, at nine hundred and fifty dollars a year. To-day these cities are six hours apart and correspond by a dozen mails a day.

Five years were to pass before Meadville, Oil Creek, Warren, and Mayville were included in a mail-route. The first quarter of a century was over before a daily stage-line ran from Erie to Buffalo. Often at dead of night the farmer was aroused to help the immigrant, or Colonel Bird's carry-all, out of the sink-hole in the Buffalo road.* Travel by stage was considered peculiarly dangerous. The fare by day, in summer, was four cents a mile; in winter the roads were closed.

In the farm-houses there were no children's books, no toys, no games, no pictures, no musical instruments. The business of life was to work. Each household was a self-sustaining colony—a New England in miniature. Many years passed before planted orchards bore sufficient fruit to make unnecessary the autumnal gathering of wild apples, fox-grapes, and wild plums. The boys gathered ample harvests of beechnuts, butternuts, walnuts, and chestnuts; the girls made stores of dried pump-

* Travellers agreed that one of the worst was just west of "The Gulf," or Twenty-mile Creek, near the State line—New York and Pennsylvania.

kins and dried apples. Apple-bees, husking-bees, and quilting-bees were a laborious recreation. In summer might be seen an occasional posy-bed of moss-pinks, marigolds, poppies, lavender, balm, sweet-williams, and summer-savory. Near the door grew lilacs, hollyhocks, and caraway.

In religion, nearly all were Calvinists; in politics, those from the East were Federalists; those from the South, Democratic-Republicans. But religion was of far deeper interest to them than politics. They knew little of the State Legislature and less of Congress. The ideas now embodied in the word nation never occurred to them. Life was a serious business. They had little time to speculate; their wants were pressing and immediate. In 1810 the entire country from Buffalo to Detroit, that now has a population of more than a million, did not have five thousand.

Along the frontier, distinctions in social rank were drawn according to rules unknown in the East. Birth counted for little; wealth levelled all other distinctions. The struggle for existence strengthened individualism. Isolated settlements, such as the older towns in the West were at first, developed a unique aristocracy largely composed of the families of the more prosperous tanners, lumbermen, and farmers, with a few surveyors and civil functionaries, of whom the postmaster and the squire were easily first. The event of the year was training-day, when the raw youth of the district tried their best to understand the noises

hurled at them by their commanding officers. It was thought to be a military age, and easily ran to militia titles. Who in middle life to-day does not remember some large citizen of the days of his childhood who was the colonel or the captain—not merely a colonel or a captain, as in later years. As each militia company elected its officers, titles did not easily run out. In our day men find employment for their surplus social energies in belonging to countless societies, lodges, and associations, and such membership ignores distance. The man who now has a lodge-night six times a week, had he lived then, would have been forced to concentrate his social dissipation upon general musters, election days, and religious meetings.

In the West and Southwest it was easier and more profitable to transport whiskey than corn. The federal collectors hardly ventured over the mountains, and a licensed still was unknown. Drunkenness was the prevailing evil of the times. A grocery-store was usually a liquor-store. In the Northwest some families held slaves, in the early part of the century, in spite of the great Ordinance, and a greater number had colored servants, who, though free by the law, were members of the household and received no wages. In ten years population overspread the greater part of Ohio and Tennessee, crossed the Indiana border in the Southeast, and began to appear along the northern bank of the river; but the Indian country began below the latitude of Indianapolis and

Springfield. Emigration from South Carolina and Georgia was checked by the Creeks and Cherokees; and the Chickasaws, and the lesser but equally fierce tribes, held back the people of Tennessee and Kentucky from the rich bottomlands of Mississippi. Nineteen in twenty of the population lived in the country. Nineteen in a hundred were negroes, living almost wholly south and southwest of Pennsylvania.

Before the westernmost advance of population reached the Mississippi, Louisiana was purchased from Napoleon. In 1800 it had been conveyed to France by Spain, in a secret article of the treaty of San Ildefonso, without definition of boundaries. Jefferson made public the purchase on the 21st of October, the three hundred and eleventh anniversary of the discovery of America. Marshall spoke of the treaty as one of "studied ambiguity." It contained one article which, as it came to be administered, proved a sweeping clause. The inhabitants, as soon as possible, were to be incorporated in the Union, "according to the principles of the federal Constitution," and, meantime, were to be protected in the enjoyment of their "liberty, property, and religion." At once it was claimed that "property" included slaves, and that the treaty, according to the Constitution, was a part of the supreme law of the land. However slight as yet might be respect for the federal government, it was a guarantor of slavery, and therefore entitled to some allegiance. The clause in the treaty proved before many years to be one

of momentous interpretation of the functions of the general government. It was one of the first epoch-making measures of the century. Before the century closed, the Louisiana country was to consist of fifteen commonwealths, and their constitutions and laws were to be strongly influenced by the issues germinant in this article. Congress speedily erected the Territories of Orleans and Louisiana, specially providing that federal laws respecting the slave-trade and fugitives from justice should be in force in them.

The purchase of Louisiana changed the history of the United States. As long as the Mississippi remained the western boundary of the country, the North and the South were conventionally, if not economically, equal forces in government. The new acquisition suddenly and permanently changed old relations. The area of the United States now became about two million square miles, of which by far the greater portion lay north of the latitude of 36° 30′. Orleans touched the Spanish possessions, and was the westernmost extension of slavery. In the far Northwest the Louisiana country joined Oregon, and thus the United States extended from the Atlantic to the Pacific. West of the free States there thus suddenly opened up an almost unlimited opportunity for the extension of free institutions. A conflict between slavery and freedom for its control was inevitable. All the energies of the country, social, economic, and political, were soon marshalled on one side or the other. The contest between

freedom and slavery, hitherto obscure, was from this time carried on with increasing fierceness for sixty years.

In 1802 Congress authorized the people living in "the eastern division of the Territory northwest of the river Ohio" to form a State government. Only taxpayers who were citizens of the United States and residents of the Territory for one year were allowed to vote for members of the convention. Congress empowered the delegates to accept or reject its offer of every sixteenth section of land in every township for the use of schools, and the reservation of certain military lands and salt-springs for the use of the State. The lands thus set apart for the support of schools comprised, in the aggregate, an area greater than half the State of Connecticut. No provision of the kind could have been made in Kentucky, Tennessee, or Mississippi. There Congress never had title to the land. Large portions of the Mississippi Territory were in private ownership before it came fully under federal control. The two sections of the West, the northern and the southern, thus began with unequal facilities for public education. The difference was largely temperamental, and characteristic of their populations. The Eastern habits of the people of Ohio could not be shaken off. Though the majority of the settlers were unlearned men, there were few illiterates, and none who did not wish their children to have an opportunity to attend school. The spirit of the people dictated the provision in the constitu-

tion of 1803 forbidding the Legislature to enact laws that would prevent the poor from an equal participation with the rich in the schools, academies, colleges, and universities in the State endowed in whole or in part with the revenue arising from the school-lands granted by the United States. No distinction or preference in the reception of students and teachers should ever prevail in these institutions. Congress thus began a new policy, by which public education became an essential part of commonwealth organization. It was followed in the enabling acts for later Northern States, and led eventually to provisions for education in their constitutions. From the day Ohio was admitted, and largely because of its generous equipment for public education, began a new concept of the functions of an American commonwealth. The provisions for public institutions of learning were the first and the principal cause of a change in the popular idea of the State. From this time the State had the gift of education in its hands, and the public began to look to the State to do things which had before been done by individuals or not at all. Education at the expense of the State meant the downfall of discordant individualism. A beginning was made in the education of the masses, in a common school-system. It is impossible fully to estimate the importance of education in a democracy. The educational grant to Ohio was, in all its aspects, the first of the kind in history.

Responsive to movements of population, Con-

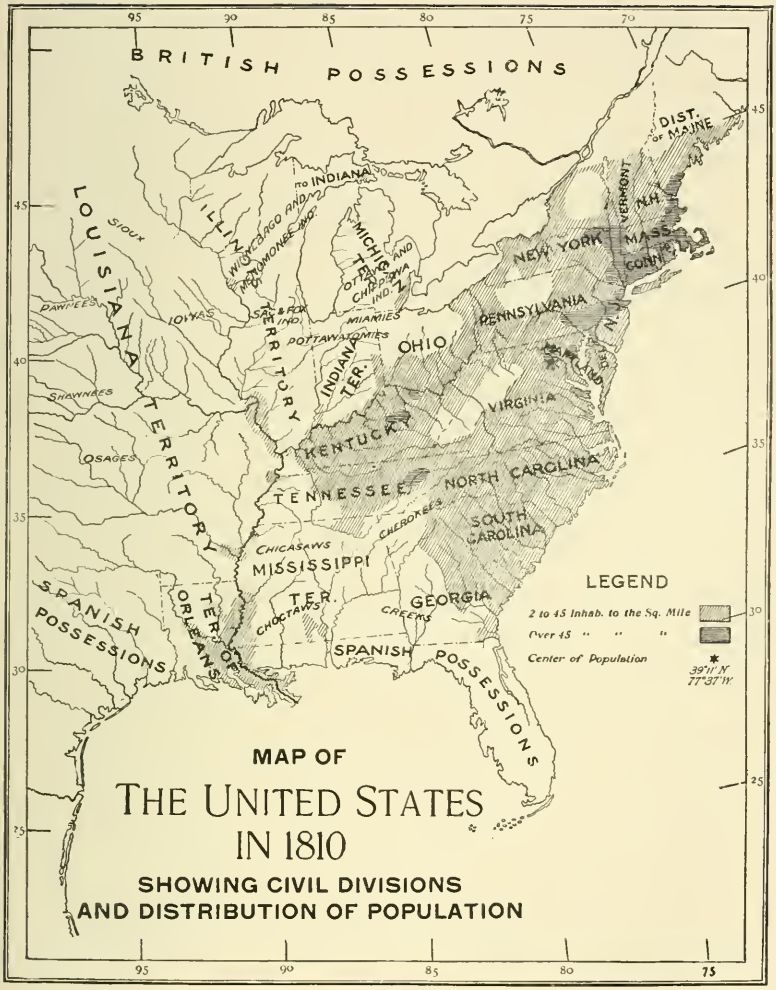
gress in 1805 organized Michigan from the Indiana Territory, with Detroit as the capital, and, four years later, again divided Indiana, calling the new Territory Illinois, and making Kaskaskia its capital. The northern peninsula remained part of Indiana. Georgia, in 1802, ceded to the United States the lands between her western boundary and the Mississippi, for which she received one and a quarter millions of dollars and the obligation of the United States to extinguish the Indian titles within the State. The Mississippi Territory, which at first was a narrow strip along the boundary of West Florida, was now extended to Tennessee, with promise of admission into the Union at the discretion of Congress. The act organizing the Territory guaranteed slavery. White men above the age of twenty-five, citizens of the United States and residents of Mississippi one year, owning fifty acres of land and a town lot of the value of one hundred dollars in the Territory, were allowed to vote. This property qualification, in contrast with manhood suffrage in the Northwest, was in keeping with precedent in most of the States.

The white race was now increasing relatively faster than the black. Cities were multiplying in number, but not in their proportion of the population. They were centres of trade and litigation, but manufactures and towns were not yet synonymous terms. The age of factories began after the second war with England. As population became denser in the older regions of the country the press-

ure westward found voice in a common demand for more land. The pioneer was treading on the heels of the Indian.

Two Indian wars broke out almost at the same time—with a confederation of tribes in the Northwest, with the Creeks and Seminoles of the Southwest, constituting, as the people of the West thought, the principal part of the war of 1812. They would have broken out had that war never occurred. The wave of population was dashing against Indian barriers, and there could be only one result. Immigration westward had now overrun what were thought to be the best lands made accessible by Wayne's treaty of 1795. Twenty years had passed. A new generation demanded cheap lands.

Hundreds of battles have been fought, surpassing in fierceness, and in the number and the skill of participants, the battle of Tippecanoe. Yet because of its effects on the development of the West it lingers in the memory of the people like Lexington and Fort Sumter. Another Pontiac had planned to sweep the whites from the Northwest. Tecumseh, and his brother The Prophet, had conceived a more daring plot—to unite all the tribes, North and South, and swoop down upon the settlements at one time. Harrison's victory gave the Northwest to new settlers. For the settler in the Southwest Jackson performed a similar service. His campaigns left a trail of Indian blood. Henceforth no tribe dared commit hostilities east of the great river. Harrison and Jackson had won a popularity surpassing



MAP OF

THE UNITED STATES IN 1810

SHOWING CIVIL DIVISIONS AND DISTRIBUTION OF POPULATION

that of Washington or Franklin. When the war of 1812 was over, and the treaty of Ghent was signed, and the country could calmly reflect on its gains and losses, the victories of Harrison and Jackson, which opened the West to settlement, outweighed, in the opinion of the people living in the great valley, all the victories of the Americans on the sea. The popularity of the two soldiers took deep root in public sentiment, and, growing stronger as the years displayed prosperous commonwealths as the fruit of their victories, at last culminated in the election of the "Hero of New Orleans," and, later, the "Hero of Tippecanoe,"* to the Presidency.

By a provision of the national Constitution, a census of the people is taken every ten years. The movement of the frontier westward has thus been regularly recorded. Its position from decade to decade suggests the waves of some mighty sea, each in succession leaping further to the West. Every wave has ingulfed once powerful tribes. From frontier to frontier stretches a succession of battle-fields. Each decade has had its Indian wars, its victories, and its popular heroes. Harrison and Jackson were the first of their kind. Within ten years of their victories, the West stretched far away beyond the Mississippi; many of the tribes with whom they fought were transferred to the Indian country, and an ample region east of the

* For typical resolutions on General Harrison, see those of the Kentucky Legislature, January 13, 1812.

river was opened to peaceful settlement. Population continued to converge upon St. Louis, even after these victories on the Thames and the Alabama. Within five years of the battle of Tippecanoe, a population poured into Indiana sufficient to ask for admission as a State. Congress made a grant of school-lands equally generous with that to Ohio, and appropriated an entire township exclusively for the support of higher education in "a seminary for learning"—the beginning of appropriations of land for State universities. Like the offer to Ohio, this one to Indiana was subject to the will of the convention. The constitution adopted was the first in the country to make it obligatory on the Legislature "to provide by law for a general system of education, ascending in a regular graduation from township schools to a State university, wherein tuition shall be gratis, and equally open to all."

In 1817 the Territory of Mississippi was divided. The eastern portion was organized as the Territory of Alabama, and the people of the western portion were authorized to form a State government — republican in form, and complying with that part of the Ordinance of 1787 applicable to the Southwest. This meant a slave constitution. The free navigation of the Mississippi was guaranteed to all the inhabitants of the United States. The State was admitted on the 10th of December. Two years and a day later Alabama was admitted on the same terms. In this State school-lands were reserved as in Ohio.

Similar civil changes had meanwhile gone on in the Northwest. In 1818 the people of Illinois were authorized to form a constitution. A land-grant was made like that to Indiana. The portion of the Territory north of the present boundary was attached to Michigan. On the 3d of December the State was admitted. Thus the four new States came into the Union in pairs—Indiana and Mississippi, Illinois and Alabama.

Within five years from the organization of the Territory of Orleans its people asked for admission, and Congress acceded by passing an enabling act in 1811. The conditions imposed on Mississippi and Alabama were renewed and complied with, and the State of Louisiana admitted on the eighth day of April following. It was the first State in the recent acquisition, and its admission precipitated an ominous debate, in which there were strong assertions of State sovereignty and some mutterings of secession. A few days later all territory north of the new State was organized as Missouri. Its Territorial government was more liberal than that given to the Northwest twenty-five years before. Members of the House were required to be freeholders—a qualification which, in practice, though not by law, was exacted of the Territorial officials generally. After 1816 the sessions of the Legislature were made biennial—an innovation in Territorial matters.

The people of the nine counties of Massachusetts constituting the District of Maine had been agitating separation for several years, when, in 1816, de-

sire took the form of a convention, which assembled on September 29th, at Brunswick. Most of the Federalists were opposed to separation. Three years of political agitation followed; Massachusetts assented to separation; a convention assembled at Portland and submitted a constitution to the electors of Maine. It was ratified, was approved by Massachusetts, and on the 3d of March, 1820, the State was admitted.

While the people in the Northwest were making these changes, those in the Southwest were similarly engaged. Congress organized the Territory of Arkansas in 1819, with a government like that of Missouri. To induce immigration, bounty lands for military service during the war of 1812 which were still held by the original patentees or their heirs, were exempted from taxation for three years from date of issue. The laws of Missouri were extended over Arkansas.

Georgia, Alabama, Mississippi, and Louisiana had long been complaining of the escape of runaway slaves into the Floridas. Partly because of the weakness of Spain, but principally in compliance with the wishes of the pro-slavery element in the Union, Congress early in 1811 passed a resolution that the United States could not, without serious disquietude, see any part of the Floridas pass into the hands of a foreign power, and on the same day authorized the President to take possession of East Florida. A month later it authorized him to take possession of West Florida. Though the peninsula was thus converted into a military

possession of the United States, Congress declared that it should be subject to future negotiation. No act of Congress was ever more popular along the Southern frontier than this one. Remonstrance by Spain was useless. It could do no more than sell a possession already practically in permanent military possession of the United States. On the twenty-second day of February, 1819, a treaty was made by which Spain relinquished all claim to the Floridas and to the Louisiana country. The consideration was five millions of dollars and the assumption of certain claims, which proved eventually to amount to a million and a half more. It was this treaty that defined the western boundaries of the Louisiana country; but influences were already at work which, in a quarter of a century, left the sea-coast of Florida the only part of our national boundary fixed by this treaty. Portions of it now constitute the boundaries, in part, of thirteen commonwealths.

St. Louis, the principal city on the Mississippi, lay at the confluence of streams of population from the East. Before the Territory of Missouri was in its eighth year its people were seeking admission. On the 6th of March, 1820, Congress passed an enabling act, with a more generous grant of lands for school purposes than that made to Indiana. Four sections were granted as a site for the seat of government—the first grant of the kind. A condition found in later enabling acts was for the first time imposed—that the constitution of the State be republican in form, "and not

repugnant to the Constitution of the United States." It was with the latter part of this condition that the Missouri constitution conflicted and for a time delayed the admission of the State. For the first time the question was raised whether slavery should be permitted west of the Mississippi and north of Louisiana. It was settled by applying the sixth article of the Ordinance of 1787 to the portion north of 36° 30′, and admitting Missouri with a pro-slavery constitution.* As originally defined, the western boundary of the State was a meridian line, and did not include the triangle in the northwest, about equal in area to Delaware. This was annexed to Missouri in 1836, in defiance of the compromise of 1820.

With the organization of the Territory of Florida, in 1822, the public domain passed wholly into the hands of civil authority. In less than forty years from the day when the independence of the United States was recognized, population had overspread more than a thousand miles of the Western country. Nine commonwealths had arisen in a region which, in 1781, was in the possession of hostile tribes. The West was now greater than the East. New issues had arisen in the nation. New States and old were confronted by new social and economic problems, in the settlement

* On the 26th of June, 1821, by a "solemn public act," the Missouri Legislature complied with the conditions of the enabling act, that the objectionable clauses in the State constitution should never be construed so as to violate rights guaranteed by the Constitution of the United States.

of which the constitutions of the eighteenth century gave little help. Consequently the constitutions of the new commonwealths contained innovations, chief of which were changes in the basis of representation, in the franchise, in the method of securing public officials, in provisions for public schools, colleges, and universities, and in the distribution of the functions of government among the departments. The constitutions, like the people of the new States, were more democratic in character than those of the East. The new organic laws of the West were a wave of constitutions. Those of the eighteenth century comprised the first, these the second, on the great sea of American democracy. The influence of ideas dominant in the West was reflected and felt in New York and Massachusetts, in Connecticut and New Jersey, in Maryland and Georgia. These older States were discussing, if not adopting, reforms in the basis and the apportionment of representation, reforms in the franchise, and, to a less extent, in the organization of the administrative, or, as it may now be called, the civil service. Government by property was giving place to government by persons.

CHAPTER IX

FROM THE ALLEGHANIES TO THE MISSISSIPPI

At the opening of the new century the frontier advancing westward was along the Ohio River.* The greater part of the original States was in private ownership. From the shores of Ontario and Erie a new zone of occupation extended southwestward to the country of the Creeks and Cherokees—a new world of isolated settlements, found along the great streams flowing into the Ohio, along the south shore of the two great lakes, and in the valleys of Kentucky and Tennessee. But throughout this new region the fear of straggling half-breeds and remnants of once powerful tribes made the new West a vast agricultural camp. St. Louis stood at the outpost of civilization. Peace with the United States, France, and Spain contributed to make it a centre of population as well as a frontier trading-post. It was the one town on the continent which served the function of the middle-man with the people of the States, the French, Spaniards, and Mexicans on the south, and the unknown Indian tribes of the

* The principal authorities for this chapter are the treaties, the statutes at large referred to, and the meagre records of the constitutional conventions.

yet undiscovered West. It stood near the confluence of the three great rivers of the country—the Ohio, the Mississippi, and the Missouri—the confluence also of civilization and savagery. Three hundred miles to the south, another and an older town, New Orleans, laid tribute on all that came from the upper country; and this meant the surplus product of the United States west of the Alleghanies. A less discerning mind than Jefferson's could see that the fate of the Western country was in the hands of New Orleans. The phrase "manifest destiny" had not yet been invented as the apology for the acquisition of new territory, but the thought was embodied in Jefferson's dictum, that the power possessing New Orleans was the natural enemy of the United States. It was a prescient idea, and one that the wayfaring man might not have expected to find in a republic of only twenty-five years' standing, and not without signs of falling. Why more land when more than half the public domain was yet a wilderness? Why the isle of Orleans when population had barely reached the Altamaha, four hundred miles to the east, or the Cumberland, three hundred to the north? We all know the reason—it has been written in the history of all nations—that the power is supreme which regulates commerce and controls the highways of trade. Although the greater part of the people of the United States inhabited the Atlantic slope, the future of the republic did not rest with them. More than half the country lay in the valley of the Missis-

sippi; on this yet unoccupied portion rested the fate of the Union. Trade and commerce follow lines of least resistance. The mountains which divided the people of the coast from the people of the great valley might prove a greater obstacle to "a more perfect union" than the delusion of fiat money and the jealousy of the State sovereignties had been at the time of the ratification of the Constitution. In the last analysis union rests on morality and industrial association, and the general welfare means a true political economy. Thus the fate of the republic depended on the course of streams and the trend of mountains, as well as on Congress and the Legislatures. Had the Rocky Mountains run parallel with the Mississippi at twenty miles to the west, it is doubtful whether the United States would ever have extended beyond its original limits and the peninsula of Florida. The acquisition of the Louisiana country ranks in importance with the Declaration of Independence—for it made room for democracy in America.

With nations, as with individuals, it is the forward look that stimulates. Too much history, like too much introspection, chills the spirit and cripples action. Thus the thought of an energetic people is of their outposts and frontier, and the history of these is the history of civilization. When the new century opened the outposts of the republic were at Buffalo, Erie, Detroit, Mackinaw, Chicago, Green Bay, Prairie du Chien, St. Louis, and Orleans—names, it is true, seldom heard in

the East then, but to the statesmen of the day the subject of diplomacy, the signs of the times, the vanguard of democracy.

Louisiana was almost an unknown land. Not until sixteen years after its purchase, when Florida was acquired, was there even a rude definition of the boundaries, for no accurate maps existed. No man knew the true course of the Rio Grande or of the Rocky Mountains, for there were several great rivers and many mountain ranges, any of which might be the boundary. Fortunately for the republic, the western boundaries were at the edge of the world, and not likely, it was thought, to raise diplomatic questions for centuries.

Of greater domestic interest were the political articles of the treaty. The United States guaranteed the inhabitants of Louisiana the protection of their liberty, property, and religion, and this guarantee of property rights was soon applied in a way that determined the real importance of the acquisition and its effect on the destiny of the country. If property included slaves, what was the national significance of the guarantee? What effect on the commonwealths of the future? Was the fate of freedom in the States to be formed within the new acquisition to be determined by the property rights of a few thousand people living in Louisiana at the time of the treaty?

Nor were these the only civil problems latent in the acquisition. What effect would the great Ordinance of 1787 now have? If slaves were property—and, by the treaty, slavery was to prevail through-

out the Louisiana country—was not the republic thereby converted forever into a slave-holding community? The Ordinance excluded slavery from the territory northwest of the Ohio, but at the same time included it southwest.

Slavery did not exist in New Hampshire, Vermont, and Massachusetts; but elsewhere, in every State, and in the Northwest Territory, there were slaves. By the Ordinance it became unlawful in that Territory after 1800, but the year came and went with no change in the condition of the negroes within its boundary. The white people in the Territory were not enthusiastic to apply the Ordinance. The year of the acquisition of Louisiana witnessed the admission of Ohio* with a constitution forbidding slavery, and it also saw the persistent efforts of the inhabitants of Indiana to persuade Congress to repeal, or suspend, the Ordinance. Their petition was answered by the unanimous report of the committee, of which John Randolph was chairman. Slave labor would be unprofitable in the Northwest; slavery would make the frontier less secure. But defeat did not cause petitions to cease. In the following year another committee reported favorably, but the House took no action. Two years later another committee made a favorable report, on the ground that the repeal of the prohibitory clause was almost universally desired in the Territory; that the suspension of the clause would stimulate

* February 19, 1803.

immigration, and that slave-owners would be free to move to Indiana if they chose. The suspension would also improve the condition of the slaves. The more they were scattered, the better care they received from their masters, as experience proved that the comfort of slaves was in proportion to the smallness of their number—an argument to be made much of by Madison, and repeated by the friends of slavery extension in 1820. The House, however, took no action. Again, in 1807, a committee reported favorably, and its opinion was reinforced by a letter from William Henry Harrison, Governor of the Territory. A new argument was presented. Though inexpedient to force the population of the Territory, it was desirable to connect its scattered settlements, and place it on equal footing with the different States. Indiana was so far inland it was improbable that slaves could ever become so numerous as to endanger the peace of the country. The Territory should be open freely to the current of immigration. Suspension of the clause, it was now claimed, did not involve the abstract question of freedom or slavery, because slavery existed in different parts of the Union. Rather, the suspension would ameliorate the condition of the slaves, because it would merely authorize their removal from other States. But the House took no action. The Indiana petition came as a resolution of the Territorial Legislature. Private judgment was thus strengthened by the official act of the legislative and executive. In January, 1808, the whole matter came before

the Senate, but its committee reported the proposed change inexpedient, and Congress took no further action. Thus, by a coincidence, the territory northwest of the Ohio was secured to freedom in the year when, by the terms of the national Constitution, Congress was free to prohibit the African slave-trade.

The fate of the Indiana memorial, settled five years after the acquisition of Louisiana, may now be said to have been an augury of the fate of slavery in the new domain, but there is slight evidence that the action of Congress was so construed at the time. The name Louisiana, then, as now, was connected, in popular thought, with the southernmost part of the purchase. There was no objection to the acquisition because of the extension of slavery. Objection was of the kind expressed in the federal convention of 1787, when the contingency of new States in the West was discussed—that they would multiply and out-vote the East, and therefore ought not to be created. Moreover, the Constitution made no provisions for the acquisition of territory. These two objections, involving questions of federal relations rather than of slavery, engrossed what public attention was given to the matter. The article of the treaty by which the Constitution of the United States was soon invoked as guaranteeing the right of property in man, was generally unknown or overlooked. Was not the acquisition a Southern and Western question, after all? Quincy and the New England Federalists, of course, object-

ed,* but would they not object, as they ever had objected, to whatever the South and West might ask? Times had changed; henceforth the West should outweigh a black cockade. Let the Federalists remember that Jefferson, the man of the people, was President. At last the West was to have its rights, and it gathered more fervently than ever beneath the banner of that new and powerful party described by its founder as "inclining to the legislative powers."

Ten days after the treaty was proclaimed Congress authorized the President to take possession of the new country, and it was erected into two Territories—Louisiana and Orleans. The fugitive-slave law of 1793, and the laws respecting the slave-trade, were specially mentioned as extended to the new Territories. On the 2d of March Orleans was provided with a permanent government, and on the next day Louisiana. The form became the precedent for later Territories in the South. Within five years from the organization of Orleans its population had sufficiently increased to authorize the formation of a State government. By the enabling act of February 20, 1811, the electors were empowered to choose delegates to a constitutional convention. Its work was completed eleven months later. The act prescribed several conditions, suggested in part by a clause in the treaty of 1803. The constitution should contain the fundamental principle of civil and religious liberty,

* See Josiah Quincy's speech in the House, January 14, 1811.

should be republican in form, and consistent with the national Constitution. Satisfied with the plan of government submitted, Congress admitted the State on the 8th of April, and, six days later, enlarged its boundaries.

The greater part of the Louisiana purchase remained as yet unorganized. To the portion north of the new State, Congress, on the 4th of June, gave a Territorial organization and the name Missouri. The government departed slightly from precedent in prescribing a biennial election of members of the House. These were required to be freeholders. In 1816 the sessions of the Legislature were made biennial—the first application to a Territory of a reform already in progress in the States. The laws of Louisiana were extended over the new Missouri Territory, except any parts of them inconsistent with the act creating the Territory. Thus the early legislation of Missouri was, in part, ingrafted on the civil law.

Georgia had recently ceded to the United States all the region west of her present boundary—the result of an amicable agreement between the State and national commissioners, ratified on the 16th of June, 1802.* The United States agreed to pay one and a quarter millions of dollars, and also to extinguish the Indian title within the State and over the greater portion of the ceded area. The new Territory was to be admitted as a State as soon

* For papers respecting this cession, see Donaldson's Public Domain, pp. 79-81. Forty-seventh Congress, second session; House of Representatives, Miscellaneous Document 45, Part 4.

as it contained sixty thousand people, or sooner, if Congress thought expedient, and the United States agreed that the Ordinance of 1787 should apply to it, except the article forbidding slavery. This cession enabled Congress to extend the Territory of Mississippi northward to the Tennessee line. The right to vote was limited to free white males above the age of twenty-five, citizens of the United States who were residents of the Territory one year, provided they owned fifty acres of land in the United States, or a town lot worth one thousand dollars within the Territory.

Indiana was divided in 1805, and to the portion comprising the southern peninsula the name Michigan was given, with Detroit as the capital. Again, four years later, the Territory was divided, and the western part, with capital at Kaskaskia, was called Illinois.

Indiana now sought admission, and on the 19th of April, 1816, Congress authorized its people to elect delegates to a constitutional convention, limiting the choice to white male citizens of the United States, residents of the Territory for one year, who had paid a county or Territorial tax. On the 29th of June of the following year this convention assembled at Corydon, and completed a constitution, which was ratified by the electors and approved by Congress. On the 11th of December the State was admitted.

In 1812 the Territory of Mississippi was enlarged so as to include the region east of the Pearl River, west of the Perdido, and south to the

thirty-first degree of latitude. Within five years the inhabitants applied for admission. On the 1st of March, 1817, Congress passed the act necessary for admission, and the electors in the thirteen counties chose forty-eight delegates, who assembled at Washington, and, after six weeks' labor, completed a constitution. Under this the State was admitted, on the 10th of December. A condition of the enabling act required the constitution to be republican in form, and in conformity with as much of the Ordinance of 1787 as was applicable to the Southwest. The establishment of slavery was, therefore, a condition of admission. An enabling act for Illinois passed Congress on the 18th of April, 1818; a constitutional convention met at Kaskaskia on the 26th of August, and its work was approved by the electors and by Congress. By resolution, the State was admitted on the 3d of December.

Alabama had long been a land of promise when, in 1817, it was created a Territory. It was a fair and fertile country, in which the United States had guaranteed to extinguish the Indian title. A tide of immigration poured in from the adjoining States, especially from Tennessee and Kentucky. In two years its people sought admission to the Union, and Congress responded by the act of the 2d of March, 1819, authorizing them to form a constitution and State government subject to the condition imposed on Mississippi with respect to the Ordinance of 1787. The constitutional convention completed its work on the 2d

of August. On the 14th of December, Alabama became the twenty-second State in the Union, with the suggestive distinction of having been a Territory for a briefer period than any other American commonwealth.

Arkansas was given a Territorial organization in 1819, after the form of that of Missouri. As an inducement to immigration, and in response to public sentiment in the South, bounty lands granted within the Territory for military services during the war of 1812, and still held by the original patentees or their heirs, were exempted from taxation for three years from date of the patent. In 1820 the changes in the form of the Missouri government were declared by Congress to apply equally to Arkansas.

The enabling act for Missouri passed on the 6th of March, 1820, and a constitutional convention was elected early in May. Congress imposed the usual conditions—that the new constitution be republican in form and not repugnant to the Constitution of the United States, but the last section of the enabling act prescribed a new condition, destined to become epoch-making in the history of the country. In all that Territory ceded by France lying north of 36° 30′, not included within the limits of the proposed State of Missouri, slavery, or involuntary servitude, other than as a punishment for crime, was forever prohibited, but fugitive slaves found there might be lawfully reclaimed. Thus the Ordinance of 1787, as applied north of the Ohio River, was extended

over the Louisiana purchase, north and west of the State of Missouri, and the greater part of the republic was thereby made free soil.

From the 12th of June till the 19th of July the convention was busy at St. Louis in forming a constitution for the new State. Among other ordinances it passed one formally declaring the assent of the people of the State of Missouri to the conditions of the enabling act. The new constitution was approved by the people, who, at the time of voting approval, had elected a State ticket and practically established a State government. The enabling act had provoked the first exhaustive discussion of slavery in Congress. The act was itself a compromise. As first submitted to Congress, the constitution of the new State directed its Legislature, as soon as possible, to exclude free persons of color from the State. The clause at once, and for the first time, raised the question whether such a provision conflicted with the national Constitution. Were these citizens of the United States? The controversy threatened to prevent the admission of the State. New York, and other States in which these persons might become electors, saw in the exclusion a direct violation of the rights of their citizens under the Constitution. By a "solemn act" the Missouri Legislature promised that the objectionable clause should never be applied to citizens from another State, and, on the 10th of August, 1821, President Monroe, who had been authorized to admit the State upon receipt

MAP OF

THE UNITED STATES IN 1820

SHOWING CIVIL DIVISIONS AND DISTRIBUTION OF POPULATION

of such a promise, admitted it by proclamation.

While the Missouri Compromise was pending, the people of Massachusetts residing in the District of Maine, after several unsuccessful attempts to organize a separate State government, completed a constitution on the 29th of October, 1819, in convention at Portland.* Massachusetts had given its formal assent in June. The constitution was ratified by the electors on the 6th of December; Massachusetts made a formal cession of title to the District on the 25th of February, 1820, and on the 3d of March the State was admitted. At this time the line of the frontier extended four thousand one hundred miles, and the settled area was nearly five hundred and nine thousand square miles. Population was rapidly increasing and now numbered nearly ten millions.† Since the opening of the century the centre of population had moved westward fifty miles. More than one-sixth of the population was in slavery.‡ Though the urban population was increasing, less than half a million souls were to be found in cities.§ New York, the largest,

* The Debates and Journal of the Constitutional Convention of the State of Maine, 1819–20, and Amendments subsequently made to the Constitution. [Edited by Charles E. Nash.] Augusta: Maine Farmers' Almanac Press, 1894.

† 9,633,822. ‡ 1,538,022.

§ Alexandria, District of Columbia, 8218; Norfolk, Virginia, 8478; Portland, Maine, 8581; Cincinnati, Ohio, 9642; Providence, Rhode Island, 11,767; Richmond, Virginia, 12,067; Albany, New York, 12,630; Salem, Massachusetts, 12,731; Washington, District of Columbia, 13,247; Southwark, Pennsylvania, 14,713; Northern Liberties, Pennsylvania, 19,678; Charleston,

contained scarcely one hundred and twenty-five thousand; Philadelphia and Baltimore, each, half as many; Boston less than one-third. New Orleans was larger than Charleston. Territorial subdivisions indicated what movements in population were in progress, and a great body of immigrants was impatiently awaiting the extinguishment of the Indian title in the Northwest and the Southwest.

As a refuge for fugitive slaves the Floridas had long been a cause of complaint to the States along the Southern border. As the peninsula belonged to a weak nation, there was some hope that the cause would cease. Partly on this account, but principally in compliance with the aggressive policy of slavocracy, Congress, on the 15th of January, 1811, by resolution declared that the United States could not without serious disquietude see any part of the Floridas pass into the hands of a foreign power, and that a due regard for the safety of the United States compelled them to occupy the territory—subject to future negotiation. On the same day the President was authorized to take possession of East Florida—the country south of Georgia and Mississippi Territory and east of the Perdido—and, on the 12th of February, to take possession of the remainder of the country then called West Florida. The peninsula thus became a military possession of the United States. This, too,

South Carolina, 24,780; New Orleans, Louisiana, 27,176; Boston, Massachusetts, 43,298; Baltimore, Maryland, 62,738; Philadelphia, Pennsylvania, 63,802; New York, 123,706. The urban population aggregated 475,135.

was a Southern question, as the public thought, and the unprecedented act of Congress met with general approval. Undoubtedly the peninsula would have been held by the United States successfully had war followed, but the treaty of cession, concluded on the 22d of February, 1819,* brought matters to an amicable settlement. Of greatest importance, as time passed, was the clause in the treaty defining the western boundary of a portion of the Louisiana purchase. There were those who asserted, and John Quincy Adams was among the number, that the United States had acquired a just claim as far west as the Rio Grande —an idea which twenty-six years later was revived in the demand for the "reannexation" of Texas. Until March 30, 1822, the Floridas continued under a military government, responsible to the President. On that day they were united under a Territorial organization of the usual form, but the lack of roads and waterways between the eastern and western parts compelled a departure from the usual judicial organization. Two superior courts were established—one for the eastern and one for the western part. Twenty-two States and two Territories were now organized east of the Mississippi, and, to the west, one Territory and two States.

A change in Territorial government, in the nature of a reform, was made by the act of Congress of February 5, 1825, affecting Michigan. Its Governor and Legislative Council were empowered to

* Treaties and Conventions, pp. 1016–1023.

divide the Territory into townships, and to incorporate any of them. Henceforth county officers were to be elected by popular vote. These were important steps towards independent and responsible local government. It was an application of civil notions long prevalent in New England and New York, but now for the first time applied by Congress to a Territory. Its appearance in Michigan is explained by the nativity of the people, who, for the most part, had emigrated from New York and New England. The reform thus early introduced into Michigan was a sign of the times, and particularly in the North. The laws on local government soon after passed by the Michigan Legislature became the nucleus of articles on local government, taxation, and finance which, nearly twenty years later, this State was the first to insert in a written constitution.*

Few of the State boundaries were at this time settled, and scarcely a session of a Legislature passed without some act or resolution bearing on the disputed question. The greater part of the national boundaries was also unsettled. Save the sea-line, along the Atlantic and the Gulf, the boundaries of the country were yet diplomatic problems. The treaty with Great Britain, in 1783,† had provided for the appointment of commissioners to settle the entire boundary line between the two countries, and the treaty of Ghent, in 1814,‡ made a more definite provision for a

* Of 1850.

† Treaties and Conventions, pp. 375–379.

‡ *Id.*, pp. 399–405.

commission. On the 18th of January, 1822, the commissioners appointed under the sixth article of this treaty gave their decision at Utica,* and thus established the boundary from Northern New York through the St. Lawrence and the great lakes to the Lake of the Woods. The next portion settled was the continuation of the line to the Rocky Mountains. A convention, ratified at London on the 2d of April, 1828,† related to the further settlement of the boundary towards the Pacific coast, and it was agreed that the United States and Great Britain should occupy the Oregon country in common, but that joint occupation should cease at any time, on twelve months' notice to the other party, after the 20th of October, 1828. Thus the Oregon question was indefinitely postponed. The treaty of Ghent also provided for the appointment of commissioners to settle the northeastern boundary, and, by agreement of the same day, the commission that had agreed to the Oregon occupation was empowered to act, but, finding it impossible to reach a satisfactory decision, they agreed that the matter in dispute should be submitted to an arbiter whose decision should be conclusive. These negotiations paved the way for an amicable settlement of the northeastern and northwestern boundaries, fifteen years later.‡

* Treaties and Conventions, pp. 407–410.

† *Id.*, pp. 429–432.

‡ Before this settlement was reached, Maine and Massachusetts, the States chiefly affected by the decision, passed a series of resolutions which constitute an important chapter in the history of State sovereignty and federal relations. See the resolu-

At the time of the acquisition of Florida, and of the admission of Maine and Missouri, Texas, hitherto a Mexican province, revolted and declared itself a republic. On the 12th of January, 1828, a boundary treaty was concluded between Texas and the United States, but political events soon obscured both the treaty and the boundary, and the treaty proved only a prelude to an aggressive pro-slavery policy directed to the acquisition both of Texas and California. The issues of this policy divided the country, and called forth resolutions from many of the State Legislatures.

The organization of Territories and the admission of States kept pace with the movements and the increase of population. At the close of the third decade of the century the line of the frontier extended five thousand three hundred miles, and the settled area comprised nearly six hundred and thirty-three thousand square miles. The population numbered about thirteen millions,* nearly all of whom were native-born. Two and one-third millions were of the African race, the third of a million being free persons of color. The most significant change in population was shown in the increase in the number and size of cities. Nearly nine hundred thousand people † were now living in cities, each having a population of eight thousand or more—and thirty-two towns ranked as cities. The five largest were New York, Balti-

tions of the Legislature of Maine, January 19, 1832, published with the laws of that year. See Note, p. 340.

* 12,866,020. † 864,509.

more, Philadelphia, Boston, and New Orleans. The increase in city population signified that the country was changing from one of agriculture to one of manufacturing pursuits. City government as yet scarcely existed. State constitutions made no direct provision for it, as, at the time of their formation, there were few cities. Cities and towns were, with few exceptions, a part of the government of the township or county in which they were located. But the rapid increase of the city vote soon led to demands for new apportionments of representation. This signified that in every State containing a large city two political interests—the rural and the urban—were struggling to control legislation.

On the 27th of September, 1830, the foundations were laid of a city destined in two generations to become the second most populous on the continent. On that day three hundred and twenty acres, surveyed as in-lots and out-lots at Chicago, were offered for sale, and about one-half of the in-lots were sold for nearly seven thousand dollars in cash. A person present at the sale recorded at the time that there was not then a freeholder within a hundred miles of the place.* Chicago

* Extract from manuscript letter:

CHICAGO ILLINOISE *October* 13th 1830.

Thomas Forster Esquire—

* * * this section where the town of Chicago is laid out is No. 9, the south side of it, 320 acres, was laid out in Inlots and out-lots and sold for the use of the canal the sale comenced on 27 ult. about the one-half of the Inlots were sold, and a fiew peaces of land the commissioners Received upwardes of $7000 in cash here for what lots were sold. before said sale there was not one freeholder within 100 miles of this place that held one

had been for centuries the rendezvous of the Indian tribes; it was known to the early French explorers, and was laid down on their maps as early as

foot of land. the Engineers of the united states Mr. Nicholson and Mr. Gyon has been here all most all season they surveyed the harbour and fixed the place to open the bar it is 400 yds from 15 feet water in the lake to 20 feet water in Chicago River about 100 yds wide & caries its depth & width for miles in the town the River forks, and Each branch is as large as the whole branch or River and as deep the town is laid out part on Each side of the River to the forks which is East and west more than half a mile then one branch comes from the north and the other from the south at right angles and part of the town is in the forks—and about ½ of the lots sold is about Equal in all the 3 parts of the town Each branch 100 yds wide there can be no beter harbour if the barr is opened and any vessel can turn Round that sales the lakes—within it Mr. Nicholson has been sick and could do no buisiness and is now gone to the south about 200 miles for his health Mr. Gyon the united states Engineer & also an Engineer Imployed by the state from the state of Kentucky near the falls they have been out with a parol of solders from the Garrison for hands about 14 days Examining the country &c and not on stake set for the canal —some of the canal commissioners are here wating patiently to hear. the result of the Exploring of the two Engineers one for the state the other for the U S—It is very proble that the canal will be comenced next spring the commissioners inform me that they will set out this fall 10 miles for Excuvation but I have my doubts about it. there is nothing but the fear of the U. S. taking advantage of the time of comencing the canal, to Hold the land granted by congress.

Sir.

I have given you a history of some parts of this Country having travled some thrug it and meeting with numbers of gentlemen from different parts of the state of the first Information, and of talents, altho I was not in a good state of health part I have Indeavored to gether all the Information in my power for the time,—on last saturday the Indians drew at this place their annuity great preperations was made by numerous traders and marchants &c by bulding huts some with logs some in tents & other in bord shanties, but from the best Information I could gether the Cheafs caried off above one third of the cash to their vilages to make the dividend at home with their tribes but the traders will follow and pick it up from them at home but the traders all came far short if their Expecttations* * *

Very Respectfuly I Remain

your—

Most obedient Humble Srvt.

JAMES HARRINGTON.

MAP OF
THE UNITED STATES
IN 1830
SHOWING CIVIL DIVISIONS
AND DISTRIBUTION OF POPULATION

1703.* The time of its founding may be said to mark the beginning of the municipal period of American democracy. At the adoption of the national Constitution not more than three people in a hundred lived in cities; at the time of the founding of Chicago the number had doubled.

Nearly all of Michigan, and nearly one-half of Indiana and Illinois, were yet unsettled. In the peninsula the Ottawa and Chippewa tribes, and in the two States the Miamis, Sac, Fox, and Pottawattomies possessed their old seats quite undisturbed. In like manner the Cherokees and Creeks in Georgia and Alabama, the Choctaws and Chickasaws in Alabama and Mississippi, kept back the tide of immigration. All these tribes were soon to be removed west of the great river. The line of least resistance for immigration to the West thus continued along the Ohio, as of old. Virginia sent immigrants to Ohio and Kentucky, and these in turn to Indiana and Illinois and Missouri. Tennessee, the Carolinas, and Georgia had sent their sons and daughters into Alabama and Mississippi, and now the inhabitants of these were migrating in turn to Florida, Louisiana, and Arkansas. Into the Northwest were passing the long lines of immigrant wagons from New England, New York, and Pennsylvania. Could one from some lofty height have taken in the whole

* On the rare Carte du Mexique et de la Floride des Terres Angloises et des Isles Antilles du Course et des Environs de la Riviere de Mississipi . . . . par Guillaume Del 'Isle Geographe de l'Academie Royale des Sci. a Paris, 1703.

Western country at one view, he would have seen the faces of thousands, young and old, turned towards the West, hopefully seeking homes. Here and there along the wilderness-roads through Southern forests, and by the wagon-tracks on the prairie, camp-fires were burning, men were on guard over sleeping women and children, and, not infrequently, wild animals and lurking Indians were prowling near. Nor would the wisest of men have been able to foretell that in less than a dozen years the country should witness a complete revolution in the means of transportation. The West, whose frontier was now at Kansas City, had been taken by a people who came on horseback and with ox-teams. With these primitive powers, in the short space of forty years, the frontier had been carried from Pittsburgh westward a thousand miles.

In the founding of new Territories, new States, and new cities, new men came from obscurity to fame and power. Some laid out towns; some, like Lincoln, surveyed farms and located township lines; others served in the Assembly, or on the bench, or in the constitutional convention. When a Territory became a State the few who had been active in effecting the change became Governors and judges, or were elected to the House or to the Senate. Steadily throughout the West the majority of the electors supported the party which Jefferson had founded. The West was democratic. New leaders took the places of the old. The generation that took part in the stirring scenes of '76 had passed away. Franklin and Washing-

ton, Morris, Sherman, Pinckney, Mason, Rutledge, seemed to belong to a distant past. Jefferson and Hamilton, though dead, had passed into political immortality. Webster and Clay, Benton and Calhoun filled the eye of the public, and Jackson and Harrison were the military heroes of the age. Already covetous eyes were looking across the border into Texas, and slavocracy, excluded from the greater part of the Western country by the Missouri Compromise, was planning the reannexation of that republic and its transformation into slave soil.

Yet slavery was not the burden of the people's thought. A struggle that interested them more was in progress—the extension of the franchise. Religious and property qualifications, twin relics of colonial days, were coming to be interpreted as contrary to the spirit of republican institutions. Free schools, the equitable apportionment of representation, an elective judiciary, local government, land speculation, internal improvements, the use of public credit were the issues of paramount interest to the commonwealths and were beginning to dominate their laws and constitutions. No longer were the political theories of the eighteenth century the first thought of the leaders of public opinion. A half-century of experience in representative government had taught the people of the commonwealths that theory must be construed by administration. The questions how to secure a trustworthy bank and outlets for trade by highways and canals were now discussed with the zeal

which, in 1787, the question of representation had provoked in the federal convention. Nor is the cause far to seek. More than as many people as were living within the original States at the time of the convention were now living in States and Territories that then had no existence. This new nation accepted as settled ideas which were undecided in 1787. The Constitution, and they who made it, were passing into perspective. A new generation felt new needs. History is instructive, but it cannot run a government. The West needed a market—whence the cry for internal improvements. It needed money—whence the demand for State banks. It knew nothing of social traditions—whence its rejection of discriminating qualifications for elector and elected, and its demand that public offices should be filled, not by appointment, but by popular vote. It began life without churches and schools and with a desire for knowledge—whence the establishment of free schools for all and the multiplication of religious sects. Hard work and isolation made thinking a habit—whence the age bred men of limited reading, but of epoch-making ideas, and of these Lincoln was easily foremost. To know this young West, this new world of revised democracy, we must know the lives of the settlers. We must follow them in their migrations and their labors, in their expectations and their disappointments.

No man knew that during these years of the new century the embodiment of the new nation was coming into the early years of manhood, and that

an obscure Kentucky family, emigrating from Indiana to central Illinois, bore with it the destiny of democracy in America.* The fascination which the early life of Lincoln has in our day for old and young is of the Homeric quality, belonging to a stern age that has passed away. Yet his life was for nearly forty years like the lives of thousands of men of the West whose names are now forgotten. It is the making of the West that proved to be the making of the nation. The East long continued Anglican and continental; the West began American—and by the West is meant the great valley of the Mississippi. As yet the sentiment of union was feeble and obscure. It was one of States united, not of the United States. No man had stirred the imagination of the people with the thought of nationality. It was an age of State-making—of the founding of cities and of road-making from east to west, but not from north to south. Government was a personal matter, not, as now, a function handed over to committees.

Many associations unknown to the East made the national government a part of daily life in the West. Congress had established the Territory, and every foot of land in cultivation or for sale had been surveyed by an official of the United States. Every title came from the national land-office. Every sixteenth section was a guarantee of

* A map of Illinois, "showing points of interest in Lincoln's early life," and the route of the family from Indiana, is given on p. 45 of Miss Tarbell's *Early Life of Lincoln*. New York, S. S. McClure, 1896.

free schools. With these prosaic associations no colonial traditions, royal grants, or conflicting State claims interfered. It was a new world; a fresh experience; a precedent for posterity. The vastness of the public domain made generosity an easy virtue with the government, and land could be had almost for the asking.

It followed that the new States and the old viewed the government in quite different lights. The old Thirteen looked upon the Union as their creation; the new States looked upon it as their creator. They began with the Union, but the older States thought that the Union began with them. Old and new alike thought of the Union as a compact—as a government of specified, delegated powers. To this degree of unanimity all the States had attained—from Maine to Missouri, from Michigan to Florida. The doctrine of '98 was held by the majority of people who gave the question any thought. It was both the legal and the historical view. Equality was a well-worn word in 1830, but the century was to reach its close before politicians and parties and newspapers and preachers and teachers and writers in America were to be talking and thinking and demanding economic equality. As yet, political equality was conceived to be the rightful remedy for all social ills.

CHAPTER X

FEDERAL RELATIONS—MISSOURI

By the treaty of 1803 the United States* agreed to protect the inhabitants of the Louisiana country in the enjoyment of their liberty, religion, and property.† The country was slave soil. Slaves were property, and by the treaty this property was under the protection of the United States. The protection was not conditioned upon the amount or the value of the property. The owner of a single slave was as much the object of the treaty as if the entire acquisition had been filled with a slave-holding population. When Louisiana was admitted, the guarantee of the treaty, the

* The principal authorities for this chapter are the Annals of Congress, 1819–21 — *i.e.*, the fifteenth Congress, second session, to the close of the second session of the sixteenth Congress. This chapter was written several years before the publication of Professor James A. Woodburn's article on The Historical Significance of the Missouri Compromise, in the Annual Report of the American Historical Association for 1893, pp. 251–297. Washington: Government Printing-office, 1894. In revising my chapter I have been glad to be confirmed, in several particulars, by Professor Woodburn's able paper.

† Art. iii. The treaty may be found in Treaties and Conventions, etc., pp. 331–334; the convention for the purchase-money, pp. 334, 335; for the payment of debts assumed by the United States, pp. 335–342.

wishes of the inhabitants, and the will of Congress made it a slave State. There were at the time, exclusive of the Indian tribes, about one hundred thousand people in the Louisiana country—three-fourths of whom were in the new State, and nearly all of the remainder within the present bounds of Missouri.

Ten years passed. Arkansas had nearly fifteen thousand population and Missouri nearly seventy thousand. In Missouri, at this time, there were ten thousand slaves; in Arkansas about sixteen hundred. The treaty further provided for the admission of new States that might be formed out of the purchase—on an equal footing with the original States. The petition of Missouri for admission was presented to the House on the 16th of March, 1818, by Scott, its delegate, as chairman of the select committee to which this and several petitions of a similar nature were referred. He reported a bill on the 18th of April, empowering the people of the Territory to form a constitution, a State government, and to be admitted into the Union on an equal footing with the other States. The bill was read twice and referred to the Committee of the Whole, but received no further attention at this session.

At the second session, Henry Clay, the Speaker, on the 18th of December, laid before the House a recent memorial of the Missouri Legislature praying for admission; but not until the 13th of February following did the question come up, when, in Committee of the Whole, the House began the

discussion of the enabling acts for Alabama and Missouri. As reported, these were in the form hitherto usual in the admission of a State—that the constitution of the new commonwealth be republican in form and not inconsistent with the Constitution of the United States. The act for Missouri was first considered, and, on the second day, Tallmadge, of New York, offered an amendment embodying two restrictions—that the further introduction of slavery, except as a punishment for crime, be prohibited, and that all children born within the State should be free, but might be held to service until the age of twenty-five years. The purpose of the second restriction was gradual emancipation—after the precedent of most of the Northern States. The first restriction was taken from the Ordinance of 1787. The restrictions, it was said, were both right and expedient. On the other hand, it was argued that Congress had no power to prescribe the details of a State government other than that it must be republican in form. Of what value a restriction? Once admitted, a State had the unquestioned right to change its constitution. But, replied the friends of the restriction, Congress has a clear and comprehensive grant of power in the constitutional provision authorizing it "to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States." Thus, in exercise of this power, Congress, in the enabling acts for Ohio, Indiana, and Illinois, had made their admission to the Union

conditional upon their constitutions not being repugnant to the Ordinance of 1787. Missouri lay in the same latitude. Why should not the same principles of government be applied? Very true, answered the opposition, if Congress were not restrained by the treaty of 1803. The obligation rests on Congress to protect the property of the inhabitants of the late French territory; therefore no restriction can be placed on slavery. Not so, said the supporters of the amendment. The treaty contained not one word about erecting the new country into States. Who make treaties? The President and the Senate. Would any man claim that they had power to bind Congress to admit new States into the Union? Then the President and the Senate could change the Constitution and rob Congress of one of its expressly delegated powers. Clearly the treaty could not affect the question, and, in truth, the erection of the Territories of Louisiana and Orleans, and the admission of the first as a State, proved this. Congress had then annexed conditions: the civil law had to give place, in large measure, to the common law; trial by jury was introduced; and the language of the inhabitants—chiefly Spanish and French—was not allowed to remain supreme; legislative and judicial proceedings were required to be conducted in English. Congress was, therefore, sovereign with respect to the Territories. Missouri was bought for money, and might be sold for money. How irrational, then, to claim that though Congress had

power to change the political relations of its free citizens by transferring their country to a foreign power, it could not provide for the gradual abolition of slavery within its limits nor establish civil regulations naturally flowing from a self-evident truth.

If slavery be excluded from the new State, argued a Virginia member, the price of the public lands would fall. Not so; the reverse would follow, replied a member from New York. Compare the price of land in Pennsylvania and Maryland, along the line dividing free from slave soil. On the Pennsylvania side, where slavery was forbidden, land uniformly sold at a higher price than that of the same quality on the Maryland side. Slavery would diminish the value of the public lands in Missouri, just as it had diminished the value of land wherever it was allowed. Why had not the people of Ohio, Indiana, and Illinois changed their State constitutions and introduced slavery? Because they had learned by experience the value of the Ordinance of 1787. Public sentiment there sustained the principle of the Ordinance far more effectually than any constitutional prohibition could do. Is it not the duty of Congress, inquired a Massachusetts member, to ascertain, before admitting a new State, that its constitution, or form of government, is republican? This was secured by the restriction. The existence of slavery in any State is, so far, a departure from republican principles. It violated the Declaration of Independence and the principle on which our

national and State constitutions are professedly founded. Since it could not be denied that slaves are men, it followed that, in a purely republican government, they are born free, and are entitled to liberty and the pursuit of happiness. No sooner was this said than members were on their feet calling the speaker to order for using improper language. He had no right, in debate, to question the republican character of the slave-holding States; such language tended to deprive them of the right to hold slaves as property; moreover, it was not improbable that there were slaves in the gallery listening to the debate. But the member quickly assured the House that nothing was further from his thoughts than to question the right of Virginia and other States which held slaves when the Constitution was established to continue to hold them. With that subject the national Legislature could not interfere, and ought not to attempt interference.

Would it be a republican form of government if Missouri submitted a constitution by which no person could vote or be elected to office unless he possessed a clear annual income of twenty thousand dollars? As few had such an income, the government would be an aristocracy in fact, though a republic in form. But if all other inhabitants, save those favored by wealth, were to be made the slaves of this oligarchy—and consequently mere property—would not the republican principle be outraged? The exclusion of the black population from all political freedom and the making them the property of the whites were an equally

palpable invasion of right and abandonment of principle. If permitted in a new State, Congress would violate the Constitution; the excuse existing in 1787 no longer remained. Then concessions were necessary and proper. The States in which slavery existed claimed the right to continue it, nor could they be asked to make a general emancipation of their slaves. It would have endangered their political existence. The Constitution was a compact among the original States, and contained certain exceptions in their favor—such as the obligation on Congress not to prohibit the African slave-trade till 1808; also the provision for the rendition of fugitive slaves. These exceptions did not apply to new States. To attempt to extend slavery over them would be a direct violation of the clause which guarantees a republican form of government to the States. Clay had argued that the proposed restriction would violate the provision that citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States. But can slavery be called a privilege? inquired a member. Surely what was gained by the master was lost by the slave. Slavery was the exception to the general principles of the Constitution. Clay had asked, Where would conditions end if Congress could impose them on a new State? Congress, was the reply, is obliged to require a republican form of government—which was enough to decide the question at issue; but it had the right, at its discretion, to impose any reasonable condition. The conditions imposed on Ohio,

Louisiana, Illinois, Indiana, and Mississippi were not more indispensable ingredients in a republican form of government than the restriction now proposed for Missouri—the equality of privileges for all its population.

But, it was said, the restriction would abridge the rights of citizens of the slave-holding States to transport their slaves to the new State, for sale or otherwise — thus violating the principle, clearly laid down in the Constitution, of the equal rights of citizens of the several States. Did not the Constitution itself answer this objection? The migration or importation of such persons as any of the States existing in 1787 might admit should not be prohibited by Congress till 1808. Clearly this implied that after that year migration or importation might be prohibited. Importation had been probibited, but not migration. Could not Congress restrain it whenever it might be judged expedient? Migration did not mean importation nor exportation. Nor could it mean the reception of free blacks from a foreign country, as some alleged, for there was no possible reason for regulating their admission by the Constitution. Moreover, none ever came. There remained but one meaning for migration — the transportation of slaves from slave-holding States to other States. Hitherto it had not been necessary for Congress to prohibit migration or transportation from State to State; now it was its right and duty to prevent the further extension of the intolerable evil of slavery. To these arguments for the amendment there was

but one reply, repeated now by one member, now by another: If the citizens of Pennsylvania or Virginia enjoyed the right of deciding whether or not they should have slavery, why should not the citizens of Missouri have the same privilege? Discrimination of this kind by Congress among the States would destroy the Union. Let the advocates of restriction beware! On them would rest the fearful responsibility if civil war should come. They were exciting servile insurrection; they were attacking the vested rights of property. Let them not imagine that the people of the slave-holding States did not know their rights and would not protect them.

But the mind of the House was made up, and on the 16th both sections of the amendment passed—the first, prohibiting the further introduction of slavery, by a majority of eleven;* the second, for gradual emancipation, by a majority of four.† A Delaware member voted with the majority on the first section, and ten members—from Massachusetts, New York, New Jersey, New Hampshire, Ohio, and Illinois—with the minority. Both sections were carried, however, by a sectional vote.

On the next day, Taylor, of New York, moved the Tallmadge amendment to the bill providing a Territorial government for Arkansas—a subdivision of the Missouri Territory. The question differed from the one of the day before. That

* Eighty-seven to seventy-six.
† Eighty-two to seventy-eight.

applied to a State, this to a Territory. Clay charged the supporters of the amendment with being afflicted with negrophobia. Who, yesterday, feared the negro faces in the gallery? was the rejoinder. But the amendment would coop up the people of the slave-holding States by preventing the extension of their wealth and population. A glance at the map would confute this charge, was the reply: what immense and fertile regions were open to slavery, from the Sabine to Georgia; what millions of rich acres were lying waste in Alabama, Mississippi, Louisiana! Were not these enough?

Was not the amendment an entering wedge for an attack by Congress on the property of masters in their slaves? Certainly not. The amendment did not disturb that right, even in Arkansas. But it would tend to the dissolution of the Union. Impossible! Could any man believe that the preservation of the Union depended on the admission of slavery into a Territory which did not belong to the States when the Union was formed—a Territory purchased by Congress, and for which it was bound to legislate with faithful regard for the public welfare?

To this it was answered that Congress had no right to legislate on the property of citizens, but could levy taxes only. Why not prohibit other forms of property from crossing the Mississippi. The Southern States had given up the vast territory north of the Ohio and ought not to be deprived of a small share of the advantages of this

new Louisiana country. At this point a claim was put forth which, thirty years later, when the Missouri Compromise was re-examined, became one of the chief reasons for its repeal: the amendment proposed would take away from the people of Arkansas Territory the natural and constitutional right of legislating for themselves, and would impose on them a condition which they might not willingly accept. In organizing a Territorial government and forming a constitution, they, and they alone, had the right to be the judges of what policy was best adapted to their genius and interests, and it ought to be left exclusively to them. They alone could decide whether to prohibit or to admit slave immigration. Slavery was an evil entailed upon the country; it was not our original sin. The more widely diffused, the less the evil. The people of Arkansas and the West were the best judges of their constitutional rights. This was popular sovereignty.

Another idea destined to dominate the final decision was now advanced by McLane, of Delaware. A line should be fixed west of the Mississippi, north of which slavery should not be tolerated. Congress had no power to impose any condition upon the admission of a State impairing its sovereignty. The term State meant sovereignty. The claim of right to impose conditions was a double-edged sword. At some future day, when the slave-holding interest dominated Congress, it might be made a condition, when a new State was admitted, that slavery should never

be prohibited. A vast, unsettled region made this possible. On the vote the amendment was divided, and the first clause, forbidding the further introduction of slavery, was defeated by one vote;* the second clause was carried by two.† On the 19th, by Clay's casting vote, the second clause was recommitted, and was finally struck out by two votes.‡ In slightly modified form, Taylor now renewed his amendment, but it was rejected by four votes.§ He then applied the idea of a fixed line between the two sections; slavery should not be introduced into any part of the Territories of the United States lying north of 36° 30′ north latitude. The idea at once met with favor, and various lines were proposed. But none of these lines applied to Arkansas, and that Territory was organized without the imposition of any restriction on slavery.

It may be remarked that, in this debate, the principal arguments for and against slavery extension, heard later in the debates over the series of enactments called the Missouri Compromise, were outlined: that Congress was bound by the treaty of 1803; that it could not interfere with property rights; that the States were sovereign, and that Congress could impose no Condition on them at admission. The suggestion of a fixed dividing line between slave soil and free soil was sedulously followed up. It was first made by a member from a slave-holding border State.

* Seventy-one to seventy. † Seventy-five to seventy-three.
‡ Eighty-nine to eighty-seven. § Ninety to eighty-six.

On the 17th the Missouri bill was read in the Senate, and referred to a committee having charge of a similar bill from Alabama. Ten days later both sections of the Tallmadge amendment were struck out,* and, as thus amended, the bill passed. Neither House would recede, and meanwhile Congress adjourned. The rejection of Missouri immediately became the theme of discussion all over the country. The case was reopened and reargued by all sorts and conditions of men. Petitions, arguments, and appeals; pamphlets, sermons, editorials, and resolutions accumulated as the season's political harvest. When Congress met, on the 6th of December, no member was forgotten, and a Representative had but to glance over his mail to discover how he ought to vote on the Missouri question. Had all this mass of opinion been sorted, it could have been cast into two heaps —one from the South, one from the North. It was a sectional question—the first, clearly defined, that had arisen since the formation of the Union. On the 8th, Scott, the Missouri delegate, presented several memorials from the Legislature and some of the inhabitants of the Territory, praying for its admission; and Strong, a New York member, gave notice that he would ask leave, on the following day, to introduce a bill prohibiting the further extension of slavery within the Territories of the United States. The notice was a sign of the times.

* The first by a vote of twenty-two to sixteen; the second, by thirty-one to seven.

A new element now entered into the problem. The people of Maine asked admission as a State, and a bill for this purpose was introduced in the House and another in the Senate.* There was nothing unusual in either bill. Each was a simple enabling act. The House bill passed on the 3d of January, 1820. While on its progress, Clay, on the 30th of December, expressed himself in ambiguous but suggestive language. If hard conditions were to be imposed on new States beyond the mountains, and Congress were thus to strike at their power and independence, might not hard conditions be imposed on new States in the East? Whatever this signified, on the 6th, when the House bill came up in the Senate, it was proposed to embody in the bill for the admission of Maine a clause for the admission of Missouri. Two wholly irrelevant matters were thus combined. Roberts, a Senator from Pennsylvania, labored in vain to separate the propositions and to amend the bill further by prohibiting slavery in Missouri. Every effort of the restrictionists to apply the provisions of the Ordinance of 1787 to the new State was defeated. In the debate the old arguments were repeated and elaborated; citations were made from the writings of the fathers, and *The Federalist* was quoted in evidence by both sides. On the 18th, Senator Thomas, of Illinois, brought in a bill to prohibit slavery in the Territories north and west

* The Articles of Separation, the Proclamation of the Governor of Maine, and other documents are given in Maine Constitutional Convention, 1819–20; Charles E. Nash, editor, Augusta, 1894.

of the proposed State of Missouri, which bill passed to a second reading. As the debate continued, most of the States sent up resolutions, and, except those from Delaware, the resolutions opposing the extension of slavery came from free States. Some compromise must be made, for neither the restrictionists nor the extensionists seemed likely to recede. On the 16th of February, by a majority of two votes, the Senate united the Maine and Missouri bills, and Thomas offered the compromise. Except within the limits of the State of Missouri, in all the territory north of 36° 30′ slavery should be prohibited. Efforts were made to modify this amendment—as by Barbour, of Virginia, who wished the line at forty degrees. Thomas amended it on the following day by adding a fugitive-slave clause, and in this form it passed the Senate by a majority of more than three to one.* Eaton, of Tennessee, sought to have the amendment apply to the West only so long as it remained a Territory; and Trimble, of Ohio, wished the restriction to apply to all territory west of the river, except Missouri; but both propositions were rejected. On the 18th the Maine-Missouri bill, as amended, passed the Senate and went to the House. Taylor moved that the House disagree to the amendments, and Scott that they be sent to the Committee of the Whole; his motion had precedence under the rules. A long and animated discussion followed, when the motion to commit was lost.†

* Thirty-four to ten.

† Seventy to one hundred and seven.

Would the House disagree? This was debated three days, when, by large majorities, the Missouri rider and the Thomas amendment were rejected.* The House then took up its own bill, with the Taylor restriction, in Committee of the Whole. It made but slight progress; yet the discussion disclosed that a restrictive clause of some kind would be likely to pass. Taylor's restriction passed, in Committee of the Whole, on the 25th, and on the following day Storrs, of New York, moved the Thomas amendment, in substance, and, in a speech, supported it, though only incidentally examining the right of Congress to impose the slavery restriction on Missouri. Two days later a message was received from the Senate that it would insist on its amendments, and Taylor at once moved that the House insist on its disagreement. It was carried by a large majority—first, that the Maine bill and the Missouri bill should not be combined,† and, secondly, by a larger majority, that the compromise amendment should be rejected.‡ The meaning of the vote was stated by Lowndes, of South Carolina. The friends of Missouri would vote for the compromise principle when combined with the free admission of the State; yet, as the amendment relative to Missouri had been disagreed to, it was useless to return it in

* The Missouri attachment by vote of ninety-three to seventy-two; the details of the Missouri bill, by vote of one hundred and two to sixty-eight; the Thomas amendment, by vote of one hundred and fifty-nine to eighteen.

† Ninety-seven to seventy-six.

‡ One hundred and sixty to fourteen.

connection with the Maine bill alone. Thus it was clear that Lowndes and his friends would oppose slavery restrictions on Missouri, though they might agree to apply them to the Territories.

When the Senate was informed that the House insisted upon its disagreement, Thomas moved for a committee of conference, whereupon a debate marked by "vehemence and warm feeling" ensued. But the motion prevailed. Its author, Pinkney, of Maryland, and Barbour, of Virginia, were appointed conferees for the Senate. On the next day the House agreed to confer, and appointed as conferees Holmes, the delegate from Maine; Taylor; Lowndes; Parker, of Massachusetts, and Kinsey, of New Jersey.

This procedure did not interrupt the progress of the bill pending in the House, and, with the Taylor restriction, it passed on the 1st of March,* and was sent to the Senate for concurrence. The Senate, on the following day, struck out the Taylor restriction,† substituted the Thomas amendment, passed the bill, and sent it back to the House. Would the bill in this form be agreed to by the conference committee? At the request of Holmes, the Senate bill was laid on the table long enough to give him an opportunity to make a report from the committee. That report was soon made. The Senate should recede from its amendments—that is, abandon the combination of Maine and Missouri in one bill—and Maine should be admitted.

* Ninety-one to eighty-two. † Twenty-seven to fifteen.

The House should abandon the restriction of slavery within Missouri. Both Houses should agree to the Thomas amendment—the compromise—excluding slaves north and west of Missouri.

Would the House concur? Would it consent to the admission of another slave State? It seemed impossible that so strong a majority as that which had voted for restriction would recede. But moderation prevailed, Kinsey undoubtedly expressing the opinions of the body of the House—at neither extreme—favoring a compromise: "Now is to be tested whether this grand and hitherto successful experiment of free government is to continue, or, after more than forty years' enjoyment of the choicest blessings of heaven under its administration, we are to break asunder on a dispute concerning a division of territory. Gentlemen of the majority have treated the idea of a disunion with ridicule; but, to my mind, it presents itself in all the horrid, gloomy features of reality. * * * On this question, which for near[ly] six weeks has agitated and convulsed this House, I have voted with the majority. But I am convinced, should we persist to reject the olive-branch now offered, the most disastrous consequences will follow. These convictions are confirmed by that acerbity of expression arising from the most irritated feelings, wrought upon by what our Southern brethren conceive [the] unkind, unjust, determined perseverance of the majority, and to those I now beg leave to address myself. Do our Southern brethren demand an equal division of this wide-spread, fertile region,

this common property, purchased with the common funds of the nation? No; they have agreed to fix an irrevocable boundary, beyond which slavery shall never pass; thereby surrendering to the claims of humanity and the non-slave-holding States, to the enterprising capitalists of the North, the Middle and Eastern States, nine-tenths of the country in question. In rejecting so reasonable a proposition we must have strong and powerful reasons to justify our refusal. * * * Should we now numerically carry the question, it will be a victory snatched from our brothers. It will be an inglorious triumph, gained at the hazard of the Union. Humanity shudders at the thought. National policy forbids it. It is an act at which no good man will rejoice, no friend of his country can approve." The vote was called, and disclosed that compromise had prevailed over restriction by a majority of three.* Taylor, unwilling to give up the fight for free soil, moved to strike out 36° 30′, and exclude slavery from all soil west of the Mississippi, except Louisiana, Arkansas, and Missouri; but this was rejected. The bill passed both Houses on the 2d, Maine was admitted on the 15th,† and the people of Missouri were empowered to form a constitution and a State government.

On the 12th of June the constitutional conven-

* Ninety to eighty-seven.

† Massachusetts had consented to the separation of Maine on condition that it should be admitted to the Union by the 4th of March, 1820. See the Articles of Separation, Sec. i., in Nash, p. 3 of third paging.

tion of Missouri assembled at St. Louis, and completed its work on the 19th of July. Many of the delegates believed that Congress had usurped its powers in the enabling act. The Constitution reflected public sentiment in the Territory. It sanctioned slavery, and forbade the Legislature to interfere with it. The clause, which originated with Thomas H. Benton,* forbade emancipation without the consent of the owners, and made it the duty of the General Assembly as soon as possible to pass whatever laws might be necessary to prevent free negroes or mulattoes from coming to the State or settling in it, under any pretext whatever.† It was laid before Congress by Scott, on the 16th of November, and was referred to a select committee.‡

Lowndes presented its report a week later. The committee thought that the provisions of the enabling act had been complied with; whether wisely or liberally, it was not for them to decide. Congress could not well anticipate judicial decisions by interpreting an equivocal phrase, or by deciding on the powers of a new State, and thus add the weight of its authority to an opinion which might condemn the laws and constitutions of old as well as sovereign States. The clause in the Missouri constitution excluding free negroes and mulattoes might be construed to apply to such of that class as were citizens of the

* *Thirty Years' View*, Vol. i., p. 8. † Art. iii., Sec. 26.

‡ Lowndes, Sergeant, of Pennsylvania, and Smith, of Maryland.

United States, and thus be repugnant to the federal Constitution. The objectionable clause was to be found in the laws of Delaware,* and, on careful examination, it might perhaps be applied to the large class of free negroes and mulattoes who could not be considered to be citizens of any State.† No article of the Constitution of the United States was more difficult to construe than that giving to the citizens of each State the privileges and immunities of citizens of the several States. Too large a construction of this would completely break down the defensive powers of the States and lead directly to their consolidation. The constitutions of the States settled this much—that a State has the right to discriminate between the white and the black man, in respect both to political and civil privileges, though both be citizens of another State—giving the right of voting and serving on juries to the white, refusing it to the black. The Territorial condition ceased when the people formed a State government, an act which made them sovereign and independent. Judicial tribunals must then determine the constitutionality of laws. A decision by Congress against the constitutionality of a law passed by a State of which it had authorized the establishment could not operate directly by vacating the law, nor could

* Act of January 28, 1811. The committee might have cited similar acts in other States—Maryland, 1806; Virginia, January 26, 1806; South Carolina, December 20, 1800; Kentucky, February 23, 1808.

† The number of free persons of color in 1820 was 233,634.

it reduce the State to the dependence of a Territory. Therefore, to refuse admission to the State, in these circumstances, would be to refuse to extend over it that judicial authority which might vacate the obnoxious law, and to expose all the interests of the government within that State to a Legislature and a judiciary the only checks on which had been abandoned. The report concluded with a brief resolution in favor of the admission of Missouri.

Discussion began on the 6th, led by Lowndes, who, though in feeble health, made his last important speech in Congress, which was, perhaps, the most impressive delivered throughout the debate. Congress, he maintained, had already admitted the State by the enabling act. In the case of Indiana, five years before, Congress, for the first time, added a formal act of admission to the enabling act, as a general notice to the members of the Union. After the enabling act for Ohio no resolution for admission was passed, but an act, necessary in its nature, to extend the jurisdiction of the United States courts over the new State. That the House, in passing the Missouri enabling act, fully intended to confer the rights of a State was evident from an amendment offered by Taylor, that if its constitution be approved by Congress the Territory should be admitted into the Union upon the same footing as the original States, which had been defeated by a large majority,* the vote signi-

* One hundred and twenty-five to forty-nine.

fying that Missouri was made a State without the condition that Congress approve its constitution. The clause in the constitution respecting the exclusion of free persons of color was objectionable to some members. Whether or not it was constitutional should be left for the Supreme Court to determine. Few of the free blacks in the country were citizens in their respective States. The clause might be construed as excluding the few who were. They were excluded by the laws of some of the other States. Why not attack these laws? Why discriminate against Missouri alone? When Tennessee sought admission, it was objected that its constitution was incompatible with that of the United States; but the objection was fully answered, that, as the national Constitution is paramount, the provisions, if any, in that of Tennessee could be of no effect. Missouri was already exercising all the rights of a sovereign State.

Sergeant replied at some length to Lowndes. If Missouri was a State, why were her Senators and Representatives kept waiting at the doors of Congress? Why was the constitution of Missouri submitted to a committee of the House? Certainly Missouri would not be a State until so admitted by resolution of Congress. Its people were authorized to form a constitution not repugnant to that of the United States. Who was empowered to decide whether they had done so? The fault was with Missouri, not with Congress. The House should be satisfied that Missouri had com-

plied with the conditions prescribed: a government republican in form; a constitution not repugnant to that of the United States. The degree of repugnancy was not involved. Whether all or a part of the constitution submitted be repugnant, Congress must insist on the conditions. It alone could be the judge. The question was not one for the Supreme Court to decide. The Constitution of the United States must not be violated. Congress is peculiarly and emphatically its sworn guardian. If Missouri had provided that no free white citizen of the United States should be permitted to come and reside in the State, what member would consent to its admission? In North Carolina, in New York, in Massachusetts, free persons of color were citizens. The right of citizenship did not imply the right to vote—as in some States more than half the white men did not vote because they were not freeholders, yet no one denied that they were citizens of these States. The simple right of locomotion was indispensable to citizenship, and that was all that was now asked.

But the question involved more than the right of locomotion; it involved the citizenship of free persons of color. Were they citizens? For the first time, the civil and political rights of these people without a country, at this time more than three hundred thousand in number, were the theme of a debate in Congress, the issue of which was to decide the admission of a State into the Union, and possibly the fate of the Union itself.

No more curious or more unexpected turn in public affairs could have arisen than this respecting a class of people unwelcome in every State, excluded from many, refused all social relations with the whites in the free States; denied, under severe penalties, all association with the slaves in the slave States; excluded from enrolment in the militia; incapable of serving as jurors, or, in most States, as witnesses against a white man; for whom no schools or hospitals existed; and who were, as a class, considered to be only criminals at large. In spite of increasingly rigorous laws against emancipation, this class had increased almost phenomenally. When the Constitution was adopted, it numbered less than sixty thousand.* At the opening of the century it was more than a hundred thousand.† At the time of the admission of Louisiana, nearly ninety thousand more.‡ It had increased nearly forty thousand since then, yet there was little amelioration of law or public prejudice. The letter of the law and the constitution enrolled them as citizens in New York, where twenty-nine thousand resided; in Massachusetts, with less than seven thousand;§ in North Carolina, with half as many as New York.‖ There were few slaves in the Louisiana country when Louisiana asked admission into the Union, yet,

* In 1790, 59,527. † In 1800, 108,435.

‡ In 1810, 186,446. Louisiana was admitted in 1812.

§ In 1820 there were 6740 in Massachusetts; the area of the State is 8315 square miles.

‖ In 1820 North Carolina had 14,712 free persons of color.

by the treaty, this form of property must be protected, and the few determined the character of the new State. Only three States were emphasized, in 1820, as having conferred citizenship on free persons of color, and very few of these persons, it is believed, actually exercised in them both civil and political rights. Yet the rights of this handful of despised free negroes were to turn the scale in the admission of Missouri and put all federal relations in clearer light. Had there been no free persons of color, the Missouri struggle would have ceased with the passage of the enabling act. Had there been no slaves, there would have been no struggle. Had no State already conferred the rights of citizenship on some free negroes, the constitution submitted by Missouri would have raised no objections.

Should a new State be permitted to exclude the citizens of another State? This was the new issue—a question of States' rights, of federal relations. Has Congress the right to decide, finally, whether the constitution of a proposed State conflicts with the constitution and laws of another State, or with the national Constitution, and refuse it admission? The question was sure to arise, sooner or later, in the republic. It came now, suddenly, and it must be answered. With union or disunion? There seemed no ground for compromise. For the slave had defenders, as property always finds defenders; but for the free negro, who would speak?

It was denied that he was in any State a citizen

in full enjoyment of civil rights. In North Carolina he could not give testimony in any case in which a white man was a party. In Massachusetts his marriage with a white woman was null and void. In New York he could not serve as a juror. As each State had the right to prescribe the qualifications of its own citizens, should not Missouri be permitted to do the same? Slavery was permitted in Missouri. In the Southern States free persons of color were considered the most dangerous class possible in a community. Elevated just enough to have some sense of liberty, they had not the capacity to estimate or enjoy all its rights, and, being between two societies, above one and below the other, they were in a most dissatisfied state. "They are themselves perpetual monuments of discontent, and firebrands to the other class of their own color." As they were not citizens in any State, like white men, the constitution of Missouri did not conflict with that of the United States in excluding them.* Moreover, free negroes and mulattoes were not citizens, in the meaning of that word as used in the Constitution of the United States. They were not entitled to its protection. Whatever privileges they possessed were surely local in character. At the time of the formation of the Constitution negroes ranked with Indians, were not taxed, and were not conceived as belonging to the class of persons for whom the government, either State or federal, was organized.†

* Barbour, of Virginia, December 8, 1820.

† McLane, of Delaware, December 12, 1820.

In reply it was said that in the Revolution many persons of color bore arms,* and entered the ranks as freemen with the whites. Many were made free by the States, as an inducement to enlist.† A black regiment from Rhode Island won fame for the gallant defence of Red Bank. If persons of color were intentionally excluded by the national Constitution, why did it not read, "We, the white people of the United States"? As to the marriage law of Massachusetts, it interdicted the marriage of a white man with a black woman, and therefore applied to both races alike. Exclusion from the militia, in that State, proved that they were in the enjoyment of the right, and that a specific law became necessary to deprive them of it. All the broad essential rights of citizenship were theirs—to hold and convey property, trial by jury, the writ of *habeas corpus*, the elective franchise. By the laws and the Constitution they were considered as citizens equally with the whites. For forty years they had been in the constant exercise of these rights. To vote in the election of town, county, and State officers, the same qualifications of residence and property were required from them as from the whites, and, having these qualifications, they had a voice in the election of all State officers. Had they, then, no

* See the first ordinance of Congress relative to free negro troops, January 16, 1776; Journal of Congress, Vol. ii. (Folwell's edition), p. 27.

† See Debates in the North Carolina Constitutional Convention of 1835, pp. 351–357; also citations by Curtis in his dissenting opinion in Scott *vs.* Sandford, 19 Howard, p. 393.

federal rights? The national Constitution was made for the benefit of the people inhabiting the States at the time, and the convention of 1787 did not take into consideration the complexion of the citizens included in the compact. The black citizens of Massachusetts were as directly represented as the whites in the process initiatory to the federal compact; from their votes, in common with those of the whites, emanated the convention of Massachusetts by which the federal Constitution was ratified. They were directly represented in Congress, for they participated in the election of every Massachusetts member on the floor. In one district the qualified voters among them had actually decided the election of a member of the sixteenth Congress. Did not these facts controvert the claim that they did not exercise federal rights in common with other citizens? In attempting to exclude them, Missouri was palpably violating the Constitution of the United States.* On the following day the vote was taken, and the House rejected the resolution for the admission of Missouri by a vote of ninety-three to seventy-nine.

A month passed before the struggle was renewed, and then unexpectedly. Three memorials of the Senate and House of Representatives of Missouri, respecting the public lands, were presented on the 11th of January, 1821, and, next day, Cobb, of Georgia, moved to correct the journal so

* Eustis, of Massachusetts, December 12, 1820.

as to read "the State of Missouri." A short, sharp debate followed; the vote was a tie, and, by the vote of the Speaker, Cobb's motion was rejected. Parker, of Virginia, was quickly on his feet. As the House had refused to acknowledge Missouri to be a State, and as she must be a Territory if not a State, he moved to correct the journal by inserting the words "Territory of" before "Missouri." Taylor, the Speaker—author of the lately defeated restriction—remarked that the rules made it the Speaker's duty to examine and correct the journal before it was read. In the present instance he had thought it proper so to correct the journal that it should not be taken either to affirm or deny that Missouri was a State, this being a question on which the House was greatly divided. The question, said Parker, is not one of mere form. If Missouri was a Territory, and the House had voted she was not a State, why not call her a Territory? "I say she is a State, and were I a citizen of that State I would never, at your suggestion, strike out that clause in the constitution to which objection has been made. If I found it convenient to myself to do so, I would; but I would not do it on your recommendation, even for the important boon of being admitted into the Union. I would rather be trodden down by the armies of the North and East, and, if you could get them, from the South, than yield this point. * * * If ever on earth a people has been maltreated, it is this people." By a vote of one hundred and fifty to four, the House rejected Parker's motion to desig-

nate Missouri as a Territory. In the face of these heavy majorities, that she was neither State nor Territory, the question was—What was she?

Eustis, on the 24th, attempted to surmount the obstacle in her path by proposing a resolution that she should be admitted on a certain day, provided the objectionable clause in her constitution be expunged,* but, as the same question would probably be brought up by a motion to amend the resolution in the Senate, Lowndes suggested that nothing would be gained by this course, and the Eustis resolution was rejected by a large majority. In the Senate, meanwhile, the Missouri question had been exhaustively discussed and a different decision reached. On the 29th of November the committee to whom the proposed constitution was referred reported a resolution declaring Missouri admitted, which passed to a second reading. Nearly all who spoke on the subject from this time declared that every member's mind was made up, and further debate useless. Eaton, of Tennessee, on the 6th of December, offered a proviso, that nothing in the act for admission should be construed as giving the assent of Congress to any provisions in the constitution of Missouri, if any there might be, which contravened the clause in the Constitution of the United States declaring the equality of right of citizens of each State to all privileges and immunities of citizens in the several States. This,

* Art. iii., Sec. 26, *in re* free negroes, etc.

at least, guarded Congress, and postponed the day of reckoning. Various provisos in the same direction were submitted during the discussion. On the 7th, Eaton's proviso was rejected by a majority of three,* and the discussion of the committee's resolution was resumed. Smith, of South Carolina, in a long speech, cited all the precedents to show that no condition had been imposed on any of the ten new States admitted. In the constitutions of all of them only free white males could be electors, yet Congress had never objected to the discrimination, if there was any. More than this, New Hampshire and Vermont excluded the negro from the militia, and Vermont empowered the select-men of the towns to exclude, at their discretion, not only negroes and mulattoes, but citizens of any description, male or female, of other States.† The naturalization laws of the United States extended to white persons only, and Massachusetts excluded all negroes not subject to the Emperor of Morocco, under penalty of being whipped.‡ New York made provision for the exclusion of undesirable inhabitants, with penalty of fine, imprisonment, and whipping.§ Connecticut had a similar law,‖ and its recent constitution denied citizenship to free negroes and mulattoes.¶

Was not this mass of evidence conclusive that

* Twenty-four to twenty-one.
† Vermont, act of November 6, 1801.
‡ Massachusetts, act of March 6, 1788.
§ New York, act of April 8, 1801.
‖ 1792. ¶ Constitution, 1818.

Missouri only followed precedent in excluding whom she did not want, and that the exclusion was no more a discrimination than the constitutions and laws of the older States? Holmes, who had recently taken his seat as a Senator from Maine, argued that the privileges and immunities of citizens were nowhere extended to free persons of color by the Constitution of the United States nor by the laws of Congress; that they were conferred by the States alone; that Missouri had not conferred them; and, therefore, that black citizens of other States would acquire no other privileges and immunities than her own black population. This part of the population being excluded, the black citizens of other States might be excluded also.

On the 11th Eaton again offered his rejected resolution. Morrill, of New Hampshire, cited cases in Vermont, New Hampshire, and Massachusetts where the privileges and immunities of citizenship had been exercised by free men of color, and reasoned that these alone, though few, should be sufficient to reject the admission of Missouri. This time Eaton's amendment was carried.*

The Senate resolution was taken up in the House seven weeks later.† Clay at once declared for it. Lowndes, Randolph, Barbour, and others from slave-holding States, announced with equal promptness that they should vote against it. Foot, of Con-

* Twenty-six to eighteen.

† January 29, 1821.

necticut, proposed Eustis's resolution to expunge. Six other propositions were submitted, but all, including Foot's, were rejected by large majorities.* The House would neither adopt the resolution of the Senate nor one of its own. All efforts at amendment had failed. Missouri was left—neither a State nor a Territory. At this point Clay, hoping to effect some compromise, moved to refer the Senate resolution to a special committee of thirteen; it was appointed,† with himself as chairman, and, on the 10th, made its report. It was nearly unanimous that no other conditions than those already specified in the enabling act should be imposed. The settlement of the question ought not to be disturbed. As to the clause in the Missouri constitution affecting free persons of color, the same diversity of opinion prevailed in the committee as had prevailed in the House. It thought, therefore, that neither side abandoning its opinion, a compromise could be effected by amending the Senate resolution: Missouri should be admitted into the Union upon the fundamental condition that she should never pass a law preventing any description of persons from going to and settling in the State who were, or who might become, citizens of any State in the Union. When, by a solemn public act, the Legislature of Mis-

* Mostly on February 1st.

† The committee consisted of: Clay, Kentucky; Eustis, Massachusetts; Smith, Maryland; Sergeant, Pennsylvania; Lowndes, South Carolina; Ford, New York; Archer, Virginia; Hackley, New York; S. Moore, Pennsylvania; Cobb, Georgia; Tomlinson, Connecticut; Butler, New Hampshire; Campbell, Ohio.

souri, before the 4th of November, should subscribe to this condition and communicate its assent to the President, he should proclaim the fact, and the admission of the State should thereby be complete without further action of Congress.

This was the compromise of 1820, with which the name of Henry Clay is associated. Contrary to the notion which has long prevailed, his part in the series of compromises of that year bore little upon the establishment of the line of 36° 30′, and less upon the efforts of the Free-soilers to exclude slavery from the new States. His was the compromise on admission, not on slavery. Measured by his own idea of State sovereignty, the solemn public act which should be exacted from the Missouri Legislature was not beyond repeal by a subsequent Legislature, and, twenty years later, it was practically repealed by the laws of the State prohibiting the immigration of free negroes, under heavy penalties,* followed by a more severe act three years later. But Clay's compromise was an immediate solution of the sectional question which now threatened the dissolution of the Union.

On the 12th the House took up the report, in a debate which went over familiar ground. After rejecting several proposed amendments, the House, by a vote of eighty-three to eighty, rejected the Senate resolution and Clay's amendment. On the 13th the vote was reconsidered, and the committee's report was again before the House. General

* Missouri, acts of February 23, 1843; February 16, 1846.

Pinckney, of South Carolina, produced some new evidence in favor of Missouri. The objectionable clause in its constitution, he declared, was not repugnant to the Constitution of the United States. "It appears by the journal of the convention that formed the Constitution of the United States," said he, "that I was the only member of that body that ever submitted the plan of a constitution completely drawn in articles and sections; and this having been done at a very early stage of their proceedings, the article on which now so much stress is laid, and on the meaning of which the whole of this question is made to turn, and which is in these words, 'the citizens of each State shall be entitled to all privileges and immunities in every State,' having been made by me, it is supposed I must know, or perfectly recollect, what I meant by it. In answer, I say that, at the time I drew that Constitution, I perfectly knew that there did not then exist such a thing in the Union as a black or colored citizen, nor could I then have conceived it possible such a thing could ever have existed in it; nor, notwithstanding all that is said on the subject, do I now believe one does exist in it."* Pinckney

* Pinckney's belief that he submitted such a plan to the federal convention is indisputable. It appears by the journal and Madison's note that he submitted a plan on May 29th. That it was not the Constitution as adopted, and that the Constitution contains provisions at variance with Pinckney's ideas, are dwelt on by Madison (Elliot, Vol. v., p. 578). There is no evidence, other than the above speech, that Pinckney was the author of the article he quotes. He was speaking from memory, of *one* provision made in a constitution thirty-four years before. The *intention* of a constitutional convention is usually difficult to fix, and

then proceeded to prove that free persons of color were not citizens of the United States; that the race had never possessed the rights of white men; that it was incapable of exercising them; and that its exclusion from citizenship conformed to the course of history and the will of God.

At this stage of the question the restrictionists were accused of breach of faith—that they had secured Maine and would not keep their word with Missouri. There is no doubt that the Free-soilers had not changed their opinions. They did not interpret the admission of Maine as free soil as an obligation on them to support slavery in Missouri. They believed that they had broken the combination of the admission of the two States in one bill. They wished now to exclude slavery from Missouri, and from all other territory of the United States, forever. In vain Clay pleaded for his resolution. It was again rejected, and by a larger vote than before.*

The day for counting the electoral vote for President and Vice-President was approaching. Missouri had chosen three electors, and their votes had been received by the President of the Senate. Clay, on the 4th of February, in order to anticipate and allay a possible tumult, proposed a reso-

that of one member, in shaping a particular provision, is usually merged in a mass of opinions difficult to separate. Once adopted, a constitution depends for its interpretation as much on current necessity as on the original intentions of its members. This is, theoretically, a question for the courts; but, practically, it is one for politics and administration.

* Eighty-eight to eighty-two.

lution relative to the counting of the vote, that if any objection be made to the vote of Missouri, the President of the Senate should declare the result that would follow if its votes were counted and if they were not counted. This method of reaching what Randolph at once called a special verdict precipitated another debate, but was carried, though with apprehension, in both Houses.* Thus a possible omission in the Constitution was temporarily supplied. As the electoral vote stood, Monroe and Tompkins were chosen, and the vote of Missouri could not change the result. But if its vote was counted it must be as that of a State. All who claimed this to be the condition of Missouri, therefore, insisted on the inclusion of its three electoral votes.

The electoral vote was counted on the 14th. Both Houses, as the Constitution requires, assembled in the Representatives' chamber, and the count was begun under the usual forms. As the vote of Missouri was announced, Livermore, a member from New Hampshire, arose, and, amid some confusion, objected to receiving it because Missouri was not a State. A tumult began, and all likeness to a deliberative body vanished. Above the din of voices a Senator was heard to move that the Senate withdraw, and the House was quickly left alone to wrangle the matter into some conclusion. After more than an hour of confusion such as can arise only in a great parliamentary body,

* In the House of Representatives, February 4th, by a vote of ninety to sixty-seven. In the Senate, February 9th.

Floyd, of Virginia, succeeded in submitting a resolution that Missouri was a State and its vote should be counted. Something must be done. The House was at the brink of a precipice. Another step might hurl the government into destruction. "I have gone as far as I can go in the way of compromise," said he; "if there is to be a compromise beyond that point, it must be at the edge of the sword." Randolph went back to what he called "first principles," and advanced the extraordinary notion that the Electoral College was as independent of the House as the House was independent of the College, and that each had the right to determine the qualifications of its own members. The House had only a ministerial office in counting the votes. But this set of "first principles" appeared to be of Randolph rather than of the Constitution. Clay came to the rescue with a pacific motion to lay Floyd's resolution on the table and proceed with the count. This at last prevailed,* and a message was sent to the Senate that the House was prepared to receive it, "for the purpose of continuing the enumeration of the votes of the electors for President and Vice-President."

The Senate accordingly again filed in, resumed its seat, and the President, in pursuance of the resolution adopted by both Houses, announced that were the vote of Missouri to be counted the result would be two hundred and thirty-one votes for

* By a vote of one hundred and three.

Monroe for President and two hundred and eighteen for Tompkins for Vice-President. If not counted, each would receive three less. In either case, Monroe and Tompkins had a majority of the electoral vote.

Before the announcement was finished, Floyd was inquiring whether the vote of Missouri was counted. His voice was drowned by cries of "Order! Order!" Randolph arose. The cries became louder. The Speaker pronounced Randolph out of order and invited him to take his seat. He did not obey. Members were screaming that Randolph be heard and that he sit down. Order was restored; the President of the Senate concluded his announcement of the result of the vote, and Randolph again addressed the chair. The confusion increased; the Senate withdrew, and the House was called to order. Randolph was still standing and addressing the chair. Few could hear him above the noise. There had been no election, he shouted, because the whole electoral vote had not been counted. He was writing resolutions to this effect when, amid great excitement, the House adjourned. The counting of the electoral vote was evidence that Missouri was not a State. Happily the decision did not turn on its three votes. It was an inopportune time for a disputed election.

On the next day, Clark, of New York, moved that Missouri be admitted on the first Monday in December, provided, before that time, the objectionable clause in its constitution be expunged.

On Clay's motion, this resolution was laid on the table without discussion. It had been proposed before. What ground for hope was there that it would succeed now? Brown, of Kentucky, on the 21st, put into a resolution which he submitted the ideas of many who were accusing the restrictionists of a breach of faith. The enabling act for Missouri should be repealed. This would bring Congress back to the place of beginning. Would another act be framed with a clause prohibiting slavery from any part of the Western country? The pro-slavery men would thus be able to test the integrity of the restrictionists. But the House decided not to take up the resolution.

Meanwhile another effort for peace was in progress, and, on the 22d, Clay moved for the appointment of a grand joint committee, and that the House elect twenty-three members by ballot. Not until the 24th was its membership settled. On this day the Senate concurred and appointed seven members.*

* The committee consisted of:—Members of the House—Clay, Kentucky; Cobb, Georgia; Hill, Maine; Storrs, New York; Cocke, Tennessee; Rankin, Mississippi; Archer, Virginia; Brown, Kentucky; Eddy, Rhode Island; Ford, New York; Culbreth, Maryland; Philip P. Barbour, Virginia; Hackley, New York; S. Moore, Pennsylvania; Stevens, Connecticut; Rogers, Pennsylvania; H. Southard, New Jersey; Darlington, Pennsylvania; Pitcher, New York; Sloan, Ohio; Randolph, Virginia; Baldwin, North Carolina; Smith, North Carolina. Members of the Senate—Holmes, Maine; James Barbour, Virginia; Morrill, New Hampshire; S. L. Southard, New Jersey; Johnson, Kentucky; King, New York; Roberts, Pennsylvania. S. L. Southard was President *pro tem.* of the Senate; he was the son of Henry Southard, of the House. Father and son voted alike on the Missouri Compromise.

The report of this committee was delivered on the 28th, and was in substance that of the former committee of thirteen. Again there followed a sharp discussion in the House, and a vote was taken. The report was carried by four votes.* In the Senate, three days later, it passed by a vote of two to one.† On the 2d of March it became a law. In June the Missouri Legislature complied. In August the President's proclamation issued, and the Missouri struggle was over.

At the root of the Missouri Compromise lay a federal question which, for the first time in the history of American democracy, demanded solution: What authority has the government of the United States, under the Constitution, to impose restrictions on a Territory or a State? Could Congress restrict slavery? Essentially, the question was one of sovereignty.

What was this Union? A confederation of States equal in sovereignty, capable of everything which the Constitution does not forbid or which it does not authorize Congress to forbid. The chief purpose of the union was the common protection of the sovereignty already existing in the States. The parties to the Union—the States—had given up a portion of their sovereignty to insure the remainder. Means were provided for defining this residuary sovereignty. The Union was a compact. Whether old or new, a State was equally sovereign with the other States. Territorial con-

* Eighty-six to eighty-two. † Twenty-eight to fourteen.

sent signified nothing; only a State could decide as to its own sovereignty. This sovereignty was a constant quantity, incapable of being diminished by the Union without the consent of the State. Therefore the federal government had no power to impose restrictions on a State. Slavery restriction, except by a State, was, therefore, unconstitutional. Whatever his change of residence, a slave remained a slave. He was property—nothing more, nothing less—and his condition was not a subject of Congressional legislation. The States alone could legislate concerning him. They alone as sovereigns, controlling their domestic affairs, could establish freedom or slavery. As the opponents of the admission of Missouri did not demand the abolition of slavery there, they must thereby admit that it existed by authority; for them to claim that it should be restricted to Missouri was merely a contradiction of their own views. If they did not wish to abolish it, by what authority would they seek to restrict it? The opponents of slavery must, therefore, in order to be consistent, either abandon their doctrine of the legality of the restriction of slavery or their doctrine of abolition. Slavery was the natural state of the African from the dawn of history. Constitutions, written and unwritten, confirmed it. That of the United States recognized it, and those of most of the commonwealths also. Equality among the States depended on its recognition and continuance. Being a domestic institution, it was wholly without the sphere of federal government, except as

that government was established and obligated to protect the States. Slavery was not inconsistent with a republican form of government. The people of a State could, at their will, establish or destroy slavery; it was merely a result of legislation. The form was one thing, the law quite another. Universal suffrage was not sanctioned by all the free States; they disfranchised for poverty as much as the slave-holding States disfranchised for race and color. The disqualified, whether they were slave or free, obeyed the laws, but they had no share in making them. Were the governments of these free States republican in form? The Constitution of the United States made no requirements for electors other than those prescribed by the several States; if it could prescribe these, "the Union might be reduced from a union to a unit."

But it was said that the clause providing for the suppression of the slave-trade after 1808 proved that Congress had power to impose restrictions on slavery. "Migration" applied to freemen only, and was synonymous with importation. If Congress could prevent the migration of slaves from State to State, why not from county to county within the State? — from plantation to plantation?—from house to house? The clause only authorized Congress to forbid the migration or importation of slaves from a foreign jurisdiction into any of the United States. Slaves were property; slavery, a domestic question to be settled by each sovereign State to suit itself. These ideas

were advocated by the party that stood for the doctrines of '98.*

But there was another side to the question. The Constitution empowered Congress to make all needful rules and regulations respecting the Territory and other property of the United States. It could, therefore, prohibit slavery in the Territories, and as Missouri was organized out of the purchase from France, the restriction of slavery within it was clearly within the authority of Congress. The power to admit new States implied the right to determine the conditions of admission. Congress could admit or not, at its discretion. When admitted, a new State stood on a footing with the old, and its citizens were entitled to all the immunities and privileges of citizens in the several States. As Congress could affix conditions to admission, it could prohibit slavery forever in a new State. In proof of this were the Ordinance of 1787 and the prohibition of slavery in Ohio, Indiana, and Illinois. If the people of Missouri were permitted to enjoy the privileges of citizens of the several States, why should the citizens of these States be denied similar privileges in Missouri? By the treaty of 1803, the property of the inhabitants of Missouri was to be protected. Only an exceptional use of this word could bring slaves within its meaning. As Congress could exclude slavery from a State at the time of its admission, the State sovereignty would be bound by

* The ablest speech on this side of the question was made by William Pinkney, of Maryland, in the Senate, February 15, 1820.

the condition. Even a sovereign power could not do an unlawful act. There was, however, a larger view. Slavery could be excluded from Missouri on the ground of promoting the common defence, the general welfare, and that wise administration of government which, as far as possible, produces an impartial distribution of benefits and burdens throughout the Union. Slavery impoverishes a country and makes its defence both more expensive and difficult. It weakens the power of self-protection, and should therefore be restricted. Moreover, it was the cause of a violation of the equity of representation, because in a free State thirty-five thousand persons were required to elect a Representative, while in a slave State the number was only twenty-five thousand five hundred and fifty-nine. Five free persons in Virginia had as much power as seven in New York in the choice of Representatives to Congress. Nor was this an end of violence. Slavery impaired the industry, and therefore the power, of the nation, in proportion to the multiplication of slaves. If the laborers of a State were slaves, it could not raise soldiers nor recruit seamen. Manufactures never prosper where workmen are slaves. In case of war, slaves weakened the country, because they displaced freemen and increased the number of things to be protected. It was for the purpose of extending free government that provision was made for the admission of new States. Slavery existed in States contiguous to one another. If extended across the Mississippi into the great

West, both the repose and the security of the nation would be endangered. Slave-markets would multiply; the principles of freedom would be weakened; the nation would have a feeble, because a slave-holding, frontier. The extension of slavery meant the exclusion of citizens of the United States. These, under the Constitution, had citizen's privileges in the several States, but if slavery were permitted in the new States, free persons of color would be the object of discrimination. Its extension beyond the Mississippi was unconstitutional, because this part of the country was exempted from conditions imposed on the original States. They came into the Union with slavery; in the West slavery did not exist as a prior condition of admission into the Union.*

As the Missouri question comprehended the fundamentals of representative government under the American system, it drew opinions from men in all conditions of life. An index to contemporaneous material on the subject would make a respectable book. In a private letter,† John Jay

* The ablest speech for restriction was made by Rufus King, of New York, in the Senate, February 11, 1820. His speech was not reported in the annals. He afterwards wrote it out for publication. See Papers Relative to the Restriction of Slavery; speeches of Mr. King in the Senate, and of Messrs. Taylor and Tallmadge in the House of Representatives of the United States on the bill for authorizing the people of the Territory of Missouri to form a constitution and State government, and for the admission of the same into the Union, in the session of 1818–19, with the report of the Committee of the Abolition Society of Delaware. Philadelphia: Printed by Hall & Atkinson, 53 Market Street, 1819.

† To Elias Boudinot, November 17, 1819. Jay was at this time president of the American Abolition Society.

expressed the opinion that slavery should not be permitted in any of the new States; that it ought gradually to be abolished in all; that the power of Congress to prohibit the importation and migration of slaves was unquestionable, and applied, at its discretion, alike to old and new States; that slavery was repugnant to the principles of the Revolution, and that, from a consciousness of the repugnancy, the doctrines of the Declaration of Independence were held as self-evident truths. A few days after this letter was written the leaders of public opinion in Boston assembled in the State House,* and with the approval of a great public gathering drew up a memorial against the further extension of slavery. It was written by Webster and expressed the prevailing opinion of New England. Doubtless it was Webster's opinion at that time. It elaborated the thought that the power to regulate commerce gave Congress complete authority to regulate, and therefore to restrict, slavery. Just six days before Webster wrote this memorial, Madison, in one of his most carefully considered letters,† gave his own views on slavery restriction, and anticipated the decision in the Dred Scott case by declaring that the restriction of slavery by Congress, and by this he meant the Missouri Compromise, would be unconstitutional.

Little was added, in later times, to the arguments presented during the three years of the

* December 3, 1819.

† To Robert Walsh. *Madison's Works*, Vol. iii., p. 149.

Missouri struggle. Read to-day, when slavery is a thing of the past, they seem needlessly and heartlessly cruel, legal, and merely textual. The doctrine of '98 was in the saddle. Things, not men, were the basis of government. Civil and political institutions seem a legal fiction, the national Constitution only a document, or bond, whose execution was in pounds of human flesh. Behind this slavocratic tyrant loomed other tyrants even more formidable—the laws and the constitutions of commonwealths, and the cruel exactions and prejudices of public opinion.

CHAPTER XI

BEYOND THE MISSISSIPPI

THE authority of Congress to prescribe conditions for a Territory* was further illustrated by the act of 1832†, limiting the franchise in Arkansas to free white males. Of the slave-holding States, North Carolina alone, by its constitution, recognized the right in free persons of color to vote, and public sentiment there was soon to be gratified by the abrogation of the right.‡ A like change was in sight in Tennessee.§ A slave-holding democ-

* The principal authorities for this chapter are the statutes at large and the records of the conventions referred to.

† May 31st.

‡ See Proceedings and Debates of the Convention of North Carolina called to amend the Constitution of the State, which assembled at Raleigh June 4, 1835, to which are subjoined the Convention Act and the Amendments to the Constitution, together with the Votes of the People. Raleigh: Printed by Joseph Gales & Son, 1835, pp. 351–358. Also, Sec. iii., p. 421. The provision of the constitution of 1776, vii., viii., allowing "all freemen" (otherwise qualified) "to vote" was modified in 1835 so as to exclude every "free negro, free mulatto, or free person of mixed blood descended from negro ancestors to the fourth generation, inclusive."

§ Compare Constitution of Tennessee, 1796, Art. iii., Sec. i., with that of 1834, Art. iv., Sec. i. "Every freeman" changed to "every free white man." See, also, *Studies in the Constitutional History of Tennessee*, by Joshua W. Caldwell. Cincinnati: The Robert Clarke Company, 1895, p. 113.

racy must of necessity be a white-man's government. When, on the 4th of January, 1836, the people of Arkansas met in convention at Little Rock to form a constitution, they had before them as recent precedents the exclusion of free blacks from the franchise in North Carolina and Tennessee, and, practically, their exclusion from the basis of representation. The constitution was completed on the 30th, was approved without delay by Congress, and the State was admitted in the middle of June. On the 23d of June a generous grant was made of school lands and salt-springs, and a five per cent. donation for public roads and canals. Fifteen sections were given to complete the public buildings at Little Rock, and two townships for a university. These donations were formally accepted by the General Assembly in October, under promise never to tax the property of the general government, or discriminate in taxation against that of non-residents. The new State, in its constitutional outlines, was a duplication of Alabama and Mississippi. There could not be a great variation from the type in any pro-slavery constitution.

Immigrants had for several years been appearing west of the Mississippi and north of Missouri, but they were not yet sufficiently numerous to warrant the organization of a new Territory; therefore, in 1834 the region, indefinite in boundary, north of Missouri was attached to the Territory of Michigan. Two years later the northern boundary line of Ohio was in the way of settlement, and the people

of Michigan were authorized to organize a State government. The Detroit convention rejected the boundary named in the enabling act, but a supplementary one practically removed all obstacles. Michigan acquiesced on the 15th of December, and was admitted on the 26th of January following.* The Arkansas constitution followed the Southern type; that of Michigan the Northern, being in outline like those of Ohio, Indiana, and Illinois. These four States of the Northwest followed the model of New York, as their four contemporaries of the Southwest did that of Virginia.

It seemed at this time that the vast region north of the Red River and west of Arkansas and Missouri was destined to remain a wilderness for many generations. The pressure of population east of the Mississippi seemed now in part to cease. Powerful Indian tribes, which, a few years before the Missouri Compromise, stood in the path of immigration, had sold their lands meanwhile, and disappeared, at least for a time, across the great river. With others that yet remained on their

* See especially the following authorities bearing on this subject: Journal of the Proceedings of the Convention to form a Constitution for the State of Michigan, begun and held at the Capitol, in the City of Detroit, on Monday, the 11th day of May, A. D. 1835. Detroit: Printed by Sheldon McKnight, 1835. Index—Boundary. Appeal by the Convention to the People of the United States, with other Documents in relation to the Boundary Question between Michigan and Ohio. Detroit: 1835. Journal of the Convention held September 26–30, 1836, to Consider Admission into the Union. Pontiac: 1836. Journal of the Convention held December 14–15, 1836, to give Assent required by Act of Congress previous to Admission. Ann Arbor: 1836.

ancient hunting-grounds, negotiations were in progress, and their removal was impending. But the negotiations seemed slow to the thickening line of frontiersmen clamoring for land.

On the last day of June, 1834, Congress set apart as the Indian Country all the unorganized public domain west of the States. This proved to be the great organic act in the history of the tribes, for it began a new Indian policy. From this time began the process of gathering the Indians into reservations. At first the vast unorganized West comprised one. As time passed and Territories were organized, reservations were increased in number and diminished in size. An Indian policy was begun which, before the century closed, was to scatter, yet to concentrate, the tribes; to break up their organization, and gradually to force an exchange of Indian title for annuities, or for other lands, or for lands in severalty.

Technically, in 1834, the Indian Country lay east as well as west of the Mississippi, for it included all lands to which the Indian title had not been extinguished. For judicial purposes, this country was attached to Missouri. One great purpose of the act was to exclude the whites from the reservation. It could be entered only by the agents of the national government. At the same time a Department of Indian Affairs was created, under charge of a commissioner. The public, ignoring the correct title of the reservation, called it the Indian Territory, and the popular name was soon sanctioned by the department and by the Presi-

dent. There has never been an organized Indian Territory.*

The States, about this time, began accurate surveys of their boundaries. Congress, in 1831, ordered the survey of the line between Alabama and Florida, and between Illinois and the Territory of Michigan. Usually, the enabling act described the boundaries of a new State, but, at best, only approximately. Maps were inaccurate, and actual surveys were necessary to establish the lines. The new States, like the old, soon had boundary disputes on hand. The admission of Michigan left the region to the west for Territorial organization, and, early in 1836,† Wisconsin was given a government, modelled after those already familiar in the old Northwest. In one respect, however, there was a departure. Members, both of the Council and the House, were chosen by the voters. On the 2d of July, Congress directed the surveyor-

* The lands within it were granted, at various times, to the Indians—in 1838, a portion, by patent, to the Cherokees; in 1842, another portion, by patent, to the Choctaws; in 1852, the remainder, by patent, to the Creeks. These patents included lands within the present boundary of Kansas. By these patents the land was conveyed in fee forever. Many other tribes have been moved into the territory and lands assigned them by treaty. During the first half of the century the tribes were not disturbed. They were treated as separate and independent nations. Treaties were made by the War Department. The Indian Commissioner was in that department until 1849, when the Department of the Interior was created, and the Indian Bureau was transferred to it, where it has remained. See Report on Indians Taxed and Indians Not Taxed in the United States (except Alaska) at the Eleventh Census: 1890. Washington, D. C.: Government Printing-office, 1894, pp. 1–69.

† April 20th.

general to lay out designated tracts of land as towns. Madison, Burlington, and Dubuque were thus laid out into in-lots, with streets, avenues, and public squares. The lots were arranged in three classes—the first to be sold at the rate of forty dollars an acre, the second at twenty, the third at ten. A purchaser could not acquire more than one acre. These town-surveys were the subject of several amendatory acts—as that of 1838,* which provided for a Territorial surveyor, who should follow the precedents set by the surveyor of Ohio. His office was at Dubuque. Usually a Territorial survey has gone no further than that of townships and counties. The survey now ordered was extended west of the Mississippi.

The act provided also for the survey of the boundary between Wisconsin and Michigan. Two townships were set apart by Congress for the support of a university; a grant was made for public buildings, and another in aid of a canal to connect Lake Michigan and Rock River.† Wisconsin resembled Alabama in the rapidity with which population poured in. The Territory was soon divided, and the name Iowa given to the southwestern part.‡ The old Northwestern model was again followed, but Iowa had a new feature in the Congressional appropriation of five thousand dollars to be ex-

* June 12th. † June 18th.

‡ June 12, 1838. See Iowa City, a Contribution to the Early History of Iowa, by Benjamin F. Shambaugh, M.A.; State Historical Society of Iowa, Iowa City, Iowa, 1893. Also, Documentary Material Relating to the History of Iowa, edited by Benjamin F. Shambaugh, A.M., Ph.D.; Historical Society, etc.

pended in books for the use of the Territorial officers. The survey of the southern boundary was ordered,* and the usual land grant was made. A year later† the Legislature defined the eastern boundary, along the middle of the main channel of the Mississippi, and declared it under concurrent jurisdiction with Wisconsin.

The organization of new Territorial governments barely kept pace with the movements and demands of population. By the removal of the Indians, the East experienced a great relief—and the East now began at the Mississippi. In ten years‡ the frontier had moved more than two hundred and fifty miles north and northwest, in Ohio, Michigan, Indiana, Illinois, and Wisconsin. The new-comers were chiefly from New England, New York, and Pennsylvania, but Ohio was rapidly becoming a parent of States. In the same period similar changes had gone on in the Southwest. The Indian tribes, so long elements of discord in surveyed Alabama and Mississippi, were now in the Indian Country, and a prosperous population was in possession of their ancient lands, save the desolate pine barrens of Georgia and the swamps of Western Mississippi. The unoccupied portions of Arkansas and Missouri were dense forests and impassable swamps. The entire Southern country, which had gone into private ownership since 1820, was less accessible than the new country of the North and Northwest. Michigan, Wisconsin,

* June 18th. † March 3, 1839. ‡ 1830 to 1840.

and Iowa were easily accessible, and their settled parts were in a prairie country. Heavy timber was yet abundant in New York and Pennsylvania; the forests of Michigan and Wisconsin were not to be converted into lumber camps till the Eastern supply of lumber began to fail. As there was no market for timber that stood far from great waterways, the settlements in the timber districts, North and South, like those first made in the colonies, were in the most accessible valleys and near the great lakes—the natural highways of the country. Population was increasing most rapidly at the centres of trade, and among these were Cincinnati, Louisville, Detroit, and Chicago. All the coast cities having harbors suited to the increasing draft of ships, and the cities along the Erie canal, were growing beyond precedent. Interstate commerce was by waterways and wagon-roads. States were competing with one another for the carrying-trade from the West to the Atlantic seaboard. Everywhere internal improvements were demanded, and in most cases beyond the ability of the States to construct and to maintain. The statute-books were swelling with acts for the construction of canals that would connect the great lakes with the Ohio, the Ohio with the Delaware and with Chesapeake Bay, and the larger eastern tributaries of the Mississippi one with another. Other acts proposed wagon-roads and railroads aggregating thousands of miles, connecting rivers and canals, and weaving a vast net-work of highways over the whole country. Creeks were to be en-

larged into rivers. Political careers were made, broken, and mended by the army of office-seekers who, especially in the newer States, were loudly advocating internal improvements. The great West was rapidly mortgaging its credit for roads, bridges, railroads, and canals. Was not the State bound to receive vast accessions to its population? How were people to reach it? Build roads, bridge streams, issue bonds, and borrow money. Immigration would pour in, and the increase of taxable property would pay the debt. This was the stock argument. Lincoln used it in 1832, when first he stumped the New Salem district as "an avowed Henry Clay man." His circular letter which began his political career admits us, without reserve, into the secrets of his ambition and the wants of the West. It is the voice of the people living in the great valley.

*Address to the People of the Sangamon County.**

Fellow-citizens, — Having become a candidate for the honorable office of one of your Representatives in the next General Assembly of this State, in accordance with an established custom and the principles of true Republicanism, it becomes my duty to make known to you, the people whom I propose to represent, my sentiments with regard to local affairs.

Time and experience have verified to a demonstration the public utility of internal improvements. That the poorest and most thinly populated countries would be greatly benefited by the opening of good roads, and in the clearing of

* *Abraham Lincoln: Complete Works.* Edited by John G. Nicolay and John Hay. Vol. i., pp. 1–4, 7.

navigable streams within their limits, is what no person will deny. Yet it is folly to undertake works of this or any other kind without first knowing that we are able to finish them—as half-finished work generally proves to be labor lost. There cannot justly be any objection to having railroads and canals, any more than to other good things, provided they cost nothing. The only objection is to paying for them; and the objection arises from the want of ability to pay.

With respect to the county of Sangamon, some more easy means of communication than it now possesses, for the purpose of facilitating the task of exporting the surplus products of its fertile soil, and importing necessary articles from abroad, are indispensably necessary. A meeting has been held of the citizens of Jacksonville and the adjacent country, for the purpose of deliberating and inquiring into the expediency of constructing a railroad from some eligible point on the Illinois River, through the town of Jacksonville, in Morgan County, to the town of Springfield, in Sangamon County. This is, indeed, a very desirable object. No other improvement that reason will justify us in hoping for can equal in utility the railroad. It is a never-failing source of communication between places of business remotely situated from each other. Upon the railroad the regular progress of commercial intercourse is not interrupted by either high or low water or freezing weather, which are the principal difficulties that render our future hopes of water-communication precarious and uncertain.

Yet, however desirable an object the construction of a railroad through our country may be, however high our imaginations may be heated at thoughts of it, there is always a heart-appalling shock accompanying the amount of its cost, which forces us to shrink from our pleasing anticipations. The probable cost of this contemplated railroad is estimated at $290,000; the bare statement of which, in my opinion, is sufficient to justify the belief that the improvement of the Sangamon River is an object much better suited to our infant resources.

Respecting this view, I think I may say, without the fear of being contradicted, that its navigation may be rendered

completely practicable as high as the mouth of the South Fork, or probably higher, to vessels of from twenty-five to thirty tons burden, for at least one-half of all common years, and to vessels of much greater burden a part of the time. From my peculiar circumstances, it is probable that for the last twelve months I have given as particular attention to the stage of the water in this river as any other person in the country. In the month of March, 1831, in company with others, I commenced the building of a flat-boat on the Sangamon, and finished and took her out in the course of the spring. Since that time I have been concerned in the mill at New Salem. These circumstances are sufficient evidence that I have not been very inattentive to the stages of the water. The time at which we crossed the mill-dam being in the last days of April, the water was lower than it had been since the breaking of winter in February, or than it was for several weeks after. The principal difficulties we encountered in descending the river were from the drifted timber, which obstructions all know are not difficult to be removed. Knowing almost precisely the height of water at that time, I believe I am safe in saying that it has as often been higher as lower since.

From this view of the subject, it appears that my calculations with regard to the navigation of the Sangamon cannot but be founded in reason; but, whatever may be its natural advantages, certain it is that it never can be practically useful to any great extent without being greatly improved by art. The drifted timber, as I have before mentioned, is the most formidable barrier to this object. Of all parts of this river, none will require so much labor in proportion to make it navigable as the last thirty or thirty-five miles; and going with the meanderings of the channel, when we are this distance above its mouth we are only between twelve and eighteen miles above Beardstown in something near a straight direction; and this route is upon such low ground as to retain water in many places during the season, and in all parts such as to draw two-thirds or three-fourths of the river water at all high stages.

This route is on prairie land the whole distance, so that it appears to me, by removing the turf a sufficient width, and

damming up the old channel, the whole river in a short time would wash its way through, thereby curtailing the distance and increasing the velocity of the current very considerably, while there would be no timber on the banks to obstruct its navigation in future; and being nearly straight, the timber which might float in at the head would be apt to go clear through. There are also many places above this where the river, in its zigzag course, forms such complete peninsulas as to be easier to cut at the necks than to remove the obstructions from the bends, which, if done, would also lessen the distance.

What the cost of this work would be I am unable to say. It is probable, however, that it would not be greater than is common to streams of the same length. Finally, I believe the improvement of the Sangamon River to be vastly important and highly desirable to the people of the county; and, if elected, any measure in the Legislature having this for its object, which may appear judicious, will meet my approbation and receive my support.

It appears that the practice of loaning money at exorbitant rates of interest has already been opened as a field for discussion; so I suppose I may enter upon it without claiming the honor, or risking the danger, which may await its first explorer. It seems as though we are never to have an end to this baneful and corroding system, acting almost as prejudicially to the general interests of the community as a direct tax of several thousand dollars annually laid on each county for the benefit of a few individuals only, unless there be a law made fixing the limits of usury. A law for this purpose, I am of opinion, may be made without materially injuring any class of people. In cases of extreme necessity there could always be means found to cheat the law, while in all other cases it would have its intended effect. I would favor the passage of a law on this subject which might not be very easily evaded. Let it be such that the labor and difficulty of evading it could only be justified in cases of greatest necessity.

Upon the subject of education, not presuming to dictate any plan or system respecting it, I can only say that I view

it as the most important subject which we as a people can be engaged in. That every man may receive at least a moderate education, and thereby be enabled to read the histories of his own and other countries, by which he may fully appreciate the value of our free institutions, appears to be an object of vital importance, even on this account alone, to say nothing of the advantages and satisfaction to be derived from all being able to read the Scriptures, and other works, both of a religious and moral nature, for themselves.

For my part, I desire to see the time when education—and by its means, morality, sobriety, enterprise, and industry—shall become much more general than at present, and should be gratified to have it in my power to contribute something to the advancement of any measure which might have a tendency to accelerate that happy period.

With regard to existing laws, some alterations are thought to be necessary. Many respectable men have suggested that our estray laws, the laws respecting the issuing of executions, the road law, and some others, are deficient in their present form, and require alterations. But considering the great probability that the framers of those laws were wiser than myself, I should prefer not meddling with them, unless they were first attacked by others; in which case I should feel it both a privilege and a duty to take that stand which, in my view, might tend most to the advancement of justice.

But, fellow-citizens, I shall conclude. Considering the great degree of modesty which should always attend youth, it is probable I have already been more presuming than becomes me. However, upon the subjects of which I have treated I have spoken as I have thought. I may be wrong in regard to any or all of them, but, holding it a sound maxim that it is better only sometimes to be right than at all times to be wrong, so soon as I discover my opinions to be erroneous I shall be ready to renounce them.

Every man is said to have his peculiar ambition. Whether it be true or not, I can say, for one, that I have no other so great as that of being truly esteemed of my fellow-men, by rendering myself worthy of their esteem. How far I shall succeed in gratifying this ambition is yet to be developed. I

am young, and unknown to many of you. I was born, and have ever remained, in the most humble walks of life. I have no wealthy or popular relations or friends to recommend me. My case is thrown exclusively upon the independent voters of the country; and, if elected, they will have conferred a favor upon me for which I shall be unremitting in my labors to compensate. But if the good people in their wisdom shall see fit to keep me in the background, I have been too familiar with disappointments to be very much chagrined.

Your friend and fellow-citizen,

A. LINCOLN.

NEW SALEM, *March* 9, 1832.

The Western country was dreaming of the time —close at hand—when steamboats would be penetrating its rivers, bringing the wealth of the world to its doors and bearing away its surplus corn and bacon. The West was young, confident, aggressive. There was a lesser Lincoln in every district, eager to vote the boundless credit of the State for the support of internal improvements. But of what use such improvements if the people had no money for their own affairs? Money, and plenty of it, was the popular cry, and in response the Assemblies passed volumes of bank-laws. State banks sprang up at the cross-roads, in the cities, and showered reams of fiat money over the country. Another money delusion seized on men, and, like a fever, ran its time. It was an era of irresponsible banking and "wild-cat" currency. Experiment with more or less vicious banking schemes continued until uniformity and responsibility were secured by the national-bank act of 1863.

The new States were booming; their every in-

habitant was about to make his fortune. Plenty of money, plenty of railroads and canals, and the thing was done. How it was done is well illustrated in Lincoln's own experience. In 1834 he again stumped Sangamon County, advocating the same policy as before, and in August was elected. Illinois had nearly a quarter of a million inhabitants, the majority of whom were in favor of that policy. In the Assembly of 1834–35 plans were discussed for the general improvement of the State, and the legislators got no further that session. Most of them were candidates for re-election, and among others Lincoln. Again he issued an address to his district. His policy was comprehensive:

To the Editor of the "Journal":

In your paper of last Saturday I see a communication, over the signature of "Many Voters," in which the candidates who are announced in the *Journal* are called upon to "show their hands." Agreed. Here's mine.

I go for all sharing the privileges of the government who assist in bearing its burdens. Consequently, I go for admitting all whites to the right of suffrage who pay taxes or bear arms (by no means excluding females).

If elected, I shall consider the whole people of Sangamon my constituents, as well those that oppose as those that support me.

While acting as their Representative, I shall be governed by their will on all subjects upon which I have the means of knowing what their will is; and upon all others I shall do what my own judgment teaches me will best advance their interests. Whether elected or not, I go for distributing the proceeds of the sales of the public lands to the several States, to enable our State, in common with others, to dig canals and construct

railroads without borrowing money and paying the interest on it.

If alive on the first Monday in November, I shall vote for Hugh L. White for President. Very respectfully,

A. Lincoln.

New Salem, *June* 13, 1836.

Again he was elected, and, with the majority of the Legislature, returned in full confidence that the people demanded a complete system of internal improvements at their expense. The session of the Illinois Legislature of 1835 was not unlike that in other Western States. Railroads were chartered, canals projected, and a loan of half a million dollars for canal purposes authorized. This was more than two dollars apiece for every man, woman, and child in the State. The State was given over, as by mortgage, to carry on enterprises of vast consequence. Every town in the State should be in railroad connection with every other —aggregating thirteen hundred and fifty miles of construction. Many of the towns were like that city of Eden in which Martin Chuzzlewit expected to make his fortune. The State was in danger of being laid out by the Legislature into in-lots and out-lots from Chicago to Cairo. Eight million dollars were voted for railroads, and four millions more to complete a canal from Lake Michigan to the Illinois River. Innumerable roads and bridges were authorized, and the law directed "that work should be begun at once at the termini of all the roads and the crossings of all rivers." This stupendous folly met the approval of the majority

of the people, and was advocated in a conservative fashion by Lincoln. The infatuation possessed older, wiser men than he. Experienced legislators in General Assembly and in Congress were at the same time strenuously helping to inflate the financial bubble that burst with such dire results in 1837. That year remains in our annals as the Black Friday of fiat legislation—fiat banks, fiat money, fiat canals, fiat railroads, fiat fortunes. And yet the record of those times has taught us little, and speculation has reached a dizzy and almost equally dangerous height at least twice since.

Collapse awoke the spirit of repudiation. The newer States were stunned by the weight of their obligations. Legislature followed Legislature in joint resolutions addressed to their creditors. Illinois bravely rejected repudiation. Speculation and the abuse of the credit system—so ran the resolution of its Assembly—have been common faults. The whole world is guilty. And under this stimulus of universal speculation may not a new State be justified in planning largely for its people? Let the creditors of the State be patient. They shall be paid, for the resources of the State are inexhaustible; its people are vigorous, industrious, and honest, and they will redeem their promises.* The lesson was learned at fearful cost all over the Union — in Pennsylvania and New York as well

* Joint resolution, February 21, 1843. See also the joint resolution against repudiation passed by the Alabama Legislature January 17, 1844.

MAP OF

THE UNITED STATES IN 1840

SHOWING CIVIL DIVISIONS AND DISTRIBUTION OF POPULATION

as in Illinois and Kentucky. The lessons of the panic of '37 were incorporated in the constitutions of the next twenty years,* and have been remembered by every later commonwealth.

While the country was intoxicated with speculation and prospective wealth, the frontier did not advance far west. Migration is a child of discontent. The increase in numbers was for a time chiefly within the old settled area—and this, in 1840, was a little more than nine hundred thousand square miles. The portion of the country that might be called entirely settled was now equal in area to that of the original domain under the treaty of 1783. There were about seventeen millions of people, or about twenty-two to the square mile. In spite of speculation and the panic, the centre of population had maintained an average western movement of nearly five and a half miles a year. The number and the population of cities were increasing. This indicated a continuance of the change going on in the country, from farm to factory. As yet nearly the entire population was native-born. Less than six hundred thousand came from foreign lands, and of these the greater part from Great Britain. A few had come from Canada, Germany, Scandinavia, Italy, and France. There were eight Chinamen in the country. The white population was increasing more rapidly than the black. Emancipation was becoming less common,

* Pennsylvania, 1838; Rhode Island, 1842; Louisiana, 1845; New York, 1846; Illinois, 1848; Michigan, Ohio, and Kentucky, 1850; Indiana and Maryland, 1851.

because of restrictions chiefly contained in recent laws. The abolition sentiment was gaining strength among a class of people who stood aloof from the two great parties. The Missouri struggle had given birth to a Free-soil party, and from the day when Taylor offered his resolution to exclude slavery from Missouri, the Free-soil party gained strength — disclosed in antislavery publications, antislavery meetings, in antislavery resolutions of State Legislatures, and in antislavery laws. To all this the slave-holding States made rejoinder by counter-publications, resolutions, and laws.

The collapse of State systems of internal improvement, the failure of the State banks and the suspension of specie payments, the depreciation of State bonds, the worthlessness of fiat money, and the fearful burdens which all this ruin put upon the shoulders of the taxpayers left their disfiguring marks on the lives of multitudes of men and women. Few of the children born during these dark days had the opportunities which in ordinary, prosperous times are the common heritage of each generation of Americans. Hard times rob childhood and youth, burden manhood, and sadden old age. Business was prostrate, farm produce would not sell, attendance at the schools fell off, and especially at those of higher grade, which charged for tuition.

Could one have seen the whole country at a glance in the years when Arkansas and Michigan came into the Union, and then again two years later, when the great panic had come, it would

have seemed as if the nation had been struck motionless—as if some powerful and evil spirit had stopped the wheels in the factories, closed the banks, shut up the stores, stayed the plough in the furrow, fastened the boat to the wharf, suddenly dismissed the bridge-builder, the engineer, and the contractor, and discharged the laborers with their tools in their hands. When, by cruel fortune, an ants' nest is suddenly crushed in, the little creatures are for a moment stunned. Then they are seen running aimlessly in all directions and apparently greatly excited. After a time they crawl back into orderly ways, and begin to repair their habitation. In a few days they have accommodated themselves to their new conditions and are seen to be busily at work, as if no accident had befallen them. They will even abandon their repairs to wage battle with another colony.

Amid the hard times that followed the panic of '37 the people of the commonwealths acted very much like a colony of ants whose fine roof had suddenly been tumbled upon their heads. Stunned, uncertain for a time, they soon resumed their undertakings, adapted themselves to their new conditions, and stood ready to wage battle with their opponents. Nor was a cause of division lacking. In April, 1836, the United States and Mexico arranged, through their Representatives at Washington, for a survey of a boundary line between the two republics as stipulated by the treaty of 1828.*

* Treaties and Conventions, pp. 675–6.

The execution of this agreement was suddenly interrupted by the revolt of Texas and its proclamation of independence.* A treaty with the new republic soon followed,† and a survey of boundary was agreed upon.‡ It was to be completed within a year. But no man can tell what a year may bring forth.

The new republic was an opportunity. Hard times breed idlers—restless, perhaps dangerous. The panic of '37 turned the thoughts of thousands of Americans, chiefly in the slave-holding States, towards Texas. Military companies volunteered for the defence of the new republic. From Kentucky, Tennessee, Arkansas; from Georgia, the Carolinas, and Florida; from Alabama, Mississippi, and Louisiana, these volunteers converged upon Texas. The compromise of 1820 had made nearly all the Louisiana country free soil. The reso-

* March 2, 1836. The declaration was an imperfect transcript of Jefferson's; was made by Americans chiefly from Louisiana, Mississippi, Alabama, Tennessee, and Kentucky, and omitted Jefferson's dictum, "all men are created equal." The constitution of Texas of 1836 was closely modelled after those of the five States above mentioned, but was more restrictive than any of them of the immigration of free negroes and of the power of the Legislature to emancipate slaves. It was the ultra pro-slavery constitution thus far made. It became the basis of the constitution of 1845. The declaration given by Poore was adopted by the consultation at San Felipe de Austria, in November, 1835, and refers to the Mexican Constitution of 1824. The actual declaration passed March 2, 1836, is not given by Poore. See the Journal of the Convention (General Council of the Republic of Texas) November 14, 1835, to March 11, 1836. Houston: 1839.

† April 11, 1838.

‡ April 25, 1838. Treaties and Conventions. 1078–1080.

lute vote which, seventeen years before, had supported Randolph and Lowndes in their opposition to slavery restriction now brought forth a harvest of public sentiment in the South. On Christmas Day, 1837, the Legislature of Alabama gave expression to this in a joint resolution for the reannexation of Texas. Similar resolutions were passed by other Southern Legislatures. Those of the North passed counter-resolutions.* The country

* The conflicting and ominous elements in public opinion from 1835 to 1850 are nowhere more plainly and significantly indicated than by the acts and joint resolutions of the State Legislatures respecting Oregon, Texas, and slavery. The principal resolutions and acts are as follows:

Alabama.—Joint resolutions for annexation of Texas, December 25, 1837, and January 1, 1842. Another sympathizing with Virginia (*in re* the resolutions of New York, April 11, 1842, as to refusing return of fugitive slaves), "a dangerous and alarming attack upon Southern rights," February 14, 1843. "The right to exercise power (over slavery) by a State is higher and deeper than the Constitution," resolution of January 27, 1845. Alabama will act in concert and make common cause with other slave States for the defence of the institution of slavery—Congress has no power over the institution, resolution of March 6, 1848.

Delaware.—Joint resolution — the addition of slave territory hostile to the spirit of free institutions and contrary to sound morality, February 25, 1847.

Florida. — Joint resolution that "Congress has no power to abolish slavery in the District of Columbia or to prohibit it south of 36° 30′. Florida ready to join Virginia, South Carolina, North Carolina," etc., "for defence of our rights," "whether through a Southern convention or otherwise," January 13, 1849.

Georgia.—Elaborate resolution on "Federal relations," Wilmot proviso, slavery extension, etc., February 8, 1850.

Illinois.—Joint resolution favoring the occupation of Oregon, February 21, 1843; to 54° 40′, February 27, 1845; same date, one favoring "reannexation" of Texas.

Kentucky.—Joint resolution: The United States should assert

was again divided. Like the ants, the people forgot that their roof had recently fallen about their ears. Public sentiment North was arrayed against public sentiment South. For a time its vehe-

its rights and occupy Oregon, February 27, 1843. See also on Federal relations, March 1, 1847.

Louisiana.—Joint resolution proposing a convention of the slave-holding States to obtain respect for their institutions, "peaceably if they can, forcibly if they must." Resolution of February 20, 1837.

Massachusetts.—Joint resolution against the annexation of Texas, March 16, 1838; against the admission of new slave States, April 23, 1838; also, of same date, resolution that Congress by the Constitution has power to abolish the slave traffic between the States. The admission of Texas dangerous to the peace of the Union, March 17, 1843.

Michigan.—Joint resolution, March 11, 1844, that the joint occupancy of it with Great Britain should cease, that our claim to 54° 40′ is "clear and incontestable," January 4, 1846; that the Mexican War was justifiable, February 13, 1847; that slavery "is a mere local institution without positive law"; that the principle of the Ordinance of 1787 is fundamental, and that Congress has the power and the duty to prohibit slavery in any United States territory now or to be acquired, January 13, 1849. Joint resolution favoring the admission of California, February 23, 1850.

Mississippi.—Joint resolution like the last of Alabama, February 6, 1841. For annexation of Texas, February 25, 1842. Resolution approving and vindicating the Mexican War, March 4, 1848; on Federal relations, March 6, 1850; on California, March 5, 1850. Very elaborate, pro-slavery, and favoring State sovereignty.

New Hampshire.—Joint resolution for the "reannexation of Texas," December 28, 1844, and another disapproving of "British interference" in Texas, July 2, 1845. Joint resolution that "the Ordinance of 1787 should be extended over Texas," December 29, 1848. Slavery should be excluded from New Mexico and California, January 4, 1849. No more slave States, "all men created equal"; New Hampshire "pledged for freedom"; no slavery in Oregon, July 10, 1846.

New York.—Joint resolution disapproving Governor Seward's refusal to return fugitive slaves (to Virginia), because slavery is not felony within meaning of the United States Court, Art. iv.,

mence was restrained by the invasion and conquest of Mexico. But victory could only aggravate the differences between the States, because it extended the boundaries of the country to the

Sec. 2; the Legislature resolves that it is, April 11, 1842. This act of the Governor provoked counter-resolutions in Virginia, South Carolina, Georgia, Florida, Louisiana, Kentucky, Alabama, and Mississippi. Extension of slavery into the Territories should be forbidden, resolutions of January 27, 1847, and January 13, 1848; the laws of Texas and slavery should be excluded from the region between the Neches and the Rio Grande and from New Mexico, east of the Rio Grande, resolution of January 4, 1849. Extension of slavery to California should be forbidden and Congress should abolish the slave-trade in the District of Columbia, resolution of January 16, 1850.

Ohio.—Joint resolution that slavery should be excluded from Oregon, February 8, 1847; that Congress has power to exclude it from acquired territory, February 24, 1848; that the Ordinance of 1787 should be extended to territory acquired from Mexico, February 13, 1847; February 25, 1848.

Pennsylvania.—Joint resolution instructing the Senators and Representatives in Congress to vote against the acquisition of new territory unless slavery be prohibited, January 22, 1847.

South Carolina.—Joint resolution advocating a call for a convention or Southern congress "to arrest further aggressions and restrictions on the rights of the South," December 20, 1850. Compare resolutions of December 17, 1841. The commonwealth put into a "state of defence," act of December 20, 1850.

Tennessee.—Joint resolution in favor of annexation of Texas, January 20, 1838; another for its admission into the Union, "on an equal footing with the sovereign States of these United States of America," February 7, 1842.

Vermont.—Joint resolution against annexation of Texas; for abolition of slavery in the District of Columbia and in the Territories: joint resolution given in "Acts and Resolutions of 1838," p. 23. The perpetuation of slavery a violation of the national compact, 1844.

Virginia.—Joint resolution that Congress can impose no condition on slavery extension, as such limitation is not within its power; laws preventing the removal of slave property to a Territory unconstitutional and in violation of the Missouri Com-

Pacific. The acquisition from Mexico became at once a new subject for controversy.

The Texas question, and all that it involved, did not suddenly supplant in popular interest the question of State banks and internal improvements. But it was an open cause of division between the sections. They were less divided over the Oregon question. The boundaries of the Oregon country no man knew. Its joint occupation by Great Britain and the United States only postponed a struggle. Public opinion found expression here and there in the resolutions of State Legislatures favoring the "immediate occupation of all Oregon," and this meant to 54° 40′ north latitude. New England, for a time alarmed at the prospective dismemberment of Maine in settling the northeastern boundary, delivered herself of strong State-sovereignty notions and appeals to the States,* but finally acquiesced in the decision

promise, March 8, 1847. See also the joint resolution on the Wilmot proviso, January 20, 1849.

Wisconsin.—Joint resolution favoring the application of the Ordinance of 1787 to all new territory, June 21, 1848. Joint resolution favoring the "immediate occupation of Oregon," January 13, 1844.

* See the following authorities having reference to this subject: Resolutions of the Massachusetts Legislature, February 9, 1830, protesting against the adoption of the decision of the King of the Netherlands and declaring it to be in violation of the rights of the State as secured by the Federal Constitution, and "consequently null and void and in no ways obligatory upon the government or people." Resolutions of February 24, 1826; February 15, 1832; March 23, 1832; March 14, 1836, and April 19, 1838, the latter declaring that no power is delegated by the Constitution of the United States to Congress authorizing it to cede to a foreign nation any territory lying within the limits of either

under the Webster-Ashburton treaty of 1842.* The hostile attitude of Maine for a time indicated how thoroughly the doctrines of '98 possessed the people of a State when they thought themselves injured by the general government. Objections of this kind, North or South, all tended to become obstacles in the pathway of the national idea.

of the States of the Union. Resolutions of March 26, 1839; March 13, 1841, and March 3, 1842. Resolutions of Maine Legislature, February 28, 1831, that the convention of the United States with Great Britain, made in September, 1827, tended to violate the Constitution of the United States and to impair the sovereign rights and powers of the State of Maine, and that Maine is not bound by the Constitution to submit to the decision which is or shall be made under the convention. Resolutions of the Maine Legislature, January 19, 1832, that the United States has only a "special and modified sovereignty." Governor Enoch Lincoln's message of January 8, 1829: "By Senators in Congress we represent our aggregate and consolidated population in its common and combined wants and demands. It is the senatorial representative who is to appear for us all against invasion of the sovereignty which belongs to the republic." Laws of Maine, 1829, p. 11. The question of State sovereignty involved in the Alien and Sedition laws, the Virginia and Kentucky resolutions, the tariff in South Carolina in 1828, the taxation of the United States Bank by Ohio in 1820, and the settlement of the northeastern boundary, brought out a mass of resolutions by State Legislatures. Many of these are given in a pamphlet entitled The Virginia and Kentucky Resolutions of 1798 and '99; with Jefferson's Original Draught thereof. Also Madison's Report, Calhoun's Address, Resolutions of the Several States in relation to State Rights. With other Documents in Support of the Jeffersonian Doctrines of '98. "Liberty—The Constitution—Union." Published by Jonathan Elliot, Washington: May, MDCCCXXXII.; 82 pp. Maine and Massachusetts were present, in their commissioners, when, at Washington, in June, 1842, Lord Ashburton and Webster signed the treaty. The northeastern boundary question was thus, at last, amicably settled. New England had declared, but not applied, the doctrine of State sovereignty.

* Treaties and Conventions, 432–438.

Russia, in 1824, agreed with the United States by treaty that the boundary between the two countries should be along the line of 54° 40′, thus laying a foundation for the extreme American claim.* But the Oregon country was far from Washington, and was of slight commercial interest to the East. Its boundaries seemed of no moment, as probably population would not reach the country for centuries. The treaty of 1846 with England,† fixing the boundary along the forty-ninth parallel, did not provoke great public interest. This treaty settled the northwestern boundary as far as Puget Sound. On the 2d of February, two years later, by the treaty of Guadalupe-Hidalgo,‡ the boundaries of the purchase from Mexico were established. Thus, by the middle of the century democracy in America was in possession of the heart of the continent from ocean to ocean, from the great lakes to the Rio Grande. Florida was out of the lines of migration. Immigrants in the North were passing into Michigan, Illinois, Wisconsin, and Iowa; in the South the tide flowed into Texas. As an inducement to settle in Florida, Congress § now offered a quarter of a section of land to any person, being the head of a family or a single man over eighteen years of age, able to bear arms, who, within a year, would settle in East Florida. The population of the Territory had doubled in twenty years, but was still small.‖

* Treaties and Conventions, 931–3. † *Id.*, 438–9.
‡ *Id.*, 681–694. § Act of August 4, 1842.
‖ Population, 1830, 34,730; 1840, 54,477; 1850, 87,445.

The effect of the act was immediate. In ten years population increased over thirty thousand. The rush of settlers caused numberless land disputes, so that Congress found it necessary to revise the late act. As early as 1838* a convention had assembled at St. Joseph's and formed a constitution, but seven years passed before Congress passed an enabling act.† It applied alike to Florida and Iowa, and admitted both States. But Iowa, dissatisfied with the boundaries imposed by the act, refused to enter the Union with them. Congress passed a supplementary act on the same day relative to Iowa, and in the following year,‡ in a third act, again defined the boundaries and referred the boundary dispute between it and Missouri to the Supreme Court. This act made the usual grant of lands for schools, public buildings, and internal improvements, and admitted the State on the 28th of December.§ On the 1st of March, 1845, the popular clamor for the reannexation of Texas was satisfied by a joint resolution of Congress, which remains unique in our history. Texas was not asked to adopt a constitution in conformity with that of the United States. The condition imposed by Congress was the submission to it of all questions of boundaries. A State constitution should be made, and, with evidence

* December 3d. † March 3, 1845. ‡ August 4, 1846.

§ See journal of this convention, held May 4–19, 1846; Iowa City, 1846. Also, the Documentary Material Relating to the History of Iowa, edited by Benjamin F. Shambaugh, Nos. i.–viii.; published by the State Historical Society of Iowa.

of its adoption, should be sent to the President, to be laid before Congress by the 1st of January, 1846. The United States should not be charged with the liabilities of the late republic. It retained its public lands. With its consent, four States, or less, might be formed out of its domain and be entitled to admission into the Union. All formed south of the line of the Missouri Compromise should be admitted with or without slavery as the people of each State should decide. North of the line slavery was prohibited.

On the 4th of July, 1845, a convention met at Austin, and completed a State constitution late in August.* It was submitted to popular vote and ratified.† The vote bore small ratio to the population. At this time there were upwards of fifty thousand men in the State, most of whom were slaves. Many, especially the native Mexi-

* August 27th.

† Four thousand one hundred and seventy-four to three hundred and twelve. See the following works relating to this subject: The Constitution of the Republic of Mexico and of the State of Coahuila and Texas, containing also an abridgment of the Laws of the General and State Governments relating to Colonization, with Sundry other Laws and Documents, not before published, particularly relating to Coahuila and Texas, the Documents relating to the Galveston Bay and Texas Land Company; the Grants to Messrs. Wilson and Exter, and to Colonel John Dominguez. With a description of the soil, climate, productions, local and commercial advantages of that interesting country. New York, 1832. Journal of the Convention, October 16 to November 14, 1835; Houston, 1838. Journal of the General Council of the Republic of Texas, November 14, 1835, to March 11, 1836; Houston, 1839. Journal of the Convention of July 4 to August 28, 1845; Austin, 1845. Debates of same, W. F. Weeks, reporter; Houston, 1846.

cans, did not vote. It was the American party that made the constitution and carried it through. It was this party that, from first to last, effected reannexation. Congress accepted the constitution, extended the laws of the United States over Texas, and admitted it by joint resolution.*

Wisconsin was now asking admission. Congress passed the requisite act in August,† and on the 15th of October a convention assembled at Madison. Its work was rejected by the electors, and another convention assembled at the same place late in the following year.‡ The constitution it submitted was approved by the electors in March and by Congress in May.§ In ten years the population of Wisconsin increased from thirty thousand to three hundred thousand.‖

California comprised the greater part of the Mexican acquisition, for by that name the country from Texas to the Pacific was known in the East. Congress extended the revenue laws over it, and made San Francisco a port of entry.¶ Violations of law were to be prosecuted in the Supreme Court of Oregon, or in the District Court of Louisiana.

* December 29th. † August 6, 1846.

‡ See Journal of the Convention to Form a Constitution for the State of Wisconsin, Begun and Held at Madison, on the Fifth day of October, One Thousand Eight Hundred and Forty-six; Madison, W. T., 1847. Also, Journal of the Convention to Form a Constitution for the State of Wisconsin, with a Sketch of the Debates, Begun and Held at Madison, on the Fifteenth day of December, Eighteen Hundred and Forty-seven; Madison, W. T., 1848. § The State was admitted May 29, 1847.

‖ Population, 1840, 30,945; 1850, 305,391.

¶ Act of March 3, 1849.

Vermont, Kentucky, and Tennessee had never been organized as Territories. Texas and California were to be similar exceptions. As soon as news of the discovery of gold in California spread abroad, all the world set its face towards the gold-diggings. While Congress was debating whether California should be organized as a Territory, more than two hundred thousand men had arrived on the coast and were transforming it into a State. Their civil necessities quickly outran the performance of Congress. A convention assembled at Monterey* on the 1st of September, and its work was approved by the electors in November. A year and nine days after the convention met Congress admitted the State—the thirty-first in the Union. It came in as free soil. The balance of power between the States was broken. Public opinion again found expression in the resolutions of the State Legislatures—some favoring, some opposing the further extension of slavery. Its restriction was viewed with alarm by the slave-holding States, and their expostulatory resolutions sounded a cry for a Southern convention. Some slave-holding States made provisions for military protection. The doctrine of '98 seemed on the point of being put to practical test.†

An act creating the Territory of Minnesota pass-

* See Report of the Debates in the Convention of California on the Formation of the State Constitution, in September and October, 1849. By J. Ross Browne. Washington: Printed by John T. Towers, 1850. See also Vol. ii., Chapters x., xi., xii.

† See note, pp. 340 *et seq.*

ed early in March.* Congress limited the franchise to free white men, and followed the Territorial precedents of the Northwest. As Minnesota was organized out of Wisconsin, the laws of the latter were continued in force as far as was consistent with the recent act. The new Territory contained about six thousand people,† and was divided into nine counties. Oregon had been a theme for debate in Congress, more or less, for twenty years. It was too far away to awaken much popular interest, and no man's seat in Congress depended upon his advocacy of its claims. Immigrants were arriving in large numbers, and were demanding a Territorial government. National parties made Oregon the substance of planks in their platforms, but these did not make a passable road to Astoria. Finally, Congress erected the country into a Territory,‡ providing also that it might be subdivided into two Territories. The model followed was that of Minnesota. Only white men could vote or hold office. The act contained a new provision, that recalled the panic of '37—the Territorial Legislature was forbidden to incorporate a bank, or to grant any institution banking powers, or to pledge the credit of the Territory for any loan. Nor could it give any privilege of making or circulating bank-bills, or bills of exchange, or anything like them. This indicated that the lessons of '37 were not forgotten. Another lesson calling for reform, too, was remembered: henceforth

* March 3, 1849.

† Population, 1850, 6077.

‡ Act of August 14, 1848.

every law must embrace but one object, which must be expressed in its title. This was an early attempt to stop the evil of including vicious legislation under the phrase of the title "and for other purposes." A provision of local importance forbade the obstruction of streams that would prevent the salmon from passing up and down them freely. The antislavery provision of the Ordinance of 1787 was imposed upon the Territory, thus making it free soil forever. Two years earlier* the joint occupation of the country had, by resolution of Congress, come to an end. An appropriation was made for a military station on the line of communication to Oregon, and, to encourage immigration, the Secretary of War was authorized† to furnish all applicants who designed to emigrate to Oregon, California, and New Mexico with such arms, munitions, and stores as might be required. The treaty of 1846 settled all controversy with Great Britain respecting title to the country.

On the day when California was admitted the northwestern boundary of Texas was settled; Texas ceded a large region of country to the United States for ten million five per cent. stock, and Congress organized the Territories of New Mexico‡ and Utah.§ The franchise was limited, as usual, to white men. In New Mexico the white population clustered about a few old Spanish towns; in Utah it comprised the new Mormon settlements at Salt Lake. By the organiza-

* April 27, 1846.
† March 2, 1849.
‡ Population, 1850, 61,547.
§ Population, 1850, 11,380.

tion of Utah and New Mexico the last link of local civil government between Maine and California was completed. Except the unorganized Indian country, every foot of American soil was now subject to the law of State or Territory. Of States there were thirty-one; of Territories, five. The line of the Missouri Compromise divided the public domain into free and slave soil. Geographically, the division was equal, except the southern part of California. This extended below the line.

Three-quarters of a century had now passed since the Declaration of Independence. Population had increased from two and a half to twenty-three millions, and the public domain from less than nine hundred thousand to nearly three million square miles. During this time the centre of population had moved westward nearly four miles, on an average, each year. The frontier had reached the Pacific, but in the middle of the continent there lay a wilderness, more than a thousand miles wide, whose eastern edge was in Iowa, whose western was at the Nevada mountains. The ceaseless tide of immigration had reached the Indian tribes, had surrounded their best lands, had extinguished their titles, and had compelled them to migrate into the Indian country. About the middle of the century the white man and the Indian stood face to face in the centre of the continent, disputing for its sovereignty. The history of the tribes east of the great river during the first half of the century was to be repeated west of it

during the second half. No political party had raised a voice for the Indian, and but one State had made it possible for him to become an American citizen.*

Within a few years foreigners had begun to arrive in large numbers.† Nine-tenths of the population were, however, native-born; yet the number of foreigners in the country was nearly equal to its population at the outbreak of the Revolution. Native-Americanism discriminated against the foreigner, but its force was impotent, except in the slave-holding States.‡ It followed that the Northern States and Territories profited by their coming, and in the Northwest there was rivalry among the States to make them welcome.§ Gradually some parts of the West, as in Wisconsin, came to consist largely of foreign settlements. The laws were printed in German in several States, and newspapers in the language of the new-comers began to appear. The Irish did not go West. They preferred the cities and towns of the East, but many of them found temporary employment on the railroads and canals in course of construction all over the North. Their sons were sent to school, and the next generation of Americans included them among its successful merchants, doctors, law-

* Wisconsin, constitution of 1848, Art. iii., Sec. 1.

† Since 1841.

‡ See the debates in the Louisiana Convention of 1845, in the Kentucky Convention of 1849, and in the Virginia and Maryland conventions of 1850.

§ See the Wisconsin Convention debates of 1847 and the debates in the Convention of Michigan in 1850.

yers, preachers, and politicians. The Germans wanted farms, and therefore they passed westward, locating all the way from New York to Iowa. Canadian immigrants located near the great lakes engaged in farming, and, to a larger extent, in milling and in starting great lumber industries. A few Englishmen and Scotchmen settled in the South, became prosperous planters and earnest advocates of slavery. Their sons usually entered politics and became highly influential. The Irish, the Germans, the Scandinavians, and the Canadians sedulously avoided slave soil. They were men who had to work for a living.

The number of cities containing eight thousand people, like the urban population, had doubled in ten years. New York, the largest city in the country, contained a little over five hundred thousand people.* No longer was the increase in city population limited to the Atlantic seaboard. The large towns in Ohio—Cleveland, Akron, Columbus, Dayton, Cincinnati; in Indiana—Fort Wayne, Indianapolis; in Michigan, Detroit; in Wisconsin, Milwaukee; in Illinois — Chicago, Joliet, Peoria, Quincy; in Iowa—Dubuque, Burlington; in Missouri, St. Louis and Kansas City—were gaining more rapidly than the towns of the East. They were fast becoming manufacturing centres, and around them lay rich farms and near them prosperous villages. In these the conspicuous buildings were the school-house and the churches; and in the

* In 1850, 515,547.

larger towns, these and the factories. The houses in the West were generally of wood. In the East, brick and stone had been commonly used since the country was settled. Throughout the North, in the New England and New York belt, the dwelling-houses were usually of the New England style, built of wood, painted white, with green blinds. In the South, the richer planters lived in commodious mansions, whose architecture would now be called colonial. Both North and South abounded in log-houses and unpainted one-story cabins.

Wealth was the dispenser of social rank; less was made of ancestral distinctions than now. It was a new country, and the most populous centres were not two hours' travel from wild lands or primeval forests. Few homes had the luxuries now common. If there were rugs or carpets, they were mostly home-made. Rarely were there pictures or that miscellaneous collection of ornaments we call bric-à-brac. Wall-paper was a luxury. Organs and pianos were almost unknown. To own a melodeon or a dulcimer was evidence of wealth and elegance; to play either gave distinction. Rarely did a church have an organ, but the leader of the choir had a tuning-fork. As yet no church was struggling over the question whether to call a minister or to buy a pipe-organ. Churches were usually built by local carpenters, who donated their work. These buildings were barren of ornamentation, were never elegant, and rarely comfortable. The building was one vast room, planned to contain the preacher and his listeners. The early churches

were not heated. With prosperity came huge box-stoves, long enough to burn four-foot wood. Usually the stoves were set near the doors, in a location conveniently accessible to the wood-pile. The sinuous stove-pipe ran near the ceiling, the full length of the church. Forests were consumed, but a church was rarely warm. There were no separate rooms or adjoining buildings for Sunday-schools or church entertainments. Indeed, except the too-frequent lottery, by means of which the church was built or the minister paid, church entertainments were quite unknown. In summer-time, betwixt haying and harvest, or in the autumn, after the harvest was gathered, here and there over the country might be heard the voices of great camp-meetings. About the time when Lincoln was first a candidate for the Assembly these meetings were religious caravansaries. Gradually the Presbyterians, who seem to have originated them, abandoned them to the Baptists and Methodists. In many parts of the country they were relied on as the only practicable method of bringing the people together for religious worship. They were attended, not infrequently, by all the population within a circuit of fifty miles. Amid profound and irrepressible excitement sermons were preached which strongly moved the listeners, and which lingered long in the memory as events of a lifetime.

Some of us who remember in our school-readers William Wirt's touching description of the blind preacher may have wondered in our mature years whether that majestic figure which Wirt drew

existed only in his fancy. But as we retrace the century and revisit its eventful scenes, we hear and see many such leaders of the flock as Wirt describes—earnest, trustful, eloquent men, now forgotten, like the multitudes who gladly heard them. Not Congress alone; not Presidents and courts and Governors and Legislatures; not orators like Henry and Ames, Webster and Clay; not inventors like Fulton and Goodyear and Morse and Singer; not the poets and the historians and the journalists—but also the rural preachers, the circuit-riders, the faithful priest, the voices crying in the wilderness—these moulded democracy in America. All these pass before us as we go back to the days of small things, the gray days of work and pioneering.

At the middle of the nineteenth century democracy in America was encumbered with more slaves than the entire population numbered on that April day when Washington became President. Scattered over the land were more than four hundred and thirty thousand* free persons of color, everywhere unwelcome. Slave property in the border States was becoming insecure and the black code yearly more severe. The constitutions and laws of the Southern States were gradually making emancipation impossible. Few Northern people migrated to the South for permanent homes; fewer Southern people sought homes in the North. The Union consisted of two peoples, separated by a compromise boundary. They did not know one

* 434,495.

another well. Far in the West lay one State whose composite people had recently made a constitution which contained both Northern and Southern elements. California was free soil, and the men who made its constitution and laws represented by birth nearly every State in the Union. Was this State, that broke the balance of power in the Union, indicative of the goal to which democracy in America was tending? Free labor had made this State and won its admission, for it would not compete with slavery in the gold-mines.

CHAPTER XII

A PEOPLE WITHOUT A COUNTRY

Every nation in history, at some period of its career, has been an oppressor. The oppressed have not infrequently been as numerous as the oppressors, sometimes more numerous. Usually the relation between the two groups is that of master and slave, but the slave, being property, is protected by the law of things.* As a human being he has few rights, or none. As property he must have an owner, and be answerable, as assets. By law he may be real or personal property. Slave codes, in whatever nation, guard him as long as he is productive or profitable, but their dominant purpose is to prevent him from exercising the rights of man. He is denied every right except the right of things. He must be owned, but cannot own; he must be protected, but cannot protect himself; he must support the State, but cannot participate in its organization or control. He must be known, but cannot be taught. He has no rights; another has rights in him, to him, over him. Only by custom can a slave be called he or she. Property is impersonal.

* The principal authorities for this chapter are the colonial laws and the laws of the several States on the subject, from 1800 to 1850.

But man makes the law for man; property the law for property. In spite of the law of things, slaves have always tended to come under the law of persons. The affection of the master, or some great personal or public service done by the slave, might work emancipation. Or a person of the same race as the slave might not be a slave in another country. Thus inheriting a man's rights, his descendants would be freemen.

Democracy in America, during the first century of independence, exhibited the anomaly of being slavocracy. Its excuse was the common one of the heir-at-law; its real defence was the lust and the enjoyment of riches and power. In some form slavery existed in every colony, though it ceased first in those of the North, and chiefly on account of the climate. Had the sunny, semi-tropical climate of Florida and South Carolina extended over New England, the abolition of slavery would have been advocated farther north. Even our morality is much a matter of latitude.

Not until the eighteenth century was nearly past did the people of New England,* New York, Pennsylvania, and New Jersey arrive at the conclusion that slavery was unprofitable. Then they provided for its gradual abolition. Their morality

* In Rhode Island, negroes born after 1784 were free; in Connecticut, after 1797—slavery abolished, June 12, 1848. Slavery was abolished by the constitution of Vermont, 1777; of Massachusetts, 1780; of New Hampshire, 1783. Gradual abolition was effected, by statute, in Pennsylvania, 1780; New York, 1799; New Jersey, 1804. In New York, by act of 1817, slavery was abolished after July 4, 1827.

sustained them during this trial, just as the morality of people in States farther south sustained them, at the same time, in making their slave codes more severe and their laws permitting emancipation less liberal.

Until the adoption of the national Constitution the slave was not a political factor in American democracy. The "federal number," as the "three-fifths" clause was called, combined economics and politics. Climate forbade African slavery in the Northern States, and it there ceased to be an economical before it became a political element. Had it not been abolished in the North it would hardly have gained importance as a federal factor. Men may outwit a constitution; they cannot resist climate. In the year when the Constitution went into operation there were nearly sixty thousand free persons of color* and nearly seven hundred thousand† slaves in the country. A little more than one-twentieth of the slaves were in Northern States;‡ about three-fifths§ of the free persons of color were in the South, and of these fully three-fourths were in Delaware, Maryland, and Virginia. The right to emancipate a slave was incident to the right of property, but the exercise of the right involved questions of public policy. Was it public policy to encourage

* 1790—59,527. † 1790—697,681.

‡ New Hampshire, 158; Rhode Island, 948; Connecticut, 2764; Pennsylvania, 3737; New Jersey, 11,423; New York, 21,324.

§ Kentucky, 114; Tennessee, 361; Georgia, 398; South Carolina, 1801; Delaware, 3899; North Carolina, 4975; Maryland, 8043; Virginia, 12,866.

it? Was it public policy to restrict it? Could the emancipator be allowed to endanger other property by emancipating his own? But could he not emancipate his own? He could sell it, exchange it, bequeath it, mortgage it, lend it, nourish it, starve it, and in some cases put it to death and not be indictable for homicide.

Obviously, in a slave-holding State a free negro was an anomaly. Public policy made his presence unlawful, and went as far as prudence dare to make it impossible. The question of emancipation was sure to come to the front whenever a slave-holding State should meet in convention to make a new constitution. But slight record remains of the debates on this question till after 1840, although as the half-century closed it was exhaustively discussed in Kentucky, in Maryland, and in Virginia. There the result of the discussion was inevitable. As slave property in a border state was insecure, public policy dictated that everything be done to make it safer. Should emancipation be permitted? Should the Legislature be forbidden by the constitution to allow the cessation of the relation of master and slave? Yet how could the restriction be imposed if a slave was lawful property? May a man not do as he wills with his own? The result of the struggle was a compromise, as in Virginia in 1850,* which forbade the Legislature to emancipate slaves, but, at discretion, it could impose re-

* Constitution, 1850, Art. iv., Secs. 20, 21.

strictions on the power of slave-owners to do so. Public opinion did the rest. This may be said to have been the attitude of slave-holding States towards the question of emancipation in the middle of the century.

Free negroes, at the opening of the century, were in much the same plight all over the country. New Hampshire excluded them from the militia by law,* and every other State, either by law or by the constitution. Massachusetts compelled them to report for militia duty, under heavy penalty, but assigned them to menial duties about the officers' quarters.† Occasionally their natural love of music, and their capacity to produce it, found them a more favored service as drummers or trumpeters. In 1788‡ Massachusetts forbade Africans to tarry in the State longer than two months, under penalty of hard labor. Exception was made for the citizens of Morocco, with whose Emperor a treaty existed, but none was ever known to immigrate to Massachusetts from that country. When the nineteenth century began, the act of 1703 was still in force in this State, requiring the emancipator of a slave to give fifty pounds security to the town treasurer, to prevent the enfranchised from becoming a public charge. In other States the amount varied, but the general character of this law remained.

On every side the free negro encountered degrading restrictions. His certificate of emancipation must be registered and his own copy be signed

* Act of December 28, 1792.

† Laws of 1699, p. 309.

‡ March 26th.

by two justices of the peace.* Without the copy he could not remain in the county, nor travel out of it, under penalty of fine, imprisonment, or, often, of being claimed or sold as a slave.† Registration of the certificate was, however, seldom required, for obvious reasons. The free negro, like the slave, was rarely able to read or write, and as his habits were not those of an intelligent white, he was not accustomed to the care of papers. His certificate was easily lost, or stolen and destroyed. Unable, then, to prove his emancipation, he was forced back into slavery. If his case reached a court of justice, he could not be a witness, for no negro or mulatto, free or slave, could give evidence in a case in which a white man was a party.‡ Thus it followed that all over the country free negroes were constantly being seized as slaves.

Their migration early became the subject of cruel laws. If emancipated, they must leave the State within a prescribed time, usually not over three months. But whither could they go? Every man's hand was against them. If they went to another State, they would be arrested, examined, fined, imprisoned. On discharge, if caught within thirty days, they would be condemned to hard labor for life, or to be sold as slaves.§ Every State,

* New Jersey, act of 1838. Ohio, acts of January 5, 1804, and February 27, 1834. Illinois, act of March 30, 1819.

† New Jersey, acts of 1838, *Elmer's Digest;* Georgia, December 26, 1835; Louisiana, March 16, 1842.

‡ Acts of Ohio, January 25, 1807; Indiana, January 28, 1818; Maryland, December 31, 1801.

§ Kentucky, acts of February 14, 1846; March 24, 1851.

slave or free, objected to their coming.* If near slaves, the free negro might excite an insurrection; if among whites, it was said he was sure to become a vagrant and a criminal. Did not the reports of prisons and penitentiaries prove that more crimes were committed by negroes than by whites, in proportion to the numbers of the two races? Possibly, was the reply; but the negro is not wholly to blame. What can be expected of a people whom it is a penal offence to teach even to read? Throughout the broad land were tens of thousands of schoolhouses, yet no negro dare enter one, nor would any school dare to admit him, unless it be one kept by some fanatical Abolitionist. Very proper, all this; for the free negro for ages has proved his incapacity to learn. Point to one negro, in all history, who was a scholar or an artist, a painter or a poet. God intended him to serve others, and gave him a black skin to mark him and his descendants forever as the inferior race. Therefore,

* See acts of the following Legislatures concerning this subject: Ohio, act of January 25, 1807; excluded from the census by act of January 28, 1817. Illinois, act of March 30, 1819. The act of Delaware, January 25, 1811, forbade them to enter the State, subject to a fine of ten dollars a week for remaining, or to be imprisoned and sold. Acts of February 16, 1849, and March 5, 1851. Acts of Maryland, 1806; March 14, 1832; December, 1829. Acts of South Carolina, December 20, 1800; December 20, 1825; December 19, 1835; December 18, 1844. Acts of Kentucky, February 23, 1808; February 24, 1846; made a felony by act of March 24, 1851. Acts of Tennessee, December 16, 1831; December 21, 1851. Mississippi, acts of June 18, 1822; December 20, 1831; February 26, 1842. Arkansas, act of January 20, 1843. The qualifying act of Missouri, of January 7, 1825, and the excluding act of February 16, 1846.

let the free negro—the worst of all negroes—go elsewhere; forbid his coming into this State, and, if he persists in coming, make an example of him.

It is rather curious that debates of this kind were heard oftener and at greater length in the free States—as in New York, in 1821, when the constitutional convention was discussing whether to limit the suffrage to white men; in 1838, in Pennsylvania; again in New York in 1846; in Iowa in the same year; in Illinois and Wisconsin in 1848; and in Ohio in 1850. No Southern Legislature or convention before 1868 ever debated the extension of the suffrage to the negro, save Tennessee in 1834 and North Carolina in 1835, which discussed the abrogation of his right to vote under their first constitutions. It was bad enough to suffer an occasional case of emancipation. To a Southerner living before the war negro suffrage was fanaticism.

Yet the number of free negroes increased, and, strange to say, quite regularly. For every one in the country in 1790 (59,527)* there were two in 1800 (108,435), three in 1810 (186,446), four in 1820 (233,634), five in 1830 (319,599), six in 1840 (386,293), and seven in 1850 (434,495). This was a greater rate of increase than that of the white population, which, on the basis of the number in 1790 (3,172,006), was one and one-third in 1800 (4,306,446), one and two-thirds in 1810 (5,862,063), two and one-third in 1820 (7,862,166), three and one-third in 1830 (10,537,378), four and one-third

* These figures are taken from table i., ninth census, 1790–1870, pp. 4–6.

in 1840 (14,195,805), and nearly six and one-third in 1850 (19,553,068). It was a higher rate also than that of the slave, which, as compared with the number in 1790 (697,681), increased one and one-third by 1800 (893,602), one and five-sixths by 1810 (1,191,362), two and one-half by 1820 (1,538,022), three and one-third by 1830 (2,009,043), three and five-ninths by 1840 (2,487,355), and four and five-eighths by 1850 (3,204,313).

Yet, with the increase of free negroes the laws and public sentiment against them became more and more hostile. Emancipation in some States was regulated, practically, by a jury, and in nearly all was limited to persons in middle life who were fully capable of taking care of themselves.* Virginia, in 1836, appropriated eighteen thousand dollars to remove them from the State.† Various schemes were proposed to secure a place of deposit. Colonization in Liberia and Africa was the favorite, but the free negro showed slight desire to be returned to the Dark Continent.‡ From first to last African colonization was a failure. Might not the Pacific coast offer a retreat?§ It was too

* Acts of Louisiana, January 31, 1827; Civil Code, Art. 185. North Carolina, act of 1837 (Iredell and Battles' Revised Statutes, p. 585). Forbidden by South Carolina, act of December 17, 1841. Tennessee, acts of November 13, 1801; February 5, 1842.

† Act of March 23d.

‡ Tennessee, act of November 26, 1833, authorized the State treasurer to pay ten dollars for each negro who was removed to Africa by the Colonization Society. The joint resolution of the New Jersey Legislature, December 30, 1824, favoring colonization is typical of the attitude of the States towards free negroes.

§ Act of Virginia, December 23, 1816.

far away to be neighbor to any of the States; yet it belonged to them. Why not remove the free black to the Oregon country? Like other impracticable schemes, this failed, and the States were left free to dragoon the unfortunates into migrating—somewhere.

The result was the steady drift of this human flotsam and jetsam into the free States, and specially those along the border. From the Delaware to the Mississippi the outcry against negro invasion was heard for twenty years. So, too, in Louisiana, when, towards the close of the civil war, it was proposed to put the right to vote within reach of those negroes who, in the opinion of the Legislature, might with safety to the State be intrusted with it on account of military service, the payment of taxes, or intellectual fitness.*

Every slave-holding community from the dawn of history has lived in constant fear of a servile insurrection. The Spartans solved the problem by a periodical slaughter of their slaves. The Romans attempted to solve it by making the slave-owners individually responsible for the safety of the State, and to this end the master's will was made law. Between him and his slave the distance was measured by no human tribunal.

American democracy was no exception. Its Southern portion lived in fear of an uprising. Against this every provision of the black code was aimed. In substance the plan was simple enough—

* Constitution of 1864, Title iii., Art. 15.

to keep the slave an animal and to deprive him of all means of self-defence. It became necessary to include the free negro in that plan. He, too, was forbidden to carry arms without the consent of a number of slave-holders.* To teach him was an offence punishable by heavy fines.† Free negroes could not assemble for any purpose between sunset and sunrise, nor at other times for religious purposes unless in the presence of at least five slave-holders.‡ The preacher must not sow sedition. In brief, free negroes were put under the same police regulations as slaves.§

In many respects they were worse off, because the slave was property, and enjoyed the stern protection that property always receives. The free negro could neither protect himself nor, in many cases, find protection in the law. Persecution drove many to select a master and live as slaves —who, at least, had food, clothing, a cabin, and a protector. The ceaseless persecution of an exquisite system concentrated its torments upon this people without a country. They could not buy from a slave nor sell to one, nor be found in slave quarters.‖ No slave or free negro could lawfully

* The Delaware act of 1806 forbade him to keep a dog or a gun; that of February 10, 1832, forbade him fire-arms; North Carolina, act of January 11, 1841.

† Missouri, act of February 16, 1846; Virginia, act of April 7, 1831; if leaving the State to be educated, they were not permitted to return, by act of April 7, 1838.

‡ Virginia, act of March 15, 1832; South Carolina, act of December 20, 1800. § Georgia, act of December 7, 1807.

‖ North Carolina, acts of January 1, 8, 9, 1845; Georgia, act of December 21, 1839; Alabama, act of January 16, 1832.

administer medicine.* If a free negro sought to learn a trade, no one dare teach him. If a person hired one as a mason or a carpenter, the penalty was a fine of two hundred dollars.†

There remained but one avenue of escape, and this led out into the wilderness. On a piece of abandoned land the free negro built his wretched hut, a strange, pitiful combination of savagery and civilization. How he existed he alone knew. Whether in the North or in the South, he dwelt apart from men, like the leper in Israel. Every offence committed in the region was attributed to him. If he raised a crop, the owner of the land compelled him to move on. If his chicken-yard prospered, his increase was at once attributed to the robbing of some white man's roost. Nothing good was credited to him. His children grew up wild. No teacher dare show them a book or teach them a letter. As they straightened their bandy-legs and shot up from infancy, they fished and stole and became the scavengers of the district. A selfish or pitying soul might take them to service, but with the almost inevitable result of finding them utterly untrustworthy, worse than slaves, and fit only for the whipping-post. Often they married slaves, and thus drifted back to the condition of their ancestors and stamped it upon their posterity.

Towards the close of the half-century, many

* Virginia, act of January 28, 1843.

† Georgia, act of December 27, 1845; Alabama, act of January 16, 1832.

free negroes were in service on the sailing-vessels and steamers plying in the Atlantic coast-trade and down the Ohio and Mississippi. Their condition was far better than that of most of their race. But as soon as the vessel came into a Southern port the process of persecution began. Black freemen ran the vessel and brought it to the dock. There, black slaves, often under the whip, handled the cargo. The contrast did not require much education in the slave to bring his mind to a conclusion. A servile insurrection quickly overwhelmed his neglected soul. Escape, be free, be a man, be clothed, be fed, be paid, and be like those of his race before his eyes! He could not withstand the temptation. He planned escape. A free negro was ever at hand as a confederate. The slave was secreted on board. He often came North concealed in a bale of cotton, or even nailed in a box. Helpless, half dead with fear, he had been tumbled into the hold. But the long voyage was towards the north star. What agonies he endured of hunger, cold, and thirst, or the more fearful fate of being stood on his head in the accident of stowing away the cargo!

Few escaped, but hundreds wanted to; therefore the laws respecting free negroes on vessels were increased in severity. Florida, in 1849,* forbade vessels having free negro crews to anchor nearer than five miles to the city of Appalachicola.† Seven years before Louisiana had forbidden free

* January 13th.

† South Carolina, act of December 20, 1825.

negroes to come in on any boat.* If found on shore, they were at once to be put in jail till the boat left port. On the arrival of a vessel with a crew of free negroes, the harbor-master informed some justice of the peace, who was alert to have proper warrants ready.† If one of the free negroes returned, he was liable to imprisonment for five years. Thirty days after his discharge, if found in the State, he would be imprisoned at hard labor for life. A fine of a thousand dollars was imposed on the person who carried a slave to a free State.

As negroes look much alike, a free negro might easily be claimed as a slave. The North accused the South of selling free negroes into slavery under pretence that they were runaway slaves. The South accused the North of carrying away slaves as free negroes. Complaints by individuals easily became the ground of general accusations. Truth, and also violations of law, existed on both sides. As soon as the sacred realm of law was invaded, Governors and legislators roused up, not so much to repel the invaders as to defy one another. The Governors of several Northern States refused to deliver up certain runaway slaves as fugitives from justice. The Governors of several Southern States refused to deliver up certain free negroes who had been seized as slaves. Long and learned were the references to precedents—legislative, constitutional, historical, and judicial. Longer, and no less learned, were the resolutions

* Act of March 16th.

† Louisiana, act of March 16, 1842.

passed by contending Legislatures, and all with one, and only one, result—each party was the more convinced that he was right. Legislation recriminative in character followed. In the North it was popularly called the personal liberty bills;* in the South it was entitled acts for the further protection of slave property, and for other purposes. The legislative contest began about 1835 and increased in vehemence till the end came—thirty years later.†

The case of the slave "Isaac," the property of one Colley, a citizen of Virginia, renewed the contest.‡ He had been conveyed to New York in a vessel that ran regularly between the two States. Governor Seward refused to return him as a fugitive from justice, on the ground that, as slavery was contrary to the law of nations, the State of New York was under no obligation to deliver him up to the State of Virginia. Virginia replied that the case did not arise under the law of nations, but under a provision of the Constitution of the United States. Nor was it an ordinary provision, but one resulting from a compromise on the making and support of which the existence of the Union depended.

It was not long before other slave-holding States

* New York, May 18, 1840; see Virginia, act of March 18, 1841, passed as a rejoinder; also, act of March 27, 1843.

† See Louisiana resolutions of March 16, 1842; Georgia resolutions (in reply to the Massachusetts General Court), December 28, 1842; also of December 25, 1843.

‡ See Virginia resolutions *in re*, March 17, 1840; also, the resolutions of the New York Assembly *in re*, April 11, 1842.

fell into line with Virginia. Resolution after resolution appeared, and threats of disunion were freely and formally made.

The Missouri Compromise was effected at last when that State, by a solemn public act, promised not to exclude free negroes and mulattoes who were citizens of any State. In the year of this promise, 1821, New York revised her constitution and extended to free negroes the right to vote.* This provision was in substance like the act of 1815 respecting such persons. Having proved to the Mayor that he was a freeman and a freeholder having real estate worth twenty pounds, or that he was a tenant paying a rent of forty shillings annually, and also paying a State tax, the free negro in New York City, in 1815, was entitled to receive a certificate from the Recorder, which entitled him to vote. The constitution of 1821 increased the property qualification to two hundred and fifty dollars, and required him to reside in the State two years longer than a white man, but it opened the right of suffrage to him. This provision by New York proved in time to be of far greater importance than the Missouri Compromise. It forced the issue on which the Union depended. It was the right of New York, as of every State, to prescribe qualifications for its citizens. In 1846 the State repeated the provision in its third constitution. It stood alone among the States. Massachusetts, New

* The first discussion of the extension of the suffrage to negroes occurred in the New York convention of 1821. The chief advocate of the innovation was Rufus King.

Hampshire, and Vermont allowed the free negro to vote, with a more liberal suffrage qualification. Elsewhere in the Union the right to vote was denied him. How was this condition of affairs to be harmonized with the national Constitution, which provides that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States"? Or with the provision requiring the delivery of persons held to service in one State escaping into another. As a negro slave did not differ in appearance from a negro freeman, and as these were increasing in number at the rate of two a day, and as most of them, like ancient Gaul, looked to the North—whither also a stream of fugitive slaves was steadily flowing—it was impossible, under the laws, the constitutions, and the public sentiment of the time, to discriminate always between freeman and slave. The commonwealths were, therefore, in confusion over the question of citizenship.

But Northern sympathy, such as it was, reached out only to the fugitive slave. The free negro was as unwelcome North as South.* He lived on the outskirts of towns and villages — the American Ishmaelite. Every man's hand was against him. Schools existed, but not for him or his children. Men who were conductors on the underground railroad, or who kept its way-stations, were not al-

* Northern sentiment on the subject was typically set forth in the Pennsylvania constitutional convention of 1837. It runs through the thirteen octavo volumes in which the debates of this convention are preserved.

ways anxious to have negro children attending the same schools with their own. Moreover, most of these schools were pay schools, for the free public-school system was not inaugurated until about 1842, and was then planned solely for white children.

Nor did hostility cease with the exclusion of negroes from the rate schools and public schools; it was equally fierce at the prospect of schools for negroes only. Reference need only be made to the indignities heaped upon Prudence Crandall, a member of the Society of Friends, who, in 1832, established a school for young women in Canterbury, Connecticut. She admitted one colored girl, and the phials of public wrath were at once emptied on her head. In town-meeting, her school was declared a public nuisance, for she announced that colored girls might attend. She was insulted, slandered, and persecuted in ways that only Yankee genius could devise. Her house was frequently assaulted, her well was filled with filth. She was boycotted by the neighborhood. And who were her neighbors? Lawyers, doctors, farmers, mechanics, clergymen, and the United States district judge. What horror filled these good people at thought of a negro school right at their doors! She was denied a hearing at town-meeting; nor were her friends, among whom were Arthur Tappan and Rev. Samuel J. May, permitted to speak in her behalf. In spite of concerted opposition and persecution, she opened her school with about twenty pupils. Then local wrath took the form of

law. One of her neighbors carried an act through the Legislature making it a penal offence to establish a school for the instruction of colored persons not inhabitants of Connecticut, or to harbor or board any such persons, without the written consent of the select-men of the town.* When news of its passage reached Canterbury, bells were rung for joy and cannon fired.

On the 27th of June, Miss Crandall was arrested and bound over to appear at the August term of court. Would Connecticut send a woman to jail for daring to teach a negro girl to read? She was placed in a cell just vacated by a murderer. Here she spent one night. In the morning bond was given, and she was free. Her imprisonment wrote the infamous law on the public conscience—if such thing there be—and soon was verified the truth of a later and now famous saying, "The best way to get rid of a bad law is to execute it." She was tried, and the jury brought in a verdict against her. But this was not the end. She again attempted to resume her work, but persecutions redoubled. One midnight her house was attacked by a mob and left a ruin. Then, and not till then, did she abandon her work —the benevolent undertaking of teaching a few negro girls the elements of knowledge, that they might teach free negroes.†

* Act of 1833, in Connecticut Public Statutes, 1835, Title 53, p. 321.

† Wilson's *Rise and Fall of the Slave Power in America*. Vol. i., p. 237.

The attitude of the North towards free people of color became more and more favorable, however, as the designs of slavocracy to extend its power over Texas and California were disclosed. Remonstrance against slavery extension began in 1820, when Missouri sought admission, and was renewed when the question of the reannexation of Texas was proposed—the time of Miss Crandall's persecution in Connecticut. From about this time slave laws became more severe in the South, but the treatment of the free negro in the North became more humane. The changes are illustrated by the laws of Ohio. In 1804 a free negro was required to record his certificate of emancipation in the office of the county clerk. No man could hire one unrecorded. In 1807 the law forbade any negro to settle in the State without giving bond for five hundred dollars to the county clerk. A free negro could not give testimony when one party was white. By the act of 1829 negroes were specially prohibited from attending free white schools in Cincinnati. Taxes paid by negroes were to be expended, at the discretion of the school trustees, for the education of black children, but they were not taxed for the support of the schools for whites. At this time a black man could not gain a legal settlement in the State. Ten years passed, and an elaborate fugitive-slave law was enacted, "to secure the protection pledged by the Constitution to the South." It was on the statute-books only four years and then repealed. Ohio was becoming slightly antislavery. Its Legis-

lature sent forth a joint resolution in 1847 favoring the exclusion of slavery from Oregon, and one in the next year demanding its exclusion from whatever territory might be acquired from Mexico. It claimed that Congress had power to do this. In 1849* the Legislature sent forth a truly penitent resolution. As free persons of color had long been degraded and oppressed, Congress ought to give each of them eighty acres of land in some part of Mexico, set apart for these people without a country. On the next day the Legislature declared that Congress ought to abolish the slave-trade in the District of Columbia.

That this repentance was genuine was proved, now, by the establishment of separate free schools for them, by the repeal of several discriminating acts,† and, further, by the passage of a law providing, *mirabile dictu*, that when fewer than twenty black children resided in the school-district they might attend the white school, unless objection in writing should be made by a patron of the school or by a voter in the district.‡

About this time the people of the State decided to call a convention to revise the constitution of 1803. It was a liberal-minded body of men in many ways, and its handiwork, completed in March, 1851, continues to be the supreme law of the State; but it limited the suffrage to white men.

* March 23d.

† February 10, 1849, repeal of acts of 1804, 1807, 1834, except the act excluding negroes from service on juries.

‡ See also the act of February 24, 1848.

To extend it to free negroes, as some proposed, was thought both dangerous and degrading. It would convert Ohio into an asylum for free blacks and runaway slaves. But, while the convention was in session, an incident occurred which suddenly sharpened public sentiment. On the 6th of June, 1850, seven children and one grandchild of a free negro woman, named Peyton, were abducted into Kentucky. Nine months later the Legislature instructed the Governor, Reuben Wood, to inquire into the crime and restore the children at the expense of the State.

As the admission of California grew into a national question, the State Legislatures divided—the Northern, like Wisconsin, demanding the extension of the Ordinance of 1787 over it; the Southern, like Alabama, declaring that the State would make common cause with other slave-holding commonwealths for the defence of the institution of slavery, because Congress had no power whatever over it.* Though California came in as free soil, its constitution excluded free persons of color from the franchise and barely missed containing an article

* Resolutions favoring the admission of California and the limitation of slavery were passed by the Legislatures of—Maine, July 27, 1849; New Hampshire, January 4, 1849, July 10, 1846; New York, December 7, 1847, January 13, 1848, January 4, 1849; Ohio, February 25, 1848; Michigan, January 13, 1849, February 23, 1850; Wisconsin, February 8, 1849, June 21, 1848. Counter-resolutions were passed by the Legislatures of—Virginia, January 20, 1849; South Carolina, December 20, 1850; Georgia, February 8, 1850; Florida, January 13, 1849; Texas, February 11, 1850; Alabama, March 6, 1848; Mississippi, March 5, 1850 (the most elaborate report on the subject by a Southern Legislature).

wholly excluding them from the State. Confident that public sentiment would regulate the matter, and that no free negro would travel so far, the proposition was allowed to fall through. The attitude of California towards the free negro, in 1850, was typical of the attitude of the North. As slavery was forbidden there, the free negro was not a subject for legislation. A few soon found their way into the new State, chiefly as stewards on the Pacific passenger-ships and steamers. Gradually they established themselves on shore as servants, barbers, and occasionally as valets, but they did not venture into the mining-camps. Their appearance there would have started a white insurrection.

The story of the struggles of the free negro is a painful one, yet he steadily gained ground during this half-century. This class multiplied so rapidly in Maryland that its presence — some seventy-five thousand — in the State became a most vexatious problem. The number of free negroes fell short of the number of slaves in the State only by fifteen thousand, and the two parts of the black population were within ten years of equality in numbers. The constitutional convention of 1850 was called, largely to solve the problem. It made no provision on the subject other than to forbid the Legislature to abolish the relation of master and slave. An effort was made, though unsuccessful, to incorporate a clause like that in the Virginia constitution of the same year, empowering the Legislature to relieve the common-

wealth of its free negro population "by removal or otherwise."* This was the typical attitude of the South towards the freeman of color. Thus, North or South, he was a man without a country. Though New York at this time contained nearly fifty thousand of this population—which in a State having manhood suffrage would give ten thousand voters—only about one thousand were voters; not so much because they lacked the constitutional qualifications as that they did not dare to vote. Hostility to the negro voter was intensified by foreign immigration. Few Irishmen felt constrained to allow a negro to vote.

As free schools overspread the land, particularly the North, the free negro had to deny himself further. Yellow-fever or the small-pox would not more suddenly and surely break up a school than the presence of a negro pupil. Nor has racial hostility of this kind yet wholly disappeared. In the far North—as in New Hampshire, Vermont, Northern New York, and Michigan—a negro child was somewhat of a curiosity and was suffered to attend school in peace. A Chinese baby or a papoose would have been given the same passing attention. But Northern patience with the free negro's delinquencies was short; perhaps shorter than Southern. Somewhat paradoxically, the abolition sentiment was strongest in the cold parts of Vermont, and the laws enacted against runaway slaves — the black code in general — were

* Virginia, constitution of 1850, Art. iv., Secs. 20, 21.

most terrible in tropical Louisiana. Extremes met in Virginia.

From the border States to the great lakes ran the various branches of the underground railroad. Thousands of fugitive slaves reached Canada over this line. Its management baffled Governors, sheriffs, and constables. The men and women who kept its "stations" were among the most respectable and intelligent in their community. They held slavocracy, and its aiders and abettors, in contempt. They thought it a virtue to break the fugitive-slave law. They were the only people in the North who treated negroes as they treated other men and women. But their work was done in secrecy, often in fear, and under the cover of night; and sometimes, when the fugitive was in sight of safety, the law seized him and thrust him back into slavery.*

* At the mouth of the sixteen-mile creek, in Erie County, Pennsylvania, lived a Whig farmer named Crawford. His house stood in a grove of locust-trees, a few rods from the beach of Lake Erie. He was an agent on the mysterious road, whose frightened dusky passengers were moved at night, secretly, from station to station. One evening in early autumn, at which time the Lake Shore country of to-day is radiant with the odor of the vineyards, and the Virginia creeper hangs in prismatic hues about the trunks of the oak and the fruitful chestnut, a peculiar knock was heard at Crawford's door. There stood a neighbor named Cass, an Englishman who had recently started a woollen mill near by. Mrs. Crawford assured him that the family was alone. He gave a low whistle, and a man timidly came out of the bushes and drew near. He was a fugitive slave from North Carolina. He was kindly received, was given his supper, and put to bed in the spare room. About two o'clock in the morning he was suddenly aroused. Another neighbor, John Glass by name, who had a foundry at the mouth of the creek, had re-

Hostility towards the free black was due in the North principally to racial prejudice. This showed itself in various ways. Negroes were forbidden to learn trades in the South except as their owner

ported danger. The sheriff was in the village about a mile to the south, and in the morning would surely search Crawford's house, for he was known to be an Abolitionist, and was suspected of secreting slaves. The frightened negro begged to be taken at once across the lake, which is here about sixty miles wide. With Canada in sight, must he be dragged back into slavery? The men were in doubt what to do, when Mrs. Crawford suggested that the negro go at once with Glass to his foundry, where he should be stowed in the bottom of a great wagon, be covered with frames and patterns, and be started at once for Erie, sixteen miles away. Glass often made the trip in his business, and, as he always started before daylight, his wagon would not excite suspicion.

As soon as the negro was gone Mrs. Crawford called her eldest son and bade him finish his sleep in the negro's bed. If the sheriff asked him any questions, he could say that he had not seen the negro and he had a bad cough. His younger brother was left in the bed where the two had been sleeping. Early in the morning the sheriff appeared, read his warrant, and began searching the house. He was compelled to be satisfied with the family's explanations, and went away, turning his horse's head towards Erie. Glass had some five hours' start, and was now rapidly approaching the city. He had stopped, as usual with travellers, at the half-way house, where he watered his horses, leaving them for a few moments while he got a hasty breakfast. He was about driving on when a farmer, who lived some miles to the east, now on his way home from Erie, drew up to water his team. He had left Erie about the time Glass had left his home. As it became light enough for him to read, he noticed here and there posted on the trees an offer of a large reward for the capture of one Ned, a runaway slave from North Carolina. The reward was larger than usual.

As he was watering his horses it occurred to him to mention the reward to Glass, and, stepping forward, while talking, his eyes ran over the load of frames and patterns. Quickly he detected the negro beneath them. Knowing that Glass was an Abolitionist, for he himself was an equally ardent pro-slavery Democrat, he at

might consent, for his own purposes.* Usually, on a large plantation, there were carpenters and cobblers and blacksmiths among the slaves, but rarely any one who could do a piece of work requiring skill. In the North no man wanted a negro apprentice, and, except at farm-work in the same field, no man was seen associated with a ne-

once took in the situation. Discreetly concealing his discovery, he jumped into his wagon and started his horses rapidly towards his house and the constable's. Glass, with equal speed, started for Erie, to deliver the negro into the hands of a faithful captain, who could be relied on to take him across the lake. He suspected that the negro had been discovered and that the man would not hesitate to betray him for the reward. Meanwhile, the sheriff was galloping rapidly towards Erie, when he met the informer and the news he was seeking. Quickly agreeing about payment of the reward, he spurred on after the foundryman. Glass had reached the dock and had driven into a shed, where, concealed from public view, the negro was quickly handed over to the captain. He was put into a dory, covered with tarpaulin, and rowed to a little sloop at anchor in the bay. Just as he was climbing on board, the sheriff appeared on the wharf, quickly detected the negro, and soon had him in his possession, chained and manacled. At once the bewildered negro was roughly started towards the South, was returned to his master, and lost in slavery.

The reward, a small fortune for those times, was paid to the informer. Fifty years after the event its incidents were related to me by the woman who so zealously strove to give liberty to the wretched African. With old age had come total blindness, "but," said she, "my sight was not taken away before I was permitted to see slavery abolished. And more—though it is not for me to tell it—the blood-money received for that poor negro brought wretchedness to three generations of the informer's family, and, strange to say, was finally lost in speculating in Southern lands. 'Justice and judgment are the habitation of Thy throne; mercy and truth shall go before Thy face.'"

* By the Georgia act of December 27, 1845, to contract with a free person of color as a mechanic or mason, to erect or repair a building, was punishable by a fine of two hundred dollars.

gro in work. Massachusetts complained, through its Legislature, in 1821,* that free negroes were forced into Northern States, and specially into Massachusetts, where they became a disorderly, indolent, and corrupt population in the larger towns. Yet in these they were excluded from the schools, and from any kind of labor except that of the lowest grade. In New York, and Philadelphia also, the Northern cities in which they were most numerous, they were rigorously excluded from the schools, and as soon as foreign immigration set in and the Irish began to contend for occupation as unskilled laborers, the era of labor riots began, in which public opinion was outrageously on the side of the aggressors.

It is not strange that the North catalogued free negroes as a part of the criminal class.† Nothing else was left to them than to play the part of social outcasts. The Massachusetts House of Representatives expressed Northern opinion in its resolutions against the substitution of free negroes "in occupations which, in the end, it would be more advantageous to have performed by the white native population."‡

The Northern churches, like the Southern, tolerated black skins in the congregation, chiefly because there is no overcrowding on the road to heav-

* Resolution of House of Representatives, June 4, 1821.

† This is brought out in the discussion of negro suffrage in the constitutional conventions of New York in 1821 and 1846; in that of Pennsylvania in 1838.

‡ Resolution of House of Representatives, June 4, 1821.

en, and competition for future rewards does not affect the social standing or the trade or the politics of the world. An ebony face in the gallery was likely to put the missionary spirit of the society into a mild glow, and charity takes pride in reaching the outcasts. It followed that what little comfort the free negro got in the North was chiefly of an ecclesiastical character. His theology was properly attended to. No man could listen to his petition to be allowed to learn a trade or to go to school; but his quaint supplication, encouraged at prayer-meeting, was something of a sensation. His body and mind might be dark, but his soul, it was said, was full of light. Some of the congregation were puzzled how a person who could "wrestle so powerfully in prayer" could be so persistent a thief, so indolent, so useless; but probably it was all in fulfilment of sundry obscure references to Ethiopia in the prophecies. There was some contest among the various churches to enroll the object of so much attention from the prophets. The Sunday-school taught him to read, and thus he found an entrance into a hitherto forbidden world. He came with wife and children, and thus circumvented the State.

Down to 1840 free public schools were not common North or South. No Southern school admitted a negro, and no Northern school welcomed him. As soon, however, as the free-school system was understood by the people, and this may be said to be about 1845, public policy demanded that all the children of the community should be made

welcome.* It is now forgotten that serious, and for a long time successful, opposition was made to common schools. Their establishment was a pub-

* Governor J. W. Dana, of Maine, in his message to the Legislature, March 19, 1847, complains of the lack of public interest in the free schools. Connecticut practically established a common-school system in 1841. New Jersey attempted free schools, on a limited scale, under the act of February 12, 1817. Pennsylvania inaugurated a system by the acts of April 1, 1834, and April 15, 1835, but it did not prosper until the acts of April 11, 1848, and April 7, 1849. Delaware, by acts of January 28 and February 7, 1817, established a fund for the education of poor children. The African School Society of Wilmington was organized under the act of January 20, 1824. North Carolina established a school system by the act of January 11, 1841. In South Carolina, schools for the poor began under the act of December 11, 1811, which was many times amended later; free schools began under the acts of December 19, 1836, and December 17, 1841, especially the latter act. In Georgia a general educational system was inaugurated by the act of December 28, 1838; see also acts of December 19, 1829; December 24, 1837; December 10, 1840. In Missouri, act of 1839. See joint resolution of Florida Legislature, relative to education, December 21, 1846. See free-school act of Louisiana, May 3, 1847; also constitution of 1845, Sec. 135. Kentucky began its school system under the act of January 29, 1830. See Tennessee acts of 1826, 1829, and 1835; also constitution of 1834, Art. xi., Sec. 10. Mississippi inaugurated its common schools under the act of March 4, 1846. Arkansas, under the act of February 3, 1843. Ohio, act of January 30, 1827; a school system for whites, February 28, 1834; March 27, 1837; March 7, 1838. The act of March 23, 1840, abolished the office of Superintendent of Common Schools and authorized the Secretary of State to employ a clerk at four hundred dollars a year to perform its offices. Separate schools for negroes were inaugurated under the act of February 10, 1841, and that of February 24, 1848. The Indiana Legislature, by joint resolution, January 9, 1821, recommended the appointment of a committee to draft a bill for a general system of education, "from township school to university," in accordance with the constitution, 1816, Art. ix., Sec. 2. See act of February 2, 1832. Illinois established free schools under the act of January 15, 1825.

lic issue from 1835 to 1845. The public accepted them chiefly because they would enable the children to get on in the world more easily and successfully than their parents had done. Moreover, education was a panacea for the ills of society. Send the children to school, and vice and immorality would disappear. Through this open door of reform negro children in the North went to school, and, it may be said, almost as soon as the children of the poorer whites.

In the South an entirely different idea of public policy prevailed — dominated by slavery. It excluded the negro, slave or free, from every means of information likely to make him intelligent. He must not learn to read, nor be suffered to preach, except in the presence of white men. The camp-meeting, ever dear to the African heart, was forbidden unless controlled by the presence of whites.* Slavery thus put a muzzle on speech throughout the South, and at last custom became not only a property of easiness, but an article of faith.

A religious system rarely escapes becoming tyrannical, because religion is usually the chief police system of the State. Public policy often dictates cruel laws, and religion rarely sets itself against the laws. The code found even more enthusiastic advocates in the pulpit than in the Legislature or the courts. This was inevitable in a religious system supported by the voluntary contributions of

* For a typical piece of legislation on the subject, see act of Alabama, January 16, 1832.

slave-holders. Pro-slavery and apologetic sermons were not infrequent in the North. Clergymen are habitually legalists and conservatives; therefore they preached obedience to the law, prayer for its repeal, and patience under its yoke. Meanwhile, a revolution was in progress.

It must be admitted that modern Christianity has tended ever towards the emancipation of slaves. This has been partly due to sentiment, partly to a sense of justice, and largely to economic necessity. There may have been a time when slavery was profitable in Egypt, or even in the United States. It is difficult to fix the times, and in this country it ceased long before 1850. I know of no better proof of the unprofitableness of slavery than that produced in the Kentucky convention of 1849.* It was there shown that Essex County, in Massachusetts, produced as much as the entire State of South Carolina. The startling conditions that made this truth possible are clear enough now, but were realized by few, North or South, then. The world is slowly learning that freedom is cheaper than slavery; those who have a conscience have always known that freedom is better.

During the first half of the nineteenth century every discovery, every useful invention contributed to the betterment of the free negro. As machinery was introduced, wealth increased, labor was in demand, and population was on the move, west-

* See Chap. vi., Vol. ii.

ward. It is somewhat vague and paradoxical to say that the free negro participated in the general benefits of the time, after showing that he was excluded from most of them. However, it is true. He gained slowly and lost nothing. Though welcomed nowhere, he found his way everywhere. The new West frowned on him; but he went West. It was hard for him to get title to a piece of land. Even liberal Iowa made vigorous efforts to prevent his becoming a settler. Local claim associations, such as that of Johnson County of 1839, rigorously discriminated against him, and for a long time made his residence in the Territory unsafe.* As the American world grew larger, and ceased, or tended to cease, being provincial, the people of the North let the free negro alone. It was a great opportunity for him—indeed, the greatest that ever came to his race. As soon as he was let alone he began to prosper. There is a hint here for those who are seeking the solution of the race problem in America. As soon as the negro was suffered to earn his own living, like the rest of the world (who earn it), difficulties began to disappear. Legislatures ceased sending out resolutions in complaint of free-negro invasions. Remonstrances against negro children in the public schools became less common. A negro was seen here and there planing a board, shingling a roof, mending a shoe, or laying a wall.

* See the Constitution and Records of the Claim Association of Johnson County, Iowa, with Introduction and Notes by Benjamin F. Shambaugh, A.M.; 8vo, 196 pp. The State Historical Society of Iowa, Iowa City, Iowa, 1894.

A man thus engaged was not likely to belong to the criminal class. Public policy began to discover this simple fact, as the half-century drew to a close. Public opinion began to permit what it had long thought, "Give the negro a chance." Yet the privileges accorded him in the North were, as yet, by sufferance rather than by law. A vague sense of economic necessity was putting the laws in their true light. They were fast falling behind the times. Everybody could find work in the North. This was the primary favorable condition. Had it been otherwise, the condition of the free negro would have been hopeless. If in the North he was seen with a gun, no one was terrified. Squirrels and ducks were plentiful. In the South arms were denied him under severe penalties.* There a free negro with a shot-gun suggested a servile insurrection. As the code grew blacker, so did the North—for its negro population increased more rapidly. Numerically, the gain was in the States north of the Ohio. From 1840 to 1850 there was scarcely any increase in the negro population of New England and the Middle States. In Massachusetts and New York it decreased. The lines of least resistance for the white and black alike ran into the Northwest. This was due chiefly to climate. Ohio, Indiana, Southern Michigan, and Illinois are warmer than Massachusetts or New York. Unconsciously, the

* Acts of Delaware, February 10, 1832; Maryland, March 14, 1832; Virginia, March 15, 1832; North Carolina, January 11, 1841; Georgia, December 7, 1807. Nat Turner's insurrection (1831) was the immediate cause of severe laws on this subject in the South.

negro was travelling along isothermal lines. It followed that opposition to him continued in the Northwest after it had ceased in New England, New York, and Pennsylvania. Objections heard in New York in 1821 were repeated in Ohio in 1851. They were heard in Wisconsin and Iowa in 1847; in Illinois in 1848. But there is a new tone to the general discussion—a tone of greater toleration. It is heard in Michigan in 1850.*

Selfishness is at the bottom of all this hostility. This is illustrated in California.† The negro, free or slave, should be excluded, lest he deprive white men of a monopoly of the mines. This was exactly the spirit of Massachusetts in 1821, of Pennsylvania in 1838, of Iowa in 1847. It was the spirit of slavery, for that is the spirit of selfishness on the most gigantic scale.

It seems as if white men, in democratic America, during this half-century, denied rights to black men, lest the wealth of the country—social, political, industrial, and educational, be divided with them. A fateful step had been taken by the most powerful commonwealth—New York—when, in 1821, it made it possible for a negro to become a voting citizen. True, there was discrimination in the grant. The negro must have a clear freehold estate of the value of two hundred and fifty dollars; must have been rated, and paid taxes on the estate, and have been a citizen of the State for three

* See Chap. viii., Vol. ii., pp. 215, 235; Chap. ix., pp. 249–254.

† See Chap. x., Vol. ii., pp. 297–304, 315; Chap. xi., pp. 316–330, 353–362.

years. A white man could gain residence in a year, and was not required to own real estate or personal property.* But the negro was given a chance, and that changed the history of democracy in America. The influence of New York, in this respect, is clearly seen when California sought admission into the Union. Recognition of negro suffrage might be delayed, but it must come in time. When, in 1821, Rufus King introduced the revolutionary provision into the proposed constitution of New York, he cited as sufficient authority the clause in the national Constitution declaring the equal rights of the citizens of the several States. In its consequences the New York innovation ranks in importance with the Emancipation Proclamation and the abolition of slavery, for which it paved the way.

So strong was race prejudice in 1850 that California only by a meagre majority escaped enrolment in the list of States which then excluded free persons of color.† Their exclusion, it was thought, could safely be left to public sentiment. At this time the act of California was of critical importance. Doubtless the State must be included among those of the time holding most liberal ideas. It made its soil free, and, at least by the letter of its law, it excluded no freeman. It stands, therefore, as the embodiment of American sentiment at this time, and pointed the way by which things and men were going. It intimated

* New York, Constitutions of 1821 and 1846, Art. ii., Sec. i.

† See Chap. xi., Vol. ii., p. 361.

that the time was at hand when it would be impossible in America for half a million free people to be a people without a country. Before the change implied in this promise could be realized, all things pointed to a fierce struggle. Its nature was outlined in the debate in Louisiana* in 1845, and in Kentucky four years later; in the resolutions of State Legislatures relative to slavery extension, and in the convergence of population on Kansas. These signs of the times pointed out that the impending struggle was between two systems of government—one founded on property, the other on persons. Primarily, it was a struggle for the extension of the franchise, for with the franchise go all rights known to freemen.

On the threshold of this struggle between State sovereignty and national sovereignty, between free labor and slave labor, between suffrage extension and suffrage limitation, the commonwealths divided into two groups. Public opinion in the North was shifting rapidly, and as yet was uncertain. The border States, Kentucky claimed, held the key to the future of the Union. The word "white," in all Southern and in most Northern constitutions, yet preserved the legal fiction that government was instituted for the exclusive benefit of a favored race. This fiction continued the stern fact of history. There was, however, a new shade of color to the fiction. A third estate lay between

* See Chap. xiii., p. 400.

the slaves and the slave-holders—the free negroes. They gravitated towards slavery in the South; in the North, towards citizenship. As the half-century closed, their children were found in the free schools of New Hampshire, Vermont, Massachusetts, New York, Ohio, and Michigan. In these States, and in Pennsylvania, Maryland, Wisconsin, and Iowa, occasionally negroes were suffered to work as mechanics, but as yet they possessed little skill in the use of tools. Ages of slavery had robbed them of much of man's tool-using ability, but not wholly of his tool-using capacity. On the emotional side of their religious nature they were inferior to none of the whites among whom they lived. Theirs was an anomalous condition for freemen in a democracy. Legislation in the South, keeping pace with public opinion, became more and more oppressive. In the North it slowly became remedial and helpful. In some degree the miserable condition of this class was mitigated by its ignorance of better things. It had never known opportunity. It had for ages known only the degradation possible in slavery. Free schools were organized just in time to benefit this class in the North. Negroes were suffered to attend lest they grow up wholly in ignorance and vice, and thus ultimately cost the State many times more than the expense of teaching them to read and write. Mechanical trade-schools were already thought of, but legislative notions respecting them were of a different order from those which called into existence the later technical

schools.* Socialism had not yet gone so far as to possess the public mind that the state owes to every citizen a bread-winning education. It may be said that whatever the state did for the free negro down to 1850, it did as a means of self-protection, not for love of the negro. Public schools were a form of public insurance against vice and crime, or, as was often said, "the cheap defence of the nation."

Self-interest compelled the Northern States to include the free negro in the list of its beneficiaries. Self-interest compelled the slave-holding States to exclude him from the list. He must be treated as King James treated the Puritans—harried out of the land. It is rather curious that free negroes were permitted, for a time, to be enrolled in the militia in one State—and that Louisiana. The constitutions of the Northern States carefully excluded them. In Louisiana a special act of the Legislature† authorized free negro troops to be raised during the second war with England, but only those residing in the parish of Natchitoches, who possessed real estate of the value of one hundred and fifty dollars, were eligible. This was the only instance of the enrolment of negro troops during the half-century. General Jackson wrote, in a letter to President Monroe, describing the battle of New Orleans, "I saw Pakenham reel and pitch out of his saddle. I have always believed

* See act of the New Hampshire Legislature of July 4, 1834, providing for a "manual-labor" or "self-supporting system of education."

† Act of January 30, 1815.

that he fell from the bullet of a freeman of color, who was a famous rifle-shot, and came from the Attakapas region of Louisiana."*

If war be man's most glorious occupation, and the death of the enemy's commander-in-chief be desirable, America should erect a monument to this forgotten free negro, who, on a property qualification of a hundred and fifty dollars, served so faithfully at the battle of New Orleans. Was not this almost as great a service as to command a negro regiment? Less than a half-century later a great many people in the North were converted to the idea that a black skin was good enough to stop bullets fired by those fighting for slavery. The case was a compound of justice and military necessity. What gains were made during this half-century by free persons of color were permitted by the white race, partly as an act of justice, but principally because of economic necessity. This last phrase was seldom heard from 1800 to 1850. It is of more recent use. Few then living realized that the free negroes of the United States were both political and economic barometers. A despised race is not likely to be taken as the unit of measure of civilization. There are many units in America, and one was the condition of the free negro. It was no more anomalous than the existence of slavery in a democracy, the corner-stone of whose political theory was and is the equality of men. A democracy that en-

* The *Century Magazine*, January, 1897, p. 361.

slaved three millions would be expected to deny citizenship to freemen of color. As long as this continued freedom in America was a paradox.

What to do with the negro, free or slave, was the first and most serious question whenever a Territory was organized, a State admitted, or its government revised. The question was fundamental, because it involved the right of a man to himself, as well as the right of one man to own another. It was involved in the apportionment of representation, as illustrated in Louisiana in 1845; in the definition of legislative powers, as illustrated in Kentucky in 1849; and again in the discussion of the franchise and the rights of citizens, as illustrated in California and Michigan in 1849 and 1850. The question had been discussed before,but in narrower relations. New York began the discussion in 1821, and continued it in 1846. Virginia heard Marshall and Madison and Monroe and their distinguished colleagues discuss it in 1829. Pennsylvania labored to solve the question nine years later. North Carolina, in 1835, met in convention for the express purpose of taking from free negroes the right to vote.

Other questions agitated the public. Should judges be elected? Should circuit give place to resident district courts? Should representation be apportioned according to wealth or persons, and if by persons, should slaves and free negroes be included? What powers should be granted, what denied, to the Legislature? How should corporations be created and regulated? To what extent

should free schools be established? To whom should the rights of citizenship be granted? As the century grew older, these questions stood for reforms. They were answered in all the commonwealths, but the answers are not recorded in all. From 1776 to 1851 the Union increased from thirteen to thirty-one States, and these adopted fifty-nine constitutions. Each of these was a reform constitution. Each stands for what was considered, at the time it was made, a remedy for existing evils. It would be highly interesting and instructive to know by what process these organic laws came into being; what arguments were advanced, what remedial measures were proposed but rejected; what interpretation of civil needs was made by the convention that undertook to give the State a better fundamental law. But this knowledge is denied us, save for less than one-third of the constitutions adopted. The journals of nearly fifty of the constitutional conventions from 1776 to 1851 are in print, but they are a colorless and unsatisfactory record. It is from the debates in seventeen of these conventions that we obtain our chief knowledge of the ideas that dominated our organic laws during the three quarters of a century that they cover. A perusal of these debates discloses much repetition of wants, of remedies proposed, and of remedies adopted. In each State there are needs purely local, but there are reforms demanded by all. The extension of the suffrage, the apportionment of representation, the provision for public schools, the establishment

of a secure banking system, the exact apportionment of influence in the government between city and country, immigration, the rights of married women, and the reorganization of the judiciary come up repeatedly all through these years. Legislative functions demand definition; trial by jury must be subjected to new tests; negro emancipation and slavery provoke discussions in all the Southern States; but from the debates as they come down to us we turn away, confirmed in our belief in the truth of Goethe's saying that there are many echoes, but few voices, in the world. It is the few voices that we wish to hear, because they speak with authority during these strident years.

Much of the constitutional history of the first half of the nineteenth century is abbreviated in the debates of the constitutional conventions that assembled between 1845 and 1850. The civil problems that agitated the country during these years had been accumulating a long time. Louisiana, in 1845, sought to solve them, and may be listened to as the voice of the Gulf States. Kentucky debated them in its great convention of 1849, and it spoke for the border States. Michigan, in 1850, a strong commonwealth of fifteen years, took up the task of their solution in a series of debates that rank the Lansing convention among the great expository bodies which our country has produced. Michigan may be listened to as speaking for the North. The new West was heard in California, at Monterey, in 1849, when, for the first time, Americans of diverse political opinions—

some from free soil and some from slave—united in making an organic law under the dominating guidance of economic necessity.

In California, slaveocracy broke down. It could not administer the affairs of a commonwealth whose existence depended upon free labor, although a large portion of that commonwealth lay below the line of the Missouri Compromise.

In selecting these States as typical of the North and the South, of the East and the West, each is left to tell its own story quite in the words in which it was first spoken, in order that the civil problems that confronted the country in 1850 may be understood now, as they were then understood and solved.*

* The constitutions adopted between 1800 and 1850 are examined and discussed at length in Volume ii., Chapters xiii., xiv., xv.

CHAPTER XIII

DEMOCRACY IN A GULF STATE: 1845—LOUISIANA

After years of agitation of the subject, and after expressing their will in large majorities at successive elections, the people of Louisiana succeeded, in August, 1844, in entering upon a revision of their State government.* The convention assembled at Jackson on the 5th, adjourned to meet at New Orleans on the 20th, and, after a short intermission, resumed its session on the 14th of January, 1845. Its work was not completed until the 16th of May, when the convention submitted a new constitution. It was ratified by popular vote on the 5th of November. The reforms demanded at the time of calling the convention may be said to be typical of demands then common over the country. The suffrage should be extended, representation equalized, and the appointive system for the judiciary give place to the elective. Outside of the original

* The principal authorities for this chapter are, Proceedings and Debates of the Convention of Louisiana, R. J. Ker, reporter, 146+962 pp., 8vo, New Orleans, 1845; Journal de la Convention de la Louisiane, Nouvelle-Orléans, Imprimé par J. Bayon, 367+11 pp., 8vo, 1845; Rapports Officials des Débats de la Convention de la Louisiane, James Foullonze, rapporteur, Imprimés par J. Bayon, Imprimeur de la Convention, 460+11 pp., 8vo, Nouvelle-Orléans, 1845.

States the judiciary had been seized by democracy and the elective system adopted. In commonwealths having large cities, the demand for the extension of the suffrage was strongest. But in some States, as in Rhode Island in 1842, a small and so-called Native-American party strongly opposed the extension,* and, for a time, successfully. In Louisiana, conservatives, in and out of the convention, were now heard declaring their desire to extend "the inestimable privileges of the suffrage," but that it must be "protected and corrected by proper enactments, such as a registration law, "to put a stop to fraud and corruption," and be guarded by strict regulations "to prevent bribery." Louisiana had a large alien-born population. The suffrage should be extended to all entitled to citizenship, but should not include "birds of passage"—"the floating population," who could not be deeply interested and personally involved in the prosperity and government of the State. More liberal-minded delegates wished to receive "with

* The struggle in Rhode Island culminated in "Dorr's Rebellion," and, after great agitation, in the extension of the suffrage. No episode in State history has been more prolific of controversial pamphlets. Of these there are nearly three hundred. The best account of the struggle, as an episode in civil polity, is given in the Interference of the Executive in the Affairs of Rhode Island, Report No. 546, House of Representatives, twenty-eighth Congress, first session, and in Luther *vs.* Borden, 7 Howard, 1. See the joint resolution of the Illinois Legislature, February 27, 1845, declaring Dorr "a noble martyr in the cause of human liberty", the joint resolutions of the New Hampshire Legislature, December 27, 1844, and July 2, 1845, blaming the Legislature of Rhode Island; and the New Hampshire Legislature's resolution of July 2, 1847, investing Dorr with citizenship.

open hearts, and with generosity, all those who desired to cast their lot among the citizens of Louisiana."

The Constitution of the United States leaves the definition of citizenship to the commonwealths. It should be made with discretion and without imposing the slightest obstacle, otherwise one class in the State would have advantage over another. Distinction of privileges between free white citizens was anti-republican, illiberal, and unjust, and would be a source of perpetual struggle and discontent in any commonwealth. To New Orleans had come many thousands of foreigners who promoted public improvements, and in building up their own fortunes had built up the fortunes of the city and contributed towards paying the debts of the State. Its indebtedness at this time amounted to four millions of dollars, its liabilities to fifteen. It was by the industry of these "birds of passage" that the commonwealth was to look for the cancellation of its obligations. To encourage the coming of foreigners was the principal assurance of the prosperity of the commonwealth. The problem before the convention was how to extend the suffrage without endangering the interests of the State by including an undesirable class of voters. Universal suffrage was considered an unlimited mischief in Louisiana. It was necessary to identify the electorate as the permanent, responsible population of the State. Foreigners, temporarily residing in the commonwealth, could have no identity of interest with it, as they were merely

there to subserve personal ends, which accomplished, they would return whence they came.

Distrust of foreigners, and a general unwillingness to extend to them the right of suffrage, were characteristics of slave-holding States long after such sentiments had ceased to influence the people of the free States. The relation between this sentiment and the institution of slavery is not difficult to establish. Undoubtedly slavery compelled its advocates as far as possible to exclude from the commonwealth all who were not slave-owners. Consistency demanded this. Every white man not a slave-owner was necessarily a secret foe to the institution, as was proved when, in the final test, the limitations dictated by slavocracy were fully realized. Foreigners residing for a time in a slave-holding State were not likely to sympathize wholly with slavery. Many of them came from free States, many from countries in Europe in which African slavery was either unknown, or at least viewed with disfavor. Being chiefly concerned in commercial enterprises, they adapted themselves for gainful purposes to the industrial system in vogue, but utilized its resources chiefly for their own aggrandizement. At least, they were considered as doing so by the native inhabitants of these commonwealths. When, fifteen years later, the slave-holding States sought to secede from the Union, it will be seen that in their constitutional conventions they seriously debated the exclusion of foreigners.*

* Read the speeches on "Citizenship" delivered in the Alabama Convention of 1861, reported in The History and Debates

The basis of their opposition to foreigners was rooted in the unnatural conditions of slavery itself. The reasons for excluding the foreigner and the free person of color from the suffrage were quite the same. Neither was considered as permanently identified with the essential interests of the State. The free person of color was a disturbing element in society; the foreigner, a disturbing element in commerce. Slavery, for its own protection, therefore, persistently sought to exclude both from the political community. They were residents in a slave-holding community only by sufferance.

These selfish feelings long dictated the qualifications for the suffrage. In the eighteenth century they prescribed what amount of property and what religious notions should be held by the voter in order to warrant the State in admitting him to participation in all its privileges. The causes which abolished property and religious qualifications later effaced ideas long held in many States, by which foreigners and free persons of color were excluded from the electorate. At last, in 1865, these same causes abolished slavery itself, since which time they have been operating to obliterate, as far as is racially possible, all distinc-

of the Convention of the People of Alabama, Begun and Held in the City of Montgomery, on the Seventh Day of January, 1861; in which is preserved the speeches of the Secret Sessions, and many valuable State Papers. By William R. Smith, one of the Delegates from Tuscaloosa. Montgomery: White, Pfister & Co. Tuscaloosa: D. Woodruff. Atlanta: Wood, Honleiter, Rice & Co., 1861.

tions among the persons who organically compose the State.

It was in Louisiana, in 1845, that the first exhaustive debate occurred in a constitutional convention over the right and the expediency of basing representation in the State on the federal number. The debate on this subject in Virginia,* in 1829, was earnest, but brief, and though it became the precedent for Louisiana, public opinion North and South had meanwhile greatly changed, and many influences not existing in 1829 were shaping the course of American politics. The Louisiana convention spent some time in fixing the election day, a matter which at first thought might seem to be of slight account. If the election was not in June or September, many of the most respectable citizens of the State would be practically disfranchised, for during the long, tropical summer they and their families sought a Northern clime. By the constitution of 1812 the election of the General Assembly occurred on the

* See Proceedings and Debates of the Virginia State Convention of 1829–30. To which are subjoined the new Constitution of Virginia, and the Vote of the People. Richmond: Printed by Samuel Shepherd & Co. for Ritchie & Cook, 1830. Also Journals, Acts, and Proceedings of a General Convention of the Commonwealth of Virginia, Assembled in Richmond on Monday, the Fifth Day of October, in the Year of Our Lord One Thousand Eight Hundred and Twenty-nine. Richmond: Printed by Thomas Ritchie, 1829. James Monroe was president of this convention, and among its members were James Madison, John Marshall, John Tyler, John Y. Mason, John Randolph, Philip P. Barbour, and Abel P. Upshur. Its debates were cited in Southern conventions for the next twenty years.

first Monday in July, an inconvenient time, as experience had shown. In 1812 it was common throughout the Union for an election to extend over one, two, or even three days. The roads were so bad in those days that it would have been impossible for the electors to convene in any one place on one day. So apparently slight a matter as a good road determines an important detail in the administration of government. As Rome conquered and governed the world for twelve centuries largely by means of a system of good roads connecting all parts of the empire with the capital, so in the United States the administration of government has improved as the roads of the country have improved; and roads include not only canals, highways, and railroads, but also all practical means in the communication of ideas, such as the mails, signal systems, and telegraph and telephone lines. These economical aids to good government bring about an attachment between the elector and the interests of the State. It is in great measure due to mechanical aids of this nature that the qualifications of the voter have been simplified. Less time is required for him to gain a residence in a community, because good roads now enable him to know its condition and its wants more intimately than the longest period of residence could give under the first State constitutions. There is some little reason why, in many commonwealths, a man, in order to vote, is required only to declare his intention of becoming a citizen. Together with the

advantages of transportation, he has the church, the school, and the press by which to inform himself of the wants of the community in which he resides.

On the 21st of January, in the discussion of qualifications for the suffrage, a delegate expressed the idea that only residents of the State identified with its interests should be invested with the "vital prerogative of suffrage." The utmost latitude should be given to voters to select their Representatives. It was possible, but improbable, that they would abuse that freedom. "It was not likely they would elect a colored person or a woman to represent them." Five years was thought to be a suitable period for residence.

Granted that sovereignty resides in the people, said another, has not the principle, when applied literally, proved to be impracticable? A pure, unmixed democracy is an absurdity, opposed to the very nature of man. Some restraint, for the protection of the minority against the majority, is indispensable, otherwise government becomes a farce. The people are liable to be led astray. It is absurd to believe that any government can exist without restraint, reposing solely on the momentary will of the people. True, we often hear that the Representative is the servant of the people; but this is only a half-truth. The Representative is equally their ruler. Therefore, restrictions of some kind are necessary. These, in our country, take the form of electoral qualifications. As a lawyer accustomed only to practise under the

common law would be incapable of practising under the civil law without due preparation, so a citizen, unless duly prepared, is unable to perform the duties of an elector.

But should not the qualifications of the Representative be the same as those of the voter? Such a requirement would conform with the experience of many States, and was undoubtedly the true principle of representative government. Connecticut* and Virginia† were precedents. The requirement would prevent the establishment of a privileged class. Opinion had changed respecting the time required of the elector for residence. Fourteen of the States required but one year, and among these were the oldest as well as the youngest in the Union. Why should Louisiana adopt a principle different from that in other States? Twenty-two of them required a residence of but two years for eligibility to the House of Representatives. The legislative department should be restrained quite as much as the electorate.

One member defended the requirement for a five years' residence, because to intrust the administration of the affairs of the State to strangers who knew nothing of its institutions, the peculiar feelings of its people, their manners and education, would endanger their interests. It would take at least this time for a person of ordinary intellect coming from a distant corner of the

* 1818. † 1829.

Union to become familiar with the institutions, history, local affairs, and especially the peculiar system of laws of Louisiana. While not likely that strangers would be elected to the Legislature, the possibility should be prevented. Indeed, should not all the public offices in the State be filled by her native sons? They were identified with her by the strongest local attachment. It was not unreasonable to suppose that the colleges and schools of the State would soon send out young men capable of filling its highest offices. If there were any advantages in the public service, surely the natives of the State were entitled to them. Immigration to Louisiana was increasing. The State differed in this respect from Virginia or Massachusetts.*

This was essentially a repetition of the old argument that the population of the Northern States was homogeneous, and that of the Southern heterogeneous; and therefore the constitutional provisions of Northern commonwealths could not be made precedents for the South—an argument of great practical effect as long as slavery continued.

From these opinions some dissented. That the qualifications of members of the Legislature, and other public officers, ought to be identical with

* Prior to 1850 no authentic data existed of the distribution and increase of the foreign population in the States. In that year 1.62 of the population of Virginia, 13.18 of that of Louisiana, and 16.49 of that of Massachusetts were foreign-born. This tends to show that the statement by the member is incorrect. See Eleventh Census of the United States (1890); Population, Part i., p. lxxxiii.

those of voters was a novel idea. A few States had adopted it, but the great majority had followed a different principle. The Constitution of the United States was itself a precedent to the contrary. A member of the House of Representatives must attain the age of twenty-five years. If the sovereign people were to select a man of the most distinguished talent—a political miracle, like Pitt, Jefferson, or Clay—he could not be eligible unless he was of this age and had been a citizen of the United States seven years. The qualifications which entitled him to vote did not entitle him to a seat in Congress. For this reason he was required to be a citizen seven years and an inhabitant of the State for which he was chosen. Had not Franklin and Madison made this Constitution? Were the fathers of the Constitution in ignorance and darkness? The constitutions of the States controverted the idea proposed. Maine required a residence of five years; so, too, Massachusetts, and a freehold estate in addition; and New Hampshire, "a good Democratic State," required a qualification of seven years' residence.

A member at once corrected the reference to Maine, saying that to be a member of the House in that State, one must have been for five years a citizen of the United States, but a resident of the State only one—a correction typical of many that have to be made in the speeches of delegates. But in making a State constitution it is the argument as presented that affects the convention, few of whose members are able to verify from their

own knowledge all the references made to constitutional precedents. Error often works as effectively as truth in the process of State-making. The experience of Maine, Vermont, Ohio, Virginia, and North Carolina invalidated the idea that the voter and the Representative should have the same qualifications. The typical member of a constitutional convention always considers his own State to be peculiarly situated.

The greater part of the population of Louisiana was new. A tide of immigration was flowing into the city of New Orleans more rapidly than into any city of New Hampshire, Virginia, Rhode Island, Maine, or Texas. The resources of the State invited foreigners. No obstacles should be thrown in their way, but the government of the State should not be intrusted to them. Identity of interest between them and the institutions of the commonwealth should be secured. The property qualification had been struck out as useless in securing fidelity in the exercise of the suffrage, on the ground that identity of pecuniary interests is an obsolete notion. It followed that there remained no guarantee derived from the possession of property, and that the man without property who came from a State hostile to Louisiana might participate in its government. The only remaining guarantees were attachment and sympathy, and these are secured only by residence. Was it possible for a man who had passed his youth in Massachusetts, Virginia, or Rhode Island to divest himself of his former attachment to the particular in-

stitutions with which he was familiar, and, in the short period of six months, forget the influence of his education and his prejudices? Could an inhabitant of Massachusetts who removed to Louisiana regard slavery in its true light? Would he sympathize with the perfect tolerance of religions, so remarkable in Louisiana, which was not the result of law, but of public opinion? It must be presumed that the attachments which he had formed in his former home would preclude him from imbibing at once a relish for Louisiana institutions. If he resided there for years he might at last acquire it and lose his original prejudices.

The reference to a property qualification caused a delegate to cite a case in the House of Representatives, when he was a member, as proof that the qualification was not only odious to the people of the State, but was disregarded by them. The seat of a member had been contested on the ground that he did not possess the property qualification—landed estate to the value of five hundred dollars—as required by the constitution of 1812. But the committee on elections, though knowing the facts, would not take notice of them, neither would the House. The futility of insisting on the qualification of age as an essential matter was proved in the case of Henry Clay and John Randolph, each of whom was elected to the Congress of the United States before he was twenty-five. Randolph settled his case by his reply to the inquiry as to his age: "Go and ask my constituents." When the constitution of 1812 was adopted, Louisiana had not

long emerged from Spanish and French dominion. It was then supposed that some unkind feelings existed among classes of the community. Since that time the population have become a united people; nor was there any danger of electing a Representative who was not entirely identified with the interests of the State by residence. Election was evidence of popularity and public confidence. There was no likelihood that any Abolitionist would be chosen. None would sink into the affections of the people, for none could conceal his views. Suppose that any one of the distinguished men of the country—Calhoun, Tyler, or Silas Wright—were to remove to Louisiana, who would object that he be elevated to the Legislature of the State? By a vote of thirty-four to thirty-one, the residence was fixed at four years, and, by a vote of thirty-nine to thirty-two, the time of residence of the naturalized citizen was to be computed from the date of his certificate. One member, though favoring the extension of the suffrage, did not favor the utopian idea that there should be no restriction as to sex and color. But before this was discussed several members expressed their ideas of the respective rights of native and naturalized citizens.

One wished an equality between them. If, from reasons of sound policy, native-born citizens from other States were required to remain in Louisiana five years before they could be eligible to public office, at least the same restriction ought to be prescribed for naturalized foreigners. A native

citizen is always subject to the laws of the country, and is obliged to bear his share of the public burdens. Not so the foreigner. He may exempt himself from the laws and remain under those of his own country. In the mean time he might make his declaration of becoming a citizen, and having at his convenience gone through all the forms of naturalization, at once become eligible to office. Meanwhile a citizen of Mississippi coming to Louisiana was compelled to work on the public roads and perform similar duties during the time he was acquiring a lawful residence. A foreigner who had first arrived in another State and was naturalized there, was placed from the date of his naturalization on an equality with the native-born citizen of that State. Was it not unjust that citizens of other States must be disfranchised two years because they chose to emigrate to Louisiana? The State had become rich and powerful because of immigration. For a long time its property qualifications retarded its progress, and Alabama, Mississippi, Ohio, Indiana, and Illinois—admitted long after Louisiana—had far outstripped it in the race of prosperity and population. The constitution of 1812, and the laws made under it, if not the sole cause of this result, had certainly not been as conducive to progress as the soil, the climate, and the commercial advantages of its great city. Moreover, there was reason for the proposed restriction. Men will not take residence in a State whose laws are an invidious distinction against their own interests. Immigrants would

prefer Texas to Louisiana. For thirty years, under the old constitution, the people of Louisiana had admitted citizens from any State to all the rights of freemen after a residence of twelve months. The Constitution of the United States, in prescribing that the citizens of each State should have all the rights, privileges, and advantages of citizens of the other States, indicated the principle which Louisiana ought to follow.

The government of the United States was a government of one country, and therefore every citizen of the State should feel as much at home in one State as another. The principle of requiring long residence was erroneous, for it was founded on an idea of exclusion, contrary to the general welfare. Whenever a man proved by sufficient residence that he was identified with the interests of a State, there was no reason why he should be denied the rights of citizenship. Louisiana should accord them to such a citizen because every other State in the Union accorded them to the citizen of Louisiana after a similar residence. Of the Southern States, South Carolina required, in addition to the residence of two years, a freehold estate of fifty acres of land, and the payment of a tax equal to three shillings sterling. Some States required a residence of but three months. A man should not be deprived of political rights simply because he moved to Louisiana. He had been a citizen of an equal State, and perhaps was the descendant of one who, in the field or the Senate, had done much for his country. He was

accustomed from infancy to love the whole country and its institutions, and was now interested to concentrate that affection on Louisiana, simply because he had located there. His attachment to the whole country being as great as any man's, was he less capable of performing the duties of citizenship than one who had long resided in Louisiana? His conduct depended upon his education, but the means of education in other States were equal to those in Louisiana.

The extremely fertile lands and genial climate of Louisiana attracted rich planters from Mississippi, Alabama, and the Carolinas, with their families and their slaves. There were many such in the northwestern portions of the State; many more would come and avail themselves of these advantages, if the constitution and laws of the State invited them. The greater number came without means, but with moral and intellectual capital to use for the welfare of the State. They were a most valuable acquisition. The agriculture of the State was in its infancy; the sugar and cotton lands were far from being all occupied. Compared with the vast resources of the State, its production of provisions was slight. Its soil and climate were adapted to the production of many articles which had not yet received attention—such as fruits, silk, wine, and oil. The State had scarcely yet made a beginning in manufactures. Soon its commerce must be the first in the Union, but it was now carried on almost exclusively by the citizens of other States. Population should be courted, not

restricted by constitutional provisions. If the rich immigrated with their slaves, and settled and improved the lands of the commonwealth, sound political principle required that they should have a voice in selecting the officers of government whose action was to regulate their property.

New Orleans was the great point of connection with North America, Europe, and the Southern islands. It was true statesmanship, therefore, to further, by every possible means, the prosperity marked out by the opportunities of this commercial centre. But some of the members had suggested that two years' residence should be required as a guarantee against the Abolitionism with which new-comers might be imbued. A year was time enough to enable a man's neighbor to change his views on this subject, and to guard against them if they were dangerous to the State. It was sufficient to enable the new-comer to see that the well-regulated system of slavery in Louisiana was indispensable to the slave-owners, to the slaves, and to the prosperity of the State. Every man capable of taking a correct view of civil society would wish to see a million instead of three hundred thousand black slaves in the State. If any considerable portion of the population was deprived of its political rights, it would be degraded to the condition of the slave, and the evil of slavery would be made dangerous by exciting against it the sympathy of a portion of the whites. If every freeman in the State was elevated to an equal participation in its government, and a broad political

distinction was made between him and the slave, "from the united souls of freedom a wall of fire would be kindled around the State and its institutions against the diabolical machinations of Abolitionism."

Before debating the compromise, that the residence of the naturalized citizen should date from the time of receiving his naturalization certificate, whether in Louisiana or elsewhere, which practically placed him upon an equality with the native-born citizen, several members expressed an idea common to constitutional conventions, that the State was the sole judge of whom it should receive and whom it should reject. This right of final decision was incident to the nature of an American commonwealth, whose people in convention assembled, possessing accurate knowledge of the institutions of the State, should define the qualifications of all who sought identification with them. It is upon this notion that the idea of State sovereignty rests, and upon which the decisions of State and national courts have rested in its support.

This long discussion of the proposed admission of foreigners to the rights of citizenship was only a review of American history. One member interpreted the relations between Louisiana and the United States to preclude the State from imposing invidious distinctions upon the citizens of the several States. A citizen of Louisiana was entitled to all privileges of citizenship whether he was naturalized or native-born. A State had no

more control over citizenship than over the national prerogative to coin money. It could not impose discriminating disabilities upon naturalized citizens. If a citizen of Mississippi was eligible to all the privileges of citizens of Louisiana, according to the federal Constitution, how could the convention impose disabilities? At the time when Mississippi was admitted to the Union, one of its citizens, who had never gone through the usual process of naturalization, was elected to the Legislature from the district to which he had removed, and the question arose whether he was a citizen of the United States and eligible to the office. The State Senate decided in his favor; the court sustained the Senate, and also decided that all the inhabitants of the Mississippi Territory at the time of its admission into the Union became, *ipso facto*, citizens of the United States. To discriminate against naturalized persons was contrary to the decision of the federal court.* This and other decisions fixed the principle that a State cannot impose greater restrictions in admitting foreigners to naturalization than are imposed under the act of Congress. A State may require qualifications, and some new States had availed themselves of that construction by admitting foreigners to citizenship upon easier terms.

The dogma of Native-Americanism was not new. It came from an objectionable source, associated in the opinion of the people of Louisiana

* Collett *vs.* Collett, 8 Dallas, 294.

with everything vile and degrading in politics. It had made its first appearance in the days of Federalism, and had produced the infamous Alien and Sedition laws. Conscious of weakness, the old Federal party enacted these laws to save itself from overthrow. They were passed for the purpose of engendering prejudice and creating animosities. They became a leading question before the country, and a distinguished statesman of Democratic principles, of whom Louisiana would ever be proud, was conspicuous in the struggle. Perhaps of all his productions his arguments against these laws were the best. Livingston was at that time a member of Congress from the State of New York. His arguments against these laws were admirable and conclusive, and the State of Louisiana should obtain a copy, have it elegantly bound, and deposited in its archives in honor of its great author. The opposition to these laws was the rallying point of the Democratic party. In the Legislature of Kentucky prompt and decisive action was taken, and in the Legislature of Virginia resolutions now famous were introduced. As soon as the Democratic party came into power the laws were repealed and the persons confined under their authority set at liberty.

The principle then repudiated had been revived later, with all its narrow and contracting prejudices, in Native-Americanism. No man—certainly no Democrat—could give support to that idea. Again, the principles of the Alien and Sedition laws were proclaimed during the administration of Madi-

son. At a critical period a convention was held in a little village in New England, and it has given immortality to the place. Hartford otherwise would have never been heard of. At this meeting of traitors this very question of Native-Americanism was revived and brought conspicuously to light, in vital and abiding antagonism to the South, in the form of a proposition to exclude the representation of slaves, and Massachusetts still held to the idea.

The Louisiana convention was in session during the height of the excitement over the "re-annexation" of Texas, and this national issue was not overlooked in the debates. Native-Americanism was associated in men's minds with opposition to annexation, and a member read an extract from the *Southern Quarterly Review*, to which he said the author's name was not given, "but from the great ability with which the article was written he presumed it was from the pen of a distinguished gentleman, Professor Everett."* The article discussed annexation, and declared that it would produce dissension. In like spirit, the Hartford convention had declared that slave representation would produce dissension. It had proposed amendments to the Constitution—such as restricting Congress from admitting new States without the consent of two-thirds of the existing States; the withdrawal of the representa-

* *Southern Quarterly Review*, October, 1844, Art. ix., "The Annexation of Texas," pp. 483–520. There is no evidence in the article that Everett was its author.

tion allowed to the slave-holding States based upon the slave population; the exclusion of aliens from office and from the privileges of citizenship, except after a residence of twenty-one years; one term for the President, and that the office should not be filled twice from the same State. These were proposed by the Legislature of Connecticut to the other States of the Union, but met with no favor.* Was not this extract in the spirit of the Alien and Sedition laws? Did it not revive and blend new elements of political strife and endanger the peace and safety of the Union? It had met with no favor in 1814; it would meet with no favor in 1845. In these doctrines there was a design to revolutionize the whole country and light the torch of civil war. It was the Hartford convention, sanctioning the federal doctrines of 1797, and again proclaiming federal principles, which, when originally brought out, proved so disastrous to the party that espoused them. These were the principles which had given rise to the Native-American party—the old Federal party under a new guise. Defeated in 1800, and meeting with a succession of disasters, the Federal party then revived the doctrines of 1797, and made war upon our institutions. The doctrines of

* See the Proceedings of a Convention of Delegates from the States of Massachusetts, Connecticut, and Rhode Island; the Counties of Cheshire and Grafton, in the State of New Hampshire; and the County of Windham, in the State of Vermont; Convened at Hartford, in the State of Connecticut, December 15, 1814. Third Edition. Corrected and Improved. Boston: Printed and Published by Wells & Lilly. 1815. 32 pp.

the Native-American party were older than the federal Constitution. The Madison papers showed that this policy, to exclude persons of foreign birth from participating in the government of the country, was broached and insisted upon in the Philadelphia convention of 1787.* Washington, Madison, Franklin, and Wilson held liberal opinions, and were opposed to restrictions that would exclude their fellow-men from citizenship.

The opinions of Franklin, in particular, were practical, "because that distinguished man had spent a considerable time in Europe and had the opportunity of forming a correct judgment." During a period of over sixty years, although several States had formed and modified their system of government, not one had incorporated the principle of placing the naturalized citizen in a position inferior to that of the native-born. With the exception of Georgia and Maine, not a State had adopted this illiberal distinction. The constitution of Georgia of 1798 had special reference to the peculiar geographical position of that State, being then contiguous to the dominions of Spain. But it did not contain a Native-American clause. The Maine convention had not discussed the proposition, but required the Governor to be a native-born citizen of the United States. The weight of authority in America was against the incorporation of a Native-American clause in a State constitution. It was the intention of the

* Elliot, Vol. v., pp. 120, 143, 378, 398, 411, 560.

federal Constitution that the States should impose no greater restrictions than were imposed by the laws of Congress. All the eminent men of the formative period of American history were opposed to the spirit of Native-Americanism. Of these the most illustrious were Wilson and Madison. Conceding that "the services of Madison were most eminent, next to him no one had impressed a stronger mark of his mind upon the Constitution than Wilson,"* a foreigner by birth, whose very name was an illustrious refutation of the fallacy of the doctrine. Nor were all the members of the Whig party blind to the folly of the crusade against naturalized citizens.†

Like the constitution of Massachusetts of 1780, that of Louisiana in 1812 required of the Governor a property qualification, in the form of landed estate of the value of five thousand dollars. The unpopularity of this qualification was illustrated in the election of Governor Mouton, in 1844, who

* This is one of the earliest tributes to this eminent jurist.

† At this point in the discussion a member of the convention read an extract from the Louisville *Weekly Journal*, whose editor, he said, was a distinguished writer and a personal and political friend of the late Whig candidate for the Presidency, and yet he pronounced himself decidedly against the movement of his party to organize under a new name and upon the principle of hostility to foreigners. The article was written immediately after the defeat of Clay, and might be considered a sort of funeral oration or explanation of the cause which prevented the Whigs from making a better fight. Another extract, from the New York *Tribune*, to the same effect, was read, and the member concluded his appeal for the equal rights of the native and the naturalized citizens of the country by citing the distinguished services of foreigners in the war for American independence.

was inaugurated without inquiry as to his property. Even if he had lacked the qualification, his popularity would have insured his election. In like manner, and agreeable to public opinion, the religious and property qualifications for voters and office-holders disappeared in practice before they vanished from the State constitutions.

It was impossible to discuss any phase of the franchise without involving the institution of slavery, and Judah P. Benjamin, a member from Orleans, afterwards foremost in secession and in the formation of the Southern Confederacy, now warned his colleagues that they ought not to wrangle over distinctions between the rights of naturalized and native-born citizens, for a subject of vital importance, which ought to produce unanimity in their councils, demanded their attention, one that would obliterate all distinctions between Whigs and Democrats, and cause the whole South to form a single political party. The signs of the times plainly indicated that the peculiar institution of the slave-holding States must be guarded from an insidious foe — the Abolitionist. The course of events was proving that the Southern States must maintain their rights, rely upon themselves, and not upon the stipulations in the federal compact.

On Friday, the 24th, the right to vote was limited to free white male citizens of the United States. In the slave-holding States the tendency was to require a longer residence than was customary in the free States. The whole attitude of slave-hold-

ing communities was essentially unfriendly to newcomers.* These commonwealths wished to be exclusive, and their exclusiveness bred a political conceit which the course of politics and industry in America did not warrant. In this respect the restrictions on the suffrage, which for a long time were in force in slave-holding communities, continued the prejudices of colonial times. The high wall of political exclusiveness thus erected around the slave-holding commonwealths practically deprived them of the energizing population which was pouring into the free States. In no part of the world was there ever a more ardent defence of the doctrine of political equality among men than that heard from time to time in constitutional conventions of the slave-holding States. But in none did equality include any but the white, the dominant race. In Northern conventions there was less said of the necessity for long residence in order to enable the new-comer to become familiar with the essential interests of the State. The homogeneous population of the North practically permitted a shorter residence for the voter, while the heterogeneous population of the South, as its needs were interpreted by Southern statesmen,

* See the speeches on citizenship and immigration in The History and Debates of the Convention of the People of Alabama, Begun and Held in the City of Montgomery on the Seventh Day of January, 1861; in which is preserved the Speeches of the Secret Sessions, and many valuable Papers. By William Smith, one of the Delegates from Tuscaloosa. Montgomery: White, Pfister & Co. Tuscaloosa: D. Woodruff. Atlanta: Wood, Honleiter, Rice & Co. 1861.

made a longer period necessary. Thus, directly and indirectly, slavery excluded immigration, and had the domestic effect of emphasizing in an undue degree the importance of the peculiar institution.*

In Louisiana political exclusiveness was less intense than in any other slave-holding commonwealth, because it was in part obliterated by the cosmopolitan character of the State. Its population sprang from different races—the African, the Spanish, the French, the English, the American. New Orleans was the commercial capital of the South. Therefore, in determining the time required for gaining a residence in the State, this cosmopolitan character of its population was a determining factor. The discussion of this qualification was not widely different from that in the Northwestern States in a similar economic situation. The State stood in need of population; it had immense resources, which could be fully developed only by a great number of people. Therefore, it ought to encourage immigration. Discouraged immigrants would go elsewhere—to Arkansas or Texas. If a liberal policy was pursued those possessing ability and industry would come to the State, and it would then grow greater every day in wealth and importance. Its commercial domain would then extend from the Alleghany Mountains to the Gulf of Mexico, from the Gulf to the remote parts of the earth. If freely encouraged to locate in Louisiana, immi-

* See Calhoun's letter to King, August 12, 1844.

grants would there become rich and prosperous, and in times of danger strengthen the State.*

These liberal notions, however, were highly objectionable to many who wished the control of the State to be wholly in the hands of its native-born population and its oldest and richest families. As the debate proceeded, the constitutions of other States were freely quoted, particularly those of Iowa,† Alabama,‡ Michigan,§ Illinois,‖ and Arkansas,¶ whose provisions defining the elective franchise were regarded as expressing the liberal spirit of the American people. One member, in referring to these, said that he did not attach much authority to the eighteenth-century constitutions of the confederacy. They had been framed at a period when man's capacity for self-government was an unsolved problem, when our ablest statesmen were doubtful of the result of our great political experiment. Among those, however, there was one illustrious exception, "a man whose intellect towered above the age in which he lived, and mingled with the events of the coming generation." Jefferson, earlier than any of his contemporaries, had seen the successful issue of our republican institutions, and in his philosophical writings on government had left a priceless heritage to the younger statesmen of America. The doctrines of an exclusive suffrage had long been exploded. They

* These ideas are almost identical with those expressed in Illinois, Iowa, Michigan, and Wisconsin in 1845–50. See the constitutional conventions of these States during these years.

† 1846. ‡ 1819. § 1837. ‖ 1818. ¶ 1836.

were not Jeffersonian in their character. In proof of this, eight States required less than one year's residence; seventeen, a residence of one year; and but one State, South Carolina, a residence of two years—and the constitution of South Carolina was framed in 1790.* Some thought because the property qualification was to be stricken out that some equivalent restriction should be adopted. The people demanded the abandonment of such a restriction, and believed in the logic and philosophy of Franklin—that if property is made the basis of the suffrage, then property, not man, votes. Government would then be determined by "the inert mass of unthinking matter which exercises political influence."

Had not the folly of depending upon a long residence for securing a conserving electorate been proved in Louisiana at the time of the battle of New Orleans? Nearly nine-tenths of the Orleans battalion were not voters, under the restrictive clause of the constitution of 1812.† The soldiers who had driven back the British army were not electors; and it was folly to suppose that the State would be adequately defended merely by prescribing a long period in which its inhabitants might gain a residence.

There was another reason why the franchise should be liberal. The more restricted a government, the more is political power confined in the

* For the provisions in the State constitutions of 1776–1800, see Chaps. ii., iii.; for those of 1800–1850, see Vol. ii., Chap. xv.

† See p. 395 as to regiments of free persons of color.

hands of the few. Confined to only a few, the expense would be large; but if this power was confined to one-fifteenth, or in the hands, say, of a dozen men, it would be found that these would secure enormous salaries, and patronage would be appropriated so as to perpetuate power. In England, by the right of primogeniture, political power was retained in the hands of the few. Public functionaries there received large salaries. Much money was spent to keep up the state of the bishops. The national debt was increasing. In a government of property-holders, as in England, property was the chief object of protection. Although the country was under as thorough cultivation as a garden, its resources were monopolized by the few, while the many were without the necessaries of life. If protection to property were the measure of government, despotic governments were frequently to be commended, but in time of war the freeholders were not sufficient in number to protect all the interests of the State.

CHAPTER XIV

THE BASIS OF REPRESENTATION

In Louisiana the laboring classes formed the greater part of the militia. Though they performed all the services of the citizen, they were denied a voice at the polls. From the poorer classes no danger was to be apprehended; they had always been the protectors of property; they demanded but a fair participation in the privileges of citizenship. Property is power. It always exercises a sufficient control over the poor; therefore, it was unnecessary to deny them a voice in the administration because of their poverty. It would place the poorer whites on an equality with slaves.

The Virginia convention of 1829, though consisting of men as talented as any who had assembled since the formation of the federal Constitution, were afraid of making popular reforms. They were so wedded to aristocracy that they made as few modifications as possible. Indeed, their conservatism was comportable only with the conservatism of Governor Berkeley, who, in the earlier part of the colonial history of Virginia, in speaking of the New England States, and of the desire of their people for public education, had thanked God that there were neither free schools nor printing-

presses within his colony, as learning created dissatisfaction and disputes, which the printing-press promulgated. Governor Berkeley was not the last of the conservatives. The deference to property had been illustrated in the Massachusetts convention of 1820, and in the New York convention of the following year.* Even Madison had changed his earlier views. In the federal convention of 1787 he had said that "persons and property being both essential objects of government, the most that either can claim is such a stricture as will have a reasonable security for the other."

In the Virginia convention, twenty-two years later, he said that "It cannot be expedient to raise a republican government if a portion of society having a numerical and physical force be excluded from and likely to be turned against it, and which would lead to a standing military force dangerous to all parties and to liberty itself." Property is sufficient for its own protection. An extension of the suffrage would be followed by a reduction of public salaries. If a property qualification were required, it must be graduated. If a man possessed of ten thousand dollars was more interested in the defence of the State than one who has not a dollar, then he who owned fifty thousand dollars must be proportionally interested. If a man with fifty negroes had one vote, then he who owned a hundred ought to have two.

* See the debates in these two conventions for an exhaustive discussion of the idea, expressed in the Massachusetts convention by Webster, "The basis of government is property."

The value of the constitutions of other States in the Union as evidence that property would be unsafe if it were not made an element in representation, and that those who possessed no property would be dangerous legislators, was deprecated by some. It was more appropriate to refer to the contrary experience of Louisiana. There property had governed exclusively. The State had become involved in heavy debts. The extravagant appropriations made by the Legislature had not been for the benefit of the poor, but of the rich. The experience of Louisiana attested the extravagance and follies which followed the administration of a government founded on the property basis.

The ultra-conservative element in the convention was in the minority. The majority of its members favored an extension of the suffrage. But to what degree? Would not a law for the registration of voters prevent the election frauds for which the State of Louisiana was noted, due to the great number of persons who came to the State from other commonwealths and from Europe? Some wished the rights of the elector unimpaired so long as he continued to be a house-keeper in the State and his dwelling-house was actually occupied by a member of his family during his absence.

The discussion of the franchise led almost imperceptibly to a discussion of representation. It should be uniform; but upon what basis? A delegate from Orleans began the debate for which, among constitutional conventions, this one is distinguished. Property should be the basis of rep-

resentation; but the convention had rejected this basis. Next to property, the best basis was the qualified voter. There had been some unwillingness to adopt the basis of manhood suffrage. If neither property nor manhood suffrage was to be the basis adopted, it should be the free white population of the State. The committee on the franchise had reported in favor of the federal basis. This was arbitrary, and, if established, tended to keep up dissensions in the State. It was well known, as was said in the Virginia convention of 1830, that the "federal basis was a departure from principle, insisted on by the Southern States as a guarantee, and consented to by the Northern States only as a compromise, without which the union of the States had been impossible. Its design was to preserve the balance of power and to protect the Southern States from encroachments by the Northern States." The local situation of the people of Louisiana made it unnecessary to adopt that basis, as slave-holders comprised the greater part of the white population. It had been said that if this basis was rejected, Louisiana would repudiate its essential institutions. But there was no analogy between the basis of representation in a commonwealth and in the United States. In a commonwealth where all submitted to the same laws, enjoyed the same franchise, held the same kind of property, it was idle to adopt an arbitrary system of apportionment, which was not only manifestly unjust, but repugnant to the social system of the State. Granted that the federal basis was proper for the Union,

there was a peculiar impropriety in its adoption in the State, for it would expose slavery to the very risk to guard against which this basis had been insisted upon as essential at the time of the formation of the federal compact. In its local relations a State could find no necessity for adopting it. Practically, its adoption would result in great injustice. It would give to a few districts a disproportional representation, and enable them to control the whole Assembly. The western portion of the State was the richest in agricultural resources; it was fast increasing in slave population, and consequently its white population was proportionally small. Not a planter removed thither who did not carry with him from fifteen to twenty slaves, which was the average ownership in that part of the State. The comparative increase of white and slave population there was as one to seven; in Southern Louisiana the slave population was decreasing, especially in the city of New Orleans, where, in a population of one hundred and ten thousand whites, there were but eighteen thousand slaves, making a proportion of six whites to one slave. From the city of New Orleans to Baton Rouge the increase of the laboring white population was great, which accounted for the decrease in the number of slaves in that region, and their removal to the western portion of the State, or wherever their labor was more productive. If one of the new parishes in Western Louisiana, with an area of thirty to fifty square miles, was made a representative district, and to its white population

three-fifths of its slaves were added, it was certain that, as compared with one of the river parishes in southern Louisiana, whose white population was in the ratio of two to one of its slave population, the southern district would have less political power than the western, having a ratio of fifteen slaves to one white man. A more arbitrary system of representation could not be devised to transfer the political power of the State into the hands of a few persons residing in favored regions of the State.

Furthermore, if each district was to have one Representative, there would be a constant encouragement to create new districts. In the older portions of the State land was less productive and the people less able to incur heavy expenses by the formation of new districts. In the western part land was of extraordinary fertility; the population there could easily subdivide into new districts and bear the burdens of separate, parochial organization. The more numerous population in the east would be overbalanced by the number of parishes in the west. Political power would reside in that portion of the State which had been subdivided into many parishes expressly to produce preponderance. Why should slaves be represented and other property excluded? If slaves, as property, were to be represented, why not include houses and land? If the owner of a slave was to be invested with greater political power by reason of that possession, why should not a capitalist enjoy the extension of political power

through the representation of his capital? All property should be treated alike.

It seems strange, perhaps, that the defenders of slavery should have admitted that the slavery compromise of the national Constitution was a departure from principle. It might seem that they would have claimed it as an illustration of the true principle of representative government. Because the federal basis, when men sought to apply it to the apportionment of representation in a commonwealth, proved unmanageable, it was said to be a departure from principle. Why, inquired a delegate, should but three-fifths of slave property, instead of two-fifths or one-half or the whole number, constitute the basis? Any basis fixed by an arbitrary principle was revolting to the sense of justice. It was with bad grace, indeed, that those who declaimed in favor of the inestimable right of suffrage for every white male should propose a basis that admitted three-fifths of the slave population, and put them on an equal footing with the white population, and by so much reduced the political power of the individual electors.

As the debate proceeded it was discovered that the contending powers in the convention were the country against the town—as in Virginia in 1830, the highlands against the lowlands. If the white basis were adopted, the advantage would lie with the towns; if the slave basis, with the country. It was declared that the adoption of the white basis involved the existence of the agricult-

ural interests of the State. It was a basis proper enough for a community whose institutions were dissimilar to those of Louisiana; but imperious necessity there demanded that slave property, from which the greatest amount of revenue was derived, and which was the source of the agricultural wealth of the State, should be considered a part of the basis of representation. Because of the existence of that species of property, and its function in agriculture, the white population of the country was comparatively less than the white population of the city; but the population of the country was permanent, and essentially attached to the soil and the institutions of the State. The city population was floating. The greatest interest of the State, that upon which its safety and perpetuity mainly depended, was the agricultural. Should this interest be sacrificed? Should the country be a victim in order that the city might control the destinies of the State? It would be impossible to adopt a perfectly equitable basis. New Orleans was a great and growing city, whose interests were disproportionate to those of the remainder of the State. It was filling up with all kinds of people, and was exposed to outbreaks and commotions. The country would not be justified in relinquishing the power which it had wielded, but had never abused, and transferring it to the city. The country was free from those sudden passions which pervert and carry men's minds to fearful extremities; it was a shield to the State, guarding it from sudden assaults

and preserving it from the insidious schemes of enemies without or within. Every consideration of sound policy dictated that the country should maintain its ascendency.

Probably it was not known to the delegate who put forth these ideas that they have the authority of Jefferson's name; but had the speaker read the nineteenth query in Jefferson's Notes on Virginia, he would have felt strengthened. "Those who labor in the earth," writes Jefferson, "are the chosen people of God, if ever He had a chosen people, whose breasts He has made His peculiar deposit for substantial and genuine virtue. It is the focus in which He keeps alive that sacred fire which otherwise might escape from the face of the earth. Corruption of morals in the mass of cultivators is a phenomenon of which no age nor nation has furnished an example. * * * Dependence begets subservience, and venality suffocates the germ of virtue and prepares for it tools for the designs of ambition. Thus, the natural progress and consequence of the arts have sometimes perhaps been retarded by accidental circumstances; but, generally speaking, the proportion which the aggregate of the other classes of citizens bears in any State to that of its husbandmen is the proportion of its unsound to its healthy parts, and is a good enough barometer whereby to measure its degree of corruption. While we have land on which to labor, then let us never wish to see our citizens occupied at the workshop or twirling the distaff. Carpenters, masons, and smiths are needed in husbandry, but for

the general operations of manufacture let our workshops remain in Europe. It is better to carry provisions and materials to workmen there than bring the latter to the provisions and materials, and with them their manners and principles. The loss by the transportation of commodities across the Atlantic will be made up in happiness and permanence of government. The mobs of great cities add just so much to the support of pure government as sores add to the strength of the human body. It is the manners and spirit of the people which preserve a republic in vigor. A degeneracy in this is a canker which soon eats to the heart of its laws and constitutions."

Among the dominating political ideas in American history few have received wider acceptation than those of Jefferson on the relative worth of agriculture and manufactures in the evolution of democracy. Accepted without modification, they would have held America in a purely agricultural condition. Agriculture and manufactures together have determined the evolution of our institutions. With agricultural institutions slavery was identified; but it could never be identified with manufactures. Varied economic interests ultimately compelled the abolition of slavery. The most eloquent defenders of slavery were fond of describing the agricultural condition as the ideal state of society. In slave-holding States the proportion of slaves to the white population was always smaller in cities than in the country. This difference was analogous to that which existed

between the highland and lowland regions of slave States—as in Virginia, Alabama, Kentucky, North Carolina, and Tennessee. The slave-holding States steadily and successfully resisted all efforts to introduce manufactures among them, and as steadily sought to maintain an agricultural homogeneity, which, it must be admitted, was economically as inconsistent as it was unnatural. The economic variations determined by the conflicting interests of city and country, of highland regions and lowland regions, explain many provisions in the constitutions of the commonwealths.

So, on the 3d of February, Beatty, of La Fourche Interior, in defending the federal apportionment, claimed that it was demanded by the industrial condition of Louisiana, as seen in the almost antagonistic interests of New Orleans and the country. True, the city by such an apportionment would possess less influence than by an apportionment according to the number of white electors exclusively. In all countries the influence of large cities had been detrimental to the States in which they were situated. Paris had controlled the destinies of France. It was by the motley and excitable population of that city that the horrors of the French Revolution had been perpetrated. There, revolution had been succeeded by revolution until Napoleon had placed the imperial crown upon his own head. Paris had followed the precedent of Rome, which aspired to govern the world. The slightest convulsion in the imperial city was felt in the remotest province. At last, by her over-

grown and pampered weight, Rome fell to the lowest scale of degradation and impotence. Had the power of the Roman Republic been diffused throughout the empire, instead of being concentrated in the city of Rome, the republic would have possessed a recuperative energy capable of withstanding the shock of the Northern barbarians. Louisiana should profit by the experience of the past. The country should be placed beyond the corroding influence of the city. The republics of ancient Greece, controlled by their cities, had fallen a prey to luxury and licentiousness. Louisiana should pursue any system that would diffuse power throughout the State, instead of concentrating it in any one part, especially in the city. It was dangerous to republican liberty to place power in the hands of the few. On the basis of the free white population, New Orleans would elect one-third of the Assembly, and at the rate of increase of that class of population, in a few years would choose one-half of it. Under these circumstances, the federal basis was the correct one. Slaves were not merely property, but a portion of the population as well as labor of the State. As the laboring element, they were the exclusive source of wealth. If the free white population was adopted as the basis, taking into consideration the fact that the slave population of New Orleans was fast diminishing, it was not impossible that in a few years, without detriment to her own interests, New Orleans might, perhaps, carry the abolition of slavery. The number of Representatives chosen on the

federal basis should be fixed every ten years by the State Legislature, and never be fewer than thirty nor more than one hundred.

To this proposition it was objected that representation should be equal and uniform throughout the State, and be forever regulated by the number of qualified electors, using the language of the constitution of 1812. The people have a right to govern themselves, and by the people was meant the free white males past twenty-one years of age. This excluded slaves, because, from necessity as well as from choice, slaves were regarded as property. They had never been enumerated as political persons. Policy also compelled the exclusion of free persons of color from participation in political rights, and it might compel their exclusion from the State. It was wholly irrelevant to cavil against the exclusion of negroes, because minors and women were excluded. These were represented by their actual or selected protectors, just as the Legislature represented the will of the people, the executive their power, and the judiciary their reason and justice. It had been urged that taxation should regulate representation; the parish paying the greatest amount of taxes to have the most Representatives. But taxation being laid on property and profitable professions, it was difficult to determine accurately who paid the tax. Certainly they who paid the money into the hands of the tax-collector were not the only ones who suffered the burdens of government. All classes of society contributed to the treasury. Property afforded no

test of representation. The federal basis could have no application in Louisiana, where no union was to be formed and no compromises to be made. It had no necessary connection with the representation in the Legislature of an independent State, with common interests, the same institutions, and a homogeneous population throughout its limits. As applied to Louisiana, it was indeed an unequal basis, because it would necessarily lead to an anti-republican consequence—the minority governing the majority. This view was held by those who advocated that basis. They claimed that they had the balance of power in the country, and were going to retain it. It was unreasonable to give one portion of citizens a greater weight in the legislative branch than another, although the two portions might be equal in numbers. To give a parish having three hundred electors one Representative in the Legislature, and another parish having only three hundred electors, two, because its electors owned five hundred slaves, was a violation of justice. If one elector owned two slaves, especially if they were so old or so young as to be valueless, although another elector owned houses and lands, stores, shops, and factories, the slave-owner would have the larger representation. No white man would consent that two slaves should have more weight in the political government of Louisiana than he himself. To admit the federal basis would as necessarily make Abolitionists out of the inhabitants of parishes in which there were few slaves, and out of non-slave-holders, as it made Abolition-

ists of the people of the Northern States. The knowledge could not be kept from the slaves—and it would increase at every election—that two of them had more weight in the government than a free white man. This would soon destroy the institution of slavery, to the infinite injury of the agriculture, the wealth, and the happiness of the State. Every slave should know what he really was in Louisiana — property. Every freeman should know that he had a voice in the government, that the slave had none. This knowledge would raise a Chinese wall between Abolitionism and slavery, and forever make this invaluable institution secure. The evil consequences of the federal basis already felt by the slave-holding States would be greatly extended by admitting free persons of color to a participation in the government, instead of entirely excluding them.

A leading object in adopting the federal basis was to give the agricultural portion of the country an influence to which, by weight of numbers, it was not entitled. This result would promote antagonisms and prevent that harmony and equal union of the agricultural, commercial, and manufacturing interests of the State so necessary to its prosperity. The sole purpose of changing the basis of representation in the constitution of 1812 was to deprive the cities of New Orleans and La Fayette of the representation in the Assembly to which the number of their electors justly entitled them. The rule, followed in the old constitution, was to make taxation the basis of representation.

The State treasurer's report showed that the cities in the State contributed more than one-half of its taxes. The greater part of the taxable resources of the State were derived from the commerce concentrating at New Orleans. The landed property of New Orleans and La Fayette comprised in valuation nearly one-half that of the whole State. The country parishes possessed one hundred and sixty thousand slaves, of the value of fifty millions of dollars. If representation was to be based on wealth, these two cities would have more Representatives than the country parishes, because the value of the manufactures, the machinery, the ships and steamboats, the warehouses, the rich and costly furniture accumulated in public and private houses, the stocks and money in bank, in these cities far exceeded in the aggregate the value of all the slaves of the remaining portion of the State. There was, then, no reason for departing from the principle of representative government, except the arbitrary one of resisting the growing influence of the cities of the commonwealth. This spirit, prejudicial to the city, was based on a supposed diversity between the interests of town and country. Jefferson's ideas on the influence of cities on the body politic did not persuade all the members. Many of them believed that great commercial cities exercise a most beneficent influence on the States to which they belong, that commerce harmonizes and civilizes, and that any policy which arrests the growth of cities is injurious to the State.

Benjamin, objecting to the federal basis, now argued that if slaves were to be included, then, with equal propriety, should be included oxen and horses, which were equally productive—an argument advanced by the opponents of slavery in the federal convention of 1787. The discussion of the subject in the Virginia convention of 1830 was again cited as a precedent, "as more able debates on the subject of representation than had occurred elsewhere, and as leading to the rejection of the federal basis; representation in Virginia, at least, having been based on the divisions of the State east and west of the mountains, and upon taxation and numbers."

It was now urged that the principle of restraining the influence of large cities was well known in all the States, and that equally well understood was the principle of giving to each separate political community within the State a voice in the general administration of public affairs. Not population alone, but locality and incorporated interests, for the most part, entered into the basis of representation in other States. Several constitutions provided that, with the increase of population, there should be an increase in local representation. The Legislature of Louisiana should be forbidden to create any new parishes less in area than twenty to twenty-five square miles, and not containing a requisite population; then the equity of representation would be secured. In Massachusetts and New Hampshire the unit of representation was a certain number of electors. In Vermont it was the

incorporate town. Rhode Island, apprehending danger from the concentration of power in cities, provided that no town should have more than one-sixth of the representation—a principle which has been followed in later State constitutions.* It was necessary to guard against the undue influence of cities. Maryland limited the influence of Baltimore, and in its constitution of 1838 also provided that should any of the counties of the State fall short of the number of people fixed upon as the basis, they should retain the representation which had been accredited to them. This constitution entered into details, in order to secure the State against domination by municipalities. South Carolina was arbitrary in its apportionment. Charleston, although possessing one-third of the population of the State, could not have more than one-ninth of the membership of both Houses. In North Carolina the basis according to the federal principles was adopted for the Lower House, though each county was to have one member whether or not it had the full ratio. So Georgia provided that one Senator should be elected from each county without respect to population. The basis was on federal principles, the ratio being fixed at fifteen hundred persons; but no county could have more than four nor less than one Representative.

Kentucky, Ohio, and Illinois based representa-

* As in Pennsylvania in 1873, respecting Philadelphia, and in New York in 1894, respecting the city of New York.

tion on the number of qualified voters, but in all these States each county was given at least one Representative. The constitution of Louisiana of 1812 was but a transcript of the Kentucky constitution of 1799. The inland States could never have vast cities with overpowering influence and interests antagonistic to those of the country, and therefore their constitutions were not precedents for Louisiana. Alabama, Missouri, and Arkansas were cited to show that these carried out the principle that each county shall have at least one Representative. The relation which the rural inhabitants of these States bore to the inhabitants in large towns was not like that which the inhabitants of Louisiana bore to the city of New Orleans. This city was the metropolis of the whole Mississippi Valley. If South Carolina, Maryland, New York, Rhode Island, and Pennsylvania had found it necessary to make constitutional provisions confining the influence of cities within their boundaries, was not this limitation a sufficient precedent for Louisiana? It should follow the experience of twenty States — give each organized parish one Representative, and limit the city of New Orleans to a fixed proportion—say, one-sixth of the entire representation.

To these arguments a member from New Orleans replied that the precedents cited from other State constitutions were originally derived from the method of apportioning representation in England, were part of the rotten-borough system of that country, and were not adapted to Louisiana.

The system in the Northern States prevailed, as it were, by force of habit. Massachusetts was an illustration of the degree to which it might be carried. In that commonwealth, in an isolated spot, situated on the sea-coast, frequented by watermen and fishermen, and containing but a few huts, was a town, and it had a Representative. There were doubtless other towns of no greater magnitude similarly distinguished. Certainly Louisiana would not agree to apportion representation on that basis.

The constitutional history of the commonwealths was freely drawn upon, accurately and inaccurately, and with equal weight with the convention. It is as necessary to record the inaccurate citations as the accurate, for oftentimes an erroneous citation leads to the adoption of a clause in a constitution. The history of representative government is the history of fiction and of fact, for fact and fiction are curiously blended when a constitution of a commonwealth is made. The interstate influence of the commonwealth constitutions can probably be no better illustrated than by recording such citations as these which occur in the Louisiana convention. Though loosely made, and probably without the means of verification at hand, the fact that constitutions of other States are quoted in these conventions contributes to a general uniformity in the fundamental law. The primary influence of the eighteenth-century constitutions was chiefly felt in the earlier Western States. After 1800, in slave-holding States the Virginia prece-

dents were always authoritative; in free States the New York precedents prevailed.

On the 11th an effort to prescribe a real-estate qualification for Representatives was defeated by a vote of four to one, and further efforts in this direction were abandoned. By a majority of three votes the time for residence was fixed at three years. The spirit of Native-Americanism, a political characteristic of the country at this time, was quite strong in the convention, and it sought to exclude naturalized citizens from filling the office of Governor. In speaking against this proposition, a member remarked that he could see no necessity for it, because members of many families in the State had intermarried into foreign families, and had so interwoven their own interests with those of naturalized citizens that these should be regarded as Americans. To discriminate between the native-born and the naturalized citizen would produce great mischief in society. A period of sixteen years' residence as a citizen of the United States, ten of which had been spent within the State, would be a sufficient guarantee of interest and attachment to the commonwealth. In the Florida parishes there were many men born prior to the acquisition of that part of the State, and they should not be deprived of eligibility to office.

This convention was in session at a time when there existed great prejudice against foreigners and the Native-American party was at the height of its influence. At this time New York, Maine,

and Virginia required their Governors to be native-born citizens, and the constitutions of these States were cited as sufficient precedent for Louisiana. Indeed, the Governor should be further qualified, as was the case in Massachusetts, by possessing landed property of the value of five thousand dollars, so as to make the State wholly secure in electing him. If a native American, he would fairly understand the wants of the people; if a slave-property holder, he would exercise the taxing power with discretion. The principal argument in defence of a property qualification was always its guarantee of protection by means of taxation. One member was satisfied that the Constitution of the United States prohibited a State from limiting office to native-born Americans. Another thought that the United States and a State were not in the same relation to the citizen. If a State wished to make a discrimination among its own citizens, those of other States had no right to complain. A citizen from another State might challenge the right of Louisiana to exclude him. It excluded not only the naturalized citizen of the United States, but also proposed to exclude from eligibility to certain offices all the naturalized citizens of Louisiana. This would practically reduce the citizens of other States and of Louisiana to the same level. But what is the right of the State to make such a discrimination? asked a member. Even those most jealous in upholding the rights of the States knew that no State sovereignty had any right to destroy

the effect of federal legislation when that legislation was authorized by the national Constitution. The Constitution gave to Congress the power to establish a uniform rule of naturalization throughout the country. Several States had conceded to the general government all control over this subject; and, therefore, any legislation which the national government adopted must be regarded as supreme. Congress had adopted uniform rules of naturalization, nor could any one of the States legislate contrary to the act of Congress.

Any person having the act and the judgment of the court in his favor was an American citizen, and his citizenship could not be invalidated by any law emanating from State authority. The convention had power to prescribe any qualification it pleased for the office of Governor, provided that in doing so it made no discrimination between American citizens. Such discrimination was prohibited by the national Constitution when it declared that a citizen of each State is entitled to all the privileges and immunities of citizens of the several States. All American citizens were upon the same footing of equality; the Constitution did not distinguish between native and naturalized citizens.* The national Constitution was an injunction upon the several States, and with the strong voice of supreme authority forbade them to enact any legislation discriminating against the citizens of a par-

* Except that the President and Vice-President must be native-born.

ticular State. To exclude naturalized citizens from eligibility to the office of Governor would create distinctions and disregard the fundamental law of the Union. A native citizen of Mississippi going to Louisiana would be eligible to the office of Governor, but a naturalized citizen from any State would be excluded. This would clearly be creating in one State a discrimination between citizens of the several States. It could not then be said that citizens of each State had been vested in Louisiana with the privileges and immunities of citizens in all the States. Louisiana would have violated and destroyed the integrity of the federal Constitution.

In reply to this national idea of citizenship, it was said that the national Constitution did not permit so broad a view. It did not declare that a citizen of another State should have a right to hold office in any particular State. If so, a citizen of Missouri might be made a candidate, and, if elected by the people of Louisiana, claim of right to be its Governor. Citizens of other States could not claim the right to enjoy the same privileges and immunities in a new State which they had enjoyed in their own. If this were true, the citizen of Massachusetts coming to Louisiana would have a right to vote in Louisiana according to the laws of Massachusetts. In New York, negroes were entitled to vote, and if the doctrine was true, negroes would have a right to vote in Louisiana. Thus the old difficulty of realizing the equal rights of the citizens of the several States, which had sprung up at

the time of the Missouri controversy, and which always appeared when a slave-holding State attempted to define the franchise, duly appeared in the Louisiana convention.*

* Compare this train of ideas with the discussion of the same question at the time of the admission of Missouri: Chapter vi.

CHAPTER XV

ELEMENTS OF DISCORD IN THE COMMONWEALTH

THE only reason for retaining the word *native* in defining the qualifications of the Governor was to secure a native-born citizen as Governor in time of war. Birth and citizenship are not synonymous terms. As all agreed that none but a citizen of Louisiana could vote, or be elected Governor, what was the relevancy in quoting the Constitution of the United States? So broad an interpretation of the national Constitution tended to deprive a State of its sovereign power to regulate the qualifications of its own officers and to define the qualifications both of the elector and of the elected. The States had never so far parted with their sovereignty as to deprive themselves of the right to regulate their own domestic affairs. It was impossible for citizens of foreign birth to disfranchise their sentiments; therefore it was unsafe to qualify them for holding office. In time of war, could a foreign-born chief magistrate so far forget the country of his birth as to avoid endangering the interests of the commonwealth? The framers of the federal Constitution intended that the citizens of one State should not be regarded

as strangers in another State, but in all things be equal to its citizens. The Constitution, laws, and treaties of the United States were the supreme law of the land—a provision which forbade the introduction of foreign matter into a State constitution. A discrimination against naturalized citizens was abhorrent to the principles of representative government, and the judges of the United States courts would not recognize it. Though a State constitutional convention might deviate from the true path, the judges of the courts, both State and federal, would ultimately bring back constitutional provisions and legislation into harmony with the supreme law of the land. It was true that six States—Alabama, Arkansas, Missouri, Maine, New York, and Virginia—required their chief executive to be native-born; but twenty—and with the Constitution of the general government in plain view—had rejected such a provision. According to the American theory of government, all citizens were on a footing of equality. Should Louisiana hesitate to choose between the wisdom of twenty States and the intemperance of six? Nor was it true, as some had declared, that at the time of making the national Constitution its framers intended such a discrimination. As soon as the States acknowledged that the federal Constitution was the supreme law of the land, the power of naturalization became the exclusive privilege of Congress.

On this point the best authority was *The Feder-*

alist. "The dissimilarity in the rules of naturalization has long been remarked as a fault in our system, and has left a foundation for intricate and delicate questions. In the fourth article of the old confederation it is declared that the free inhabitants of each of these States—paupers, vagabonds, and fugitives from justice excepted—shall be entitled to all privileges and immunities of free citizens of the several States, and the people of each State shall in every other enjoy all the privileges of trade and commerce."* The term "free inhabitants" here obviously implied that the citizens of the State were entitled in every other State to all the privileges of its free citizens. Every State was under obligation to recognize these interstate rights of citizens.

By the old Articles of Confederation, any State might discriminate against the citizens of any other. This produced confusion and hostility among them. Political economy compelled the adoption of a uniform rule of naturalization, and this could be made by Congress alone. To secure this peace and the equity, the Philadelphia convention had given the power exclusively to Congress.

The present convention had assembled to remove the defects in the constitution of 1812, not to discriminate among the citizens of the State. If the naturalized citizen was made ineligible to the office of Governor, what would prevent an ex-

* *The Federalist*, xlii. The speaker also quoted at length from Story, *Commentaries on the Constitution*, Vol. iii., Secs. 1097–1800.

tension of the same spirit of exclusion so as to prescribe the particular district or parish of the State from which he must be chosen? In a little while this hostile feeling towards the citizens of other States would be made to include a particular class of native-born citizens, and thus ultimately enthrone aristocracy and discord. The convention had been called explicitly to extend the right of suffrage. To require the Governor to be native-born would not be in accordance with the call for the convention.

But others took a different view. Was not the Virginia convention of 1829 a sufficient precedent? Had not Monroe, Madison, and Marshall been among its members? Had not that convention required the candidate for Governor of Virginia to be thirty years of age, a native-born citizen of the United States, and a resident in the State for five years? And those who opposed the qualification of nativity forgot that Monroe and Madison had been each twice President of the United States; that Madison was one of the chief members of the convention that made the Constitution of the United States, and that Marshall presided in the Supreme Court. These men certainly understood what provisions should be ingrafted in a State constitution. Was it error to err in such company? Was not their authority sufficient? Even Congress had given its consent to the qualification complained of. Alabama, Missouri, and Arkansas were not members of the old confederation of thirteen States. Each had been compelled

to submit its constitution to the approval of Congress, lest any clauses should conflict with a provision of the federal Constitution. Congress had admitted these States into the Union and sanctioned the provision in their constitutions requiring that the Governor should be a native-born citizen of the United States. Who would say that the Representatives and Senators of the whole country, the President of the United States, and the judges of its courts, had obstinately supported an unconstitutional provision? There was no doubt of the constitutional right of Louisiana to insert such a clause.

The debate on the qualifications of the executives had at last narrowed down, as Marigny, of Orleans, expressed it, to the question whether the people of Louisiana would have a naturalized citizen for their Governor. Entering at length into the history of the State, he showed that its citizens of foreign birth had shown as sympathizing an interest in its welfare as those native-born. Asylums, hospitals, convents, cathedrals, institutions of learning, and public benefactions of various kinds attested the philanthropy of many distinguished citizens of the State who were born in foreign lands. Officers of high rank, of inestimable service to the State, were alien-born. The general welfare of the commonwealth had been as much promoted by its naturalized as by its native citizens. Particularly was the proposed exclusion of foreign-born citizens unwelcome to the French population of the State, which was generously rep-

resented in the convention, and Marigny made the ablest remonstrance against the discrimination, and deplored his inability to speak fluently in English.*

As has so often occurred in the political history of the country, the most earnest defence of democratic principles was now made by men of foreign birth. Undoubtedly the unwillingness of many members to make a person of foreign birth eligible to the office of Governor was due not to any desire to exclude naturalized persons of the white race from coming from another State or country, but because, as a member said, if the State had no right of preventing any class of citizens coming from other States from being eligible to office in Louisiana, it would make a colored citizen of Massachusetts, or from any other free State, capable of holding office. Though free colored persons were not persons of foreign birth, they were not considered as capable of being identified politically with the citizenship of a slaveholding State. They were, by nature, forever foreigners. The convention was controlled by this sentiment, and in its desire to obliterate even the suggestion that a free person of color could be included in the concept of the State, it treated the free person of color as permanently a foreigner—the naturalized citizen had been one. The African was incapable of becoming an elector; the foreign-born white man, according to this notion,

* The debates of this convention were published in both French and English.

though legally capable of naturalization, was incapable in sound political economy of becoming identified with the essential interests of the State. The free person of color and the foreigner were to be excluded from the electorate essentially for the same reason.

But Virginia was not the only precedent quoted. New York, in 1821, had admitted free persons of color, under a property qualification, to the right of suffrage. If eminent names, like those of Madison, Monroe, and Marshall, were to be quoted as authority for adopting the doctrines of Native-Americanism, the names of Tompkins and Van Buren, members of the New York convention, should also be quoted, for they had voted to exclude naturalized citizens from the office of Governor of New York. Had not Washington, in his farewell address, admonished his countrymen to beware of foreign influence? Jefferson wished that there was an ocean of fire between the United States and Europe. Certainly, the precedents and the authority for the exclusion of foreigners from office-holding in America were sufficient.

At this point some one inquired whether the matter under discussion was of even slight importance in practical administration, as it was highly improbable that any naturalized citizen would ever be elected Governor of Louisiana. If it was true, however, that a naturalized citizen, a person invested with the rights of citizenship under the act of Congress, was not worthy to be trusted with the office of Governor, the principle

would have to be carried further: all citizens of foreign birth would have to be looked upon with suspicion; none of them could be intrusted with the administration of the laws; and all the departments of the government should be swept "with the besom of Native-American reform." The executive department, as every one knew, was less important than the legislative and the judiciary. Why exclude the adopted citizen from an office of little importance and invest him with a weightier authority? It was far more prudent to exclude him from the bench and from the Legislature. It was immaterial whether or not Monroe, Madison, and Marshall had voted for Native-Americanism in the Virginia convention. Marshall might be a learned jurist, but little importance should be attached to his opinions on political matters. In the days of the black cockade he was a Federalist, deeply imbued with the heresies of a school whose temporary ascendency had fastened upon the country the odious Alien and Sedition laws—the most disgraceful acts that had ever blotted the statute books of the nation. There was no doubt that, with his party, he sympathized in its hostility to foreigners. Such rights involved nothing more than the assertion and maintenance of the reserved rights of the States. By the consent of the States, the right of admitting foreigners to citizenship had been conceded to the general government; the States had consented that no distinction should be made between different classes of American citizens. This was no invasion of State

rights. It was a stigma to describe the adopted citizens of the State as foreigners. An American citizen, declared to be such by an act of Congress and by a judicial decision, could not be distinguished politically from an American by birth. The rights of the adopted citizen were as sacred as those of the native-born; he could not be despoiled of them without violating the fundamental law of the land. If Louisiana was to distinguish between different classes of citizens, a due regard for its own safety required it to provide against real, not imaginary, dangers. The greatest peril menacing the South came from a different quarter than naturalized citizens. These dangers were the machinations of Northern Abolitionists. Was it not wiser for the State to guard against them than to attempt to shield the commonwealth from imaginary perils? If restrictions were to begin, they should be carried out, and only natives of the State should be eligible to office. If adopted citizens were to be disqualified from office because it was feared that some of the prejudices of earlier associations might cling to them, the same disqualification should attach to the Abolitionists and to all who came from the land of Abolition.

The doctrine of Native-Americanism was too feeble to take root in Louisiana. It had not been broached before the election of the members of the convention. They were delegated to make a constitution for all the people of the State, without regard to their origin.

Marshall's opinions on the franchise were worthy

of being accepted as authority. In purely legal matters not involving constitutional powers, his opinions were always sound, but upon constitutional questions there could be no worse guide. He invariably leaned towards the power of the federal government, and, where there was no express grant of power, he was always ready to imply one upon the slenderest pretence. If it were true that the convention had no power to prescribe a constitutional provision depriving the citizens of other States from enjoying the same political rights and privileges which the citizens of Louisiana enjoyed, the result would be an absurd one—that a negro vested by law in Massachusetts with the privileges of a citizen would be entitled to all the privileges of a white citizen of Louisiana. The Constitution of the United States never contemplated any other than the white population in its provisions for government. An absurd conclusion could not be made an argument against the principle.

This idea of the entire exclusion of the African race originally from American citizenship was a favorite one with the advocates of slavery. It was advanced, as it will be remembered, by Pinckney, in the debate on the Missouri Compromise, when he said he was the author of the clause in the Constitution giving equal rights to the citizens of the several States, and that neither he nor any of his contemporaries at the time thought for a moment of including any person of the African race in the provision; and nearly half a century later the

same idea was fundamental in the Dred Scott decision.

The struggle to enthrone Native-Americanism was a provincial legacy, whose title, when contested before the high court of public opinion, proved to be imperfect and unworthy of the decent respect of the American people. Louisiana, in 1845, though greatly influenced by the idea, refused to incorporate it in its constitution; and the convention, on the 11th of February, struck out the word "native" by a vote of forty-one to twenty-seven, and in the same spirit rejected the long-residence qualification of ten years for the Governor. It was agreed that he should be required to be a citizen of the United States, a provision which did not appear in the eighteenth-century constitutions, and which was seldom adopted before 1850. Indeed, at the close of the nineteenth century it is not found in all the constitutions.

Like other States in which there was a discrimination against persons of color, Louisiana provided that its militia should consist of free white men only. On the 26th, the basis of representation being again under discussion, the convention proceeded, perhaps unconsciously, to define the slave-holding concept of an American commonwealth, and no definition so complete in all its details is to be found in the constitutional history of any other American State. It might not be expected that a slave-holding State, farthest removed from those others in which Abolition notions were held by a portion of the population not controlling public

opinion, would express such sentiments as are reported in the Louisiana convention of 1845.

The idea of the political corporation as a permanent element in the basis of representation may be accepted as predominant in American government. The constitutional history of Virginia shows that this notion has long prevailed in that commonwealth, and the discussions in Massachusetts in 1820 illustrate the difficulty with which that idea, advocated by the Democratic party, was applied in that commonwealth. Louisiana, in 1845, was not unwilling to follow this precedent for corporation representation; but was it willing to apply it equally in both branches of the Legislature, or should one of them be apportioned according to population? If apportioned by population, of what should that population consist —of free whites only, or of free whites and three-fifths of all other persons, excluding Indians not taxed? If there had been a homogeneous population in Louisiana the difficulty in apportioning representation would have been simple to solve. An apportionment by mere numbers could have been made. But there were two populations in the State—a white and a slave. This produced inequalities that rendered a white basis extremely partial and unequal in its operation. The preponderance of whites over slaves in some of the parishes, and of slaves over whites in others, was so various that the idea of excluding slaves from the basis altogether was, in the opinion of many, unjust. It practically surrendered the political power of

the State into the hands of the cities, in which the white population was on the increase and the slave population on the decrease. The manual labor which was performed in the country by slaves, was, in the cities, performed by white servants. These white servants were not citizens of the United States, and were as little interested in the general welfare of the country as were the slaves. Should not the constitution of the State, in defining the basis of representation, guarantee to the people of the country the rights and powers to which they were entitled? They possessed the greatest proportion of the territory of the State and the preponderance of its productive labor. All arguments favoring a mixed basis of representation, one in which property should enter, equally applied to the admission of slaves into the basis of representation, because slaves were property. In so far as they were elements in population, slaves also were legal persons. Were not laws made for their protection? Were they not punished if they committed crimes? Were not the relations between master and slave defined? Was it right that the owners of this species of property should be denied that weight in the councils of the State to which, as property-holders, they were entitled? If the white basis exclusively were adopted it would give to the city of New Orleans one-half the representation. Some seemed willing to fix that basis and restrict the city to one-fifth of the representation. But this was unfair to the southern portion of the State, as it would take

from it a portion of its political power and transfer it to the north and to the west. What was the policy of depriving New Orleans of her just share in representation and giving to the northwestern part of the State a representation to which it was not entitled?

The city of New Orleans and the northwestern part of the State were two regions in which population was most rapidly increasing, and the increase was not of the same kind. This must produce confusion in the administration of government. There was yet another difficulty: if the white basis alone was adopted, some of the parishes would be disfranchised because they did not possess a white population equal to the ratio required. These very parishes had always enjoyed representation, and it was unjust, as well as inexpedient, to take that away from them. To apportion a Representative to a parish not by population entitled to one was practically to introduce the rotten-borough system of England.

In apportioning representation in Louisiana there arose the same difficulty which characterizes every new country while yet its population is migratory and some portions of its inhabitants are increasing much more rapidly than others. These uncontrollable elements provoke antagonisms between city interests and country interests, and have compelled many artificial arrangements by which it has been sought to equalize representation. So, in 1845, Louisiana attempted to equalize it, and the difficulty was aggravated not only by the so-

cial changes rapidly going on in various parts of the State, by the coming and going of many people, but partly by the essential antagonism between free labor in cities and slave labor in the country. No city population in America has ever been essentially a population of slave-holders. In a city, slaves could perform only domestic service. They were incapable of working in shops or factories. As soon as a slave became an expert workman he was well on his road towards freedom. It has often been said that slavery was abolished by the emancipation proclamation and the thirteenth amendment; but it must be remembered that these were written by the industrial interests of the American people. Free labor abolished slavery in the United States. When Louisiana, in 1845, was attempting to apportion its representation, it was attempting the solution of an insoluble problem, for representation cannot be apportioned between slave-holding and non-slave-holding communities. They have no common unit of measure. It was claimed at this time in Louisiana that the productive labor of the South was its slave labor; that it afforded a permanent and certain basis of representation, and that in view of the political position of the State such a basis was recommended by good policy. In other words, to refuse to apportion representation according to the white population and three-fifths of the slaves was to repudiate African slavery. Was it better for Louisiana to concentrate political power in its cities or to adopt a basis of representation in har-

mony with the political doctrines generated necessarily in a slave-holding community?

Thus, it was said at this time that there were but three modes of apportioning representation applicable to the State—according to population, according to taxation, and according to the number of qualified electors. From its peculiar position the State was precluded from adopting the basis of population, because in that population was a class of beings who were held as property, and another class, free persons of color, who, though possessing personal freedom, did not exercise any political rights. The basis of taxation was liable to many objections. Slavery obliged the State to adopt various measures for the purpose of making secure that species of property and of keeping it in a proper state of subordination. The militia system and the police patrols of the State were very burdensome on this white population; and, therefore, the principal weight of taxation had been thrown on slave property. The Constitution of the United States provided that to the whole number of free persons there should be added three-fifths of all others. By adopting such a basis the principle of taxation would enter into the apportionment, for the only manner in which slaves could have any possible connection with the political system of the State was in their character as property, which made them subjects of taxation. Free persons of color could not be made a part of the representative number, nor could unnaturalized foreigners, nor citizens of other States who happened

to be in the commonwealth. Nearly all the free persons of color, the foreigners, and the citizens of other States were congregated in New Orleans. Of the twenty-three thousand free colored persons in the State, nearly twenty thousand were inhabitants of New Orleans.

If taxation on slaves alone was made the basis, it would operate unequally, not only on city and country, but on different portions of the country. The number of slaves was not equal in the different parishes. Where slaves predominated, representation would be greater in proportion than where whites predominated. The result in either case would be unjust. Sooner or later there would be a conflict between city and country. If it were true that slaves were diminishing in the city, the same causes that contributed to that result would continue to operate, and the inhabitants of the cities, not slow to perceive that they were losing political power in the ratio of the decrease of slaves among them, and in consequence of their increase in other portions of the State, would soon be maintaining that the basis of representation in the State was not white men, but slaves. This would not only cause antagonism between city and country, but would create antagonism towards slave property, as being used to deprive the cities of their just political power.

From this antagonism would arise hatred to slavery itself, and the citizens of New Orleans would ultimately be united as one man against the institution. Such a condition of affairs in

Louisiana would practically be the transfer of the cry of Abolition from the North to Louisiana itself. It was necessary, therefore, for the general welfare of the State, that such an antagonism should not be permitted to arise. This interpretation of the discriminating effect on New Orleans of the adoption of the federal basis was, however, denied.

Would it deprive New Orleans of a portion of her political power? By its adoption there would be included in the basis a numerous class found in the city, and found in the country in smaller numbers—the laboring class of the white population. These white laborers were the counterparts of the country slaves, and the parallel was drawn "without intending to disparage the poorer classes that work in the city from day to day as laborers," and for whom some members of the convention boasted to have been steadfast in claiming the political and important right of suffrage. Admitting that greater relative political power was to be conceded to the proprietors of slaves than to those who did not possess that kind of property, some members of the convention were at a loss to know how this would tend to introduce Abolition into New Orleans, "and make the city a hot-bed of 'that abominable doctrine." If there was any danger of its prevalence, the country should look to itself for its own protection. The country should never be made dependent for safety on the city. In spite of the theories and declamations of many, the federal basis was the bulwark against Abolition-

ism. It was a peculiarly fitting basis for representation in a slave-holding State.

Had not the country the political ascendency and the means of protecting itself? Was not the sentiment regarding slavery unanimous in the State, as had been shown in the treatment by the Senate of the address of the State of Massachusetts on the very matter of slave representation? Had not the Senate of Louisiana—and without referring this address to a committee—instantly passed resolutions expressing its indignation at such interference? Had not the resolutions of the Senate been taken down to the House of Representatives, and, after an animated but brief debate, been engrossed, returned to the Senate, and adopted unanimously? If the principle of federal representation was bad, then the Abolitionists must be in the right. The proof of its goodness was its preservation of the Union, for no one pretended that if the basis were abrogated the Union would hold together twenty-four hours. It was conceded to be a basis on a natural principle. Some said that the same reasons for its adoption did not exist in the State as in the United States. The effect in both cases was the same, for it would be an equilibrium between the States on the one hand and between parishes on the other. It would reconcile disparities in population—an excess of white population balancing an excess of slave. It had been said that this basis involved an unjust preference for one kind of property. But it was not easy to subject all kinds of prop-

erty to equal taxation, and some kinds of property could not be made subject to taxation. Slaves were visible property; they were attached to the soil. It was impossible to apportion representation equally upon all kinds of property, and it was equally impossible to distribute representation, giving to each political community its just proportion. The real difficulty between the Abolitionists and the people of Louisiana was slave labor as opposed to white labor. This difference was at the foundation of all their pretended philanthropy towards the slave, and it was therefore essential that the people of Louisiana demonstrate that the principle against which Abolitionists waged war was consecrated in Louisiana as a perpetuity. Although in a sense slaves were property, they were in themselves, in another sense, a portion of the population of the State, and both as persons and as property should enter into the basis of representation. But this idea was not gently received.

Was there nothing derogatory, inquired a member, in the idea of placing a slave upon an equality with a white man in representation? It would give rise to jealous feelings. The proprietors of slaves would have much more influence at the ballot-box than the honest citizen who was too poor to own a slave. True, both would deposit one vote, but the vote of the slave-owner would be doubled, trebled, or quadrupled in proportion to the number of his slaves. The white man, the father of five minor children, would have but a single voice at the polls, while the owner of a

decrepit and worn-out negro and four negro children would be entitled not only to his own vote, but also to three additional votes on account of those slaves. The principle was unjust. It operated exclusively in favor of the rich. Were there not poor people in the country who did their own work? Was it not repugnant to the true principles of democracy that the farmer having no slaves, working his own farm, should have less weight in the government of the State than the adjoining rich proprietor who had a hundred negroes? If the purpose in advocating the federal basis was ultimately to restrain the political influence of the city, was it not better to prescribe the exact representation of the city according to a less questionable principle than that of the federal basis? Even in Virginia the federal basis had not been advocated except as a means for maintaining the equilibrium between the two great geographical divisions of the State.

On the 27th an effort was made to apportion representation according to the federal basis, and also to limit the representation in any city or parish to one-fifth of the whole number of Representatives. This proposition at once led to the disclosure of the anomaly upon which it rested. If a city or parish contained more than one-fifth of the entire population of the State, how could it justly be deprived of its proportion of representation? No other State in the Union combined two so hostile propositions.

The African slave and the free person of color

were not without advocates even in this convention. At all times in America the slave had been protected. The Spanish government prescribed the same criminal jurisprudence for the white and for the negro population. Had not the slave a right to purchase his own freedom? Had he not a right to acquire and hold property? Even the master had no right to inherit his slave's property? In some parishes slaves had the right to assemble on Sunday, a right originally granted them by Isabella the Catholic, which the State of Louisiana had respected until it adopted the black code. Under the name of law slaves had been deprived of nearly all their ancient privileges, and yet some sought to apportion representation according to slaves. The constitution of 1812 deprived free persons of color of all right to representation. When that constitution was made, the basis of representation was the free white population. Under the Spanish government free blacks had enjoyed all the privileges of white persons. This condition had led to an amalgamation between the white and the colored races until the black race had come within four degrees of the white. Were there not families in the State whose color depended on the law as a means of recognizing that they were of the white race? Because of the amalgamation of races in Louisiana, it was impossible to apportion representation on any basis in which color must be a discriminating element.

Equally unjust was it to apportion representation so that a city having four-fifths of the population

and paying three-fourths of the taxes of the State should have but one-fifth of the representation.

But there were those who objected to the federal basis because slaves could be conceived in no sense as being persons. Though in a moral sense they were persons, according to the condition of affairs in the State, because they formed an exclusive portion of its population, they could not be conceived to be political persons. In no democracy which could be construed as a precedent had the slave ever been allowed to participate in the government. The necessity for compromise, which had dictated the three-fifths clause of the Constitution of the United States, did not exist in Louisiana. Nor was Virginia a precedent. The great question in that commonwealth in 1830 was the basis of representation, and the convention made it a mixed basis of qualified voters and taxation. Was not the whole purpose of those who advocated the federal basis to aim a blow at New Orleans? Was it not to strip her of her just political influence in the State? The problem in Louisiana was to give to the representation of equal numbers equal weight upon subjects where a diversity of interests existed. The federal basis, it was said, had been repudiated by the American commonwealths, for it had not been adopted by them in their domestic representation, except in North Carolina, Florida, and Virginia, where it was adopted by the Legislature.

Eustis, a member from New Orleans, declared that the political condition of the State was too

artificial for it to think of departing from the principle that majorities must govern. There were two distinct races in the State, each entitled to its rights. In reflecting on their condition, it was necessary to conclude that numbers alone could not safely govern. Government by mere numbers would be obviously unjust.

The discussion of the basis of representation was not allowed to pass without a defence of the federal basis on the ground of its antiquity, it having been made the precedent for apportioning representation by the statesmen of the Revolutionary period. As a compromise then made it had secured the integrity of the Union. If that basis were disturbed, the Union would be shaken to its foundations. Because of its origin, it was worthy of application in the commonwealths. The anti-slavery agitation at the time of the Louisiana convention had a powerful effect upon its proceedings. All of its members who in any way criticised slavery, or who proposed any civil measure which did not strengthen slavery as an institution, were looked upon by their colleagues with suspicion. So, too, those who opposed the federal basis were accused of deriving their arguments from Garrison's *Liberator*, and as being disciples of Giddings and John Quincy Adams. Indeed, one member said that the first edition of the speech made by one of his colleagues had been delivered by Giddings in Congress at the time when that Representative from Ohio had opposed the bill for the annexation of Texas. Giddings had said that if each

freeman of Texas should hold five slaves, he would exercise the same influence in electing federal officers that would be exercised by four Northern freemen. If he held fifty slaves, he "would have an influence in electing federal officers equal to thirty-one hard-working, virtuous, and intelligent Democrats of New England or New York." Indeed, had not Giddings the advantage of the argument, because he was a constant opponent of slavery, while the delegate from West Feliciana was advocating a principle which he was not willing to apply himself? What was the justice in such a procedure? Could the people of Louisiana say with truth to their Northern brethren that they regarded the compromise principle in the federal constitution as wise and just, but deemed it odious and unjust when proposed for adoption in their own State constitution? For Louisiana to condemn this principle would work a disastrous effect on the interests of slavery. It should not be forgotten that the makers of the new constitution for Louisiana not only represented its sovereignty as a distinct and independent commonwealth, but also represented the State as one of the American commonwealths, and therefore were vitally interested in upholding the basis of representation established by the federal constitution. The Northern Abolitionists attacked this principle of representation. Already one of the outworks protecting slavery had been carried by storm when Congress had opened the way for the admission of incendiary petitions for the abolition of slavery. How feeble

such an attack compared with the one on slavery by a sovereign State of the confederacy!*

Such an attack had already been made in a petition from the Legislature of Massachusetts, calling for the amendment of the Constitution of the United States on the apportionment of representation—that thenceforth slaves should not be included.† Should Louisiana join in this crusade against the rights of the South, involving not only a compromise of the Constitution, but the very existence of the Union? Should Louisiana adopt the arguments of Giddings and the principles advocated by Massachusetts? By refusing to apply this principle to Louisiana its people would virtually admit that it was unjust, and they would place themselves in a position of doing to others what they would not do to themselves. The foreigners of the North could close the lips of the Representatives of Louisiana in Congress by quoting the proceedings of the convention in its opposition to the federal basis. Either the Southern

* Until the civil war, the national government was spoken of as a *Confederacy*, or *Confederation*, North and South; oftentimes as the *Union*, but seldom as the *National* government. The *Federal* idea of the Union was always uppermost in Southern conventions (as in this of Louisiana), and generally uppermost in Northern conventions. Lincoln's Gettysburg oration gives a date to the time when the word "Nation" passed into common speech as descriptive of a new concept of the Union: "Four score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."—November 19, 1863.

† Joint resolution of the Massachusetts Legislature, January 16, 1844.

States had no right to insist upon the maintenance of this basis in the Constitution of the Union, or they could not with justice and propriety object to its application in their domestic representation. There was, indeed, a stronger reason why the basis should be adopted in a slave-holding State than by the national government. The authority of the State to abolish slavery could not be questioned. The general government had no right to interfere with the domestic institutions of a State. If, therefore, there was no desire to protect slavery, and to protect it by incorporating this principle in the federal Constitution, was there not a greater necessity for its incorporation in a State constitution? If the people of Louisiana knew nothing of slavery, the arguments against the federal basis would be irresistible; but, for weal or woe, that institution existed among them, and they had no desire that it should cease. The very fact of its existence necessarily led to the modification of the laws of the State. Every motive of self-preservation required that the legislation of the State should be adjusted to the existence of slavery.

As the argument continued, some sought to show that the adoption of the federal basis would be a discrimination between the poor and the rich voters. To this it was replied that the poor man's vote was equal to that of the rich, even if slaves did enter into the basis of representation, for any basis which increased the representation of the parish would confer as much benefit upon its poor as upon its rich inhabitants. The federal basis

would not diminish the representation of the poor. As an exact mathematical equality in representation was impossible, it was necessary to adopt a system approximately equal. Not only the unequal distribution of population over the State, but the division of its people racially as bond and free compelled the adoption of a system which would practically secure the equities of representation. It was true that the federal basis would have some tendency to increase the power of the country parishes. This increase in the representation of the country districts would be offset by the greater city representation made possible by the subdivision of the city into wards and districts. By such a subdivision there would be practically no fractions of unrepresented population in the city, and thus the city would have an advantage over the country. The city would have a solid representation, while in every country parish there would be an unrepresented fraction. The aggregate of these fractions in the country was politically an offset which compensated the people of the city for any loss incident to the federal basis.

The discussion of this basis brought out many opinions which now seem almost incompatible with the political conditions of the time. There were men in the convention who, though slave-holders and eager to secure as much power as possible for slave property, declared that they would never consent to put the black man on a footing with the white by making a slave-holder

and his hundred slaves equal to sixty free white citizens. It might be expected, perhaps, that in a slave-holding State there would never be opposition to the application of the federal basis, for this basis of representation was the evidence not only of the legality of slavery, but also of its rights to representation as property. If slaves were property—and all slave-holders so considered them—then the argument made by Webster in the Massachusetts convention of 1820, that property is the basis of government, applied with peculiar force in a slave-holding State, and political consistency demanded that the federal basis should be the basis of representation in a slave-holding commonwealth. However, after an exhaustive debate on the applicability of the federal basis to the people of Louisiana, on the 2d of March a motion to accept the basis was defeated by a small majority—twenty-eight to twenty-two.

The failure of the convention to apportion representation in that State on this basis was a sign of the times, an intimation of impending political changes. It was of itself evidence of the futility of the chief compromise of the national Constitution, and of the wholly unstable basis upon which it rested. It was proof that American democracy was resting upon an artificial foundation. Yet at this time the great majority of the people of the United States with one accord were declaring in their State constitutions and their laws that the primary condition of maintaining the Union was the retention of the federal basis of representation,

and, as was said by Calhoun, that slavery was the natural condition of the African race. Thus far, at least, in tracing the evolution of representative government in this country, we have found no evidence in the making of State constitutions that the black man had rights which the white man was bound to respect.

No obstacle in the way of adopting the federal basis was more potent in this convention than the inequalities which it would emphasize among the several parishes of the State. The relative population, both white and slave, of these parishes differed. There would remain unrepresented fractions of both populations, and these would prove as elements of discord in the commonwealth. This objection was a natural one. The Abolitionists had long before pointed it out, not as affecting the rights of the slave population, but chiefly as discriminating against the white race. Much of the criticism of the national Constitution and many of the arguments against the basis of representation were made not because that basis deprived the black man of his rights, but because it discriminated against the white man. As viewed through some Northern eyes, it was a basis which, by including slave representation, created inequality between white men. When it was sought to apply this principle in a slave-holding State it was objected to essentially for the same reason. There was no possible solution of the problem of equitable representation for the nation or for a commonwealth so long as slavery continued in the Union.

On the 14th of May a new constitution for the State was agreed to. It apportioned representation according to the number of qualified electors, giving to each parish at least one Representative, and providing for a reapportionment by the Legislature. In 1855, and every succeeding tenth year, the Legislature was to fix upon a representative number, and each parish was to have as many Representatives as the aggregate number of its electors entitled it to, an additional Representative being allowed for any fraction exceeding one-half of the representative number; but the number of Representatives was never to be less than seventy nor more than one hundred. The elective franchise was limited to free white males, of age, who had been two years citizens of the United States, and had resided in the State two consecutive years preceding the election. There was no provision for the inclusion of free persons of color.