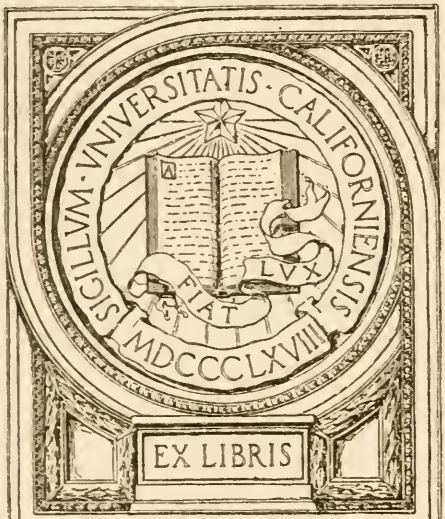
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PUBLICATIONS

OF THE

STATE HISTORICAL SOCIETY OF WISCONSIN

EDITED BY

MILO M. QUAIFE

SUPERINTENDENT OF THE SOCIETY

WISCONSIN HISTORICAL PUBLICATIONS

COLLECTIONS, VOLUME XXVI

CONSTITUTIONAL SERIES, VOLUME I

WISCONSIN IN 1846

Map prepared for this work by Mary S. Foster

PUBLICATIONS OF THE STATE HISTORICAL SOCIETY
OF WISCONSIN

COLLECTIONS, VOLUME XXVI
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THE MOVEMENT FOR STATEHOOD
1845-1846

EDITED BY
MILO M. QUAIFE
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PART I HISTORICAL INTRODUCTION

SOME GENERAL OBSERVATIONS

The assemblage and publication of the sources for the constitution of Wisconsin is desirable for several reasons. Admitted to the Union in 1848, and most notable of all the states, perhaps, for its development in recent years of progressive political policies and machinery, Wisconsin still keeps its original constitution. Although seventy years is not commonly regarded as a long period in the lives of nations, from the relative point of view the constitution of Wisconsin is hoary with age. Looking abroad it is older—to mention only a few instances—than the present governments of Russia, Germany, France, Italy, Austria-Hungary, Turkey, Bulgaria, Roumania, Servia, Portugal, China, Japan, Australia, Canada, Mexico, and, of course, of most of the countries of Africa and South America. At home, although by no means the oldest of existing state constitutions, that of Wisconsin is the oldest of any state west of the Allegheny Mountains. The constitution of Alabama dates from 1901, and is the fourth organic framework of government to be adopted in the last forty-three years. That of Mississippi was adopted in 1890 and the state has had four in a hundred years. Tennessee's constitution, the third in her history, dates from June, 1870. Kentucky's present constitution, the state's fourth, was adopted in 1891. Arkansas has had three since 1864, her present one having been adopted in 1874. Missouri's constitution dates from 1875 and is the third one adopted by the state in less than a century. Illinois closely resembles Missouri; her present constitution is her third one and was adopted in 1870. Iowa was admitted to the Union in 1846, two years before Wisconsin, and her first constitution lasted but eleven years. California was admitted in 1849; her present (and second) consti-

tution dates from 1879. Texas, admitted in 1846, has had four constitutions, the last one adopted in 1876. The present constitution of Michigan is her third and was adopted in 1908. Minnesota, like Wisconsin, still retains her original constitution but it is nine years younger than that of Wisconsin. Of all the states west of the Alleghenies, the constitutions of Ohio and Indiana, the two oldest states of the Northwest Territory, most closely approach Wisconsin's in point of age. The constitutions of Indiana and Ohio were drafted in 1850–51. Between these and the constitution of Wisconsin there is this marked difference, however. The people of Wisconsin have held no constitutional convention since 1848, and they entertain at the present time no pronounced feeling of dissatisfaction with their constitution. In Ohio constitutional conventions were held in 1873 and 1912, the dissatisfaction of the voters with the existing constitution being registered on the former occasion by a vote of more than two to one, and on the latter by more than ten to one. The constitution drafted in 1874 was rejected at the polls; the work of the convention of 1912 resulted in the adoption by the voters of thirty-four amendments to the old constitution, thus materially modifying its character. Indiana, like Ohio, has long been dissatisfied with her constitution, and in 1916 a new one was drafted by a convention created for this purpose. However, by reason of a supreme court decision invalidating the procedure in accordance with which the convention had been held, the voters were never given an opportunity to pass upon the document.

It is evident, even from the foregoing brief résumé, that Wisconsin's constitution has stood the test of time longer and better than any other in the western three-fourths of the country. No less evident is it that sooner or later it will become outworn and a new framework of government will need to be provided for the state. How soon this will come to pass we make no attempt to predict. When the time shall arrive, a full documentary history of the existing constitution should prove indispensable not only to the mem-

bers of the convention charged with the duty of drafting a new constitution, but to the enlightened citizens of the state generally. Quite aside from such a contingency the possession of such a documentary history should be invaluable to students of our history and to both students and administrators of our government.

Such a record, after seventy years of statehood, still awaits compilation. Extravagant in certain respects, our forefathers of seventy years ago were extremely economical in others. To save the expense involved, a paltry sum according to present standards, they gravely abstained from authorizing the making and printing of a report of the debates of the first convention. Consequently the only official record we have of its proceedings is the formal daily journal. The members of the second convention were more extravagant—or more far-sighted. In the beginning no report of the debates was authorized; before long, however, such a step was taken, coupled with the direction to the reporters that no record be kept of the words of any member who might indicate his objection thereto. Three members availed themselves of the privilege thus accorded to efface from the printed record their contribution to the deliberations. With this exception, and subject to the difficulty the reporters labored under of constructing a report of debates had prior to the ordering of making such a report, we have for the second convention both the official journal and a report of the debates.

Fortunately for posterity, and for the success of our enterprise, two circumstances combined to make possible the compilation at this late date of a relatively complete documentary record of the origin of our state constitution. The State Historical Society of Wisconsin was organized in 1849. Even several years before this one cultured citizen of the territory, Cyrus Woodman, of Mineral Point, was assiduously collecting newspaper files for its future library, and appealing to others to do likewise. To the present day the Society has never relaxed this zeal, which antedates its

birth, for the upbuilding of a great newspaper collection. In size it stands second in America, and the collection of files of Wisconsin papers is of course incomparably the best in existence. The newspaper annals of Wisconsin begin with the founding of the Green Bay *Intelligencer* late in 1833. By 1847 there were some two dozen papers in the territory, and the contemporary files of about half of them, for the period of constitutional origins, are preserved in the State Historical Library. Our relative good fortune in this respect may be seen by comparing Wisconsin with its western neighbor, Iowa. The latter territory was set off from Wisconsin in 1838 and attained statehood in 1846. Like Wisconsin, Iowa had two constitutional conventions, the first in 1844, the second in 1846. From the period of constitutional origins in Iowa but two newspaper files have been preserved, as compared with five or six times as many for Wisconsin.

Moreover, the character of our territorial press was such as to make the files which have thus been preserved of particular value to the student of political developments. The newspaper editor of the forties was poor in news of the world outside his immediate vicinity to a degree difficult of comprehension today; at the same time he was largely oblivious of the news value of the events of his home neighborhood. One passion possessed his soul, apparently, and two staple types of material filled the columns of his paper. His passion was for politics, and political diatribe and disputation comprised the really vital portion of the press of Wisconsin in the forties. For filler he had resort to poetry, fiction, and history, and the mediocrity of this class of material is no less remarkable than the pugnacity and zeal displayed in the political discussions.

Madison, the infant capital, and Milwaukee, the nascent metropolis, were then, as now, the two chief news centers of Wisconsin. From the village of Madison issued three exceedingly self-conscious political "organs," one of the Whig and two of the Democratic faith. Each of the two latter

spoke for a distinct faction of the party, however, and the political vituperation directed by each against the other was bitterer, if possible, than that emitted against their Whig neighbor. At Milwaukee a situation somewhat resembling that at Madison prevailed among the English papers, while the Democratic *Banner,* Wisconsin's first German newspaper, and its rival, the *Volksfreund,* displayed no less zeal for politics than did their English neighbors. With two somewhat important qualifications the press of Milwaukee may be said adequately to have represented the political opinion of the entire eastern section of the territory. The Racine *Advocate* represented much the same social and political constituency (immigrants from New England and New York) as did the Milwaukee English papers, but it is worthy of independent attention by virtue of its having been the ablest-edited paper, probably, in Wisconsin. The Waukesha *Freeman* was the organ of the abolition element in Wisconsin. Apparently it was ably and vigorously edited, but unfortunately, aside from certain scattering issues, no file of the paper for the period in which we are interested has escaped oblivion. For the population of the lead mine region, sharply differentiated from the lake shore with respect not only to origin and economic interests but also to political ideals and leaders, we have newspaper files for Platteville, Prairie du Chien, Lancaster, Mineral Point, and one or two other places.

A study of these several newspaper files affords a remarkably detailed conception of the political currents and developments of the period of emergence from the territorial status to that of independent statehood. With the suddenness, seemingly, of a western hurricane, there developed, in the latter part of 1845, a demand on the part of the voters for the admission of Wisconsin to the Union. For about a year and a half the storm of political discussion raged without a single lull. During this time the ideas of the voters as to the kind of government desired were formulated, the election of delegates to the first convention (that of 1846)

and the convention itself were held, and the great debate over the question of ratifying the convention's work was fought out. Notwithstanding the electorate and the convention were both overwhelmingly Democratic, in the election of April, 1847 the former rejected the handiwork of the latter by a decisive majority vote. Thereupon, so far at least as the statehood question was concerned, comparative calm seems to have descended upon the troubled political waters. Probably never since then have the people of Wisconsin been absorbed in a political issue to the degree which prevailed from January, 1846 to the election of April, 1847. The decision announced, statehood still lay a year in the future; a new convention must be held, and the framework of government still remained to be drafted. But the subject had been talked out; within broad lines the will of the electorate had been made manifest; if partisan rancor had not been stilled it was at any rate largely diverted to other objects; and it was taken for granted that the second convention would frame a constitution which would harmonize with the desires of the electorate. The newspaper discussion of the statehood question for this latter period, therefore, dwindles to insignificance in comparison with that indulged during the earlier one.

In assuming our editorial task it has seemed wise to limit the work to the immediate period of time in which the constitution of Wisconsin was formulated and admission to statehood gained. There were some discussions, and even several elections, over the question of statehood prior to 1846. With these, the historical introduction aside, the present work does not deal; nor does it take cognizance of constitutional developments which have come about since the admission of Wisconsin to statehood. In any complete history of the state the constitutional developments of both the earlier and the later periods indicated would, of course, require appropriate consideration. From the viewpoint of constitutional origins in Wisconsin, however, they pale to insignificance when compared with the developments of the

two and one-half year period ending with Wisconsin's admission into the Union. This consideration, taken in connection with the further one that hitherto no attempt has ever been made to compile a comprehensive record of the activities of the period in question, seems to afford adequate reason for limiting the present work in the way that has been proposed.

With the field thus delimited, the editorial task involved, although exceedingly laborious, has been comparatively simple, the work falling by the natural logic of the situation into four subdivisions. These may be described briefly as the movement for statehood (latter months of 1845 to the convention of 1846); the work of the convention of 1846; the debate over ratification, ending with the election of April 5, 1847; and finally, the calling of the convention of 1847, its work, and the ratification thereof by the electorate. To each of these subdivisions, it is expected, a volume will be devoted. The first of these is now in the hands of the reader. The others will be published as promptly as the circumstances of the case will permit. In view of the abundance of material available it quickly became evident that a selective principle must be applied to determine what should be included in, and what excluded from, our documentary record. The compilation that has been made does not aim, therefore, to include all the material which has been at the editor's disposal. It does aim to present everything needful to a clear understanding of the currents of thought and of politics in the period under discussion, and it is believed that henceforth no one, however specialized his interest may be, need traverse anew the ground we have covered in performing our editorial task.

In conclusion a few words may be said concerning a somewhat technical aspect of the editorial work. The principle that in making quotations or reprinting documents the original should be faithfully reproduced is a commonplace among historical workers. It is not unfair to say, however, that in their zeal for supposed scholarship many workers have mis-

taken the letter for the spirit and have conformed to archaic styles of spelling, typography, or expression as the case might be when such compliance had in fact no real bearing on the principle at issue. To the principle, sensibly interpreted, we yield cheerful allegiance. But the historical editor is not merely a slavish copyist; precisely because he is not his work differs from that of the typesetter or stenographer. At every stage of his work questions calling for the exercise of historical scholarship and scholarly discretion are encountered. Were it not for this fact historical editing would be not a scholarly profession but a purely mechanical calling. In performing our present task, while dealing with source materials, we have commonly been without absolutely first-hand records of the things recorded. Perhaps one-half of our material comes from newspapers. It would be not merely pedantic but actually misleading to hold the author of a speech responsible for the typographical style or typographical blunders of the newspaper reporters and compositors through whose agency it appeared in print. Even in the case of the printed and the original manuscript journals of the two conventions errors both of omission and of commission are sometimes in evidence. In the matter of capitalization (in the manuscript journals) it is frequently impossible to determine whether or not the writer intended to use a capital. Confronted with such materials it seemed perfectly clear from the outset of our work that the spirit rather than the letter of the scholar's rule with respect to faithful reproduction of original documents should be consulted. We have undertaken, therefore, to harmonize and modernize with respect to typography; to correct obvious misprints or similar errors in the papers reproduced; and in general to apply to them what we conceive to be the true editorial function of presenting the document to the reader accompanied by such special aids to its proper understanding as the competent historical editor is supposed to possess but which may not be expected of the average reader.

The editorial work has been prosecuted at such odds and ends of time as might be found for it since 1915. The doing of it under such conditions has necessarily operated to lessen the zeal of the editor and to lower the quality of his output. Only those, who, under such circumstances, have performed a similar task, involving over a million words drawn from diverse sources, are likely to appreciate either its laboriousness or the handicap under which it has been done. A number of my assistants in the State Historical Library have at different times aided me in the work. Grateful acknowledgment may here be made to Lydia M. Brauer and Annie A. Nunns for assistance in transcribing the voluminous copy, and to Daisy Milward for helping to prepare and see it through the press. With the issuance of further volumes in the series additions will doubtless be made to this roll. For the two following sections of the introduction obligation is expressed to Dr. Louise P. Kellogg, of the editorial staff of the State Historical Society, and to Frederic L. Paxson, curator of the Society and professor in the University of Wisconsin. The Index is the work of Dr. Kellogg.

M. M. Quaife.

Madison, September 1, 1918.

THE ADMISSION OF WISCONSIN TO STATEHOOD[1]

Like all territories Wisconsin had aspirations towards statehood complicated, however, in this instance by the question of boundaries. The last of the states to be formed from the Northwest Territory, both Michigan and Illinois had encroached upon the territory originally allotted to Wisconsin by the Ordinance of 1787. It was the southern boundary question, however, that was chiefly involved in the process of attaining statehood. Notwithstanding the fact that for more than twenty years Illinois had exercised jurisdiction over the disputed tract, Wisconsin's claims received much consideration among its inhabitants, and influenced the progress of the territory towards the goal of admission.

In his annual message in 1839 Governor Dodge recommended the legislature to consider the submission of the question of statehood to the people at the next election. On January 13, 1840 an act was passed embodying this recommendation with the proviso that a convention should be held with delegates from northern Illinois to discuss the inclusion of their territory in the proposed new state. Only by such a proceeding could there be a sufficient population to justify application to Congress for admission. Agitation quickly sprang up in the Illinois counties, and the majority of their population was eager to cast in its lot with that of the northern territory. Public meetings held at Galena and Rockford passed strong resolutions favoring the measure. Wisconsin people, on the contrary, took alarm at the proposal. Illinois was burdened with a heavy debt, and the portion that must be assumed by the region desiring inclu-

[1] From a manuscript history of Wisconsin to 1848 prepared for the State Historical Society in 1917.

sion in Wisconsin staggered the financiers of the territory. Politicians were also fearful that their share of offices would be diminished by the accession of a developed and thickly-populated region like northern Illinois. A meeting for Brown County held at Green Bay passed forcible resolutions against both statehood and the inclusion of any portion of Illinois. Most of Wisconsin's meager population was unprepared to assume the liabilities of a state government. Therefore, at a special session of the legislature held in August, 1840, the act of the preceding January was amended by a resolution that the convention therein authorized should not have the power to adopt a state constitution or to declare the territory an independent state. The territorial press opposed the calling of the convention, urging the people to be contented with their fortunate situation wherein all expenses of territorial government were met, not by taxes, but by the federal authorities. The September vote was, as may be supposed, very small and almost wholly against the proposition for a convention or for statehood. In Dane County, for instance, but one vote was cast in favor of the proposal.

This decisive defeat put a quietus upon the statehood movement for the next two years. Meanwhile the Whig party succeeded in 1841 to the control of the federal government, and one of its first measures was a law for the distribution to the states of the proceeds of the public lands. The territorial Whig press thereupon began an agitation for statehood in order to participate in the benefits of the distribution. Governor Doty, the Whig appointee, had been for many years an enthusiastic advocate of Wisconsin's "original boundaries." In his first annual message in December, 1841 he advised the consideration of statehood, in order to secure the advantage of the distribution law. At the same time he called upon the legislature to assert the territory's right to the region of northern Illinois. The legislature, under control of the Democratic party, was bitterly hostile to the governor. The leader of the Council at-

tacked the entire proposition in a partisan speech and a resolution was passed that "the time has not yet arrived when it [the consideration of statehood] is expedient." The Whigs thereupon called a meeting at the capitol which discussed the matter favorably, and passed resolutions for a state government, and the boundaries of the Ordinance of 1787.

The legislature, none the less, refused to consider the subject, and the discussion went to the people. Most of the newspapers of the territory, then numbering nine, came out in opposition to statehood; about this time, however, the Doty party secured possession of the Wisconsin *Enquirer* at Madison, which began a series of editorials favoring the state project. Doty even went so far as to send an official message to Governor Carlin, of Illinois, requiring him to desist from selecting state lands in the disputed Illinois tract. Doty's opponents claimed that he feared removal by the federal government, and was providing a berth for himself in the new state government he planned to establish. Be this as it may, on August 18, 1842 he issued a proclamation wherein without legislative sanction he summoned the people to vote at the September election "yea" or "nay" on the question of state government and the original southern boundary. The Democratic convention of the territory condemned this measure as executive usurpation. The vote at the September election was negligible, the 619 votes for and the 1,821 against proving indifference rather than active hostility to the attainment of statehood.

The next year Doty was still more deeply embroiled with the Democratic majority of the territorial legislature. Nevertheless in his message, delivered in March, 1843, he reverted to the proposition for a referendum on statehood. The legislature refused to consider the question, but some of the opposition suggested the advisability of such a movement in order to "shake off Doty's tyranny."

A new cleavage of opinion appears about this time. The southern counties bordering on Illinois began to favor im-

mediate statehood. Racine, for example, fast filling up and establishing commercial connections with the northern Illinois villages adopted a memorial favoring a movement towards statehood and the inclusion of northern Illinois. The northern Wisconsin counties, however, were still oppressed by the dread of being overpowered by the southern in the event of annexation. The Green Bay *Republican,* although a Whig organ, declared that "Few, very few, can be found in favor of our admission to the Union at this time." Meanwhile the Whig convention, which met in July, discussed the advantages of a state government, and recommended the measure to its constituents. Doty, following his precedent of the preceding year, issued, August 23, 1843, a second proclamation charging the legislature with negligence in not providing for a referendum on statehood, and claiming a territorial population of over sixty thousand inhabitants. These he summoned once more to vote on the question of a state government, but omitted all reference to the inclusion of Illinois. The vote was again very small, and except in Racine County was adverse to the measure. That county gave a majority of 251 in favor. The entire vote was 541 for and 1,276 against, less in actual numbers than that of the preceding year. Ten counties, however, made no returns at all.

Nothing daunted by this serious setback Doty returned to the proposal at the December session of the legislature of 1843. Almost his entire message was devoted to a discussion of the importance of statehood, and the righteousness of Wisconsin's claim to "the integrity of her territorial boundaries" and her ancient "birthright." The Milwaukee *Courier* referred to the message as "the same old tune on the same old string," but none the less new forces were at work which compelled the consideration of the question and removed it from the domain of party prejudice. The growing size of the population could no longer be ignored. All parties agreed that the requisite 60,000 inhabitants would

be available before the territory could become a sovereign state. The approach of a presidential campaign made the politicians restive in a state of "babyhood and political vassalage." The large foreign population desired to secure the political privileges they had come so far to seek, all the more that the Native American or Know Nothing party was advocating their exclusion from the polls. The advantages of statehood in stimulating immigration and the influx of capital were held by many to outweigh the advantages of federal care for the territory.

A remarkable change in sentiment animated the legislature: the Democratic leaders, who had stoutly opposed the measure in 1842 and 1843, now spoke enthusiastically not only for state government, but for the maintenance of the ancient limits. In the Council Moses M. Strong, chairman of the committee on the "infringement of boundaries" presented a long report covering the history of Wisconsin's grievances. He declared that if these were not compensated Wisconsin "would remain *a state out of the Union* and possess, exercise, and enjoy all the rights, privileges, and powers of the *sovereign, independent state of Wisconsin,* and if difficulties must ensue, we could appeal with confidence to the Great Umpire of nations to adjust them." The Democratic *volte face* was due to a desire to conciliate the foreign vote, which the Whigs were alienating by a leaning towards Native Americanism. About the time the Council report was delivered a large German mass meeting was held in Milwaukee which passed resolutions in favor of state government, and prepared a petition with 1,200 signatures requesting the right to vote for delegates to a constitutional convention. In January, 1844 two bills passed the legislature: One provided for a referendum on the subject of state government, and if it carried, for the immediate calling of a constitutional convention; the other provided that "all the free white male inhabitants * * * who shall have resided in the said territory three months" should be entitled to vote on

the question of statehood and for delegates to a constitutional convention. The legislature also prepared a memorial to Congress reciting the wrongs the territory had endured by the infringement of its boundaries at the admission of Illinois and Michigan, and under the Webster-Ashburton Treaty wherein (it was claimed) 10,000 square miles of territory belonging to the fifth state of the Old Northwest had been surrendered to the British government. So belligerent was the tone of this document that one representative remarked it ought to be entitled "A declaration of war against Great Britain, Illinois, Michigan, and the United States." The memorial concluded by agreeing to accept compensation from Congress in the form of desirable internal improvements such as harbors, canals, and a railway. It seems at the present time impossible that a document, which one of its advocates admitted would arouse in Congress nothing but a smile, could have seriously occupied the attention of the territorial legislature. Nevertheless the memorial was passed by both houses and presented by the territorial delegate to the House of Representatives, where it was speedily suppressed in the committee on territories.

Had the vote on the subject of immediate preparation for statehood occurred in April, 1844 it probably would have carried, and Wisconsin might have entered the Union before her western neighbor, Iowa. Both the Democratic and the Whig press favored the measure, the foreign population was eager to exercise its rights, and the Liberty party element desired additional northern members in both houses of Congress. In the territorial press much attention was devoted to the subject. The chief objections offered were constitutional and economic. Some of the legal minds of the community contended that a state could not be formed without the concurrent action of Congress, and that it was wiser to wait until an enabling act could be secured to place Wisconsin on a proper footing. The financial obligations of a state were much discussed, and the fear was freely ex-

pressed that the necessary taxation would prove a heavy burden to the young community, all the more that the distribution act had been suspended. Local considerations influenced other voters. The Southwest was hostile to the participation of foreigners, since this would give preponderance to the lakeboard counties. The new settlements on the upper Mississippi and the St. Croix desired delay until a new territory could be formed for their region. By midsummer of 1844 interest in statehood had so waned that the matter was seldom mentioned in the press, whose columns were filled with the excitement of the presidential campaign. The retirement of Governor Doty removed the executive support for the measure. The Democratic leaders repudiated the agency of their party in its favor, and declared that the executive junta had forced them to dare to submit the measure to the people. Rejection was anticipated, and at the September election only 1,503 votes were recorded in favor to 5,343 against adopting a state government. Thus the fourth attempt to secure a referendum vote in favor of statehood for Wisconsin failed. Governor Tallmadge in his message to the legislature of 1845 accepted the decision of the people as putting the matter at rest for the time being, and the project was not revived until 1846.

In the meantime political conditions had been reversed. The Democratic party had secured possession of the entire territorial government. During the summer and autumn of 1845 the press continually agitated for a new referendum. Two causes operated to change public opinion. One was the growing population, which was believed to be twice the prescribed 60,000. The other was the penurious policy of Congress concerning territorial appropriations. In May, 1845, the Madison *Argus* declared that Congress was trying to drive the territory into a state government. A lesser influence was dissatisfaction with the territorial judiciary, and a desire to control the choice of judges. By 1845 the question transcended party differences. The *Wisconsin Repub-*

lican stated that, whichever party succeeded at the fall election, statehood would become an immediate issue. Scores and hundreds of the inhabitants were ready to change their vote from the negative to the affirmative.

The differences of opinion were concerned with the method of action. Some of the more aggressive papers suggested that the time had come to form a state government and present the claim to Congress. "We need not," said the Madison *Express,* "stand like Iowa, hat in hand; we may go and demand admission not as a favor but as a right." Other more moderate counsels opposed action without congressional consent. The northern part of the territory preferred the slower or congressional method, the southern part desired immediate action by territorial authority.

As the event proved both methods were simultaneously evoked. On January 9, 1846 Morgan L. Martin, territorial delegate, obtained leave to introduce into the House of Representatives an enabling act for Wisconsin. This was referred to the committee on territories, and in June reported by Stephen A. Douglas and passed. The Senate concurred, and on August 6 the bill was signed by the President. In the meantime Governor Dodge in his message of January, 1846, recommended a statehood referendum to the legislature. That body favored the measure, and advised taking advantage of the situation. Florida and Texas had both been admitted since any northern territory had entered the Union. Iowa and Wisconsin were expected to restore the sectional balance in the Senate. The chief question was still one of boundaries. The idea of laying claim to northern Illinois had been dropped, but as Texas was intended to be divided into several slave states, the problem was to secure as many northern states as possible. It was contended that three states should be formed of the territory north and west of Wisconsin and Iowa and east of the Red River of the North. This would denude Wisconsin of a large part of her northwestern region. The legislature passed an act for the referendum in April without adverting to the sub-

ject of boundaries. The benefit of a state government was the theme of the legislative speeches; control over finances, over school and university lands, over the judiciary, and the advantages of independency were the considerations urged. The chief party difference was with regard to the foreign vote, the qualifications for which had been amended in the preceding legislature by the requirement of a six months' residence, and a declaration of intended citizenship. The Whigs wished to reduce the foreign vote to a minimum, but the Democrats stood firm, and the referendum bill contained the proviso unchanged.

After the adjournment of the legislature it was evident that the statehood proposition would be accepted. All parties agreed that the territory would be the gainer by this measure. The vote was 12,334 in favor, 2,487 in opposition. On August 1, Governor Dodge apportioned the territory for delegates to a convention to prepare a constitution. All political parties nominated candidates and much interest was taken in their election, which occurred on September 7. One hundred and twenty-five delegates were chosen, most of them of the Democratic faith. The Whig members were few, but their influence was important because of their talents and ability. The entire convention was composed of the ablest leaders of opinion in the territory. Organization was effected October 5, by the choice of D. A. J. Upham, of Milwaukee, for chairman, and Lafayette Kellogg, of Madison, as secretary.

The convention was in session eleven weeks and two days, adjourning on December 16. The constitution it prepared for the consideration of the people was radical and democratic. Its chief model was the constitution and political practice of New York, but independence of thought, and readiness to experiment were marked characteristics of the convention. The principal innovations were the banking provisions forbidding all banks of issue; the judiciary arrangements for an elective system, and the *nisi prius* method of state courts; the property rights of married women; and

the exemption of the homestead from the creditor's claim upon the debtor. The question of negro suffrage was left for a special referendum, when the constitution's acceptance should be determined.

During the convention personal and party differences caused much friction. One of the leading members resigned before the close of the session. The President in his closing speech apologized for the lack of harmony, and hoped the constituents would consider the difficulties under which the convention had labored. Several of its members went away with the avowed purpose of defeating the constitution at the polls. Petitions were presented to the January legislature of 1847 urging the calling of another convention in case the constitution should be rejected. During the discussion of this measure strong speeches were made in opposition to adopting the constitution.

The opponents of the instrument were of no one party, but the Whigs as representatives of the moneyed and business class disapproved of the banking and exemption clauses. Ex-Governor Tallmadge was considered the commander-in-chief of the anticonstitutional forces. The Liberty men opposed ratification because negro suffrage was not embodied in the instrument. One faction of the Democrats opposed, apparently because the other faction approved. The entire territory was divided into pro- and anticonstitution groups. The banking clause and the married women's property and exemption clauses raised a storm of opposition. The mass of the people was influenced by the impassioned oratory of the leaders. Mass meetings were held by both the "Friends of the Constitution" and the "Anti-Constitution" groups. Songs were written, liberty poles erected, and the populace was stirred to the pitch where blows succeeded words as arguments. Most of the voters had slight comprehension of the radical propositions embodied in the constitution, but influenced by party leaders they went to the polls April 6, 1847, prejudiced against the instrument and defeated its adoption by a vote of 20,231 to 14,119.

Before the constitution had been defeated, strong influence had been used to prepare the way for a second convention should the work of the first fall to the ground. The territorial press constantly agitated for a special legislative session, and petitions bearing many signatures requested immediate action. It was much desired that a constitution might be drawn in time to permit Wisconsin to take part in the presidential campaign of 1848. Accordingly on September 27, 1847 Governor Dodge issued a call for an extra session of the legislature which took place October 18–27. Its sole business was to arrange for a new constitutional convention, and the only difficulty was the apportionment of members. A strong desire was evinced for a small convention and the number of delegates was finally fixed at sixty-nine and the date for assembling on the fifteenth of December. These measures met with general approval, nominations were quickly made, and the election of delegates occurred on November 29. A few of the nominating conventions instructed their delegates; other candidates were closely questioned on the subjects of banking, married women's rights, and exemptions. Few of the first convention members were nominated a second time. The choice resulted in a larger proportion of Whigs than were elected to the first convention, twenty-three of that party being chosen to forty-six Democrats. The convention organized with the election of Morgan L. Martin, chairman, and Thomas McHugh, secretary. The constitution was introduced by a bill of rights, which had been omitted from the earlier one. The fundamental law was drawn up on general principles and the disputed features of the earlier constitution were omitted. The elective judiciary was retained; exemptions and married women's property rights were left to legislation; a harmless banking privilege was incorporated.

The convention finished its labors on February 2, and the popular election was set for March 13. The Liberty party was the only opposition element in the territory. All

the press advocated the adoption of the new constitution. One of the members of the first convention attempted to secure from the legislature the right for the people to vote for the first constitution as well as for the second; but he was unsuccessful. The Germans and Norwegians voted in favor of the new instrument. The election on March 14 gave 16,417 votes in favor of the constitution and 6,174 against it. On April 8 the governor issued a proclamation declaring the result, and on May 29, 1848 Congress formally admitted Wisconsin to the Union.

Louise Phelps Kellogg.

WISCONSIN—A CONSTITUTION OF DEMOCRACY[2]

The political revolution of 1828 opened a period of twelve years in which the Mississippi Valley, speaking through the Jacksonian organization, controlled the destinies of the United States. The movement saw itself as a revolt of the people against autocracy and aristocracy; it was in fact an uprising of the frontier against the older communities. In the long run, as in every such revolt, it reached conclusions which it sought to perpetuate in the form of constitutional law. Its democratic aspirations were mingled, almost beyond disentanglement, with the zeal of a new community for easy wealth, and with the resentment of a debtor frontier against the agencies of capital and law. But it left upon American constitutional law an impress that lasted for two generations.

The constitutional contributions of Jacksonian democracy are not to be measured by changes in the constitution of the United States. That document had received its basic interpretation before the deaths of James Madison and John Marshall, in the middle thirties. Although many Democrats and many southerners professed themselves to believe that the supreme court and the federal government were overriding the state and the citizen, Jacksonian democracy had little quarrel with the theory of nationalism. The frontier was the home of the Democrats; it had been the field of the activities of the nation. It accepted the legal doctrines of nationalism in the forties and fifties, and confined its own constitutional development to a readjustment of its local institutions. The propositions for amendment to the federal constitution were most numerous in matters of detail cov-

[2] Originally published in the *Mississippi Valley Historical Review* II, 3–24, with the title "A Constitution of Democracy—Wisconsin, 1847."

ering the appointment, removal, and pay of public servants, and none on these or other topics was ratified between 1804 and 1865.[3]

In the state constitutions of the Mississippi Valley between the panics of 1837 and 1857 are to be found the evidences of the reactions of Jacksonian democracy on government. Before 1837 the party was too young, and life was too rosy in its promise, for introspection and amendment. After 1857 a new party readjustment had come to the nation, and the old issues were transformed. But between these panics, and connected with them, is a period of interpretation and theory, in which the "ultraism of the age"[4] was seeking to perpetuate itself in the Mississippi Valley, and indeed throughout the nation. Every state from Kentucky north made its attempt at constitutional revision. Wisconsin, still a territory, made a constitution in 1846, and another, under which it became a state, in 1847. Iowa, likewise a territory, also rejected its first constitution of 1844. to accept its second, of 1846. Missouri had made a new fundamental law in 1845, but rejected it at the polls. Illinois adopted a new constitution which it framed in 1847, as did Kentucky in 1849, Michigan in 1850, and Ohio and Indiana in 1850–51.

Not only were the constitutions of the Mississippi Valley revised to meet the experiences of the new democracy, but the revisions wore well. Says McMaster: "That the financial, the industrial, the economic conditions through which the people were passing, that their changed ideas of the duties of the state, their juster conception of the social and political rights of man, their struggles for a better life, should find expression in their constitutions of government, as well as in the statute books was inevitable."[5] Confidence in the people was basic in these constitutions. "The major-

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[3] H. V. Ames, *Proposed Amendments to the Constitution of the United States* (American Historical Association, *Annual Report*, 1896), 20, 325, 366.

[4] Charleston [S. C.] *Courier*, August 18, 1845.

[5] J. B. McMaster, *History of the People of the United States* (New York, 1884–1913), 7, 162.

ity of the people always do right, they cannot be deceived," wrote one of the Democrats, exultant in his election to a minor office.[6]

The states were establishing in this period, throughout the Union, a durable type of local government. Of the eight new constitutions adopted between 1829 and 1838, the average life was thirty-two years. There were twenty constitutions adopted in the United States between 1838 and 1859; of these six had an average life of only eighteen and two-thirds years because of the changes occasioned by the Civil War; and four were renewed in an average of twenty-seven and one-half years from other causes. The remaining ten constitutions of this period outlasted the century, and eight of them were yet in force in 1915: Rhode Island, 1842; New Jersey, 1844; Wisconsin, 1847; Indiana, 1851;[7] Iowa, 1857; Minnesota, 1857; Oregon, 1857; and Kansas, 1859. Two, Michigan, 1850, and Ohio, 1851, lasted more than half a century before they were replaced. All the upper Mississippi Valley states framed constitutions and expressed in permament form the democratic ideals of the Democratic party.[8]

The most permanent of these western Jacksonian constitutions was that of Wisconsin, under which the territory became a state in 1848. In 1914 it was still in force, and in that year a decisive expression of opinion was given by the people against any considerable modification of it.[9] It shows in its provisions the forces that were at large in the second quarter of the nineteenth century in the Democratic party and Democratic society. It is longer than constitutions of earlier periods, longer even than the average of its own period, and illustrates the prevailing tendency to write

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[6] J. G. Davis, Rockville, Indiana, April 3, 1833, to G. Cornelius, Pittsburg, Kentucky; manuscript letter in the possession of J. G. D. Mack.

[7] J. A. Woodburn, "Constitution Making in Indiana," in *Indiana Magazine of History*, 10:237–255 (September, 1914).

[8] Emlin McClain, "The Constitutional Convention and the Issues Before It," in B. F. Shambaugh, *Fiftieth Anniversary of the Constitution of Iowa* (1907), 164.

[9] Ten "progressive" amendments were defeated by heavy popular majorities, in November, 1914.

distrust of the legislative, executive, and judiciary into fundamental law.[10]

The settlement of the Northwest, where the head of the Great Lakes approaches the upper Mississippi Valley, made little progress before the panic of 1837. Only the beginnings of occupation of Iowa and Wisconsin had been made before that time. With cheap land easily obtainable in Illinois, Indiana, and Missouri, under the land law of 1820, or from states that had received it as a gift from the United States, there was small temptation for the pioneer to push beyond these states. The land soaked up the emigrants until its best sections were saturated; then and then only the wave followed the easiest routes on, into remoter fields. Before 1837 the skeleton of government had been created northwest of Illinois, but only the skeleton.

The prospective admission of Michigan in 1836 led Congress to reorganize the territory between that state and the Missouri River as the territory of Wisconsin. Already a few settlers had come through the lakes to the Chicago-Milwaukee shore, or up the Mississippi to the Black Hawk purchase and the lead mines around Galena, Dubuque, and Mineral Point. In 1838 Wisconsin territory was divided, Iowa being created in its trans-Mississippi section, and the population on both sides of the river began to grow rapidly. Iowa was nearer to settled regions than Wisconsin, and once development began, Iowa grew more homogeneously than its parent. By 1846 Iowa was ready for admission, with a population of 96,000,[11] drawn largely from Missouri, Illinois, Kentucky, and the Ohio Valley. Wisconsin was ready two years later, with a larger but less homogeneous population. Its western counties resembled the social ad-

[10] Of thirteen constitutions adopted 1776–1780, the average length is 9.9 pages of Thorpe; thirteen adopted 1781–1810 average 12.7 pages; nine adopted 1811–1821 average 15.2 pages; twenty-two adopted 1822–1852 average 19.5 pages.

[11] *The Census Returns of the Different Counties of the State of Iowa*, 1859, insert, 3.

mixture of Iowa. Its Michigan shore had received a preponderance from New York and Ohio, Canada and New England. Even in 1846 its eastern and western regions had not coalesced, and between Madison and Lake Mills the traveler along the territorial road found a wide zone—a social vacuum —of open lands.[12] In both states, however, the Democratic ideas of the Mississippi Valley prevailed, and can be measured by the evidence of the new constitutions.

Both Iowa and Wisconsin drew much of their population from regions that had passed through the acute frontier stage about 1820, had aided the Jacksonian campaigns of 1824 and 1828, and had suffered economic distress in the panic of 1837. This distress had started many settlers towards the Northwest. "The great rage even here in this part of Ohio," wrote a New York emigrant in 1837, "is to sell and go West! The country here scarcely looks like new country as here are very few log huts to be seen and thickly settled as Long Island."[13] Predisposed to democracy they were governed by Democrats, since Jackson, Van Buren, Tyler, and Polk appointed most of the territorial officials, who in turn organized the territorial parties. Even the few Whigs who ruled among them were Democratic, and the appointees of a frontier hero, William Henry Harrison.

The first Iowa constitutional convention met in 1844, with the Democrats in control of more than two-thirds of its delegates. It provided for Democratic publicity by admitting editors to "seats within the bar of this House," chose a president who realized that Iowa was "in the midst of an important revolution,"[14] and listened complacently while one of its delegates approved the doctrine of the Rhode Island clergyman who had prayed in a public meeting for "the election of Polk and Dallas, and the triumph of Demo-

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[12] Milwaukee *Sentinel and Gazette*, September 14, 1846.

[13] G. M. Smith, Carthage, Ohio, February 22, 1837, to E. A. Smith, Hempstead, Long Island; manuscript letter in the possession of J. G. D. Mack.

[14] B. F. Shambaugh, *History of the Constitutions of Iowa* (Des Moines, 1902), 176–178.

cratic principles.''[15] The resulting constitution was defeated because of the double weight of Whig opposition to a Democratic document, and the obnoxious boundary which Congress was trying to force upon Iowa.

The second Iowa convention sat in 1846. It, too, was strongly Democratic, and its constitution reëmbodied the ideals of Jasksonianism. In the canvass for ratification the Whigs continued in opposition, but the boundary question had been eliminated through surrender of Congress, and the constitution was adopted. Two months after its adoption the rest of the upriver region, Wisconsin, took up the similar task of framing a Democratic constitution for a frontier state, and assembled in convention in the village of Madison.

The movement for statehood in Wisconsin, as in Iowa, began earlier among the politicians than among the citizens at large. The force of pioneer conditions was to make the average cititzen somewhat indifferent to formal law and legal institutions. The official, however, was not only professionally interested in the creation of jobs, but was in a position to see the inadequacy of territorial machinery and the need for more definite institutions. Some of the officials tended to grow out of Democratic mold and become what their fellow citizens regarded as too autocratic. When Arthur St. Clair wrangled with the Jeffersonian Democrats in Ohio there was no surprise, for St. Clair was an old school Federalist. But in Iowa in 1839 the Democratic territorial house resolved that its Democratic governor, Robert Lucas, was ''unfit to be the ruler of free people.''[16] This same Lucas talked statehood for Iowa long before the people accepted the notion. Henry Dodge did the same across the river in Wisconsin.

As early as 1838 Governor Henry Dodge recommended that a vote on statehood be taken in Wisconsin territory.

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[15] *Iowa Capital Reporter*, quoted in B. F. Shambaugh, *Fragments of Debates of the Iowa Constitutional Conventions of* 1844 *and* 1846 (Iowa City, 1900), 178.

[16] Shambaugh, *History of the Constitutions of Iowa*, 140.

He continued in this belief, but not until 1841 would the legislature consider the matter seriously; in that year a referendum on the subject polled only 591 votes, of which 499 were adverse.[17] In 1843 and again in 1844 later referendums were taken, and statehood was each time defeated. Only in 1846 did a feeling for autonomy spread widely through the territory. Early in this year the legislature provided for holding a constitutional convention, while Congress coöperated, in June, by passing an enabling act. Like other sections of the old Northwest, Wisconsin did not feel the need of an enabling act as a condition precedent to constitutional construction. It relied upon the general pledge of the Ordinance of 1787 as sufficient authority. The people of the territory ratified the call for a convention by an overwhelming vote in April, 1846. The census taken that summer revealed a population of about 155,000 in the territory, as against 18,000 in 1838.[18]

The Wisconsin convention that met on October 5, 1846, was a Democratic body performing a public task in the spirit of a party platform.[19] Like both Iowa conventions, like the Louisiana convention of 1844–45, and the Texas convention of 1845, it believed that its party interests were the interests of society. Its model was the work of the New York convention that sat in the summer of 1846. Prosperity was again upon the country and men looked forward to a long period of development under the safeguards of democratic principles. "The day of 'depression' has gone by. The last year witnessed a great and increasing improvement in the general

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[17] F. L. Holmes, "First Constitutional Convention in Wisconsin, 1846." In Wisconsin Historical Society, *Proceedings*, 1905, pp. 227–251, with an excellent bibliography.

[18] *Census Enumeration of the State of Wisconsin*, 1905, p. vi; see *Census Enumeration of the State of Wisconsin*, 1895, pp. vii, x, xi, for shaded population maps; cf. R. G. Thwaites, "The First Census of Wisconsin Territory," in *Wisconsin Historical Collections*, 13, 247–270. In 1846 the population was 153,277, with three counties unreported. Proclamation of Governor Henry Dodge, August 1, 1846, in *Wisconsin Democrat*, August 1, 1846.

[19] There is no stenographic report of the debates, but there is a *Journal of the Convention to Form a Constitution for the State of Wisconsin* (Madison, 1847).

business of the country, and the cry of 'hard times' is no more heard in the land.''[20] In the resulting Wisconsin constitution are preserved records of the hard times and the prosperity, the influx of immigrants and the southern antecedents of southwest Wisconsin, the spirit of the frontier, and the temper of the Democratic party.[21]

''Most of the members of the convention are Locos [Locofocos or Democrats] of the radical stamp,''[22] wrote a neighboring editor a week after the body assembled. It was a sound judgment, for although the body included ''the Retrograding Democracy, the Progressive Democracy, and the Whigs''[23] it was under the control of the progressive, young democracy wing, whose members were derided as ''Tadpoles'' and ''Barnburners,'' and who frankly differentiated themselves from the ''Rip Van Winkles of Old Hunkerism.''[24] The ''striking dissimilarity between the habits and customs of the people of the Mississippi Valley and the old Eastern States,''[25] was reflected in the sections of Wisconsin, and a clear tendency existed among Wisconsonians of southern antecedents to oppose the aims of conservative Democrats. The southwesterners were unable to elect their nominee, Moses M. Strong, of Mineral Point, as president of the convention, but they succeeded in obtaining a man of their own opinions, Don A. J. Upham, of Milwaukee, for that office. Upham was opposed to banks, and had the support throughout the convention of a journal started in Madison early in 1846 to advance the interests of the radicals, the *Wisconsin Democrat*.[26] ''A 'Tadpole' as we understand it,

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[20] Baltimore *Sun*, January 2, 1845.

[21] A valuable guide to the materials upon the convention is Florence E. Baker, "A Bibliographical Account of the Wisconsin Constitutional Conventions," in Wisconsin Historical Society, *Proceedings*, 1897, 123–159.

[22] *Lake County* [Ill.] *Herald*, quoted in Milwaukee *Sentinel and Gazette*, October 12, 1846.

[23] Madison *Wisconsin Democrat*, October 10, 1846.

[24] *Ibid.*, January 27, 1846.

[25] *Ibid.*, November 28, 1846.

[26] It appeared January 10, 1846, expressing its aim in its first issue; cf. Madison *Argus*, May 25, 1847; Milwaukee *Sentinel*, January 22, 1846; Moses M. Strong, *History of the Territory of Wisconsin* (Madison, 1885), 508.

is a defaulter,"[27] said the Madison *Argus,* with a bitterness increased by its inability to meet the competition of the *Democrat.*

The early procedure of the convention contained no peculiarities. It appointed standing committees to consider various aspects of the constitution and slipped into regular habits as easily as if constitution-making were a daily practice for its members. Within a few days the committees began to report tentative articles, and real debate was entered upon.

It had been anticipated that the great issues before the convention would be judiciary and finance,[28] and the report presented from the committee on banking by Edward G. Ryan, of Racine, precipitated the great debate. Ryan had already determined upon the outlines of his banking section when he was appointed chairman of the committee on October 8, three days after the assembling of the convention.[29] The next morning he reported his draft to the convention, without assembling his committee or, apparently, even consulting his associates.[30] The recent failure of the Oakland County Bank, of Michigan, "one of the last of the 'wild cat' brood,"[31] had provided a text for the Democrats who demanded the extinction of all banks. "Let our neighbors of the *Sentinel* ask the farmers 'Shall we have banks in Wisconsin?' 'No!' will be their united hearty response,"[32] declared the Milwaukee *Courier,* adding that throughout the lead region merchants, mechanics, and laborers joined in the repudiation. "Draco, who wrote his code in blood was a mild and humane legislator compared with Mr. E. G. Ryan,"[33] declared the *Sentinel* when it read his proposed article, which prohibited the incorporation of banks, the

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[27] Madison *Argus*, October 5, 1847.
[28] Milwaukee *Sentinel and Gazette*, September 22, 1846.
[29] *Journal of the Convention*, 1846, p. 24.
[30] *Ibid.*, 38; statement of M. S. Gibson, of Fond du Lac.
[31] Milwaukee *Sentinel and Gazette*, October 17, 1846.
[32] Milwaukee *Courier*, October 14, 1846.
[33] Milwaukee *Sentinel and Gazette*, October 15, 1846.

issuance of notes as money, and the receiving or passing of bank paper, under heavy and specific penalties.[34]

With the introduction of the banking section the definitive struggle of the convention was begun. Its opponents offered as alternative a system of free banking under general laws, while John H. Tweedy, of Milwaukee, a young Whig with a growing influence, pressed upon the convention the free system that New York was on the point of adopting in the constitution just framed.[35] "How many settlers are there now in our territory," inquired the leading Whig paper, "who have been compelled to borrow the money with which they bought their lands, at 15, 20, 25, aye 50 per cent interest?—Do they think that money would command such exorbitant rates if we had good banking institutions here?"[36] But the older residents of the territory had too keen a recollection of the depreciation and bankruptcy that followed the panic of 1837 to yield to such appeals. Texas, in 1845, had prohibited banks and the president of its convention had praised Jackson most because "he had the honor of giving the blow which will eventually destroy them [banks] on this continent."[37] The antagonism had spread up the Mississippi Valley. The unratified Missouri constitution of 1845 had flatly forbidden the creation of any bank of issue.[38] Iowa, in 1844, had required that no bank charter be issued until approved by popular vote; and in 1846 had gone further, and had forbidden the creation of any bank.[39] And Illinois, in 1847, was in the act of restricting the creation of banks to those whose charters had been accepted by popular vote.[40]

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[34] *Journal of the Convention*, 1846, p. 27.

[35] *Ibid.*, 60; Milwaukee *Sentinel and Gazette*, October 9, 22, 1846; C. J. Lincoln, *Constitutional History of New York* (1906), 2, 196.

[36] Milwaukee *Sentinel and Gazette*, October 17, 1846.

[37] Thomas J. Rusk, in *Texas Convention Debates*, 1845, 461; F. L. Paxson, "The Constitution of Texas, 1845," in *Southwestern Historical Quarterly*, 1915.

[38] *Missouri Convention Journal*, 1845, ap. 52.

[39] Shambaugh, *History of the Constitutions of Iowa*, 226, 303.

[40] *Journal of the Convention . . . altering, amending, or revising the Constitution of the State of Illinois* (Springfield, 1847), 565. In 1862 an-

The sectional interests of Wisconsin territory thrust a plane of cleavage through the Democratic party which in the other western states was nearly unanimous in its hostility to banks. Many of the newcomers were from the eastern states and were in sympathy with the Hunker faction of the dominant party. Some of these tended to act with the Wisconsin Whigs. A Milwaukee correspondent of Moses M. Strong admitted that "on banks and banking there is some difference of opinion among Democrats" but his wish, as late as December, 1846, still fathered the thought that "the voice *of the Democracy says no banks.*"[41]

Moses M. Strong, Ryan, and the antibanking extremists controlled the final phrasing of the article. The pains and penalties were ultimately omitted, but small bills were left under the ban, those of ten dollars being prohibited after 1847 and those under twenty dollars after 1849. The factions developed by the banking debate continued throughout the session.

The rest of the constitution was subordinate in its interest to the banking provision. A framework similar to that of other states was readily agreed upon. Much comfort was found in the decisions, often quoted, of the Iowa, Missouri, and New York conventions. Only here and there did novelties creep in. Judiciary and suffrage represented problems on which all the new constitutions had to take stand; homestead exemption and married women's property rights reflected the radicalism that was in the saddle.

The election or appointment of judges was the question at the crux of the judiciary problem. The eastern members of the convention came from states in which long-time appointive judges administered the law. The western members had

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other Illinois convention framed a constitution, known by Republicans as "the Egyptian swindle," because of its popularity in the southern end of the state, and inserted in it, by Democratic votes, a complete prohibition of banks and bank notes. O. M. Dickerson, *The Illinois Constitutional Convention of 1862* (University of Illinois *Studies*, 1, no. 9—Urbana, 1905), 404.

[41] J. W. Helfenstein, Milwaukee, to Moses M. Strong, December 2, 1846, in Moses M. Strong MSS. in Wisconsin Historical Society.

had a wider experience with the new Democratic theory of short term and election. But uniformity of opinion was absent. Ryan, later to be a great chief justice of Wisconsin, was bitterly opposed to the elective principle, although he did much to shape the other details of the article.[42] The radical Milwaukee *Courier,* though itself preferring election, was willing to print certain letters of one "Ormond," advocating appointment—and such tolerance of opinions was not usual in the Wisconsin papers of the day.[43]

There was a general agreement with "Ormond" that the constitution "must be Democratic in order to satisfy the people of Wisconsin." As to what was Democratic, there was a tendency to look to New York, where men were studying the Mississippi precedent of 1832. Mississippi had framed its second constitution in this year, adopting the elective principle for judges. J. A. Quitman, a New Yorker who had associated himself with Mississippi and who later became its governor, wrote in 1845 to the editor of the *Democratic Review*[44] that although opposed to this method of choice at first he had come to believe it entirely good. John Bigelow[45] was using this letter, with other Democratic materials, in a series of papers on constitution-making that he wrote for the *Democratic Review* about this time, and that now remain the best general statements of Democratic theory. And Bigelow was a Barnburner, or Progressive. It was another victory for the liberal faction in Wisconsin when the convention determined that the courts should be filled by election rather than by "the Old Hunker method of appointment."[46] Ryan, though he opposed election now, lived to approve his defeat.

The eagerness of all factions to conciliate and get the votes of immigrants made the definition of the suffrage

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[42] Strong, *History of the Territory of Wisconsin,* 516; John B. Winslow, *Story of a Great Court* (Chicago, 1912), 5.
[43] Milwaukee *Courier,* August 14, September 30, 1846.
[44] *Democratic Review,* 418 (June, 1846).
[45] John Bigelow, *Retrospections of an Active Life* (New York, 1909), 1, 670.
[46] *Wisconsin Democrat,* October 31, 1846.

franchise a matter of political importance. The convention itself, under the territorial law which called it, had been chosen by white males, twenty-one years of age, citizens of the United States or aliens who had filed their declaration of intention to become citizens, who had resided six months in the territory and ten days in the county.[47] Every month population was jumping upward, and by its distribution into unexpected regions was affecting the political balance. Between the censuses of June, 1846, and December, 1847, the growth was from 155,000 to 210,000,[48] the increase including nearly enough voters, under the liberal election law, to give control to whichever faction they should support. Many of the newcomers, whose votes all factions wanted to secure, were foreign born, complicating the problem of residence with that of nativism.

In the political breakup of the thirties, Native Americanism came to the front as it has often done in such periods of party dissolution. In general the Whig party, which was in the East the party of conservatism and property, was in sympathy with nativism and the protest against the foreigner; but in Wisconsin there was small difference between the Whigs and Democrats, since both parties exerted themselves to welcome the unnaturalized.

The convention worked at length over the question of extending the suffrage to negroes, but, without serious division, it fixed the qualifications for whites. It extended to one year the residence term for all, and required, in addition, of aliens who had filed their intention papers, an oath to support the Constitution of the United States.[49] To many of the foreigners this oath was an affront. They had been allowed to vote for members of the convention itself on residence,

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[47] *Laws of the Territory of Wisconsin*, 1846, 9. The second Wisconsin convention was chosen by electors having the same qualification, but eliminated the offensive oath from the constitution which it made. *Laws of the Territory of Wisconsin*, special session, 1847, 4.

[48] Madison *Argus*, January 11, 1848; April 18, 1848.

[49] *Journal of the Convention to Form a Constitution for the State of Wisconsin, with a Sketch of the Debates* (Madison, 1848), 604.

but now they were to be required to meet an additional test before voting upon the adoption of the constitution. The United States naturalization law, under which they had made their declaration of intention, did not require an oath of allegiance at this point.[50]

The oath was retained in the article finally adopted, in spite of protests, but the schedule, in section nine, relieved from the oath persons already in Wisconsin who had been eligible to vote for members of the convention.[51] This concession seems to have accomplished its purpose, since among the few counties voting "aye" on the adoption of the constitution was Washington County, into which the foreigners had "commenced to swarm" in 1841, and where Germans "became the predominant race as early as 1850."[52]

In no respects did the constitution reflect the marginal reforms of the day more sharply than in the article on homestead exemption and married women's rights. In the previous half century imprisonment for debt had been under fire, and clauses forbidding such punishment are to be found in many of the early constitutions. The frontiersmen now advanced the restriction of the forcible debt-collecting process one stage further in the interests of their society. In the panic of 1837, and its aftermath, they had seen the danger of eviction. They knew the low prices prevailing at forced sales, and many of them had taken part in discouraging speculators from buying foreclosed lands. Forced sales meant to them the loss of the equities, in which alone were the accumulations upon which they based their hope of future prosperity. Texas, in 1845, with a population drawn from Tennessee and its vicinity, had adopted a clear exemption clause, allowing to each citizen a minimum of property which no creditor could attach. California was to take up the principle in 1849. Wisconsin now accepted it. "So it

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[50] F. G. Franklin, *The Legislative History of Naturalization in the United States from the Revolutionary War to 1861* (Chicago, 1906).

[51] *Journal of the Convention with Debates*, 1847, 649.

[52] *History of Washington and Ozaukee Counties, Wisconsin*, 557.

should be,'' said the Louisville *Democrat,* commenting upon the Texas clause, ''if a man's *moral* worth will not entitle him to credit, the possession of property should not add to his credibility.''[53] Before the Wisconsin convention met, every Democratic paper in the territory, except the Hunker organ, the Madison *Argus,* was reported as favoring the principle of exemption of a reasonable amount of property from forced sale,[54] and many of them reprinted the same approving arguments that Bigelow had used in his article in the *Democratic Review.*[55] In Michigan the legislature was preparing to embody the principle in a statute,[56] and in future years the idea was to become an undisputed part of the guarantees that were habitually stated in the bills of rights. But when adopted for Wisconsin, the Whigs interpreted exemption as repudiation, and the conservative Democrats, already out of sympathy with the faction in control of the convention, made it an additional ground for complaint.

Marshall M. Strong, of Racine, was a consistent opponent of the more progressive measures, and upon the last, the recognition of the right of married women to the independent control of their own property, his indignation became so explosive that on December 7 he resigned his seat in the convention, and went home to organize the defeat of the constitution.[57] His secession marks the open split in his party in the territory, and so far as the constitution is concerned is the beginning of the end.

Just where the married women's clause originated is not clear. It appeared first in Texas in 1845,[58] and was advertised by Bigelow's approval in the *Democratic Review.* It

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[53] Quoted in the Mineral Point [Wis.] *Democrat,* October 15, 1845.

[54] *Wisconsin Democrat,* August 22, 1846.

[55] Holmes, "First Constitutional Convention in Wisconsin," in Wisconsin Historical Society, *Proceedings,* 1905, 243.

[56] Kalamazoo [Mich.] *Gazette,* quoted in Milwaukee *Courier,* August 26, 1846; Southport [Wis.] *American,* May 12, 1848.

[57] *Journal of the Convention,* 1846, 428; Strong, *History of the Territory of Wisconsin,* 525–529; cf. Racine *Advocate,* quoted in *Wisconsin Democrat,* April 15, 1847.

[58] *Texas Convention Debates,* 1845, 600 *et seq.*

may have been suggested to Texas by certain separate-estate provisions of Spanish law, but whatever its source, it found quick response throughout the frontier, where was already a tendency to improve the status of women, and where in the next generation the colleges were opened to them, and in the next, the franchise. In vain the opponents of the clause cited Scripture in the hope of proving marriage to be an indivisible partnership, into which all the property of the woman ought to be merged. When the article was approved in convention, Whigs and Hunkers alike found in it additional reason for keeping up their attack upon the whole constitution.

The Wisconsin convention met on October 5, 1846, and adjourned on December 16.[59] It provided that its constitution should come before the people in the following April, but the prospect of ratification was already slight. The bolt of Strong, of Racine, was too great a blow to be offset even by the violent efforts of his fellow-townsman, Ryan. "To him [Strong] chiefly," wrote the conservative Milwaukee correspondent of the Madison *Argus,* "will belong the honor of saving 'our beloved Wisconsin' from being converted into a Fourier phalanx playground for lunatics and idiots."[60] But Ryan kept up his courage and his advocacy. In December he wrote to Moses M. Strong: "We are going to have a hard pull here to carry the constitution: but we shall yet be able to do it handsomely in almost all the county. Your namesake here says and does nothing so far as I can learn. * * * I am clear that the party stands or falls with the constitution."[61]

The party was already threatening to fall without the

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[59] In the absence of a stenographic report of debates, the occasional speeches that were given out by their makers and were printed in the local papers, have great value in measuring the forces at play in the convention. There is a bibliography of these published speeches in Florence E. Baker, "A Bibliographical Account of the Wisconsin Constitutional Conventions," in Wisconsin Historical Society, *Proceedings*, 1897, 123–159.

[60] Madison *Argus*, March 9, 1847.

[61] E. G. Ryan, Racine, to Moses M. Strong, December 27, 1846, in Strong MSS., in Wisconsin Historical Society.

constitution. Polk had weakened his hold upon the West by his veto of the river and harbor bill in 1846. He had alienated many of the eastern Democrats by forcing a new, low tariff through Congress at the same time. His Whig generals, in the pending Mexican War, were injuring the administration when they were inactive and were threatening it when they were successful. Taylor, by his victory at Buena Vista, on Washington's birthday, 1847, elevated himself to the head of the presidential column of countless Whig papers. And in Wisconsin the cleavage between the Democratic factions was widened when the emigrants from New York formed an "Excelsior" society in Milwaukee and emphasized their difference from the southwesterners. A new balance was felt in Wisconsin. As Byron Kilbourn wrote later in the spring: "The Territory has been represented from the West and North exclusively, while the Southeast has more people than both, and as important interests to care for."[62]

By the end of March, 1847, the "rage for the constitution" had "swallowed up all other rages, and now itself rages triumphant. Constitution meetings and anticonstitution meetings are the order of the day."[63] Ryan, who was fighting an uphill battle among the easterners, was becoming less optimistic. "The opposition may talk about married women and exemption, but here along the Lake Shore, at all events, the real opposition is to the restrictions against banks, internal improvements, and state debt. A new convention, elected as it would be by the opponents of the present constitution if they succeed now, would give us all the old brood of corruption."[64] Another of the correspondents of Moses M. Strong wrote a little later, from Madison, that he had found "opponents, who fearlessly took ground in favor of the establishment of banks, regular wild cats, in this state, and

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[62] B. Kilbourn, Milwaukee, to Moses M. Strong, June 1, 1847, in Strong MSS., in Wisconsin Historical Society.

[63] Madison *Argus*, March 30, 1847.

[64] E. G. Ryan, Racine, to Moses M. Strong, February 18, 1847, in Strong MSS., in Wisconsin Historical Society.

declared that the constitution must be defeated for their establishment. The opponents are open east of this in declaring and preaching for banks; probably they think you of the West will not hear of it in time to counteract them. So take care. Tell the boys what the eastern bankites are at and make old Iowa [county] toe the mark, and put her veto to the banking, swindling, operations of Mitchell[65] and his hireling. If this constitution be rejected there will not be another one formed in Wisconsin which will have that clause."[66] Another Democrat, writing from a northern county to Morgan L. Martin, the territorial delegate to Congress, declared: "I must tell you what you ought to have known long before, that is that the people of this section are much and *very strongly* in favor of the exemption, and they expect their representatives to go to the death for it. * * * Especially are the *Democrats* in favor of it because it is a Democratic doctrine."[67] In Milwaukee the advocates of the constitution were singing at their rallies:

> "The federal party can't endure,
> So much indulgence to the poor;
> The bank democracy begrudges
> The people's power to choose their judges;
> The married woman's clause they say,
> With grief will turn each husband grey;
> But still the worst of all disasters,
> Is banishing their dear 'shinplasters.'"[68]

"Take it as a whole," said the *Argus,* which was lukewarm in its support, "we believe it to be the most liberal document of the kind ever submitted to the people of any state."[69]

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[65] The Wisconsin Marine and Fire Insurance Company, of Milwaukee, did a general banking business under the direction of Alexander Mitchell, and provided Wisconsin with a paper currency. Its charter was repealed by the legislature in 1846, but it continued in its business in spite of this, and upon it was focused the hatred of the antibank group.

[66] J. G. Knapp, Madison, to Moses M. Strong, March 21, 1847, in Strong MSS., in Wisconsin Historical Society.

[67] Anonymous, Fond du Lac, to Morgan L. Martin, January 3, 1847. In Wisconsin MSS., 12C17, in Wisconsin Historical Society.

[68] *Wisconsin Democrat,* March 20, 1847.

[69] Madison *Argus,* March 30, 1847.

The election, held on April 6, 1847, justified the hopes of the Whigs and their Hunker allies. The constitution was defeated in every county in the territory except Brown and Iowa, in which the old settlers were still in power,[70] and Washington, with its German population. And all the counties that rejected the constitution were among the larger majority that voted "no" on the separate article submitted on the right of negroes to vote. This article was a concession to the northerners among the eastern counties, and only these gave it many votes. The territory relapsed into its domestic politics again, with statehood indefinitely postponed, and with the Democratic party strained in every joint. "Let us unite once more," pleaded the *Argus* on election day, "and show a firm front to the enemies of equal rights—the federal bank party."[71]

The six months which followed the defeat of the first constitution were marked by reflection and party reorganization in Wisconsin. The only effective cause for rejection, in the constitution itself, was the antibank article. Other sections had slight influence, if any, upon the outcome. If the Democratic party had remained a unit it is doubtful if even the bank article could have defeated the constitution. The Whigs played skillfully upon the dissensions in the dominant party, and common origin made coöperation between the Whigs and eastern Democrats more easy than it might otherwise have been.

Talk of a new convention began before the first constitution was rejected. Marshall M. Strong advocated it, and all supported it, once the election was over. Whatever its internal quarrels, Wisconsin desired to become a state. Governor Henry Dodge appraised the intensity of this desire in a trip he made through the territory in the summer of 1847, and on September 27[72] he called the legislature to meet

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[70] Holmes, "First Constitutional Convention in Wisconsin," in Wisconsin Historical Society, *Proceedings*, 1905; has a map showing the distribution of the vote.

[71] Madison *Argus*, April 6, 1847.

[72] Proclamation in Madison *Argus*, September 28, 1847.

in special session in October, in order to enact a new law for a new convention. Meanwhile the chief interests of the territory had been the increase of population,[73] in the Southeast, between Janesville and Milwaukee,[74] and the territorial delegate election.

Morgan L. Martin, of Green Bay, was territorial delegate in Congress from 1845 to 1847. He desired to be nominated to succeed himself, but his ambitions were opposed by the counter ambitions of Moses M. Strong, who had been trying in vain to get himself reappointed as United States district attorney for Wisconsin,[75] and who was the leader of the anti-bank radicals, as well as spokesman for the Southwest. In spite of lukewarm support, or even open antagonism from the East, Strong secured the nomination in July, 1847. Martin returned to Green Bay, a victim of the "Tadpoles," who were "malignant in reviling the old democracy and especially yourself and friends."[76] John H. Tweedy, of Milwaukee, was nominated by the Whigs a week later to oppose Moses M. Strong, and was elected in September.

Tweedy had a good following among the Whigs, but was even more aided by Democratic friction and the various personal antagonisms to Strong.[77] His canvass was memorable because he was absent throughout it, he having taken the nomination upon the understanding that he was to be left free to go outside the territory on personal business.[78] The Whigs accepted him on these terms, and met with principles

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[73] *Ibid.*, October 18, 1847; J. A. Barber, Lancaster, Wisconsin, to George W. Lakin, in Lakin MSS., in Wisconsin Historical Society; Strong, *History of the Territory of Wisconsin*, 563.

[74] The first freshman class at Beloit College was organized November 4, 1847. (*Beloit College Catalogue*, 1914, 21.) Lawrence Institute, on the Fox River below Lake Winnebago, had been chartered in the same year. W. A. Goodspeed, *History of Outagamie County, Wisconsin* (1911), 535.

[75] A. C. Dodge, Washington, D. C., to Moses M. Strong, May 13, 1846, in Strong MSS., in Wisconsin Historical Society.

[76] H. A. Tenney, of the Madison *Argus*, to Morgan L. Martin, August 28, 1847, in Wisconsin MSS., 12C81, in Wisconsin Historical Society.

[77] Democratic central committee of Walworth County, to Moses M. Strong, August 30, 1847; in Strong MSS., in Wisconsin Historical Society.

[78] Madison *Express*, August 24, 1847 (a Whig paper).

and an absentee candidate the attack of Strong, who stumped the territory.

Strong preached radicalism up and down Wisconsin. He had the paper support of his organization, but experienced many individual defections. The success of Tweedy was an omen of the approaching decomposition of the Democratic party, locally and nationally. The vote indicated a declining interest in politics due to schisms. Fewer persons voted in September, 1847, than had voted in the preceding April, although the population of the territory grew unceasingly.

Even the worst opponents of Strong had not wanted to carry revolt thus far, and the defeat sobered the party for the time being. Few realized that the slavery issue was soon to make impracticable a close affiliation between eastern and southern Democrats. In the canvass, Strong had tried to stop the drift towards Tweedy by charging him with abolitionism. But now personal feelings were temporarily set aside, and in the second convention election, in November, 1847, the Democrats again secured a majority of the members. How far the defeat of the constitution of 1846 was due to principle, and how far to these factions, is revealed by the character of the second constitution. The schisms that disrupted Wisconsin were spreading elsewhere. Polk's veto of the river and harbor bill had produced a great internal improvements convention at Chicago in July, 1847, where it was made clear that the Northwest would not assent to the southern doctrines of narrow construction.[79] Tariff, internal improvements, and slavery were proving themselves undigested issues for the Democracy, and the name of Zachary Taylor was acquiring an ominous significance for James K. Polk.

The new constitution was far from being an amended version of the old one.[80] The two Democratic factions were un-

[79] Milwaukee *Sentinel and Gazette*, August 6, 1846; Madison *Argus*, July 13, 20, 1847; Chicago *Daily Democrat*, quoted in *Wisconsin Democrat*, July 17, 1847.

[80] The convention met December 15, 1847. *Journal of the Convention to Form a Constitution for the State of Wisconsin, with a Sketch of the Debates* (Madison, 1848).

reconciled in spite of their good working majority,[81] and the Whigs were often able to hold the balance of power. "The Milwaukee K's," said the *Wisconsin Democrat,* meaning Kilbourn and King, the editor of the Milwaukee *Sentinel and Gazette,* "are regarded as the Siamese twins of the convention—a separation would be fatal to both." "Byron Kilbourn," it continued, "is so well known in the territory that his name has become almost synonomous with political tergiversation and intrigue."[82] It was Kilbourn who, at the opening of the convention after the election of Morgan L. Martin as president, tried to persuade the body to content itself with revising the controverted sections of the first constitution—those on judiciary, bank, exemption, and the rights of married women.[83] He was voted down, though he was one of the distinct leaders in the convention,[84] and the new constitution was as different from the first as either was from the constitution of any nearby state.

A comparison of the two constitutions, section by section, shows that almost no sentence was saved from the first without change. From preamble to signatures it was a new draft. But most of the changes were only verbal and in arrangement. The skeleton of government was slightly altered, and even the disputed provisions were changed less than was to be expected.

The banking article was completely revised as was inevitable. In place of the sweeping prohibition of banks, the legislature was now authorized to take a referendum on the question of banks or no banks; and should the vote be affirmative it was authorized to pass a "general banking law, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill holders." But no such law was to be effective until ratified

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[81] Strong, *History of the Territory of Wisconsin,* 562.
[82] *Wisconsin Democrat,* January 1, 1848.
[83] *Journal of the Convention with Debates,* 1847, 8; *Wisconsin Democrat,* December 18, 1847.
[84] J. A. Noonan, Milwaukee, to Morgan L. Martin, December 12, 1847, in Wisconsin MSS., in Wisconsin Historical Society.

by the people at a general election.[85] Under this procedure state banks were soon admitted into Wisconsin; but the triumphant advocates of banks had not dared to go beyond this bare and devious concession to the banks.

The judiciary article remained almost unchanged. The principle of elective judges was becoming better grounded every year, and whatever influence it may have had in defeating the first constitution, it was none the less repeated in the second. The married women's clause was omitted entirely, but nothing was put into the constitution forbidding the legislature to do by law what had created so great a noise when done by constitution; and the legislature soon responded to the sentiment of the day and used this privilege.

The exemption clause was also omitted, but into the bill of rights was incorporated a new section at the instigation of Martin: "17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure, or sale for the payment of any debt, or liability hereafter contracted."[86] The cause had gained strength since 1846. Michigan, Georgia, Connecticut, and Texas had passed or were passing laws to this effect, and more than one Wisconsin Democrat believed that all that was essential in the section of the repudiated constitution was saved in the shorter section of the new bill of rights.[87]

The new constitution was submitted to the swelling electorate in March, 1848, and there was some apprehension as to its fate. "There was an effort made a few days ago by some of our Tadpole friends to unite with the Whigs and get up a systematic opposition to the constitution," wrote one of the Milwaukee conservatives to Martin in a private letter.[88] But the opposition failed to materialize. The Pro-

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[85] F. N. Thorpe, *American Charters, Constitutions, and Organic Laws* (Washington, 1909), 7, 4093.

[86] Thorpe, *Constitutions*, 7, 4078.

[87] W. Chase, Ceresco, Wisconsin, February 14, 1848, to M. L. Martin, in Wisconsin MSS., 13C36, in Wisconsin Historical Society.

[88] J. A. Noonan, Milwaukee, to M. L. Martin, January 8, 1848, in Wisconsin MSS., 13C17, in Wisconsin Historical Society.

gressives were opposed to banks, but every month threw them further into the minority on this item, and they all wanted statehood. Their chief organ wrote, "The instrument is better than we expected from the body that framed it,"[89] and urged its ratification. Criticism faded away, and though the vote was small the majority was overwhelming in favor of the constitution.[90]

It was, after all, factional politics that defeated the former document, fomented but not created by the extravagant attack upon the banks. Tweedy's election revealed to the Democrats the dangers of internecine feuds. They patched up their differences, elected a compromise governor in 1848, in the person of Nelson Dewey, "a thorough radical and consistent Democrat,"[91] and retained for a time their partisan control of the state and its representation. But their control was weakening; not again until 1893 had Wisconsin two Democrats in the United States Senate.[92] Their constitution marks the high water mark of Democracy in the Northwest, before the tide began to ebb.

Frederic L. Paxson.

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[89] *Wisconsin Democrat*, March 11, 1848.
[90] A. M. Thomson, *Political History of Wisconsin* (Milwaukee, 1900), 56; Strong, *History of the Territory of Wisconsin*, 556.
[91] *Wisconsin Democrat*, April 22, 1848.
[92] *New York Nation*, February 9, 1893, p. 76.

PART II—OFFICIAL PROCEEDINGS AND DEBATE

PROCEEDINGS IN WISCONSIN

On January 6, 1846, the day on which the territorial legislature convened in annual session, Governor Dodge submitted his annual message to the two houses in joint session. Aside from certain introductory remarks the first subject treated by the Governor was that of statehood, the message recommending the passage of a law for the submission of the question to a popular referendum on the part of the voters.[1] To this invitation the legislature responded by creating a joint committee composed of two members of the Council and four members of the house of representatives for the consideration of the Governor's recommendation.[2] In accordance with this resolution the speaker of the house appointed as members of the joint committee Elisha Morrow, Thomas P. Burnett, Benjamin H. Mooers, and Orson Sheldon; while the Council chose Moses M. Strong and Michael Frank.[3] On January 12 Moses M. Strong reported to the Council "A bill in relation to the formation of a state government in Wisconsin," which was read the first and second times;[4] similar action occurred in the house of representatives a few days later (January 19).[5] On January 16, Michael Frank, from the joint select committee, laid before the Council the committee's report on the subject of state government and, on motion of Moses Strong, 500 copies were ordered printed.[6] Similar action with respect to printing the report was taken by the house of representatives on

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[1] For the pertinent portion of the message see *post*, 59.

[2] *Journal of the Council*, 1846, 24; *Journal of the House of Representatives*, 1846, 29–30.

[3] *House Journal*, 33; *Council Journal*, 32.

[4] *Council Journal*, 44.

[5] *House Journal*, 96, 101.

[6] *Council Journal*, 77–78. For the report, taken from *ibid.*, 333–42, see *post*, 60.

January 20, the proceedings here being enlivened by a vigorous debate over the question of printing in foreign languages as well as in English.[7] On January 21 the house went into committee of the whole for the consideration of the statehood bill,[8] and again on January 22 for further consideration of the bill.[9] On January 23 and 24 the statehood bill was under consideration in the house,[10] being ordered to its third reading and passed on the last named date.

The Council, meanwhile, considered the bill in committee of the whole on January 16 and 17,[11] ordering it to be engrossed and read a third time. On January 19 a resolution to instruct the judiciary committee to amend the bill so as to provide for negro suffrage was introduced and defeated by a 7 to 6 vote.[12] The same day the bill was reported correctly engrossed, read the third time, and passed.[13] On January 24 the amendments of the house of representatives to the statehood bill were concurred in;[14] January 31 the bill was reported sent to the governor;[15] and the same day it received the executive's signature.[16]

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[7] *House Journal*, 105–106.
[8] *Ibid.*, 119. For the debate see *post*, 82–86.
[9] *Ibid.*, 122.
[10] *Ibid.*, 133–36, 145–47.
[11] *Council Journal*, 80–91. For the debate see *post*, 93–116.
[12] *Ibid.*, 94.
[13] *Ibid.*, 95–96.
[14] *Ibid.*, 147.
[15] *Ibid.*, 227.
[16] For the act, taken from *Laws of Wisconsin*, 1846, 5–12, see *post*, 117–24.

GOVERNOR HENRY DODGE

From an oil portrait by Bowman in the Wisconsin Historical Library

MESSAGE OF GOVERNOR DODGE TO THE LEGISLATIVE ASSEMBLY, JANUARY 6, 1846[17]

Fellow Citizens of the Council and House of Representatives: You are assembled in conformity to a law of this territory to perform the responsible duties that devolve on you as the representatives of the people.

We have abundant cause to be thankful to the Almighty Disposer of all good, for the very abundant harvests with which he has been pleased to reward the husbandmen during the past year. Our citizens who cultivate the soil are rapidly developing the agricultural resources of the territory. Our prairies are being converted into luxuriant fields. We have inexhaustible stores of mineral wealth. Our climate is of the most salubrious character, and our soil suited to the production of everything necessary for the comfort of man. We have the great lakes, Michigan and Superior (our inland seas) on the east and north, and the Father of Rivers on the west, with several large rivers passing through our territory in different directions. With a population intelligent, industrious, and enterprising, the growth and prosperity of Wisconsin must be onward; and the time is not far distant when she will form one of the most populous states of the Union.

I respectfully recommend the passage of a law submitting to the people of the territory the expediency of determining by a majority of their votes, whether they are for or against a state government. If they are in favor of that measure, the preparatory steps to carry into effect their wishes on that subject should be taken without loss of time. If they determine by their votes against that measure, their will will be ascertained and the public mind put to rest on that important subject * * *.

HENRY DODGE.

Madison, January 6, 1846.

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[17] Reprinted from the *Council Journal*, 1846, 12–13.

REPORT OF SELECT JOINT COMMITTEE ON STATE GOVERNMENT[18]

The Joint Select Committee, to whom was referred so much of the Governor's message as relates to the formation of the state government, together with all petitions and documents pertaining to that subject, beg leave to make the following report:

A change from a territorial to a state government contemplates an important period in the political history of Wisconsin. The character of our future institutions and their adaptedness to the best interests of our population will essentially depend upon the course of governmental policy pursued by the people in the formation of a new government. Whatever may have been the opinions heretofore maintained by the majority of the people in relation to the expediency of forming a state government in Wisconsin, it is believed that circumstances which have transpired within the past year have produced a very general change in the public mind in favor of severing our territorial dependency on the general government, and of assuming the rank and political standing to which we are entitled among the great family of states. Events which transpired during the last session of Congress indicate a disposition on the part of the general government to withhold from us the usual appropriations for the payment of our legislative expenses. Wisconsin is evidently regarded as having arrived at a period when she is capable of taking care of herself, and when a sense of self-respect should induce her to throw off her territorial dependence.

Your committee will proceed to notice briefly the considerations which in their opinion should influence the people of this territory to the formation of a state government with as little delay as their safety and convenience will al-

[18] Reprinted from the *Council Journal*, 1846, 333–42.

low. It is important that all of our preliminary action should be guided by calm deliberation, and that in every step we take towards the formation of a new government, the wisest of counsel should prevail. We should be neither hasty or precipitate in the adoption of measures; nor, on the other hand, should we be too reluctant to assume the responsible duties of freemen, in the exercise of the prerogative of self-government.

In considering the expediency of going into a state government, the first question which naturally suggests itself to the minds of the people is, What will be gained by the change? If our taxes are to be increased and the burdens of government are to fall more heavily upon us on becoming a state than by remaining a territory, then why not remain in our present condition? While your committee believe that the question of forming a state government should not be regarded as one of mere dollars and cents, they nevertheless believe it can be made to appear that the pecuniary gain of Wisconsin will be greater by the change than the pecuniary loss; and that the deprivation of the amount we annually receive from the general government will be more than balanced from other sources. To calculate properly the loss and gain of a change from our territorial condition to that of a state, it may be well to particularize the pecuniary advantages we derive from the general government, as well as the advantages we may expect to gain by becoming a state. The average amount received from the general government for the payment of legislative expenses for the last four years has been $16,812 per annum. The appropriations for the expenses of the executive department, for salaries of judges, courts, and jurors, average about $21,500 per annum, making the total average amount annually received by the territory from the general government a little over $38,000 for the period before mentioned. The foregoing embraces all the pecuniary benefits the territory receives from the general government. The appropriations made by Congress for the payment of legislative expenses have been annually di-

minishing since 1842, and there is no reasonable expectation of their again being increased to the amount of former years.

Your committee, having enumerated the pecuniary advantages which the territory derives from the general government, will now proceed to mention the several pecuniary benefits to be gained by going into a state government. We shall on our admission into the Union obtain a title to five hundred thousand acres of land, which is equivalent to an investment in cash of $625,000 for the benefit of the state. The profits on this investment cannot be calculated with any degree of certainty; various opinions are entertained as to the prospective increase in value of the most desirable public lands which are now offered for sale in the territory. There are many who believe that large investments might at the present time be made in lands which would be worth twenty per cent per annum, while others believe that seven per cent is all that could be safely calculated upon. It is not to be expected that these lands will be located for the benefit of the state with the shrewdness which a capitalist would exercise for his individual interest; but your committee believe that six per cent is as low an estimate as anyone would be disposed to make, especially when it is taken into account that the lands belonging to the state will not be subject to taxation. Six per cent, then, on an investment of $625,000, would amount to $31,250 per annum. It is true that this amount would not be made available annually; nevertheless it would be an annual accumulation to [of] that amount to the original capital, which the state would in due time be sure to realize. The public lands in Wisconsin are rapidly being bought up, and the longer the formation of a state government is delayed, the less will be the opportunity for making good selections for the state. The proceeds of these lands may be appropriated to such objects as the people may determine. The constitution of Iowa, adopted by the convention of her delegates in November, 1844, directed that the 500,000 acres of land to which the state was entitled should remain a perpetual fund, the interest of which should be in-

violably applied to the support of common schools. Wisconsin would do well to make a like disposition.

Wisconsin will be entitled to receive five per cent of the net proceeds of the public lands sold within her limits from and after the time of her admission into the Union. The amount of purchase money received for public lands in this territory during the year 1844 was $332,292.24. Your committee have not the authentic statement for 1845, but believe the amount does not fall short of $500,000. How much should be deducted from this amount for expenses of sale and other contingencies your committee have not the information at hand for determining; but assuming the net proceeds to be $450,000, the five per cent would amount to $22,500. To this five per cent sum Wisconsin would have been entitled for the year 1845, had she been an independent state—a sum greater by some thousands than the average appropriation made by Congress for the payment of legislative expenses for the past five years. Whether the sales of the public lands will be increased or diminished hereafter cannot be definitely stated; but it is reasonable to presume that the amount of sales will not materially lessen for the next three or four years.

In addition to the advantages of a pecuniary character already mentioned, which will be gained by going into a state government, the full control and disposal of our school lands is a matter of great importance to the people of the territory. The sixteenth section of every surveyed township has been set apart by Congress for the encouragement and support of common schools. There have been sold of public lands in the territory over 3,000,000 acres, and permanent settlements have been made in more than three hundred of the surveyed townships. In many of these townships the settlements are, of course, sparse, and the school lots of but little if any more value than government lands; but in the southern part of the territory many of the school lands are already valuable; and if the people had any authority to make any permanent disposition of them, many of the school

sections might immediately be made available for educational purposes. Whenever Wisconsin becomes a state, the legislature will have power to fix upon some settled policy in relation to our school lands; and as soon as permanent leases or conveyances can be made, many of them will doubtless soon yield a revenue which will greatly aid the cause of education.

The lands, also, which are granted by Congress for the establishment of a university, cannot well be placed in a condition to be made available until we become a state. The number of acres granted by the general government for this object is 46,080. A part of the university lands which were located a number of years ago are now becoming valuable, and when we enter into the Union the title to them will be vested in the state, and the legislature will have authority to sell or lease them, as may be deemed most advisable.

Assuming that Congress extends to us on our admission into the Union the same liberality which has been extended to other new states, we shall obtain still further grants of land besides those already named. So far, then, as the question of pecuniary profit is concerned, we shall be greatly the gainers by foregoing all that we now receive as a territory, and by receiving that to which we are entitled under a state sovereignty.

The probable cost of supporting a state government in Wisconsin cannot be arrived at with any considerable degree of accuracy. The people have it in their power to establish a plain, republican, and economical government if they desire it, and doubtless it is their will to establish such an one. The compensation for performing the duties of the offices in the different departments of our government should be neither penurious nor extravagant. In a republican government there must always be personal sacrifices for the general good; and if the time shall ever come when rendering the state a service will be measured strictly by the pecuniary consideration given, our free institutions will cease to exist.

The cost of state government differs widely in different states of the Union which are nearly equal in population. It does not appear that the laws are more salutary or better administered in expensive governments than in those of a cheaper character. The constitution which was framed by the people of Iowa, but subsequently rejected in consequence of an alteration of the boundaries of the state by Congress, contemplated a state government with biennial sessions of the legislature, at a cost of about $15,000 per annum. It appears, however, to be very generally admitted that Iowa fixed the salaries of many of her public officers too low, and that she contemplated too cheap a government; nevertheless, the constitution of Iowa may help to form something of an estimate of the expense of a state government in Wisconsin. The compensation allowed to the judiciary of Iowa appears to be the objectionable feature of the constitution framed by the convention; the salaries allowed to the other officers of the government are probably nearly what they should be. Adding, then, $5,000 more for the better payment and organization of the judiciary than was allowed by Iowa, and it will make the cost of a state government with biennial sessions of the legislature about $20,000 per annum; annual sessions of the legislature would increase the expense of government from fifty to seventy-five per cent. The assessed valuation of taxable property in this territory for the year 1845 is $9,324,405. A tax, therefore, of less than four mills on the dollar would defray the expenses of the government with annual legislative sessions, provided the state, during the first year of its existence, was obliged to raise every dollar of its expenses by direct taxation. An increase of direct taxation for the support of government must necessarily follow during the first years of our state independence; but, as has already been shown, the people will have become the possessors of a capital, the increase value per annum of which will be much greater than the amounts which they will be obliged to raise by taxation. No new state ever came into the Union possessed of available reve-

nues sufficient to pay the expenses of its government; and however long Wisconsin might think proper to protract the period of her admission into the Union, she could not expect to be prepared to meet the expenses of new government without taxation. The general government provides the new states, upon their setting up a government for themselves, with an outfit in lands, which are not so liable to be improvidently squandered as money, but which may be made available and rendered a sure and permanent resource for the benefit of the people.

Your committee thus far have discussed only the pecuniary considerations which bear upon the question of state government. There are other benefits of an important character which commend themselves to the attention of the people. Our political weight and importance as a state would give us decided advantages over our present territorial condition. We are now a dependency—our political condition is one of mere sufferance; every law passed by our territorial legislature is subject to the supervisory power of Congress. Our governors and our secretaries are appointed by the president; nor have the people of the territory any voice whatever in the appointment of their judges. The judiciary is the most important branch of the government, yet it must always be defective until placed within the reach of the sovereign people. Whatever abuse may exist in the administration of law by our highest tribunals, the people are obliged to submit, there being no means within their power of procuring a reform. Our relation to the government of the United States is one of entire dependence, and we are to be obliged to take the attitude of suppliants to procure annual supplies from Congress to maintain our territorial government. We have no voice in the governmental affairs of the Union; no matter how momentous the question at issue, we have not a single vote to cast. By becoming a state, we at once become invested with rights and privileges which are held invaluable by a free people; in the Senate of the United States our numerical strength would be as great

as that of any state, however populous, in the Union. In the House of Representatives, we should not only have a voice, but a vote, on every question pertaining to the welfare of the Union or the interests of Wisconsin. In matters of commerce, agriculture, mining, and whatever else concerns this portion of the great West, the wishes of our population would be fully represented; the necessity of harbors on our lake coast, the improvement of our river navigation, and other works of national importance could then be more successfully urged upon the attention of Congress. Whenever the political influence of the people of Wisconsin can be brought to bear upon our presidential elections and upon the decisions of our national legislature, then she will no longer be treated as an inferior, but as an equal, and then will her political power be courted, instead of being treated, as it now is, with indifference.

The influence which a state government would have in correcting many of the evils and abuses which have hitherto been attendant upon our territorial form of government must be apparent to all. It is a republican maxim that all good governments must derive their just powers from the consent of the governed: whenever a government in any of its departments is entirely beyond the reach of the ballot box—when the people are deprived of the proper exercise of their legitimate sovereignty—abuses of power will inevitably be the consequence. An immediate responsibility of the government to the people is the true safeguard of the people's rights. We have abundant proof of the profligate tendency of a territorial government; no rigid system of economy can be enforced until all the taxpayers of Wisconsin are interested in every dollar of public expenditure. That the tendency of our territorial government is calculated to foster habits of dissoluteness and extravagance, no one can deny; our territorial officers seem to regard it as part of their duty to use up the funds which are annually appropriated by Congress; and hence the length of our legislative sessions has been governed more by the amount of our an-

nual appropriations than by the amount of business to be done. Unless all the acknowledged maxims of morals are false, the tendency of these things must be pernicious. Under a state government the people will exercise a more strict observance over the acts of their public servants; no wasteful expenditures will be treated with complacency; every department of the government will be held accountable to the people, and dishonesty will be more likely to meet its just rebuke at the ballot box. If the people wish to enjoy all the rights and privileges that appertain to freemen, and give to Wisconsin the true attributes of sovereignty, if they wish to exercise their proper franchise in the election of their rulers, they must assume the rank to which they are entitled among the independent states of the Union.

The confused and uncertain condition of our laws is another argument which should influence the people to the formation of a state government. Our territorial legislation is now regarded as only temporary; the necessity of a revision of our laws is felt and generally acknowledged; yet no one pretends that this desirable object will be accomplished until we become a state. Aside from other laws, those alone which relate to our common schools imperiously demand attention. The condition of our common schools is far from being creditable, and there is but little prospect of any permanent improvement while we remain a territory. We have no plan for common schools deserving the name of system, and the prevailing sentiment is that no effective system of education can be devised until we become a state. Wisconsin is hazarding much by neglecting the instruction of the rising generation; it may take years of arduous and persevering effort to repair the wrong. Without early and vigorous action to raise higher the standard of education, the prospective destiny of the state is dark and unpromising.

Whatever force there might have been in the objection heretofore urged—that our population was too small to form a state government—it certainly now has but little plausibility. The present number of inhabitants in this territory

probably does not fall short of 115,000, and should we come into the Union in the early part of the year 1847, we shall have a greater population at the time of our admission, with a single exception, than any of the new states which have preceded us since the confederation of the original thirteen.

There will probably never be a more favorable period for Wisconsin to come into the Union than the present: the political balance of power between the South and the North is now placed in an attitude which excites very general attention and solicitude throughout the Union. Florida and Texas have come into the great family of states, and the interests of the Republic seem imperiously to demand a speedy admission of Wisconsin. As great and momentous as are the questions growing out of northern and southern interests, it is not strange that the entire North is now inviting us to throw off our territorial government, and to assume the rights that pertain to a free and independent state.

By order of the Committee,

M. Frank.

ASSEMBLY RESOLUTIONS CONCERNING STATEHOOD[19]

Resolved by the Council and House of Representatives of the territory of Wisconsin:

Section 1. That the delegate in Congress from this territory be requested to endeavor to procure at the present session of Congress the passage of an act providing for the admission of Wisconsin into the Union as a state, upon an equal footing with the other states of the Union, and upon the following principles, to wit:

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[19] These resolutions, accompanying the report of the joint select committee on state government, were not passed by the Assembly. The copy, together with the discussion here presented, is taken from the Madison *Express*, January 29, 1846. The document is of interest as showing the views of the joint committee concerning the action desired at the hands of Congress with respect to admission to statehood.

The boundaries of the state of Wisconsin shall be the same as those of the present territory of Wisconsin.

Section 2. The convention of delegates elected to form a constitution for the state of Wisconsin shall provide by an ordinance irrevocable without the consent of the United States, that the said state shall never interfere with the primary disposal by the United States of its lands within said state, nor with any regulations Congress may find necessary to make for securing the title in such lands to the bona fide purchasers thereof; and that no tax shall be imposed by said state on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt from any tax laid by order or under the authority of the state, whether for state, county, township, or any other purpose, for the term of three years from and after the date of the patents respectively.

Section 3. In consideration that the United States has heretofore attached to the states of Illinois and Michigan a portion of the territory which in justice should belong to and form a part of the fifth state to be formed and established in the Northwest Territory, according to the fifth article of the ordinance entitled "An ordinance for the government of the territory of the United States northwest of the river Ohio," made July 13, 1787, and in consideration of the aforesaid ordinance to be made by the delegates elected to form a constitution for the state of Wisconsin, the Congress of the United States shall pledge its faith to provide by law for the following: To complete the harbors which are commenced at Southport, Racine, and Milwaukee, and to construct a harbor at each of the following points in Wisconsin: Port Washington, Sheboygan, Manitowoc, Twin Rivers, and Kewaunee.

Section 4. To improve the navigation of the Neenah, or Fox and Wisconsin rivers and unite them by a canal, so that the said rivers and canal shall be navigable by steamboats of the class that navigate the Mississippi River above the Rock River Rapids, in low water.

Section 5. To grant to the state of Wisconsin, for the purpose of aiding in the construction of a railroad from Lake Michigan to the Mississippi River, all the land not heretofore sold to those sections and fractional sections which are numbered with odd numbers on the plats of the public surveys, within the breadth of five full sections, taken in north and south, or east and west lines, on each side of the main route of said railroad, from one end thereof to the other, and if any of said sections or fractional sections thereof have been sold by the United States, then to grant to the state of Wisconsin a corresponding amount of land, to be selected by the said state of Wisconsin, in any other part of the said state, in any legal subdivision, and for the purpose of further aiding in the construction of said railroad, the lands heretofore selected, appropriated, and granted to the territory of Wisconsin for the purpose of opening a canal to connect the waters of Lake Michigan with those of Rock River, by act approved June 18, 1838, are hereby granted to the state of Wisconsin free and clear of any restrictions contained in said act of June 18, 1838. *Provided* That the said state shall never impose any tax or charge upon the United States or those in its employ for the transportation of the United States mail, troops, arms, munitions of war, or other property of the United States, over or through said railroad, rivers, or canal.

Section 6. To bring into market and offer for sale, as soon as may be practicable, all lands owned by the United States in said state, and to issue patents for all lands in said state, which have been or which may be purchased by any person from the United States in good faith.

Section 7. To pay to the state of Wisconsin from and after the time of the admission of such state into the Union the sum of ten per centum upon the net proceeds of the sales of the public lands which subsequent thereto shall be made within the limits of said state, upon the same terms and conditions and with the same limitations as is provided for other states by the first section of an act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant preëmption rights," approved September 4, 1841: *Provided* That the aforesaid grants of land shall not be taken or considered as a part of the land to be granted to the said state by the eighth section of said last aforesaid act, but there shall in addition to the aforesaid grants be granted to the state of Wisconsin 500,000 acres of land to be selected and located according to the provisions of said eighth section.

Section 8. To pay to the state of Wisconsin five per cent of the net proceeds of the sales of all public lands lying within the state of Wisconsin, which have been or shall be sold by Congress, from and after the admission of said state into the Union, after deducting all the expenses incident to the same, which sum shall be appropriated for making public roads and canals within the said state of Wisconsin, as the legislature thereof may direct.

Section 9. That the said delegate be further requested to procure from Congress at its present session an appropriation of $30,000 to be paid to the treasurer of the territory and by him to be applied to the payment of the expenses of taking a census of the inhabitants of Wisconsin and the expenses of holding a convention to form a constitution for the state of Wisconsin, and that the said delegate be further requested to endeavor to procure the passage of a law providing that the state of Wisconsin upon her admission into the Union as a state shall be entitled to two senators in the Senate of the United States and two members of the House of Representatives of the United States.

Mr. Strong, of Iowa, moved a suspension of the rules prohibiting the third reading of this resolution at this time; and that it be read a third time now.

Mr. Strong, of Racine, said that as the resolutions proposed to divide all of the spoils of the territory, and presented questions of such importance, he desired a longer time to consider them.

Mr. Strong, of Iowa, replied that he did not wish to press the question, and if any member desired it he would withdraw the motion.

The motion to read a third time was then withdrawn.

DEBATE IN THE HOUSE OF REPRESENTATIVES JANUARY 8, 1846[20]

Remarks of Mr. Croswell of Walworth on the subject of state government, in House of Representatives, January 8, 1846, the Governor's message being under consideration in committee of the whole:

Mr. Chairman: There is one subject embraced in the able message of our worthy Executive, and alluded to in the joint resolutions from the Council, which I am of the opinion has, more than any other, claimed the attention of my constituents; and upon this subject I beg leave to offer a few observations. Viewing the final consummation of the proposition of a state government for the people of this territory, and the many complicated and vitally important questions intimately connected with it, as the stepping-stone to our future prosperity or adversity must be my apology for occupying the attention of the committee at a time when our existence as a branch of the territorial legislature must, necessarily, so soon terminate.

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[20] The report of the debate is taken from the Madison *Wisconsin Argus*, January 13, 1846.

It has been truly said that it is a sublime spectacle to behold a young nation on the eve of preparing for war. Is not the reflection equally noble and sublime when we contemplate the triumphant progress of freedom and self-government on this continent? A nation of freemen that in so short a space of time numbers her millions, living happily under the benign influence of her equitable laws. The change that is now occupying the minds of our people will but add another link in the great chain that binds this Union in the glorious cause of civil and religious liberty. Another and yet another will soon join us in our onward march in this triumphant experiment. But it is no longer a problem. It has become cheering reality. Seventy years' experience must convince the world that man is capable of self-government. The progress of law and order, the extension of education, refinement, and civilization, and the thousand incentives to peace and happiness, all so closely interwoven with our progress as a nation, must cause every true philanthropist to rejoice at the wide range our state sovereignties are taking, and the enlightened provisions of their constitutions. Even Texas—"poor, benighted, lost Texas"—so often pointed out as the vilest spot on the continent, as the refuge of every villain that left the states—has given to her people in many respects the most liberal and democratic constitution possessed by any state in this Union.

Sir, ours must truly be a change from territorial dependence—might I not say vassalage?—to that of state sovereignty and independence. Who does not know that at present we are scarcely respected in the halls of Congress? Wisconsin can be seen, session after session, a suppliant for those favors which belong to her, and should be demanded as her right—favors which are granted to the states as soon as asked. Look at the last appropriation made for our territorial expenses—cut down to a most niggardly pittance of dollars and cents! Again, the appropriations for harbors on our lake shores—so much needed to preserve the lives and property of our citizens. Year after year have the citizens of this

territory memorialized Congress for these appropriations and pointed out the great necessity for them and the tendency they would have to hasten the settlement of the country until the people were absolutely driven to undertake the work themselves. And finally, when Congress could no longer turn a deaf ear to our supplications, witness the extreme liberality of the appropriations! Not one quarter the amount really necessary for the completion of the works, thereby creating vexatious delays and damages that by a more liberal course of policy might have been avoided. Why this indifference and inattention to our wants? Is it not [because of] our own insignificance—our lack of weight and influence on the floors of Congress? Sir, the grand secret is that we have no share in president-making. We are of no account in the presidential canvass, and our rights never will be duly respected until we assume that position.

If we are to place ourselves under a state form of government within a period of five or six years, and I believe its most determined opponents do not contemplate a more remote period, then the sooner some decisive action is had the better. That a great change has taken place among the people since the last vote was had in reference to it, I believe is conceded in every quarter. In the county which I have the honor in part to represent, scarcely an individual can be found opposed to it. Our laws want revising. A glance at the statute book will show any man how great the necessity. We have some laws that are most clearly unconstitutional, others that are vague and unmeaning, and many that possess but one merit, and that one a negative one, giving to each individual an opportunity of placing a construction upon them to suit himself.

Our territorial or state limits is another question that should attract the early attention of the people. It is a matter of regret that it could not have been settled long ere this, when there were fewer obstacles in the way of a fair and candid adjustment. If Congress in its assembled wisdom has wrongfully given portions of our territory to Illi-

nois and Michigan, we must certainly assert our claim to a candid investigation, and firmly maintain our right to exercise jurisdiction over every portion of that which clearly belongs to us in administering our state government. This question of territorial limits has already been agitated, and the inhabitants of that portion of Illinois claimed as belonging to our territory are ready, nearly to a man, to join their destiny with ours.

Among the many objections that I have heard urged against a state government the most prominent are these: That "we have not men of sufficient talents and experience for state officers"; that "there will be an increase of expenses, and, consequently, a larger amount of taxes"; that "a bank will be located in every village"; that "there will be a large importation of railroad speculators from the older states"; and, finally, that "state indebtedness, prostration of credit, stagnation of business, and ruin must follow our admission into the Union, as in the instances of Illinois, Indiana, and Michigan."

This, Mr. Chairman, is a most gloomy prophecy of the future; but will it not prove, after the necessary lapse of time, to come from a false prophet? Like the champion of federal whiggery in Congress from Ohio, whose prophecy on the promulgation of the celebrated specie circular ran thus: "Your canals will prove a solitude, your lakes a desert waste of waters." I shall not pretend that we have within our territorial limits a Wright, a Young, a Flagg, or a Dix—men whose fame as statesmen will live coextensive with the history of their state; but we have men among us of sufficient talents, experience, and honesty of purpose for any emergency that may arise.

It is possible, indeed very probable, that our expenses will be increased by the change, though many who pretend to be the best informed on the subject contend that it will not prove to be so to any great extent. The privilege of selecting our own state officers, and having a voice in the presidential elections and on the floors of Congress, will, in their

effects upon our territory, far overbalance the additional amount of tax.

That chartered monopolies, in the shape of banks and other speculating schemes for the purpose of increasing the wealth of the already rich and powerful, will come up for legislative sanction is quite certain. A few individuals—thank God their numbers are yet small in this territory—will be found in every community ready to barter away soul and body for the establishment and control of a rag-mill with which to grind to the dust the common people. But, with the wide range discussion has taken on this subject, and the examples of those states before us that have fallen a prey to this most dangerous class of chartered aristocracies, I have yet to learn that, while the mass of the people retain the power, these special privileged gentry will succeed here to any great extent in their efforts at land piracy.

The occasion, Mr. Chairman, is a befitting one to allude to the immense internal resources of our prospective state, and to show thereby her capacity and the ample means we possess for her maintenance: First, the lead mines of the West—they are scarcely equalled and not excelled by any in the world. Second, the extensive beds of iron ore of extraordinary richness met with in every direction at the north and west. Third, the almost boundless tracts of pine timber of the North, the trade in which has but just commenced. Fourth, the copper region, also at the north, which, it is said, in value and extent is far superior to anything of the kind before discovered. Fifth, the discovery of stone coal. Sixth, the grain region, equal in extent to 90,000 square miles, at this time only in the infancy of its development. Ninety thousand square miles of rich, tillable land! The items which preceded this dwindle into insignificance when compared with it. Such an amount of land, if under cultivation, would more than supply breadstuffs for the whole universe. This may be aptly termed the granary of the United States.

Next, consider her geographical position: On her western border we have the giant Mississippi, opening a direct communication with the Atlantic Ocean through the Gulf of Mexico. Her eastern shores [are] washed by the waters of the majestic Michigan, opening to her ports the rapidly increasing trade of the lakes, and again communicating with the Atlantic through the Canadas; also with the great metropolis of the United States through the Erie Canal. On the south, if we succeed in maintaining our claim to northern Illinois, we have the Illinois and Michigan Canal. At the north are the navigable waters of the Wisconsin and Fox rivers, uniting the Mississippi with the lakes; while through the central portion flows the Rock and Pecatonica, both soon to be opened for navigation. These benefits to trade and commerce, when connected with the vast amount of hydraulic power for manufacturing purposes, can scarcely find a parallel in any other state. In connection with this what may we not anticipate when the enlargement of the Welland Canal is completed, and foreign vessels are enabled to approach our wharves with their rich freights and return loaded with our products?

There is another subject, which, though it may appear foreign to the question of state government, closely concerns us, and may have an important bearing upon our future prosperity. I refer to the Whitney Railroad.[21] So important is it to the interests of the West that that question alone should induce us to assume a state form of government in order to lend our most efficient aid in making it a national work. I do not hesitate to give it as my candid opinion that this giant

[21] Asa Whitney was a New York merchant whose attention was first called to railroads in 1830 in England. In 1842 he made a visit to China where he remained two years. He was deeply impressed with the need of an overland route to the Pacific, and upon returning to America projected a plan for a railroad from Lake Michigan to the West Coast to be built with the proceeds of a land grant sixty miles in width, for the entire distance. In the summer of 1845 he visited Wisconsin Territory and personally inspected the proposed route across its soil. He stayed some time at Prairie du Chien, at which point he advocated the bridging of the Mississippi. In the same year he presented a memorial to Congress embodying the main features of his plan. In February, 1846, he drew another memorial for the 29th Congress (see Senate Doc., 161, serial 473) in which

work, both as regards the changes that it must produce on the shores of the Pacific, and as a magnificent civilizing effort, will at no distant day be commenced and prosecuted to completion, either by the United States government or by individual enterprise—probably the former. A proposition possessed of so much merit and consequence in its results to the people of the West should attract the attention of the whole community, and if its termination, as has been suggested, is to be within our territorial limits, we should be among the first to become deeply interested in it. It requires no stretch of the imagination to convince any man of the magnitude of the commerce that must flow in through this channel from the Pacific Ocean—all our trade with China and the Indies, the voyages of which it now requires months to accomplish, through the necessity of making the passage round Cape Horn. It is a project of such momentous importance and would soon become so deeply blended with the civil and commercial interests of the Union, that, after all that may be said of particular localities, the general government would prove the greatest beneficiary. Justly magnificent and meritorious as has been considered the discovery of the magnetic telegraph, it must be totally eclipsed in its effects upon the half-civilized and barbarous tribes of the West.

There are those among us who have the welfare of the territory warmly at heart, who are seriously alarmed at the prospect of a change from a territorial to a state government, being quite positive that this change will bring with it state indebtedness. If I could be convinced of this, as warmly as I now feel enlisted in its favor, I would give the

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he rehearsed and enlarged his argument and offered a map on which Prairie du Chien is made a terminus of the proposed road. The Senate Committee on Public Lands, headed by Breese, of Illinois, favored the plan, and brought in a report embodying Whitney's proposals. See Prairie du Chien *Patriot*, Sept. 22, 1846.

Several times Whitney's plan was favorably reported in Congress, and undoubtedly it was because of his continual agitation that the project of the Pacific Railway was kept before the minds of the American people. The Milwaukee and Mississippi Railroad was considered the first link in Whitney's transcontinental railway, and much was hoped from its successful construction

proposition the most strenuous opposition, for I should consider it as one of the greatest calamities that could befall any state. I would remind those, however, who have had their fears excited in reference to this question, that if the constitution which will be presented to the people for their adoption proves to be such an instrument as the enlightened age in which we live will demand, and I have not the slightest misgiving relative to it, their apprehensions are groundless. One of the most prominent articles in that constitution should be a provision against loaning the credit of the state for any purpose except for her protection in extreme cases of insurrection or invasion.

It is so clearly evident that we possess all the elements of power and greatness, when those elements shall have been fully devloped; and a change in our government having the tendency to awaken the energies of the people and thus unfold our resources for the benefit and advancement of the country certainly makes a speedy desertion from the shackles of territorial bondage desirable. Would our present dependence upon Congress answer for a state occupying the proud preëminence of New York? No one will for a moment contend that it would. Then how much greater the necessity for a rapidly increasing community like our own, just growing into importance, to place herself in a position that will enable her to take advantage of every favorable occurrence that offers to exalt herself in the eyes of the world. Give us the population and capital that New York possesses, and in five years we can outstrip her in the race for supremacy. The natural resources of Wisconsin are not surpassed, if they are equaled, by any state in the Union. Her geographical position is as perfect as her most sanguine friends could wish it. Her boundary exhibits an area more than twice the size of the Empire State, and leaves her by far the largest state in the Union. The temperature of her climate is mild and healthful. Her soil is as rich and productive as any on the globe. Why sir, I have an accurate, personal knowledge of two counties in this territory,

Rock and Walworth, and the assertion I apprehend will not be denied, that these counties alone surpass in the natural richness of the soil, and will yield more wheat than all the counties of New York united. But New York is truly great, and well does she deserve the title of "the Empire State of the Republic." She is great in her commerce, in her splendid cities, in her works of internal improvement, in her system of education, and in her laws. The greatness of New York is the work of man; Wisconsin is great as she came from the hands of the Creator. Who can foretell the splendor of her career in the cause of human liberty and the equal rights of man?

I am aware, sir, that to some I may have appeared discursive, that I have drawn within the range of my remarks topics not necessarily connected with the object of my advocacy. All this may be, and no doubt is, true; but I may offer something by way of extenuation through simile, and one that is familiar to us all. Look at the immigrant who arrives on our shores and secures some favorite location as the sphere of future labor and a final home; imagine him looking at and admiring the glowing imagery of nature spread in such rich luxuriance all round. Who can tell the feelings of delight and manly independence which swell his bosom as he contemplates that here he has a home after all his wanderings, and that here, too, his labor will be more than amply rewarded by a fruitful soil. Such, then, must be my apology for allowing fancy to have her flight in contemplating our future prosperity as a state. But may I ask the indulgence of recurring to my simile. If this immigrant allowed himself to revel in the poetry of imagination too long, instead of awakening to the sterner realities of life, if energies and appliances were not called into action to erect his house and fence his fields,if the earlier settled friends began to hint that it was time, and more than time, to commence his settlement, if they gradually withdrew their former aid, and still he remained inactive, would you not pronounce at once that he was not the stuff out of which to make a Wisconsin citizen?

We, too, sir, have received the hint, and a hint too palpable to be mistaken, and we have been bereft of aid. The time, it would appear, has arrived, and to us it belongs to begin, if no more, to lay the foundation for a state erection; one, may we hope, that will rapidly rise and extend itself, and that soon the fabric in its fair proportions will attract the enterprising from every country and every clime to seek a home and happiness beneath its protective roof. With these remarks I conclude, sir, not, however, before thanking the committee for its kind indulgence.

DEBATE IN THE HOUSE OF REPRESENTATIVES, JANUARY 21, 1846[22]

The house took up in committee of the whole the bill from the Council on this subject [statehood], Mr. Sheldon in the chair, and the bill having been read through, and the chairman calling for amendments to the different sections *seriatim*.

Mr. Burnett moved to amend section third, which provided for the appointment by the governor of persons to take the census, by making it the duty of the sheriffs of the counties to perform that duty. He said that should this amendment prevail a large number of amendments would necessarily follow to carry out the provisions of the act, under that state of the case, and which he would make at the proper places. In support of the proposed amendments, he would say that it seemed to him that the sheriffs would be the best qualified officers to perform the duty here proposed to be assigned to them, of any person that could be named. They are elected by the people for their business qualities, are supposed to be acquainted with all the inhabitants, and are constantly moving out among them. The usual course in this case has been

[22] The report of the debate is taken from the Madison *Express*, January 29, 1846.

to give the service to this officer in the states and in this territory at all former times, and in the United States to the marshals of the United States, and he could see no object to be gained by making the change proposed by the bill. He was not afraid to trust the executive but as it would be exceedingly difficult for him to obtain the proper and necessary information on this subject, he feared the governor would be more likely to be deceived than the people. And that less satisfaction would be given by the bill as it stood than with the amendment he had offered.

Mr. Mooers [thought] the argument in favor of the sheriff taking the census, based on the ground that they have been chosen by the people, was just as applicable to any other officer they have chosen. But there was still a stronger reason that operated on his mind to support the bill as it came from the Council; there were several counties which had no sheriff in them. In such cases the very necessity of the case will require an appointment to be made by the governor, or that some other officer perform the duties. He was in favor of a uniform system, and that of giving the appointing power to the governor was the only one that presented itself to his mind as proper to be pursued.

Mr. Burnett thought there was not a district in the territory where there was not a sheriff who could perform the duty sought to be imposed on them. Even in the distant counties of La Pointe, and Chippewa, the sheriff of Crawford and his deputies are in the habit of serving writs of the district court. Therefore he can go there and perform this duty, and moreover there is no limit to the number of assistants he may have to aid him. The main object he had in view was to prevent expense as much as possible in taking this census, and he supposed it could be done by making the amendments he had proposed.

Mr. Phelps was in favor of the original bill, for in addition to what had been stated by the gentleman from Washington, it sometimes so happened that sheriffs could not perform even their proper duties. He alluded to the sheriff of this

county, who, as was well known, had in consequence of an attempt to perform his duty been buried in the "tombs" of Jefferson.

Mr. Burnett: If he has been buried, there has also been a resurrection, for I have seen him in the lobby of this house within a few days.

The question was taken and lost.

Mr. Morrow moved to amend the fifth section so as to make the time on which the secretary of the territory shall notify the persons appointed be on the tenth of May instead of the first of April. The object of this amendment was to give time for the vote on the question of state government to be canvassed, and should it prove to be adverse to the formation of such government, no census should be taken; and should the amendment he had now proposed prevail, he would make such others as would accomplish the object he had in view. He was opposed to incurring the expense of taking a census under any other circumstances.

Mr. Mooers was of opinion that a census was needed for the purpose of making an apportionment among the counties of the representatives, since it was now universally conceded that the present representation was exceedingly unequal.

Mr. Morrow was opposed to taking a census for the purpose of making a new apportionment; and he thought there would be abundant time for performing that duty and making the returns and for the governor to make the apportionment and the people to hold the election on the first of September as is now proposed in the bill.

Mr. Darling was not in favor of the speed that some gentlemen had manifested. On the contrary he would be glad to fix all the dates at least a month later in the year than they are now fixed. In the month of June, at which time the census is proposed to be taken, there will be a great many immigrants traveling about the territory, without having settled on their future homes; these he would be glad to enumerate, in their proper place. Besides, it would make

a very material difference in the number of population, as it was well known that during the month of June as many or more immigrants landed in Wisconsin, than in any other month of the year, and it would be important to present as large a population as possible to Congress with our constitution.

Mr. Mooers [said] there is [was] another reason that had no small influence upon him in sustaining the bill as it was. Next session of Congress is a short one, and there would not be time between the time of holding the convention for the people to examine and vote upon the constitution, and after those returns can be made, for that instrument to be presented to Congress for its approval at that session. And a failure to do so would cause a delay of a whole year in the organization of the state government.

The amendment was lost.

Mr. Burnett moved to amend the bill in the eleventh section, which apportioned the members of the convention by giving one to every county, one for every 1,300 inhabitants, and one for a moiety of that number after the first 1,300, by changing it so as to give a member for 1,800, or a moiety of that number, whether the county had 1,800 or not.

This amendment was defended by Messrs. Burnett, Morrow, and Darling, as being the more just and equitable towards those counties having about 1,500 people, than the provisions of the bill.

Mr. Burnett moved to strike out the "first Monday of October" and insert "second Monday of November" in section 16 fixing the time of holding the convention. He was of opinion that it would give the convention ample time to complete their work before the meeting of the legislature.

Mr. Jackson was of opinion that if the proposed time was adopted there would not be sufficient time for the constitution to be submitted to the people before the fourth of March, or in time for the action of that body.

Mr. Parker would submit that the time proposed would be the same as that on which the district court would be sit-

ting in Milwaukee County, and that circumstance would prevent many who might be willing to come from attending, being prevented as attorneys, suitors, and witnesses in court.

Mr. Phelps could not vote for the amendment on any consideration, because he perceived it had been fixed in the bill purposely to accommodate the county of Milwaukee. And since Milwaukee was the territory, and its interests alone to be looked after, he should support the bill as it stood.

Mr. Crawford should vote against the amendment, but not for the reason given by the gentleman, his colleague, for while he conceded that there were some very good lawyers in that county, he did not believe any of them would be sent here to attend the convention. He was in favor of the bill as it now stands.

On motion of Mr. Magone the bill was amended in the eighteenth section so as to make the pay of members of the convention $2 per day. And then the committee and the house adjourned.

DEBATE IN THE HOUSE OF REPRESENTATIVES, JANUARY 24, 1846[23]

The morning business being gone through with, this bill [on statehood] came up in its order, when Mr. Phelps withdrew his motion to amend the bill by striking out "secretary" and inserting "auditor."

Mr. Mooers moved an additional section, which provides for the performance of the duties of the officers specified in the act by others the governor may appoint on their refusal to act, which prevailed.

Mr. Brown moved to amend the fourteenth section of the bill so that none but citizens of the United States should be eligible to the convention.

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[23] The report of the debate is taken from the Madison *Argus*, February 3, 1846.

Mr. Burnett, though not in favor of that portion of the bill which allows foreigners not citizens to vote, because he thought in common with the vast majority of the people of Grant County, at the same time could but believe that it was no more than right that those who were voters should be eligible to the office voted for. He knew only of the exception of the president and senators of the United States, where the dignity and importance of the station demanded some such exception. The delegates to this convention did not in his opinion form such an exception.

Mr. Brown withdrew his amendment.

Mr. Brawley moved to strike out the word "white" wherever it occurred in the bill. His object was to enable the half-blooded Indians to vote. They had, as he understood, been rejected in some instances.

The amendment was lost—ayes 10, noes 16.

Mr. Burnett understood that the bill had now been perfected by its friends, and he took the occasion to explain the position he should himself occupy, and the vote he should give on the question of its passage. Thus far gentlemen must concede to him that he had made no improper objection to any portion of the bill. What amendments he had proposed he had, in making them, been influenced only by motives of friendship, and a desire to perfect and carry out the design of the bill. The people of the county of which he was a representative were opposed to state government, and more opposed to that portion of the bill which extends the right of suffrage to foreigners not citizens. His own opinion was to submit the question to the people of the territory at the next election, after which the legislature could act understandingly. Some members of the committee on this subject were in favor of immediate action, so as to get into the Union at the next session. This to him appeared untimely, if not impossible. There was in the committee a great diversity of opinion on the subject, but few agreeing; at last, however, the majority settled down on the bill as it

then stood. To that he was opposed, and desired to record his name against its passage.

Mr. Brawley then proposed to amend the bill so as to let half-blood Indians vote; and said that there had some question risen in his portion of the country in relation to the right of this class of citizens to vote. He was not in favor of letting the negroes have the same privileges.

Mr. Morrow was in favor of the amendment if his colleague thereby meant to include the Brothertown and Stockbridge Indians. As to the half-bloods, who had adopted the habits and customs of the whites, he was not aware of any question ever having arisen in his or any portion of the territory. Were there any doubts in any portion of the territory, he was willing that doubt should be removed.

Mr. Burnett [said] the rule of law on this point was, he believed, fully settled, that the children were considered as belonging to the nation of the father, and not of the mother. It had come before the chief justice at the Crawford circuit a few years since, in a case of murder of a half-blood by a Winnebago, in which His Honor decided that the case was clearly within the acts of Congress, and that the murdered man was a white man. His own opinion was that the adoption of this amendment would be to create confusion rather than uniformity.

Mr. Morrow agreed with the gentleman just up; lest there might be some question in relation to the classes of men he had mentioned, he would move to amend the amendment so as to permit Indians, citizens of the United States, to vote on the question.

This amendment was lost—ayes 12, noes 14—the position being taken that only negroes were excluded by the bill.

Mr. Morrow then rose and spoke at some length against the bill. He said before the proclamation is made by the vote of this house of the final passage of the bill now under consideration, he desired the indulgence of the house for a few minutes, for the purpose of offering a few brief remarks explanatory of the vote he should give upon the same. This

indulgence he presumed would be extended the more freely to him and the other members of the house occupying the same position with himself upon the subject under the necessity which exists of offering suitable apology for recording his vote in opposition to the bill. The same necessity or propriety for such explanation does not apply toward the majority upon this as upon other subjects. Their views are generally expressed in their proceedings, and by their acts are shadowed forth to the public their reasons for the same, but which on the part of the minority, in the absence of explanation, sometimes may be effectually suppressed or misconceived. Therefore, he hoped the patience and courtesy of the house would not be withheld from any member of the minority, and it was most obvious from the rapidity with which this bill had been matured and rolled through both branches of the legislature to its present stage, that those members who were desirous of placing themselves in a proper position upon the same before the public, and who would assign some cause for their want of comprehension of the reasons which address themselves so irresistibly to the minds of others, and for being found so far in the rear of the lights of experience, the spirit of the age, and public opinion upon this important question [should be granted opportunity to do so].

He asked permission further to qualify his action by the distinct avowal that did no other interests than his own enter into the adoption of the measure, was there no endeavor on his part to consult the views and wishes of others, and a disposition to be governed thereby, the house would have been relieved of the necessity which now impelled him to claim its attention. And though some features were not such as to meet his entire approbation, yet individually these, however objectionable, could have been acquiesced in, and his vote upon the same not placed in the minority. At the annual election of 1844 when this subject was presented to the people for their acceptance or rejection, as is now contemplated under the operations of the present bill, his vote was

then given in favor of the same, as it shall be again when it is submitted to the same tribunal on the first Tuesday of April next. He would then have resumed his original character, in which capacity it will be his right, like that of every other independent citizen of the community, and in the exercise of which he will feel justifiable, guided by the dictates of his own conscience and acting in obedience to the direction of his own judgment, to vote uninfluenced by the shackles which sometimes trammel the representatives of the people. But this he was not now authorized to do. When a retrospective view is taken of this whole subject, from which it is shown that less than sixteen months have elapsed since the same issue was had thereon, as is now intended, and a recurrence [made] to its result the inquiry forces itself upon us: What other evidence has been afforded us to act with a view of adapting ourselves to public opinion in a representative capacity, and without seeking to originate and direct that opinion upon this important subject than what was then expressed? And this inquiry to his mind was sufficient to create doubt, and that doubt hesitation, which, until the same were removed by other and as good evidence to the contrary, he felt would justify him in witholding his vote from this bill. On that occasion, which has been too recent for the result not to be familiar to us all, the vote in favor of this subject was so largely in the minority as hardly to appear respectable; and in the district which with others he wished faithfully to represent here, there was scarcely one in twenty if one in fifty in favor of the same.

He did not wish to impugn the motives which influenced others upon this subject but was free to concede to every member of the house the same honesty of purpose which he had for himself; for their action they may have good and sufficient reasons, substantial evidence for moving with as much precipitation in this matter. In these districts they may have witnessed demonstrations on the part of the people in their primary character in favor of this subject; and for his part he had no such evidence; he had received no such posi-

tive partiality from the people of his district as to justify him in aiding the hastening of this matter without rendering its propriety and expediency somewhat questionable to say the least. It is not untrue, that since its last test he had heard many leading and influential men, who then rose in its opposition, repeatedly say that the time had arrived to assume that position among the family of republics to which our numbers entitled us. And he came here expecting to witness the agitation of the subject and prepared, if necessary, to renew the act authorizing a vote upon the same, but this was as far as he had believed it would be candid, and that not to take effect earlier than the next annual election.

It is not to be denied that an additional impulse is almost always given public measures when they are agitated when any large body of men are assembled together, and he was free to say that he believed the principle possessed an applicability in this instance, for which he had made too little allowance.

But as he did not design to occupy time unnecessarily upon this subject, and had only risen with the view of offering a few reasons for recording his vote in the negative, rather than for the purpose of making any argument, or entering any protest against the passage of the measure, he would pass on more rapidly to a bird's-eye view of some of the practical operations of the bill for such reasons as he had entertained against it.

In the report of the joint select committee who were appointed to mature and draft this bill, it is forcibly if not conclusively shown that the territory, in throwing off her dependence upon the bounty of the general government, will indirectly receive advantages and be entitled to considerations altogether superior to any which we now enjoy, and, although these may be appropriated to the most laudable objects, and expended in advancing the public interest and in building up a northern member of the republic little if any inferior to the foremost now within its limits, yet in an early

history it requires little stretch of the imagination to believe this will be badly realized and less properly appreciated, [and] that the direct means indispensable for the successful and creditable maintenance of state independence in its most economical form will be felt to be oppressive and burdensome in the form of a revenue collected directly from the people.

Though we concede the vast means and wealth, and the resources of Wisconsin, yet it is not to be denied that the great body of the people of Wisconsin are possessed of small means. Those who have had energy and perseverence enough to sever the ties which bound us to the innumerable associations of youth, home, and friends, and the stronger chains of money and monarchial despotism by which the few are so far exalted above the many, to unite here single-handed on an equality, relying upon our industrial efforts, reclaiming and fertilizing a new country, for our slow but sure reward, an inheritance or a home that we can proudly call our own—we are not in a condition to endure more than a moderately low system of taxation, and indeed so large has this already become by the continued appeals to the patriotism of the people and demands upon their productive energies, to keep pace with the improvements incident to a new country in the building of schoolhouses, and supporting schools, the expenses appertaining to county organization, and erection of public buildings, the survey and improvement of roads, with many other sources of expenditure, that a very general complaint is already heard against the burdens of taxation; yet by the operations of this bill, if no one else can tell in what ratio these burdens are to be increased, all will admit that it will be very considerable. By a legislative act approved February 24, 1845, to provide means for the payment of the public debt of the territory, the several counties were required to lexy a tax of one and a half mills on the dollar for territorial purposes. This sum, in addition to the amount levied for county purposes in the county in which he resides, makes a tax of about one and a half per

cent upon the dollar, which perhaps little if any exceeds the revenues of the different counties generally.

By the report of the auditor of the territory it will be seen that from this tax a territorial revenue has been collected of $11,691; and yet is there any member of this house who will so jeopardize his reputation as a legislator as to say that this is one-sixth of the amount which will be required to meet the ordinary and incidental expenses necessary to the maintenance of state sovereignty?

He was opposed to the bill because of the amount proposed to be paid to the members of the convention. He thought that members should receive no more than sufficient to pay their expenses under the most economical style they could adopt. Two dollars a day was certainly too much. To his mind, the honor and credit of being a member of the convention would be a sufficient compensation for attendance.

He would notice one other objection to the bill, and he had done. The bill proposed to take the census in June next. This he thought was uncalled for at present, owing to the vast influx of population to this territory. It could not be denied that in the course of two or three years, at the farthest, a new census would be required to make a just and equal apportionment of members of the legislature of the state. With these views he could not vote for this bill.

The bill then passed.

PROCEEDINGS IN THE COUNCIL, JANUARY 16, 1846[24]

The Council, in committee of the whole, Mr. Reed in the chair, had the bill relating to [statehood] under consideration when, the first section having been read through by the Chair, Mr. Kimball moved to strike out the word "white" and insert the word "free."

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[24] The report of the proceedings is taken from the Madison *Express*, January 29, 1846.

Mr. Frank proposed to amend the section so as to make it read that all who are now by law allowed to vote on this question may vote, etc.

Moses M. Strong said the committee had taken this matter under consideration, and though the bill was first drawn in accordance with the suggestion of the gentleman, it had been altered because they had come to the conclusion that the law as it now stood was nugatory and unmeaning; therefore this bill was so drawn as to enact in positive terms what was intended to be enacted in that act. The law to which he referred said "*no* man should vote" who had not certain qualifications, but did not say that all who had those qualifications, but who were not in the exceptions, *might* vote, thus leaving the matter to be decided by the judges of election. He could not tell what those decisions would be. Some might permit all to vote, and others might be governed by the organic act and allow only citizens to vote.

Marshall M. Strong could not see the law as the gentleman had explained it, and he did not believe the courts would so decide if it were to come before them. The rule of construction was to give a statute such a meaning, where there was ambiguity, as would carry out the intent of the legislators, where such intent was manifest. This act meant something at least and as it is an amendatory act it is plain that it must be taken as an act limiting that act which it amended. He was in favor of the amendment of the gentleman from Racine (Mr. Frank) as it would obviate the necessity of repassing an act that must be more or less agitating in both houses, and he did not entertain the fear the gentleman from Iowa had expressed that judges of election would not construe the law as was intended by the legislature.

Moses M. Strong has put this construction on it and he did not know that others might not do the same thing. He would concede that the gentleman just up was a good lawyer, and he professed to be a tolerable lawyer, and they could not agree on what should be the construction of the statute. Would then, he would ask, judges of election be more likely

to agree? It appeared to him that the gentleman was afraid to discuss this matter, and therefore he would try to evade it. For his part he was ready and willing at all times to meet it; he was for letting all white men vote, and for excluding all black men. He would never suffer under any circumstances, if he could hinder it, a negro to vote, nor would he place the power in the hands of any judge of election to say that this or that white man shall or shall not vote; but he wanted to remove all doubt in relation to the matter.

Mr. Baker looked on this act referred to as an amendatory, not [a] repealing one—an act restraining the first—and believing so he could not think it would be construed as the gentleman just up had supposed it would.

Moses M. Strong: Will not some men put my construction upon it?

Mr. Baker could not say they would not though the thought had never struck him in that light. And he chose to let the law remain untouched.

Mr. Strong had repeatedly met this question, and feared not to meet it again, every day in the year if necessary, and he deemed the present was a sufficient necessity to demand a vote from the Council. He wanted to say now and always that he was opposed to "nigger" voting.

Marshall M. Strong was not afraid to meet the question at any and every time that there was a necessity for [it] though he was opposed to any unnecessary agitation of the subject. There was one thing he could not allow to pass unnoticed. He alluded to the stigmatizing manner in which the gentleman just up had spoken of a certain class of men, many of whom are truly worthy. He did not like to hear them called by the contemptuous epithet, "niggers." They were in Mr. S's opinion as truly worthy, as deserving of a vote and [the] privileges of freemen as are many of the whites, and more so as a class in this territory than are the Norwegians. He asked the gentleman where he would place the line of demarcation between the white and black race.

Would he exclude the half-bloods of the negro race, or the half-bloods of [the] Indian, or even the full-blooded Indian who was a citizen of the United States? How much of the African blood shall cut a man off from a vote? As he said before, he was disposed to let this matter alone for the present, as it has been settled by the legislature. The gentleman says there are reasons why these men should not vote. What were those serious reasons? He had, as Mr. S. understood, been raised in Vermont, where negroes were allowed to vote. Was that state less enlightened, less patriotic—were its laws less pure than those of any other state in the Union? The same was the case in the other New England states where they were admitted to the rights of freemen. Why then should they be excluded but for the reasons given by McDuffee that they are not men but only a higher order of the orangoutang, beings without souls? That was a doctrine he could not subscribe to, and he did not believe anyone here would do so. If they were an inferior race of human beings as some others have supposed, then he would let them vote for the purpose of elevating them in the scale of intellect. Thus far he had heard no argument but calling them "niggers," and taunting members of the Council with being afraid of meeting this question; as if there was some great merit in following in the wake of popular opinion. If the gentleman wants to show out as a man regardless of popularity let him show it by resisting the popular current.

Mr. Catlin said that he had it in his mind to call the gentleman to order for scandalizing his constituents, the Norwegians. Those that are settled in this country are very different men from those described by the gentleman as residents of his country, and were not habitants of holes in the ground, and reduced to a single pot as a cooking utensil. He was willing to grant that negroes are men and have souls, as well as others, but at the same time he was opposed to allowing negroes to vote in this territory, on the ground of inexpediency. They are a race of men that cannot live among whites, as experience has abundantly shown; and he

was not disposed to encourage negroes to come into the territory, and if by depriving them of the right of voting he could prevent their emigrating here he chose to do so. He was not disposed to encourage them to come here from the slaveholding states. With these views he could see no objection to the bill as it then stood, being perfectly willing to vote for it, and to record his vote if necessary.

Mr. Frank then withdrew his amendment, and the motion of Mr. Kimball was before the committee to strike out the word "white."

Moses M. Strong said he regretted [that] this discussion had sprung up, that [but since] allusion had been made so directly at him he must be allowed to say he did not mean to make it a matter of boast that he was not afraid to speak what he thought in relation to negro suffrage. He did not believe that in this matter he was courting the breeze of popular favor, as had been charged upon him. True it was, that in his county negro suffrage was not popular, as was manifest from the vote of the county at the late election for delegate to Congress, when Iowa gave not a single vote for the abolition candidate. But there was one remark he felt called on to make. Whatever he now thought, one thing he would boast of, he had never changed his ground in relation to this subject: he had never been found advocating and voting on both sides of this question, as the journals of the Council would show the gentleman from Racine to have done, if I am [he was] not mistaken. If the gentleman wanted his opinion in relation to this subject, he would give it to him though he had rather not do so. He then would say that he did not believe that the African race was inferior [equal] to the white race of men, and they could not be raised to that elevated position in the intellectual world that the whites were in. He was opposed to the abolition movement and measures, because even if they did believe that the negroes were as elevated or as capable of elevation as are the whites, he was of opinion that this was an improper time to agitate it. He would not as a matter of policy give the South any rea-

son to suspect that Wisconsin is favorably disposed towards the abolition movement, and here will be a favored retreat for the blacks. He could not associate and mingle with them. It was repugnant to his feelings to see them brought to the table, to caress them in the parlor, to take them to the bed of the white, as they must be if the principle be carried out that because they are human beings and have souls therefore they should be promoted to and enjoy all the advantages and privileges of the most enlightened white. Mr. S. begged pardon of the committee for the time he had consumed on this question, assuring them that no man regretted it more than himself, and now he would not have said anything had he not been particularly called on to do so.

Marshall M. Strong could not understand how it was that the gentleman should say he regretted this discussion had been gone into, when he had commenced [it] by boasting that he was not afraid of meeting the question at all times and places. The gentleman says there are a majority of the people in favor of extending the right of suffrage to the blacks. If this be true, then was it also true that some members on this floor must be misrepresenting their constituents. He was charged with having voted for this measure one day and against it the next.

Moses M. Strong: I see by the journals I have done the gentleman injustice.

No, said Mr. S. he has done me no injustice. I did vote for the measure at one time and against it afterwards. I had reasons for doing so. I voted for it so long as I could see any hopes of carrying the measure with the extended suffrage contained in it, but when I saw that my vote must kill the bill if I voted for it, I voted against it, because I believe that the bill ought to pass rather than have no law on the subject.

He knew that philosophers had divided the human race into races, some four or five he believed. He did not believe the negroes in this territory as a class would suffer at all in comparison with the Norwegians, yet gentlemen were perfectly willing the latter should vote, while the former should

be excluded because of the color of the skin. The negroes here were more intelligent, more civilized, better acquainted with our institutions than the Norwegians—at least such had been his experience. He had seen the Norwegians living without what any other people would have considered the most absolute necessaries of life, burrowed so to say in holes in the ground, in huts dug in the banks of the earth.

Moses M. Strong: Go into Iowa and you will find half of the people living in the same manner.

Mr. S. would inquire of the gentleman if this was a sample of his humanity? Would he thus promote the cause of the southern slaveholder, lending to it his aid and assistance? This legislature cannot influence the action of the South on this subject, then why should the South influence us? The true system is to place the abolitionists on the same grounds as other men are placed, let their petitions receive that attention the subject demands, let the petitioners be cautiously heard and treated, and by so doing the cause of irritation would be taken away, and the excitement be put down. Would this have been the course of the gentleman from Iowa? "He," said Mr. Strong, "I have no doubt, would have voted if in Congress to have rejected every abolition petition. He would have voted for the gag rule to curry favor with the South. Are such the principles that should influence northern men? He tells us it is repugnant to his feelings to mingle, to eat, to sleep with the negroes. Must then a man be necessitated to bed with every man that may vote with him or for him?"

Moses M. Strong: I said that the principle of making the negro in all respects politically equal must lead to that result.

Marshall M. Strong: The gentleman from Dane, Mr. Catlin, has told us that it was not expedient to allow the black and white race to mingle together, and has given us an example of a negro at Cincinnati who murdered the man who had been his patron. How many white men have done the same thing? But because they have done so would the gentle-

man dissolve all society? He, Mr. S., was not more afraid of the ingratitude of the negroes than of the whites. Nor was he afraid, if the right of voting was extended to them, that they would debase or misuse their privileges or damage the quality of our laws or institutions, nor did he believe it would have a tendency to increase their number. Are there more negroes in Massachusetts, where all the rights and privileges of freemen are extended to them, than in New York, where the suffrage is limited? There are more in the latter than in the former state, and more still in Pennsylvania, and more free negroes in the southern states, where nearly all the rights of freemen are taken from them. Have those New England states not as good laws as any states south of them? Have they not as good, as patriotic statesmen? Truly have some men been called northern *dough faces.* Men who will say to the South: Go on in your course of oppression, stop your ears to all appeals of mercy, go on and we of the North will go the whole figure in your support. But let it be remembered that the slavery of the South is the most abject in the world. It is the slavery of the mind, not of the body, the bondage of the soul in the chains of mental darkness and degredation; and the North is to sit by and see all this and not say a word in favor of suffering humanity, because, forsooth, the South may be displeased. We are to see three million of human beings trodden under foot, and say it is all right and proper; we are to see them panting for liberty, and then to throw every impediment in the way of their escape. He objected not so much because the negro was whipped as because he was kept by his master in such degradation of mind.

The progress of democratic privileges had been onward, until it became now to be the prevailing doctrine that the right of choice was coextensive with the society governed. So far has this doctrine gained that he did not believe that if New York was now to reform her constitution she would again make the invidious distinction she had done, of a property qualification in regard to the blacks. They can now

vote there if they have Dr. Franklin's jackass. He wanted the man to vote and not the ass.

Moses M. Strong said he had charged the gentleman just up with having voted against this amendment, and also with having voted for it. In this he had discovered he was mistaken, the gentleman had not changed his vote. He had at all times voted against this proposition which he was now advocating, and he begged leave to withdraw the charge of inconsistency.

Marshall M. Strong: I changed in nothing. I was opposed to any restriction; I spoke against it long and loud. I spoke against it in committee of the whole, and it was only when I saw that the bill must be lost unless the restriction was in it, that I, having the casting vote, consented to vote as I did to save the act, and I would under similar circumstances do the same thing again.

Mr. Whiton was glad that this discussion had sprung up; it showed the traps these two gentlemen had been setting for each other, and put him in mind of a stanza in an ancient version of the psalms of David.

> "He digged a pit, he digged it deep,
> "He digged it for his brother,
> "And for his sin, he did fall in,
> The pit he digged for t'other."

He should not discuss the question whether all the human race were of the same common stock or not. An answer to that question would in no manner change the rights of the parties concerned. But if it were conceded that though they were black, they were nevertheless men, and if men, he took the ground they were as much entitled to all the privileges of the elective franchise as other men. This, too, seemed to be the ground taken by the gentleman from Racine, and to him it appeared exceeding strange how that gentleman could, holding such opinions, have given his vote to cut off so large a class of men from rights he believed them entitled to. Could the passage of the law at the last session,

which would seem to be of no earthly use, have been so urgent as to make a man do a violent wrong? Mr. W. was not disposed to discuss this question at this time, and had only risen to point the gentleman to the pit he had digged and fallen into himself.

Marshall M. Strong: I say again that I voted for the bill of last session, and against this position, because I wished to save the bill. I saw the Whigs united to kill it by any and all means, and the movement was made and advocated on that ground by the gentleman from Rock, just up, and I believe by the gentleman from Grant, Mr. Rountree.

Moses M. Strong: Not so, you cannot catch him in that snap.

Mr. S. continued: I may be mistaken as to him, but I saw the bill would be defeated should I vote against it, and having the casting vote I cast it as I did.

Moses M. Strong: Then the gentleman would do a wrong to accomplish a good.

Mr. S. replied [that] he did not consider that he had done a wrong; on the contrary he had succeeded with the best terms he was able to.

Mr. Whiton would be glad to learn, and he would inquire of the gentleman from Racine, why he made a limit in the bill in favor of certain foreigners. For his part, he thought if one was entitled to vote, all were, for he took the ground that the act of Congress had limited the legislation to allow only citizens the right to vote, and any attempt to extend that right would be a direct and open violation of the act of Congress.

Marshall M. Strong would, in reply, say that he had voted to fix a limit to the right of foreigners to vote on this question on the ground of expediency, and on that ground he was in favor of letting negroes vote. As to the act of organization referred to by the gentleman, he would remark that he did not consider it of any binding force or effect. And he would not as a judge of election undertake to say that the act was unconstitutional, but finding the law as it would appear, he would follow its commands, however much he might disap-

prove its policy. And he had no doubt he should do the same had he been in Great Britain.

Mr. Whiton could not understand the ground taken by the gentleman from Racine, in relation to all these voters. If he rightly understood the matter, the right of this legislature to extend or contract the right of suffrage was based on one of three grounds: the law of nature, the law of Congress, or the Ordinance of 1787. It is not from the act of Congress that this right is denied, for that in express terms forbids the right of suffrage from being extended to any but citizens of the United States. It is not from the Ordinance of 1787, for if the gentleman should appeal to that and say there he found the power and authority, he would reply to that in this wise: By the ordinance all free inhabitants are placed on an equal footing, and the gentleman will see that he can make no distinction in favor of one and against another, no matter what the sex, condition, or color. But if he should insist that he relies on neither of those, but resorts to the law of nature for his authority, he will find himself surrounded by equally embarrassing difficulties. If a man has a natural right to vote, that right is one of the inalienable rights of man, and this legislature has no right to take it from him or to limit or restrict it. This legislature cannot limit a law of nature. She is above their power and control. Expediency cannot take it from him. It is a right that must remain with him through all time. Mr. W. did not say that such had been the arguments of gentlemen in favor of extending the right of suffrage beyond the limits of the organic act to foreigners, but he would say that it was the best that could be put into their mouths. Still there was this consequence if the law of nature was the one on which the right was based: that no limit could be placed on it as was attempted to be done in the bill, but they must receive the ballot of every man, no matter whether he be a native or foreigner, whether he understand the principles and policy of our government or not, who shall offer to vote. His claim is founded in nature and cannot be taken from him by an act of the legislature.

Marshall M. Strong would reply to the gentleman just up, by saying that he did not draw an argument on the power of the legislature to pass an act to extend or limit the right of suffrage on this subject from either of the grounds assumed by the gentleman; but he based that right on the supposed contract every man had made when he entered into society, and not on a natural right.

Mr. Whiton: How then does the gentleman get rid by [of] the express prohibition in the organic act?

Mr. S. replied that he took the ground that voting for a state constitution was a very different matter from the right of suffrage mentioned in the act of Congress.

Mr. Catlin rose to call the attention of the committee to the point before them, which was the policy or impolicy of allowing negro suffrage in Wisconsin. Thus far he must say that he had heard but little said that appeared to him in point. He took this ground that the negroes were of an inferior race of the great human family, that the whiter the race the higher they would be found in the scale of intelligence, and that the degrees could be enumerated by the shades till the blackest African formed the last link in the chain. In their native country, where the white man has never carried his influence, they are not equal to the most abject nations of the whites. Among the white race improvements have gone on, while among the blacks no advance is made till white influence has excited it. If they had one common father, and he was not disposed to controvert it, they set out on the race of improvement on equal terms; but where are they now? They have been left at an almost interminable distance in the rear. He did not suppose but they were human beings, but he did suppose them to be now an inferior race, whom policy demanded to be kept separate from the whites. Again, to encourage them was to encourage amalgamation. The policy of such a course was most deleterious to the offspring; and this to his mind was clearly a conclusive evidence of their being a different species. Old

white men, and old negroes of the full blood are common, especially at the South; but the half-bloods do not live to be be an old man. But the cross of the English with the Ger- old. He had never heard or read of a mulatto who lived to man, the French, the despised Norwegian, or any of the white nations has no such results, but on the contrary most commonly the offspring is more hale and robust than the parents.

He had hoped that this discussion would have been avoided, and therefore he was not sure but it would have been better to have taken the proposition of Mr. Frank, as that would have prevented the whole discussion. As it was he hoped no more time would be lost. And he would conclude by saying that, when the white man had been long enough among us to learn our ways and to declare his intention [of] making this his future home, he would welcome him here.

Mr. Kneeland was opposed to the amendment proposed by his colleague, Mr. Kimball, because it would render negroes capable of sitting as members of the convention, and he was not in favor of having them legislate for him. One word as to the (if we were to take the word of the gentleman from Racine in relation to them) despised Norwegians, and he had done. He would assure that gentleman [that] those in Milwaukee County, and he presumed they had as many as Racine, were not such a degraded race of beings as he had represented them.

Mr. Kimball was in favor of letting the people of the territory decide on this question, and for that purpose he wanted a full and fair expression.

The question was then taken and the amendment was lost, ayes 5, noes 7.

Marshall M. Strong moved so to amend section 9, as to provide that the expense of taking the census should be paid from the county treasuries.

Mr. Knowlton objected to this amendment, as it would operate injuriously to the different counties of the territory, some being obliged to pay much more than others.

Mr. Baker was disposed to let the accounts for this object be paid out of the territorial treasury, and then should Congress make an appropriation to defray the expenses they would be all in one place, and easy of adjustment.

Marshall M. Strong was exceedingly sorry that the gentleman from Crawford had such an outlandish, outlawed set of constituents, who will neither have courts nor vote for delegate to Congress or county officers, pay a tax nor take a census of their population.

Mr. Knowlton could not sit by and quietly hear his constituents in Crawford called outlandish, and outlaws; but he must take this opportunity to inform the gentleman from Racine that his constituents had paid as much money into the territorial treasury, yes, more, in proportion to her population, than any other county in Wisconsin. This they had been obliged to do because of the expenses of the county in maintaining jurisdiction over the vast extent of country embraced within the jurisdiction of her court. That county will not consent to add to that expense the amount of taking the census, as they will be required to do under the operation of the amendment. He was desirous of having the census of the counties of which he was the representative, but he was quite certain if the amendment prevailed it would result in a prohibition to those counties of a representation in the convention, by means of preventing a census from being taken.

Mr. Whiton: If the people of those counties will not consent to tax themselves for the support of a county government, nor to take a census, and thereby will not be represented in the convention to form a constitution, he did not believe the rest of the territory should pay for such expenses, and that portion most interested refusing to pay any part of the same.

Mr. Knowlton: Those men will lay a tax [and] will pay their share of the expense, so soon as their lands shall be brought into the market and rendered liable to taxation. He would again say as he had before said, there is not a more worthy class of men in Wisconsin.

Marshall M. Strong was sensible that there must be a great many most excellent men in that county, and he was the more inclined to this opinion because they have the *twelve apostles* and a host of other saints located there.

The amendment prevailed, and the counties were required to pay the expense of taking the census in their respective counties.

Marshall M. Strong then moved further to amend the same section by striking out the compensation of two dollars a hundred for taking the census, which prevailed.

Mr. Knowlton then moved to fill the blank with $1.99.

Moses M. Strong moved to fill with $1.90, $1.55, all of which were successively lost.

Mr. Baker moved to fill the blank with $1.50, which prevailed.

Moses M. Strong: You have swindled us out of fifty cents.

Marshall M. Strong: Yes, and have saved $600 to the territory.

Mr. Frank moved to amend the bill by adding section 16, providing for the organization of the convention, which prevailed.

Marshall M. Strong moved to amend the bill by adding section 17, providing for the allowing —— per day and ten cents per mile traveling fees.

Mr. Catlin moved to fill the blank with $1.00. He was in favor of as small a sum as compensation as could be passed. The convention would be large considering the population of the territory, amounting to about 90 or 100 members, and would be attended with a very large expense to the territory, and he had no idea that Congress would pay any part of the same. The sum he had proposed, added to

the mileage, would be sufficient to enable men who might be elected to attend the convention, and more than that sum ought not to be given.

Mr. Knowlton was in favor of a larger sum than that proposed by the gentleman from Dane. He was of opinion that the sum proposed would be so small as to prevent men of talent and influence from attending on the convention. It may be sufficient for members who reside in the town of Madison, where they can attend to their ordinary business, and also on the convention, but such was not the case in the more distant counties. Should he himself be elected to that convention, he was sure he could not afford to come here for that pay, and he was of opinion that no man who would be elected from Crawford could or would attend, by reason of the sacrifice they would be obliged to suffer.

Moses M. Strong moved to fill the blank with $2.

Mr. Kneeland was opposed to the sum proposed by the gentleman from Iowa. The expense of the sessions of the last legislature was $300 a day, and if that should be assumed as any data from which to make conclusions as to the amount of expenses of the convention, they could not be less than $20,000. That amount he was unwilling to saddle upon the territory and state of Wisconsin. His own opinion was that members should receive no pay.

Moses M. Strong believed that the true policy on this subject was either to pay members of the convention nothing and thus secure the attendance of none but wealthy men in the convention or to pay them such a sum as would enable the poor man to attend. Gentlemen were for having a constitution formed with little or no expense to the people, but in that they would find themselves mistaken; and it mattered not how soon they were undeceived, otherwise they would wake from their dreams with a large territorial or state debt. The people have now or will have to make up their minds to pay the expenses of forming the constitution, and two dollars will not be more than sufficient pay for the labor required.

Mr. Knowlton was in favor of having in that convention some of that class of men who were unable to give their time and services to the public. Among them were some of our best and soundest-minded men—men whom he wanted not only to see represented, but representatives in the convention.

The bill to insert $2 was lost, and $1.50 per day prevailed.

Mr. Baker moved to amend the bill so as to hold the convention at Milwaukee instead of Madison.

Moses M. Strong moved to insert Mineral Point, which was lost.

Marshall M. Strong moved to insert Green Bay, which was lost.

And then Milwaukee was lost. After which the committee and the Council adjourned.

DEBATE IN THE COUNCIL, JANUARY 17, 1846[25]

Mr. Knowlton, in committee of the whole, moved to strike out the word "eighteen hundred" in section 11, and insert the words "twenty-three hundred." His object was to have a less number in the convention than was proposed in the bill (about ninety). He was of opinion that a small convention would make a constitution that would give more general satisfaction to the people than a large body. He would cite the case of framing the constitution of the United States, where there were only about forty delegates; and would anyone expect that a convention of 2,300 would have been more democratic—more safe to the welfare of our country, or have given better satisfaction to the people in general than the one adopted. Again, the state of New York, containing over two million six hundred thousand inhabitants, has

[25] The report is taken from the Madison *Wisconsin Argus*, January 27, 1846.

agreed upon 160 delegates to amend their constitution. According to population we would have but seven at that ratio. Compare the state of New York with Massachusetts; the former, containing more population than all New England, has but 128 in the Assembly, while the latter has about 500, and who will contend that the laws of the former are better and give more general satisfaction to the people than those of the latter. Mr. K. cited the Supreme Court of the United States, and also our own supreme court, to further illustrate his views. He had seen courts with five judges in New York, but their decisions were not so satisfactory as the decisions of the circuit judge alone, and he believed the same remark would apply to our district courts. The last one he would trouble the committee with was that of the Declaration of Independence. Does anyone suppose that five thousand persons, congregated together for that purpose, would have made a better and more satisfactory declaration than the one drafted by Thomas Jefferson—the greatest paper ever presented to the world? If the amendment prevails we shall have about seventy delegates, and he had heard no arguments in favor of a larger number. The committee had reduced the per diem of the delegates to one dollar and fifty cents on account of the "expenses"; why not reduce the number and give better pay so that the worthy poor could come as well as the rich. He had observed by the votes that no person who would be considered wealthy voted in the negative, while the poorer voted in the negative. Why the difference? Because the poor felt that they could not let their families suffer for the purpose of attending the convention, and of course they judged that others would have the same feelings. It seemed to him that there was more buncombe in this than sound argument. As for his part, he was in favor of paying all the servants of the people enough to secure talented men, or sufficient to honor the office instead of having the office honor the man.

Motions were made to insert severally 1,000, 1,100, 1,200, 1,300, 1,400, 1,500, 1,600, 1,700, 2,000, 2,100, 2,200, and 3,000, as the ratio, all of which failed; and then 2,300 was lost.

Marshall M. Strong moved so to amend this section that no county should have an additional member unless it had a moiety of 1,800 over and above the first 1,800 inhabitants.

Moses M. Strong moved to amend the amendment so as to make the ratio 1,300 instead of 1,800. That ratio would probably keep the representation about the number that was proposed by the bill, and it appeared plain that the Council was determined to retain that number of representatives. He hoped if the amendment was to be made, they would adopt such a number as would not reduce the number in the convention.

Mr. Whiton was opposed to the original section as distributing the members unequally among the people; but he was more opposed to the amendment now proposed. The original bill gave a member to each county irrespective of its population—that is, a member is given to a district of country; in that alone consisted the inequality of the bill. But when this member has been disposed of, the ratio or a moiety of the ratio was certainly entitled to another member whether that moiety was in a large or small county. This must operate unequally and unjustly in those counties which have a large fraction, but not a moiety of the ratio. Thus a county of 2,600 will be entitled to no more representation than will a county of 100.

Mr. Baker was in favor of the principle of the amendment proposed. He would, however, concede that extreme instances could be pointed out in which it would operate unequally; at the same time there was no county which would not have a representative, and though there should be some inequality, it was as equal as it could well be under all the circumstances.

Mr. Strong, of Racine, would accept the proposition of the gentleman from Iowa, and fix the ratio at 1,300.

Mr. Whiton: That amendment, though it may remove in part, will not remove in whole the objection he had to the amendment. Take for example the county with an assumed population of 910, by the bill, and the ratio fixed at 1,800; this county would have one for the county and for the fraction of 910 it would have another member, making two members in the convention, while by the amendment it would require a population of 1,950 to give it two members. By this supposition it must be plain that there may be a fraction varying from 1 to 1,050 which by the bill would be represented, which would not be by the amendment. Again, suppose the county of Racine to have 9,900 inhabitants or five times 1,800; by the bill it would have five representatives by the ratio, one for the fraction of 900, and one for the county, making in all seven representatives. By the amendment this county would have seven members, and a fraction of 800 entitling them to an eighth member in the convention; thus plainly showing a manifestly unjust inequality operating in favor of the large counties and against the small ones, and this in equality increasing as the number of the population increases.

Mr. Knowlton rose to oppose the amendment, but observing several members of the Council assembled near the fireplace engaged in earnest conversation, he said that it appeared to him as if there was a disposition to carry measures through the Council by lobbying, and it appeared useless to discuss matters further.

Moses M. Strong called Mr. K. to order, and while reducing the words to writing, Mr. Whiton moved that Mr. K. have leave to proceed.

Moses M. Strong explained that he and the others who had been referred to were engaged on another subject.

Mr. Knowlton: If that be true then I will retract all I have said that could injure the feelings of gentlemen.

Moses M. Strong withdrew his point of order, and Mr. Knowlton stated [that] in his opinion the amendment offered

would most probably tend to defeat all representation from the counties of the northwestern district.

The amendment was rejected by the committee, but afterwards adopted by the Council.

Moses M. Strong moved to amend the sixteenth section by changing the time of holding the convention from the second Monday of November to the second of July.

Mr. S. promised that should this amendment prevail it would become necessary to make several other alterations in the bill to make it correspond to the one he had proposed. The bill as it then stood before them was based on the result of an election by the people in favor of organizing a state government. If that vote should be adverse, then there was to be no action under the bill, no convention to be held. He believed that vote would not express the opinions of the people any better than it was then known and understood by their representatives; there had been so great a change of opinion on this subject that no doubt could be entertained concerning the result of that election. Taking it for granted that a convention will be called, that the people were in favor of the measure, he was of opinion that the convention should be held at the earliest possible day. Four years ago when the then executive endeavored to press this matter upon the people, circumstances existed that do not exist now, so that the vote at that time will be no index of the public mind at this time. At that time he conceded that he was himself in favor of remaining under the territorial government. At that time Wisconsin was setting up large claims to tracts of country claimed by Michigan and Illinois; and had she attempted to go into the Union then setting up those claims she would have been opposed by the whole South on the ground that it would destroy the so-called balance of power in the Senate. Since then Florida and Texas have become states of the Union, without any states at the North to balance them; and, instead of opposition, we might reasonably expect the urgent support of the whole North hastening our admission; so that what was then operating against us would now

operate in our favor. With these things operating in favor of the territory added to the vast acquisitions that had been made to the population, he was in favor of entering into the Union at the earliest possible day.

He was in favor of so amending the bill as to have the election held in the month of February, and if favorable for state government the census should be taken in March instead of June, and then by the first of May the governor can be furnished with the returns for making the apportionment and order the election on the first Monday in June. Then the convention can be held at the time he had named, and being adopted by the people, the government could be fully organized and the senators and representatives appear in the next session of Congress. Will it be said that by so doing we were acting too fast and that by a longer delay we shall be able to obtain an additional representative in the House of Representatives, by reason of the increase of population by the summer immigrants? He was willing to grant that if the census was not to be taken until June there would be large additions made to the population, but it could scarcely be possible to suppose it would be sufficient to give them another representative.

What was the great objection to the measure? He could see none other than that there would be an expense for holding a special election. But while there was that expense which would be borne by the whole people, there are advantages in favor of the month of July that would in his opinion far outweigh all objections he could think of, or had heard. It is the best possible season in the year. The dog days are then long and the convention can do much more labor than at any other season, and the expense of lights and fuel will be entirely saved. Again, as this would be the long session of Congress, there was good reason to believe that a convention held in July could get their labor before that body in time for them to act on, before the fall election, and then we can have their action before we are called on to vote. They will not place this territory in the predicament that Iowa was in:

a constitution once accepted by the people, and then amended by Congress, and subsequently rejected.

There was one other reason that had an influence on his mind. The courts of Iowa and Milwaukee counties hold their sittings at the time of the convention. He could speak for his own county, that a very large class of the voters would be glad to see their judge, the excellent chief justice of Wisconsin, occupying a seat in that convention; in the same way some of the members of the bar are wanted by their fellow citizens. But if these should not have weight enough to induce the Council to make the change, he could scarcely believe but the desire to secure the attendance of some who are witnesses and suitors would induce them to change the time fixed in the bill.

Mr. S. did not think that there was any substantial argument that could be urged against the amendment he had proposed, and more especially if it be determined to submit it to Congress before it was voted on by the people, which he believed to be the best course.

Mr. Knowlton could only say in relation to this matter that, if the convention should be held at the time proposed, there could be no representation here from the county of St. Croix. The amendment was lost, and then the committee rose.

Mr. Baker renewed the motion to hold the convention at Milwaukee. Mr. Whiton moved to insert Washington, Washington County, in the amendment. This motion prevailed, and then the amendment was lost.

Moses M. Strong moved to add another section changing the time of the annual election to the first Monday of September. The amendment was made. Mr. S. then moved to amend the sixteenth section so as to hold the convention on the first Monday of October, which prevailed. In support of this motion, Mr. S. said he was desirous of giving the people time to vote on the subject before it was submitted to Congress.

Mr. Catlin could not see the need and propriety of taking a vote on the constitution before it had been laid before Congress. His own opinion was that it would be better to submit the constitution to Congress in the first instance, and then, should alterations be made by that body, there would not be the expense incurred of a second election. This course would give the people the power to decide on all propositions Congress should impose.

Mr. Whiton did not believe the constitution could be submitted to this Congress should the convention be held at any time in the month of October; and he did not desire to see the scenes of Michigan reënacted in Wisconsin; therefore he would wait till Congress had acted on the subject.

Mr. Knowlton could not see any object to be gained by sending the constitution to the people for their vote before it was sent to Congress for its action.

Mr. Rountree had said nothing on the subjects of the bill thus far, but he could not consent to send the constitution to Congress without its having been first submitted to the people for their adoption.

Mr. Catlin was in favor of submitting the constitution to the people as much as any other member, but the question among them was, when it should be done, whether before or after the action of Congress on the same. The amendment prevailed.

On motion of Mr. Whiton two sections relating to the manner of voting were adopted, and on motion of Marshall M. Strong a section relating to the power of the convention was adopted. And then the bill was ordered to a third reading.

AN ACT IN RELATION TO THE FORMATION OF A STATE GOVERNMENT IN WISCONSIN[26]

Be it enacted by the Council and House of Representatives of the territory of Wisconsin:

Section 1. That on the first Tuesday of April next, every white male inhabitant above the age of twenty-one years, who shall have resided in the territory for six months next previous thereto, and who shall either be a citizen of the United States or shall have filed his declaration of intention to become such according to the laws of the United States on the subject of naturalization, shall be authorized to vote for or against the formation of a state government in Wisconsin, by depositing with the judges of election in a box, to be prepared and kept by them, a ballot upon which shall be written or printed "for state government," or "against state government," and every person so authorized to vote may vote on that question, at any town or precinct in which he may be whether he resides in said town or precinct or not.

Section 2. All votes cast at such election shall be canvassed, certified, and returned, in the same manner as is required by law for the canvassing, certifying, and returning of votes for delegates to Congress, and the secretary of the territory shall make and deliver to the governor a certified abstract of all such votes by counties, and in all those counties of the territory which have adopted the provisions of an act entitled "An Act to provide for the government of the several towns in this territory and for the revision of county government," the votes shall be canvassed, certified, and returned in the manner provided for by the act entitled "An Act to provide for and regulate general elections," and for that purpose the clerk of the board of county supervisors shall perform all the duties required by law to be performed by the clerk of the board of county commissioners.

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[26] Reprinted from the *Laws of Wisconsin*, 1846, 5–12.

Section 3. The governor shall appoint in each of the counties of the territory some suitable person who is hereby authorized and required to cause the number of inhabitants in their respective counties to be taken, omitting in the enumeration Indians not citizens and officers and soldiers of the United States army, and the persons so appointed shall have power to appoint as many assistants to aid them in taking the census as they may deem necessary, assigning to each assistant a certain division of his county, to be accurately defined either by congressional township lines, the boundaries of towns organized for town government, or be distinctly bounded by water courses or public roads.

Section 4. The governor shall furnish to the secretary a list of the names of all persons and their residences so far as he can ascertain the same appointed by him in pursuance of the provisions of this act, which the secretary shall record in the executive journal; and the secretary shall furnish to every person so appointed, by the first day of April next, a certificate of such appointment, and shall at the same time forward to him the necessary blank forms for carrying into effect the provisions of this act, to be prepared by the secretary; and the auditor of the territory is hereby authorized to audit and allow the accounts of the secretary for all expenses incurred by him in carrying into effect the provisions of this act, and give his warrant upon the treasurer for the same.

Section 5. The persons appointed to take the census and their assistants shall severally take and subscribe an oath or affirmation before some person authorized by law to administer oaths, previous to entering upon the discharge of the duties imposed by this act, that they will well and truly cause to be made a just and perfect enumeration of all the persons resident within their county or division, as the case may be, and a true return thereof make in pursuance of the provisions of this act, according to the best of their abilities, which oath or oaths shall be returned with the census, as hereinafter provided, to the secretary of the territory.

Every assistant so appointed shall return to the person by whom he was appointed a just and perfect enumeration of the inhabitants of the district or division assigned to him, in the form so as aforesaid to be prepared by the secretary, by the twentieth day of June next.

Section 6. Every person appointed, in pursuance of the provisions of this act, to take the census and every assistant who shall be appointed and accept said appointment, who shall fail to make returns agreeably to the provisions of this act, or who shall make a false return of the enumeration in his county or division shall forfeit and pay the sum of two hundred dollars, to be recovered in the name and for the use of the territory before any court of competent jurisdiction.

Section 7. The said enumeration shall be made by an actual inquiry by the persons taking such census, at every dwelling or by personal inquiry of the head of every family, in their respective counties or divisions, and shall commence on the first day of June next, and shall be completed and closed in thirty days thereafter, and said enumeration shall include only those whose place of residence shall be in said counties or divisions on the first day of June aforesaid, and the several assistants shall, by the twentieth day of June next, make and deliver to the person by whom they were appointed, respectively, a true and accurate copy of the enumeration of all persons, Indians, not citizens, and soldiers excepted, within their respective divisions, which enumeration shall be set forth in a schedule designating the townships, precincts, or districts comprising his division, according to the civil or geographical boundaries thereof and shall embrace the several families by the name of the head thereof and the aggregate population therein.

Section 8. The several persons appointed in pursuance of the provisions of this act to take the census in their respective counties shall, by the tenth day of July next, prepare duplicate copies of the enumeration of the inhabitants of their respective counties and transmit one of said copies to the secretary of the territory and deliver the other to the

register of deeds of said county, or, if there be no register of deeds in such county, to the register of deeds of the county to which it is attached for judicial purposes, and the said register shall preserve the same on file in his office subject to the inspection of all persons.

Section 9. The persons appointed to take said census and their assistants shall receive as compensation for the service to be performed in taking such census at the rate of one dollar and fifty cents for every one hundred persons enumerated by them respectively: *Provided,* That in the counties of St. Croix, Chippewa, and La Pointe, and in those counties having a population of less than one thousand souls, there shall be allowed to the person making the enumeration [compensation] at the rate of three dollars for every one hundred persons enumerated therein: *Provided,* also, That there shall be allowed to the persons appointed according to this act to take such census the sum of five dollars for making the abstract or copies required by the preceding section; each county shall pay for taking the census within its own limits and for the abstracts and copies of the same.

Section 10. As soon as the returns of the census shall have been received by the secretary from the several persons authorized to take the same, and by the first day of August next, whether he shall have received all of the returns or not, he shall proceed to make an abstract of the population of the several counties as shown by the returns received by him, which abstract he shall file in his office, and furnish a certified copy thereof to the governor.

Section 11. Immediately upon the receipt from the secretary of the said copy of said abstract, in case a majority of all votes cast upon the question of forming state government are "for state government," the governor shall proceed to make an apportionment among the several counties, of delegates to form a state constitution upon the following principles, viz: He shall apportion one delegate to every county in the territory for every thirteen hundred inhabitants in said county, and an additional delegate in every

county if there shall be a fraction in such county over and above the said number of thirteen hundred, or any multiple of that number greater than one moiety of said number: *Provided,* That there shall be one delegate apportioned to each organized county, whether it shall contain the number of thirteen hundred inhabitants or not, and no county shall be entitled to two delegates in said convention unless it shall contain over nineteen hundred and fifty inhabitants. No two counties shall be united in the same election district for the election of delegates.

Section 12. As soon as the governor shall have completed said apportionment, he shall issue his proclamation and cause it to be published in all the newspapers printed in the territory and transmit a copy of it to each of the sheriffs of the county, for an election of delegates according to said apportionment to be held at the time of holding the next annual election in every county of the territory, and said proclamation shall specify the number of delegates so apportioned to each of the counties of the territory.

Section 13. Immediately upon the receipt of said proclamation the sheriff in the several counties in the territory shall give notice that an election will be held on the day mentioned in the proclamation of the governor in the several towns and election precincts in each county for the election of the same number of delegates in their counties, respectively, as the governor by his said proclamation shall have apportioned to such county, and the sheriff in such notices shall designate the same place for holding such election in the several towns and precincts as shall have been provided by law for the holding of elections in such towns and precincts, and if no such place shall have been provided by law, then such place as the sheriff shall think proper to select, which notices shall be posted up in at least three public places in each of said towns and precincts, and in case any county shall be attached to another county for judicial purposes, and there shall be no sheriff in it, then the sheriff of the county to which it is attached shall perform the duties here-

by required to be performed in such attached county in the same manner that he is hereby required to perform therein in the county of which he is the sheriff, excepting the counties of Chippewa, St. Croix, and La Pointe, in which said county [counties] it shall be the duty of the clerk of the board of county commissioners to do the duties herein required to be done by the sheriff. And the same persons shall act as judges of election, at said election of delegates, as shall act as judges of the general election and if there are no judges present or if part only are present, the voters in attendance may appoint others to supply their places.

Section 14. At the times and places specified in said notices of election, all the white male inhabitants of the territory above the age of twenty-one years, who shall have resided in the territory for six months next preceding said election, and who shall be citizens of the United States, or shall have declared their intention to become such according to the laws of the United States on the subject of naturalization, shall be authorized to vote by ballot for the number of delegates to the convention to form a state constitution which shall have been apportioned to the county in which he is voting, and no person shall vote in any county for delegates unless he shall have been a resident of that county for ten days next preceding such election, and every person authorized by this act to vote for delegates to form a state constitution shall be competent to be elected a delegate to said convention for the county in which he resides.

Section 15. The votes cast for said delegates shall be deposited in a separate box to be provided by the judges of election for that purpose, and shall be canvassed, certified, and returned, and certificates of election issued in the same manner as is provided by law for the canvassing, certifying, and returning of votes and issuing of certificates of election for members of the house of representatives. And the person or persons voted for, for delegate in each county equal to the number apportioned to such county, who shall

have received the greatest number of votes shall be the persons declared duly elected as such delegates.

Section 16. The persons so elected delegates in the several counties of the territory shall assemble in the representatives' hall in the capitol, at Madison, in said territory, on the first Monday in October next, at twelve o'clock, noon, and when so assembled shall have full power and authority to form a republican constitution for the state of Wisconsin.

Section 17. The convention shall by ballot elect one of their number president, and appoint one or more secretaries. The convention may employ a doorkeeper, messenger, and fireman, who shall be allowed the same amount per diem as the delegates. The convention may also employ a printer to do its necessary printing. The amount of pay to each delegate and officer of the convention shall be certified to by the president of the convention.

Section 18. The delegates to such convention shall be entitled to two dollars per day for every day's attendance at said convention, and ten cents per mile for travel in going to and returning from said convention, to be paid out of the territorial treasury.

Section 19. If any person shall vote at either of the elections provided for by this act, who shall not possess the qualifications of a voter as the same are prescribed in this act, he shall be punished by a fine [of] not less than fifty dollars nor more than one hundred dollars.

Section 20. When any person shall offer to vote at either of the elections provided for by this act, and either of the judges of the election shall suspect that such person does not possess the qualifications of a voter, or if his vote shall be challenged by any voter, one of the judges of election shall tender to such person an oath or affirmation in the following form: I, A. B., do solemnly swear (or affirm as the case may be) that I have resided in this territory six months, and in this county ten days immediately preceding this election. I am twenty-one years of age as I verily believe. I am a citizen of the United States (or have filed an applica-

tion to become such according to the laws of Congress on the subject of naturalization) and I have not voted at this election. And if such person shall take such oath or affirmation, his vote shall be received unless it shall be proved by evidence satisfactory to a majority of the judges that he does not possess the qualifications of a voter; and if such person refuses to take said oath or affirmation, his vote shall be rejected.

Section 21. If any person shall take said oath or affirmation, knowing it to be false, he shall be deemed guilty of perjury.

Section 22. Said convention shall have power to submit the constitution adopted by them to a vote of the people, if they shall deem proper; and to provide how the votes cast upon that subject shall be taken, canvassed, and returned, and shall also have power to submit the said constitution to the Congress of the United States, and to apply for the admission of Wisconsin into the union of the United States as a sovereign state: *Provided,* That said constitution shall be eventually ratified by the people either before or after the action of Congress upon the same.

Section 23. The general annual election shall hereafter be held in the several counties of the territory on the first Monday of September, annually, instead of the fourth Monday of September as now provided by law.

Section 24. Should any of the duties required of any officer by this act not be performed as herein provided, it shall be the duty of the governor to cause the same to be performed and executed by some other person.

M. C. Darling,
Speaker, House of Representatives.
Nelson Dewey,
President of the Council.
Henry Dodge.

Approved, January 31, 1846.

APPORTIONMENT OF DELEGATES[27]

To All To Whom These Presents Shall Come, Greeting:

WHEREAS, by an act of the Legislative Assembly of the territory of Wisconsin, entitled "An Act in relation to the formation of a State Government in Wisconsin," it is provided that immediately upon the receipt from the secretary of said territory of a certified copy of the abstract of the population of the several counties, as shown by the returns of the census received by the secretary from the several persons authorized to take the same, in case a majority of all the votes cast upon the question of forming a state government are "for state government," the governor shall proceed to make an apportionment among the several counties, of delegates to form a state constitution, upon the principles set forth in said act, and WHEREAS a majority of all the votes cast upon the question of forming a state government are "for state government," and WHEREAS the secretary on the first day of the present month of August did furnish to the governor a certified copy of the aforesaid abstract of all the returns received by him from the several counties of the territory, and WHEREAS it is also provided by the aforesaid act, that the governor, as soon as he shall have completed said apportionment, shall issue his proclamation for an election of delegates, according to said apportionment, to be held at the time of holding the next annual election (the first Monday of September next) in every county of the territory:

NOW, THEREFORE, BE IT KNOWN, That by virtue of the power and authority in me vested by said act, and in compliance with the provisions thereof, I do apportion the said

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[27] Reprinted from the Madison *Express*, August 4, 1846.

delegates to form a state constitution among the several counties as follows, to wit:

To the county of Brown, having a population of 2,662, two delegates.

To the county of Calumet, having a population of 836, one delegate.

To the county of Chippewa, from which no returns have been received, one delegate.

To the county of Columbia, having a population of 1,969, two delegates.

To the county of Crawford, having a population of 1,444, one delegate.

To the county of Dane, having a population of 8,289, six delegates.

To the county of Dodge, having a population of 7,787, six delegates.

To the county of Fond du Lac, having a population of 3,544, three delegates.

To the county of Grant, having a population of 12,034, nine delegates.

To the county of Green, having a population of 4,758, four delegates.

To the county of Iowa, having a population of 14,916, eleven delegates.

To the county of Jefferson, having a population of 8,680, seven delegates.

To the county of La Pointe, from which no returns have been received, one delegate.

To the county of Manitowoc, having a population of 629, one delegate.

To the county of Marquette, having a population of 989, one delegate.

To the county of Milwaukee, having a population of 15,925, twelve delegates.

To the county of Portage, having a population of 931, one delegate.

To the county of Racine, having a population of 17,983, fourteen delegates.

To the county of Richland, from which no returns have been received, one delegate.

To the county of Rock, having a population of 12,405, ten delegates.

To the county of Sauk, having a population of 1,003, one delegate.

To the county of Sheboygan, having a population of 1,637, one delegate.

To the county of St. Croix, having a population of 1,419, one delegate.

To the county of Walworth, having a population of 13,439, ten delegates.

To the county of Washington, having a population of 7,473, six delegates.

To the county of Waukesha, having a population of 13,793, eleven delegates.

To the county of Winnebago, having a population of 732, one delegate.

In Testimony Whereof, I have hereunto subscribed my name and caused the Great Seal of the territory to [Seal] be affixed. Done at Madison, this first day of August, in the year of our Lord one thousand eight hundred and forty-six.

Henry Dodge.

PROCEEDINGS IN CONGRESS

The movement in Congress for the admission of Wisconsin to statehood was initiated on January 9, 1846, when Morgan L. Martin, territorial delegate from Wisconsin, gave notice of motion for leave to introduce a bill to enable the people of Wisconsin to form a constitution and state government, and for the admission of such state into the Union.[28] Four days later the bill in question was introduced, twice read, and referred to the committee on territories.[29] On May 11, 1846, Stephen A. Douglas reported an amendatory bill on the subject, which was committed.[30] Four weeks later (June 8) the bill to enable the people of Wisconsin Territory to form a constitution and state government and for its admission into the Union was taken up in the House in committee of the whole. A debate ensued, which is but briefly reported in the *Congressional Globe*,[31] and the bill was reported to the House. On the following day the bill, slightly amended, passed the House;[32] the next day (June 10) a motion to reconsider its passage being before the House, an important debate ensued. Rockwell of Connecticut informed the House that Martin, the delegate from Wisconsin, had procured the insertion of a proviso in the bill which the House, on being apprised of its presence, would never sanction. He then laid the objectionable matter before the body, which proceeded with great unanimity to strike it out and then, over Martin's protest, to pass the bill.[33] It was

[28] *Congressional Globe*, 29 Cong., 1 sess., 171; *House Journal*, 29 Cong., 1 sess., 213.

[29] *Congressional Globe*, 29 Cong., 1 sess., 196; *House Journal*, 29 Cong., 1 sess., 253.

[30] *Congressional Globe*, 29 Cong., 1 sess., 789; *House Journal*, 29 Cong., 1 sess., 782.

[31] *Congressional Globe*, 29 Cong., 1 sess., 941; *House Journal*, 29 Cong., 1 sess., 921.

[32] *Congressional Globe*, 29 Cong., 1 sess., 949–50; *House Journal*, 29 Cong., 1 sess., 931.

[33] *Congressional Globe*, 29 Cong., 1 sess., 925–53; *House Journal*, 29 Cong., 1 sess., 936–38.

received in the Senate June 11, and by that body referred to the committee on territories.[34] Four weeks later (July 9) this committee reported the House bill back to the Senate unamended; four weeks later still (August 5) the Senate took up the bill for consideration, considered it as in committee of the whole, ordered it to a third reading, and passed it without amendment.[35] On August 6 the bill was signed by the speaker of the House and by the vice president,[36] and on the same day it became a law through receiving the signature of the president of the United States.[37]

HOUSE DEBATE, JUNE 8, 1846[38]

The bill to enable the people of the territory of Wisconsin to form a constitution and state government, and for the admission of such state into the Union, was then taken up.

A debate here sprung up, in which Messrs. Dromgoole and Douglas were the chief combatants, but in which Messrs. Vinton and Thurman also took part. It turned on the question, whether the Ordinance of 1787 was or was not obligatory on Congress, in that part of it which restricted the number of states to be formed out of the Northwest Territory to the number of five. It was contended, on the one hand, that it did bind Congress, because Congress had accepted the cession from Virginia with that condition in it. It was maintained, on the other hand, that other states also claimed the territory, and also ceded it, and that, in their deeds of cession, no such condition was found; that Virginia had no more right to bind [the] United States than they had; that

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[34] *Congressional Globe*, 29 Cong., 1 sess., 958; *Senate Journal*, 29 Cong., 1 sess., 340–41.

[35] *Congressional Globe*, 29 Cong., 1 sess., 1194; *House Journal*, 29 Cong., 1 sess., 1229; *Senate Journal*, 29 Cong., 1 sess., 482.

[36] *House Journal*, 29 Cong., 1 sess., 1242; *Senate Journal*, 29 Cong., 1 sess., 489.

[37] *House Journal*, 29 Cong., 1 sess., 1256. The act is in *U. S. Statutes at Large*, IX, 56–58.

[38] Reprinted from the *Congressional Globe*, 29 Cong., 1 sess., 941.

it was doubtful whether the territory belonged to Virginia at all, or at least whether she had a better title to it than the other states which claimed it; and finally, that, whether the deed of cession had or had not once been binding, it was superseded and virtually annulled as to the restriction of new states by the clause in the Constitution which allowed Congress to admit new states into the Union, without any restriction as to number or size.

HOUSE DEBATE, JUNE 9, 1846[39]

The bill to enable the people of Wisconsin Territory to form a constitution and state government, and for the admission of such state into the Union, was next taken up.

The amendments adopted in committee of the whole were read and concurred in.

Mr. McClelland moved an amendment, which, he stated, had been agreed upon between the members of the state of Michigan and the delegate of Wisconsin, to that part of the first section which defines the boundaries of the new state.

Mr. McClelland also moved to amend the bill by inserting therein a new section, as the second section of the bill, as follows:

"That the lands hereby granted shall not be conveyed or disposed of by said territory, or by any state to be formed by the same, except as said improvement shall progress; that is, the said territory or state may sell so much of said lands as shall produce the sum of $30,000, and then the sales shall cease, until the governor of said territory or state shall certify the fact to the president of the United States that one-half of said sum has been expended upon said improvement, when the said territory or state may sell and convey a quantity of the residue of said land sufficient to replace the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid."

[39] Reprinted from the *Congressional Globe*, 29 Cong., 1 sess., 949–50.

After some conversation, both the amendments moved by Mr. McClelland were agreed to.

The other amendments reported from the committee of the whole were read and concurred in, and the bill was ordered to be engrossed and read a third time. And being engrossed, it was forthwith read the third time and passed.

At a subsequent period of the day's session, a motion was made by Mr. Rockwell, of Connecticut, that the House reconsider the vote by which this bill was passed. The motion was entered and laid over, to be hereafter considered.

HOUSE DEBATE, JUNE 10, 1846[40]

Mr. John A. Rockwell rose and called up the motion submitted by him yesterday to reconsider the vote by which the House had passed the bill "to enable the people of Wisconsin to form a constitution and state government, and for the admission of such state into the Union."

Mr. Brinkerhoff claimed that he had the floor, and that his motion had the priority.

The Speaker said it had been usual to take up a motion to reconsider (which was a privileged motion) in preference to any other business.

Mr. Hoge moved that the motion to reconsider be laid on the table.

The motion was not entertained, because the floor was the property of Mr. John A. Rockwell, who placed his motion on the ground that a proviso inserted in the bill on motion of the delegate from Wisconsin contained provisions and gave a power to the convention of Wisconsin of which the House had not been aware, and which, when understood, it never would sanction. The proviso, as worded, left it discretionary with the convention to fix such boundaries to the new state on the north and west as it should deem expedient; and the phraseology was so loose and undefined that the convention might include the whole of the residue of the

[40] Reprinted from the *Congressional Globe*, 29 Cong., 1 sess., 952–53.

Northwestern Territory within the state of Wisconsin. The terms employed were ambiguous. They might mean either that the convention might take the whole territory of Wisconsin, or they might take elsewhere territory equal to it in size. They might take the whole bank of the Mississippi northwardly, or they might bound the state by straight lines, selecting the best land where they pleased, and leaving out the residue. This would certainly be contrary to the intent of the committee on territories, as well as to the understanding of nine-tenths of the members of the House.

Mr. R. had no desire improperly to limit the new state. He did not wish to confine her within narrow limits, but, on the contrary, thought it desirable that her boundaries should be ample; yet he thought that the remarks of the gentleman from Ohio (Mr. Vinton) had great force, and were entitled to deep consideration. The assigning to these new states territories disproportionately large would be eminently injurious both to them and to the Union at large. Mr. R. had not opposed any of the just claims of Wisconsin. He had voted in favor of all such accommodations as she had asked for in the way of roads and harbors; but there ought to be some limit to this compliance, and especially as to the extent of territory. He should follow his motion for reconsideration with another to recommit the bill, with instructions that the proviso be stricken out.

Mr. Thurman entirely coincided with the views which had just been expressed by the gentleman from Connecticut. He, too, thought that the proviso ought to be stricken out. The bill, as it stood, gave permission to the convention of Wisconsin to make a new state which should contain 68,000 square miles. Had the House any idea of conferring a power of this kind? Would it assent to the creation of a new state with a territory of 68,000 square miles? He hoped not. And he trusted that no gentleman would be influenced by the idea that he was compelled to do this by the Ordinance of '87. That ordinance required no such thing, its power in that respect having been superseded by the Constitution. We had

enough of the Northwest Territory still left, unenclosed, to form two good states; or if it was not quite enough for that purpose, it would be easy to add a little territory on the west bank of the Mississippi. But the bill as it stood would enable the convention so to cut up the territory that enough of it should not be left together to form any other state. No doubt the people of Wisconsin would be even content that the doctrine contended for by the gentleman from Virginia (Mr. Dromgoole) should prevail; because, according to that doctrine, as four states had already been formed northwest of the Ohio River, but one more could be, and this must therefore swallow up the whole of the residue of the territory. Mr. T. entirely coincided in the views expressed on the general subject of the size of the new states, which had been so ably expressed by his colleague (Mr. Vinton). Nothing could be more just—nothing more statesmanlike or wise.

Mr. Martin, of Wisconsin, contended that in the Ordinance of '87 there were some points which were irrepealable, unless by common consent. One of these was, that Congress should not form the Northwestern Territory into less than three nor more than five states. It had already erected four states; it could not erect more than a fifth, unless by general consent. It was admitted on all hands that this provision of the ordinance could not be changed. The proviso which it was now proposed to strike out had been inserted in the bill on his motion; and all it did was to declare that the consent of Wisconsin should be given before her boundaries should be changed. That was the question, and the whole question.

Mr. Vinton said that when this bill had been under consideration yesterday his impression was that the western boundary of Wisconsin, as there laid down, coincided with the western boundary of the United States in that quarter; but he had this morning looked into the law, and he found that in that impression he had been mistaken. By the Treaty of 1783, which recognized the independence of the United States, the western boundary of the Union was to

commence at the Lake of the Woods, and run thence by a straight line to the source of the Mississippi, and then down that river. The map of Mr. Nicollet, which had been before the committee on the territories when the bill was drawn up, fell two degrees short of extending to the Lake of the Woods. By comparing the act which created the territory of Wisconsin with Tanner's and Melish's maps, he found that a line drawn from the source of the Mississippi due north to the latitude of 49° (which was there the boundary of the United States) would pass eighty miles west of the Lake of the Woods, and would include a considerable portion of what we had purchased in the territory of Louisiana; so that, in any way in which the language of the act could be carried out, Wisconsin would have for her western boundary a line at least one thousand miles in length. The bill passed the House, as Mr. V. believed, under a general idea that the boundary of the new state was to coincide with the old western boundary of the United States; and he presumed that the gentleman from Illinois (Mr. Douglas) who had drawn the bill, was himself under that impression; but the fact was that, according to the phraseology of the proviso, Wisconsin would embrace not only all the residue of the old Northwest Territory, but a great deal more.

Mr. Douglas explained, stating that he had not reported the bill with its present territorial boundary. Its western boundary, as he marked it out, was to be the Mississippi River as high up as a point opposite the head of Lake Superior, which would leave as much of the Northwest Territory out of the state of Wisconsin (as in it, so as to form a new state) equal to it in size.

Mr. Vinton said that as the proviso now stood, a convention of the people of Wisconsin would be enabled to embrace within their proposed state not only all the remnant of the Northwest Territory, but also a portion of the United States' land which we had obtained as a part of Louisiana. Mr. V. was very sure that no gentleman was prepared to consent to this. He trusted that the House would reconsider, and that the proviso would be stricken out or greatly modified.

Mr. Dillingham considered the proviso as very objectionable; but it had been repeatedly read, and it was adopted by the House. Mr. D. had voted for it, but he had no conception at the time of what its effect would be. He now found that it would give to the new state of Wisconsin an amount of frontier equal to a thousand miles, and that there might be points within it which would be at the distance of two thousand miles from the seat of government. Its shape would be most inconvenient and most unnatural. According to the power given in the proviso, the convention might take their amount of territory, if they so pleased, in three distinct and separate bodies of land, and place them in such a manner as to ruin all fitness of the territory between to form a compact or connected state. He was utterly opposed to this gerrymandering system, and he hoped that the motion to reconsider would prevail.

Mr. Sawyer moved the previous question, which was seconded; and it was put, viz: "Shall the main question be now put?" and passed in the affirmative. And the main question was immediately put by yeas and nays, that the House do reconsider the vote passing the said bill. It passed in the affirmative: yeas 125, nays 45. So the vote to pass the bill was reconsidered.

Mr. J. A. Rockwell then moved to reconsider the vote ordering the bill to be engrossed and read a third time; and he also moved the previous question, which was seconded; and under its operation the question was put and the vote was reconsidered.

Mr. Rockwell also moved a reconsideration of the vote by which the following proviso was adopted, viz: *Provided*, That the convention which may assemble to form a constitution for said state shall be at liberty to adopt such northern and western boundaries, *in lieu of those herein prescribed*, as may be deemed expedient, not exceeding, however, the present limits of the said territory. This motion to reconsider also prevailed.

The question then again recurred on the adoption of that proviso. Mr. Rockwell moved the previous question. Mr.

Martin, of Wisconsin, asked him to withdraw it, to enable him to move as a substitute for the exceptionable proviso a new proviso. Mr. Rockwell said he should like to hear it read before he yielded to the request. It was read, when Mr. Rockwell said he could not withdraw his motion for the previous question to let that proviso in.

The previous question was then seconded, and the main question was ordered to be now put. And the main question was put, first, on the exceptionable proviso, and it was rejected by a very large vote without count or division. And the main question was put, secondly, on again ordering the bill to be engrossed and read a third time, and passed in the affirmative.

The bill was again read the third time and the question was stated, Shall it pass? when Mr. Martin of Wisconsin moved that the bill be laid on the table. Negatived. And the bill was then passed and sent to the Senate for concurrence.

THE WISCONSIN ENABLING ACT[41]

Chap. LXXXIX. *An Act to enable the People of Wisconsin Territory to form a Constitution and State Government, and for the Admission of such State into the Union.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the people of the territory of Wisconsin be, and they are hereby authorized to form a constitution and state government, for the purpose of being admitted into the Union on an equal footing with the original states in all respects whatsoever, by the name of the State of Wisconsin, with the following boundaries, to wit: Beginning at the northeast corner of the state of Illinois—that is to say, at a point in the center of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the state of Michigan,

[41] Reprinted from the *U. S. Statutes at Large*, IX, 56–58.

through Lake Michigan, Green Bay, to the mouth of the Menomonie River; thence up the channel of said river to the Brulé River; thence up said last mentioned river to Lake Brulé; thence along the southern shore of Lake Brulé in a direct line to the center of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal River, as marked upon the survey made by Captain Cramm [Cram]; thence down the main channel of the Montreal River to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of the St. Louis River; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the River St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning, as established by "An Act to enable the people of the Illinois Territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," approved April eighteen, eighteen hundred and eighteen.

Section 2. *And be it further enacted,* That, to prevent all disputes in reference to the jurisdiction of islands in the said Brulé and Menomonie rivers, the line be so run as to include within the jurisdiction of Michigan all the islands in the Brulé and Menomonie rivers (to the extent in which said rivers are adopted as a boundary), down to, and inclusive of, the Quinnesec Falls of the Menomonie; and from thence the line shall be so run as to include within the jurisdiction of Wisconsin all the islands in the Menomonie River, from the falls aforesaid down to the junction of said river with Green Bay: *Provided,* That the adjustment of boundary, as fixed in this act, between Wisconsin and Michigan shall not be binding on Congress unless the same shall be ratified by the state of Michigan on or before the first day of June, one thousand eight hundred and forty-eight.

Section 3. *And be it further enacted,* That the said state of Wisconsin shall have concurrent jurisdiction on the Mississippi, and all other rivers and waters bordering on the said state of Wisconsin, so far as the same shall form a common boundary to said state and any other state or states now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.

Section 4. *And be it further enacted,* That, from and after the admission of the state of Wisconsin into the Union, in pursuance of this act, the laws of the United States which are not locally inapplicable shall have the same force and effect within the state of Wisconsin as elsewhere within the United States; and said state shall constitute one district, and be called the District of Wisconsin; and a district court shall be held therein, to consist of one judge, who shall reside in the said district and be called a district judge. He shall hold, at the seat of government of said state, two sessions of said court annually, on the first Mondays in January and July, and he shall, in all things, have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky District, under an act entitled "An Act to establish the judicial courts of the United States." He shall appoint a clerk for said district, who shall reside and keep the records of said court at the place of holding the same; and shall receive for the services performed by him the same fees to which the clerk of the Kentucky District is by law entitled for similar services. There shall be allowed to the judge of said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly at the treasury of the United States.

Section 5. *And be it further enacted,* That there shall be appointed in said district a person learned in the law to act

as attorney of the United States, who, in addition to the stated fees, shall be paid the sum of two hundred dollars annually by the United States, as a full compensation for all extra services, the said payment to be made quarterly at the treasury of the United States. And there shall also be appointed a marshal for said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees as are prescribed and allowed to marshals in other districts; and shall, moreover, be allowed the sum of two hundred dollars annually, as a compensation for all extra services.

Section 6. *And be it further enacted,* That, until another census shall be taken and apportionment made, the state of Wisconsin shall be entitled to two representatives in the Congress of the United States.

Section 7. *And be it further enacted,* That the following propositions are hereby submitted to the convention which shall assemble for the purpose of forming a constitution for the state of Wisconsin, for acceptance or rejection; and if accepted by said convention, and ratified by an article in said constitution, they shall be obligatory on the United States:

First. That section numbered sixteen, in every township of the public lands in said state, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said state for the use of schools.

Second. That the seventy-two sections or two entire townships of land set apart and reserved for the use and support of a university by an act of Congress approved on the twelfth day of June, eighteen hundred and thirty-eight, entitled "An Act concerning a seminary of learning in the territory of Wisconsin," are hereby granted and conveyed to the state, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That ten entire sections of land, to be selected and located under the direction of the legislature, in legal divi-

sions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said state, are hereby granted to the said state, for the purpose of completing the public buildings of the said state, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth. That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the state for its use; the same to be selected by the legislature thereof, within one year after the admission of said state; and when so selected, to be used or disposed of on such terms, conditions, and regulations, as the legislature shall direct: *Provided,* That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said state.

Fifth. That five per cent of the net proceeds of sales of all public lands lying within the said state, which have been or shall be sold by Congress, from and after the admission of said state into the Union, after deducting all the expenses incident to the same, shall be paid to the said state, for the purpose of making public roads and canals in the same, as the legislature shall direct: *Provided,* That the foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said state shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall nonresident proprietors be taxed higher than residents.

Approved, August 6, 1846.

PART III—POPULAR PROCEEDINGS AND DEBATE

SELECTIONS FROM THE MADISON *EXPRESS*

PUBLIC OPINION FAVORS STATEHOOD

[January 1, 1846]

The legislature of the territory convenes on Monday next. We wait with solicitude the result of their deliberations; little inclined, however, to speculate as to their probable action. There are a few questions of a public nature which the legislature will probably act upon, and to which we will barely allude. The first, and most important one, is the forming of a state constitution. In the fall of 1843, it will be remembered, the question was submitted directly to the people, and a decided majority found opposed to the measure. At that time, perhaps, the best plan was pursued; but since that period a great change has taken place in our circumstances, and with the change, a complete revolution in public sentiment. All opposition, so far as we have the means of judging, to admission into the Union as a state has ceased, and it only remains now for the people's representatives to hit upon the most expeditious plan. We are in favor of authorizing the people to elect delegates to a convention clothed with power to draw up a state constitution, which shall be voted upon by the people. This can be done without the least inconvenience, and in a short period of time. If a constitution thus submitted to the people meets with their approval, another year will number "Wisconsin" as one among the states of the Confederacy. The advantages which will accrue to us as a people by taking a position among the states we may speak of hereafter.

VIEWS OF "K"—No. 1

[March 19, 1846]

To My Fellow Citizens: As we are soon to be called upon to establish for ourselves a state constitution, or basis of future government, we cannot spend a portion of our time better than in investigating the principles of government which are the best adapted to the condition and wants of our territory, and which are best suited to the experience and advanced state in which it is our good fortune to be placed. Notwithstanding the spirit of liberty and equality which breathes throughout our laws and institutions as a whole, and the great advancement which, as a nation, we have made in the science of government over the dark and in many instances barbarous institutions and customs of the nations of the Old World, it is not to be denied that there are yet many relics of barbarism still to be found amongst us. It is not strange that this should be so. A long succession of years, and the reverence which the mind naturally and instinctively pays to long-established customs, even though founded in error, tend to make those customs venerable, and to throw around them a sanctity which it seems almost like sacrilege to disturb. The victory which the minds of our Revolutionary patriots obtained over many of these dark errors in government, whose correctness had, till then, remained almost unquestioned—a victory unequalled even by that which the force of their arms obtained over their civil and political foe,—was a bright and glorious achievement, well calculated to dazzle the most comprehensive intellect, and the wonder is, not that they left errors yet existing, but that, at one blow, they succeeded in accomplishing the overthrow of so many. They indeed dug deep and laid the foundation of liberty firm and broad, but left the superstructure to be reared, in a great degree, by their successors. But how would they fail of their noble design, if, instead of following

out their plan, we build this superstructure with materials gathered from the dusty relics of the barbarous and unenlightened nations which have preceded us. An edifice composed of wood, stone, clay, and the other substances which the earth yields, and constructed promiscuously after all the different orders of architecture would not present to the eye of the experienced architect a more painful or incongruous appearance than would a government where civilization and barbarity, liberty and bondage, right and wrong, equality and oppression, were brought in juxtaposition to the mind of the enlightened statesman. Aside from error of opinion on those subjects (and there are many such among us) which do not properly form a basis for legislation, there are many of our laws and institutions which seem to have so little of the spirit of liberty and equal justice in them, and to harmonize so imperfectly even with our crudest notions of right and wrong, that they should be well investigated, and the reasons for their continuance thoroughly scanned, before we adopt them into a permanent form of government.

Among these are the tenure of office of our judges and the mode of their appointment, the infliction of capital punishment, the vast number of offices, both civil and military, either directly or indirectly dependent on executive patronage, the power of the creditor over the unfortunate debtor, the inequality, want of discrimination, and the misdirected object of our criminal laws, the creation of monopolies, the incidental encouragement which is given to political demagogues, a qualification of the elective franchise.

These are some of the evils and abuses to which we have been and are yet subject, and which should be sought to be remedied by all those who believe them to be such. If leisure and inclination should concur, I may take up hereafter one or more of the above-named subjects, with a view to bring[ing] them more distinctly before the mind at a time when we are called to act definitely upon them in their adoption or rejection; and in doing so I have but one wish, which

is that, although my suggestions may have little or no weight in themselves, yet my leisure, thus spent, may be serviceable in turning the attention of others more competent to the subject. K.

VIEWS OF "K"—No. 2

[March 26, 1846]

Dear Sir: I propose to mention another subject which it strikes me should not be passed by in the formation of a state constitution, to wit: the guarding the people against hasty and inconsiderate enactments by the state legislature. It is a remark full of truth that the tyranny of legislation is one of the most formidable evils, and fraught with the greatest inconveniences and most disastrous consequences to which a free people can be subjected. The more simple the machinery of government is, the less likely is it to become deranged, and the more easily understood; and consequently the more security must follow to the liberties and rights which the laws secure to the subjects of that government. Stability is an absolutely necessary ingredient in the laws of any country to secure to its inhabitants the blessing of prosperity and internal peace. There is no proposition in the world more plain than that laws to be obeyed must be understood. But how can they be properly understood by the great mass of the people when they are constantly undergoing changes—when the laws of last year are no longer the laws of this year, and the laws of next year different again from this or the last? Such constant changes serve in fact but as traps in which the designing may catch the unwary, and in their practical operation are no better than the system adopted by Caligula, the Romn emperor, who wrote his edicts in small letters and placed them so high on the doors of the temple as to be unable to be read. We may draw a most valuable lesson from our own short experience under our territorial government.

I assert it as a fact beyond the fear of contradiction that at no time since the formation of our territorial government has even a tenth part of our population understood, or even had the means of knowing, what were the laws under which they lived. The annual session of the legislature gave to that body the power to change, add to, amend, and repeal the previous enactments, a power of which, experience has shown us, it never failed to avail itself to the fullest extent. Each succeeding legislature seemed to regard itself as sent to play at shuttlecock with the existing laws, knocking them into confusion worse confounded, and at the end of the session leaving them in that state for their successors to play the same game. For the truth of these statements I appeal to the people generally. Our laws are almost always passed to take effect on the day of their passage, and of course on that day become a part of the laws of the land; but it is months after they are passed before they are printed and distributed, until which time, of course, it can be known but to a very few what they are, and the consequence is that the great majority may for months live in the daily violation of law, subjecting themselves to penalties and forfeitures of which they have no means of knowing the existence. If by dint of careful examination and perseverance a man becomes at length acquainted with the laws of former sessions, about the time at which he has accomplished his task there is another session, when the whole system is again changed, old laws repealed, new ones enacted, and general confusion is the consequence. A person who has never made the examination would be astonished, upon taking up the enactments of the different sessions, to find with what recklessness and apparently total want of reason almost the whole system of laws were changed, so as hardly to bear a resemblance to what they were formerly. As an example, the most familiar, I refer to the interminable acts relative to justices of the peace. Let anyone attempt an intelligent synopsis of these acts and he will no longer wonder at the universal complaint which arises from all parts of the territory against them.

And this is but one instance among a thousand equally as flagrant. A power liable to such abuse should, by the constitution, be taken from the legislature—how this may be effected must be left for the convention to decide. It might be done by causing a long public notice to be given of all acts intended to be passed, or by submitting them to a vote of the people generally, before they should become laws, or by letting them lie over from the session which should introduce them to the subsequent session, for final passage, during which time the people might become acquainted with their provisions, judge of their necessity and utility, and act accordingly. Something of the kind the people owe it to themselves to adopt, to save them from the consequences of excessive and hasty legislation.

K.

"CONCORDIA'S" VIEWS ON THE ELECTION OF JUDGES

[June 11, 1846]

OUR FUTURE JUDICIARY

As we are about to form a state constitution, a fundamental, ruling principle to guide our future legislators, many questions of grave importance arise, and among them, as not the least important, is the manner of choosing the judiciary. Apprehensions, at first view, may arise against their election; but if we keep steadily in view the true spirit and intent of our government, a self-government, vested in the people, and place confidence in them, then all fears vanish as to the inefficiency of this manner of choosing our judges. If we cannot put confidence in the people as to their capability of self-government, then we are to look to the one-man power, as our resort in this deplorable dilemma, by whom we are to be kept in obeisance. This, we think, is the fundamental difference between democracy and monarchy, the two great systems that sway the world. The former is a distri-

bution of power among the people; the latter, its concentration in one man. The former treats all as equals; the latter establishes unnatural and unwarrantable distinctions and privileges. And, we think, the former would recognize the election of judges by the people; the latter would place the whole judiciary system in the power of one man, or nearly so. Who, then, is there but would choose the former method, actuated by the consciousness of his own individual privileges, and a proper degree of jealousy for his own rights? This is upon general principles.

But it is apprehended by some that there are collateral influences that will tend to lay aside this principle. But we contend that if the principle be right and expedient in one case or circumstance it is in another. If it be right in a calm, it will withstand the tempest of partisan feelings and actions. If it be expedient in a calm political atmosphere, it will be amid the lowerings of jarring elements, the very moment when the voice of the people should be supreme in the land. "*Vox populi vox Dei*" was the maxim of the ancient civilians, and it will equally apply to us.

But, in a communication in your last number the writer confessed that public opinion is in favor of election. This, then, is a powerful argument in favor of the election, for no law in a democratic government should be made in advance or opposition to that opinion; for then, it is *not* the *law* of the land, but the *will* of the few. When our legislators or representatives cease to enact the will of the people, they cease to be their representatives; the *vox populi* is disregarded, and dissatisfaction prevails.

Neither can it be thought *ultra,* unless ultra in simplicity, the best ultraism we can possibly adopt. The first system of government, that we are aware of, established upon the earth was patriarchal; or where one family or number of families voluntarily and individually placed themselves under the direction of one patriarch. This was an union of individual will, happy in its results, democratic in its prin-

ciples, a model for all. But the refined ingenuity of the nineteenth century would center too much power in one, thereby lessening the influence that each, individually, is entitled to. We do not say that this extensive territory, with so many inhabitants, can be swayed in that primeval manner of ruling neighborhoods; but we do say, the nearer we get to this principle, the better is our system of government.

It is true that we can frequently accomplish some specified object through the medium of an agent better than to do it ourselves. "Your child is sick, and you want an agent or physician to administer medicine," says the writer in your last. "You have a suit to manage, and you want a lawyer" or an agent. All this is acknowledged. But, you want to choose that physician according to your own views of medicinal skill, and the lawyer for his legal knowledge, and not trust to a third person's dictation. So it is with our judges or agents to administer justice; we, as people, rather elect our own agents than trust to a third person, or executive. For how is our executive, residing in one place, at a distance from most counties, to know whom to appoint? He surely cannot know individuals in every county; of their acquirements and capability to fill such an office faithfully. The answer, obviously, is that individuals will be recommended to the governor by their respective friends. And here, of course, will appear that partisan influence which some so much fear. And it is worse, for this interference of friends will work secretly and carry with it greater corruption, while an election is more open and better to be seen. This is the way they are appointed in many states, the deplorable consequences of which are already working a reformation. For if partisan action is to be the order of procedure it had far better rest in the great mass of the people than in the choice of one man. If judges are appointed with whom the executive is acquainted, they must necessarily reside without most of the counties when appointed, probably most of

them centered at the capital. These will be sent, strangers, into the different counties, bearing with them the impression that the county does not afford men capable of administering justice, and even if so, that the people are not capable of selecting them. But it is said that they ought to come strangers from other counties, that they may not be prejudiced in any trial, or actuated by any local considerations; and after coming, ought to reside there; and the term he affixes for their duration in office is seven years. Now in my humble opinion this would inevitably place us in the same dilemma, as the writer considers it, as we would be in if they were chosen from the county. For in seven years any man would acquire an interest in affairs where he resided, and acquire all the local prejudices that any other citizen would, for it is not expected that a judge must isolate himself from the world.

But it is to be hoped that these prejudices are not so alarming after all. For the people always choose to have their rulers from among themselves. This is something that is not only natural to man, but is complied with generally; it shows an equal respect to all locations, and equal representations from all parts. Although the original English colonies constituted a part of the British government, yet one great cause of disaffection was that the English government took it upon herself to appoint some officers which the people claimed they had a right to choose from among themselves.

The governor, it is gravely said, is more capable of selecting judges than the people; yet all will acknowledge that the people are competent to elect their own governor. He is the highest officer in the state. Then if we can elect the most responsible officer within the suffrages of the people it is difficult to ascertain upon what principle of logic why [*sic*] they may not choose inferior officers.

In relation to the salary, there will undoubtedly be as many aspirants seeking executive patronage for the emoluments of the office, as there will the patronage of the people—and

doubtless more—because they can more easily impose upon an executive, whose only knowledge of their character is obtained through the mediation of partisan friends, than upon the people who are better acquainted with such individuals. A competent salary should be given, that responsible and capable men may be induced to accept the office; and it is sincerely hoped that no individual would be so rash, under any circumstances or prejudices, as to disgrace his own dignity and office, so much as to subject himself to impeachment by the all-seeing eye of the people; and it is further hoped that public opinion, if it be not already so, will soon become so reformed that any person will not *dare* to offer himself as a candidate for office unless he is qualified to perform its duties.

In the state of New York the judges are appointed by the executive, with the consent of the senate. But long experience has taught them the inefficiency of the method, and the dissatisfaction among the people; and consequently, upon the suggestion of the governor, who declares that too much power is invested in that department, a convention has been called and will meet during this month to revise the constitution; and one of the greatest objects of that convention, by the almost unanimous approval of the electors, is to take the power of appointment from the executive and vest it in the people. Let us, then, profit by the experience of older states, and avoid error by the constitutional support of an elective judiciary.

CONCORDIA

WHIG NOMINATIONS

[July 28, 1846]

In the *Express* of today will be found a list of the nominees to the constitutional convention, presented for the suffrages of the electors of Dane County. The candidates selected are all men of sound principles, practical intelligence,

and sterling integrity—such men as the community can safely support for the important and responsible station to which they are nominated, with the assurance that, if elected, they will labor in good faith and with unswerving fidelity to establish the fundamental principles of enlightened republican government upon the most approved and enduring basis. The business of the meeting convened to select candidates was conducted in a spirit of harmony and good feeling—a presage that indubitable reliance might be placed upon the united efforts of the sincere advocates of moral right and political truth to sustain both our men and our measures. Let them be sustained! They are worthy of support. Lamentable, indeed, to ourselves and to posterity, may be the consequences if we falter in our duty and suffer the reckless advocates of unrestrained licentiousness and the mercenary ministers of a spurious democracy to triumph in a contest of which the citizens of Wisconsin will reap the results probably for a long time to come. Let the independent freemen of Wisconsin learn a lesson of prudence from the unhappy experience of the party-ridden people of Iowa. Two Locofoco-made constitutions have they already been constrained to reject because of the antirepublican and despotic provisions incorporated therein, and a third is now threatened with a similar fate on account of its containing the same objectionable features—hundreds of those who voted with the Locofoco majority in electing the delegates who formed the constitution, now declaring that they will vote against its adoption. Let us guard against similar results by making choice of delegates whose labors in the convention shall have a higher aim than the accomplishment of selfish, mercenary objects, and a nobler purpose than the gratification of mere partisan spleen, and we may entertain the hope of seeing them crowned with happy success, without the jeopardy of being greatly disappointed.

DECLARATION OF WHIG PRINCIPLES[1]

[July 28, 1846]

The approaching contest for the selection of delegates to the convention which is to form a constitution for our government as a state must be viewed with the deepest interest. The political and civil freedom of the people should be guaranteed and secured in that constitution, and it behooves us all to weigh well the principles of those who are to be selected for this important trust. It is true that there are certain political principles essential to the government of a free people which have been established by our forefathers and confirmed by the happy experience of more than half a century. But our free systems of government are like all other systems, progressive. The knowledge which it has taken ages of the past to perfect and secure it is within our means to acquire before we have started on our political career. It is a legacy left us to be used for our own and our country's good. Let us, therefore, in Wisconsin, a new people in a new country, fettered by no prejudices, but enlightened by the experience of our predecessors, take hold of the noble work of reform where they have left off and help to rear still higher the noble structure of freedom, by engrafting upon our constitution such new provisions as will tend more fully to secure the political and civil rights of man.

For the purpose of effecting these ends we shall hold the candidates selected by the Whig party pledged to offer and support in the convention the following provisions to be engrafted in our state constitution.

First. To make all officers in our government, both civil and judicial, elective directly by the people, with short tenures of office, that they may hold in constant remembrance their accountability to the people.

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[1] Adopted by the Whigs of Dane County assembled in mass meeting at Madison, July 20, 1846, for the purpose of nominating candidates for election to the constitutional convention.

Second. A direct and positive prohibition against the granting by the legislature of any charter for banking purposes, or the passage of any law whereby any monopoly or any special exclusive rights and privileges may be conferred, for private purposes.

Third. That there shall be secured to every person engaged in any trade, occupation, or profession, the books, tools, and implements necessary for carrying on the same; to every householder his homestead; to every farmer his farm containing eighty acres of land with its products, sufficient for the support of his family, and that his interest in the same shall not be taken from him, except on particular contract of bargain and sale thereof, or for some tax imposed thereon, or for the payment of some fine or amercement against him for trespass or misdemeanor.

Fourth. A restriction of the land monopoly, by which any deed or other conveyance of land hereafter made to a person owning in fee at the time of such conveyance more than six hundred and forty acres of land in the state, shall be null and void. That the soil of the state may not pass from the many to the few, accompanied with a landed aristocracy and a ruined and oppressed tenantry.

Fifth. A prohibition upon the legislature to incur any debt, except for the purpose of repelling invasion or suppressing insurrection, unless authorized by a direct and positive vote of the people.

Sixth. The extension of the right of suffrage to every male resident above the age of twenty-one years in the territory at the time of the adoption of the constitution, being a citizen of the United States, and thereafter to every male resident above the age of twenty-one years, being a citizen of the United States, or having declared his intention to become so.

Seventh. A restriction upon the law-making propensities of our legislatures, by forbidding the passage of any law of a general character, unless a bill for the enactment of the same shall have passed through three several readings in

one of the branches of the legislature, at a session next previous thereto; and forbidding the passage of any local act unless a notice of an application for such act shall have been published in such manner as the legislature shall direct.

Eighth. That in fixing the rate of compensation of officers of the government no greater amount shall be allowed than is consistent with the most economical administration of government.

On motion, the meeting accepted the address and the committee were discharged.

WHAT LOCOFOCOS CAN'T UNDERSTAND

[August 4, 1846]

A Locofoco is a strange being. Sometimes he appears quite sagacious and cunning—an hour has elapsed, and he is as dull as an ass. One day he is rational and seems to possess in some degree the faculty of reasoning; the next, he is witless, moody, and stupid. As a partial recompense for his stupidity, however, he is usually endued with a marvelous instinct, by the aid of which he can understand the "why and wherefore" of many occult principles or rules of action. Thus if a lucrative office is to be obtained through political profligacy, he can understand why a Loco should strive for it—because "to the victor belongs the spoils!" Or if a barbarous outrage is to be perpetrated in the management of a political intrigue undertaken solely for the aggrandizement of a party, he easily comprehends the importance of decrying all opposition to the sordid and selfish schemes of his master, the bellwether of the Locofoco flock—wherefore he not unfrequently receives some valuable token of political favor, and is exalted in the eyes of his copartisans. But there are certain other subjects which he seems utterly unable to comprehend.

We have quite recently found occasion to observe more particularly these peculiarities in the characters of a number of distinguished Locofocos not a thousand leagues distant from this town. They seem to misunderstand or misinterpret the word patriotism. They evidently imagine that its meaning is in no way associated with the love of country, but that it signifies perhaps a strict and totally blind adherence to the dictates and usages of the Locofoco party—however detrimental to the prosperity of the country or dangerous to the welfare of the people. And hence it is, that they can't conceive how the Whigs who attended the late convention in this place could with sincerity recommend the constitutional disqualification of the legislature to confer chartered privileges upon banking companies, etc., in Wisconsin. Let us endeavor to enlighten the dullards a little on the subject.

The universal Whig party hold it as an incontrovertible tenet of their political creed that a mixed currency of specie and bank notes (convertible into specie at the will of the holder) is indispensable to our individual and national prosperity; the steadfast support of our commercial enterprise; the efficient propagator of industry in all its manifold branches; and that to banish the paper circulation entirely from the Union would be not only to curse the whole people with those fearful evils which resulted so disastrously to them from the curtailment of the currency during the reign of Martin Van Buren, but would ruin their fortunes, beggar their families, and crush their fondest hopes of happiness forever.

But it does not necessarily follow that a prohibition of banking operations for an indefinite period in this territory only would be productive of similar evils. The particular circumstances under which we are placed, and to which we must adapt our laws and political regulations for the time being, present many obstacles to successful banking which are scarcely to be found elsewhere. It is well known also that

falsehood, duplicity, and hypocritical professions of faith, but seldom attested by practice, are characteristic traits in the conduct of Locofoco office-seekers. And notwithstanding their ceaseless clamor and uproarious vehemence against the "rascally banks" previous to elections, few are so hard-hearted afterward but that they may be induced to relent should they luckily meet with an opportunity for replenishing their coffers by assisting in the fabrication of a few bank charters. A case directly in point, and corresponding with the Locofoco "general rule," fell under our observation twelve years ago in Michigan. At that time Governor Barry was publishing (anonymously) in an obscure little newspaper, printed at White Pigeon, his long-drawn-out agrarian articles, in which he poured forth a continual torrent of gastriloquent fulminations against corporations in general and banking in particular. These productions, so abounding in superlative horror of "privileged classes" and transcendent love for the "dear, delightful people," rendered their author conspicuous as a leader of the Locofoco party, and in due time he was elected a member of the state senate to carry out the doctrines he had so eloquently promulgated. During his term of service—his (antibank) party being a large majority in the legislature—the famous, or rather infamous, Wild Cat and Red Dog banking system was adopted, Senator Barry, like many of his colleagues, becoming a stockholder and director in a bank which soon exploded and left its debts *payable* but never to be *paid!* Causes and effects akin to those connected with this Locofoco banking experiment or swindling scheme in Michigan would probably attend a similar experiment in Wisconsin. The reasons for this are obvious. Immigration was then overwhelming in Michigan, as it now is in this territory. Property had no fixed and certain but a very unsteady and fictitious value—varying from high to low with the ebb and flow of the tide of speculation, which generally wore the aspect of a tremendous flood. Hence when any twelve men resolved to

become bankers, they usually borrowed an amount in specie equal to 30 per cent of their "capital stock" to exhibit to the bank commissioner, pledged to the county clerk as security for the redemption of their issues real estate appraised at ten times its real value, and then set afloat "oceans" of their paper trash, for which, alas, there was no redemption. The property mortgaged as security, possessing a very small intrinsic value in comparison with the amounts for which it was pledged, afforded little relief to bill holders except the consolation to be derived from "deferred hope." The banks suspended, and the community suffered—some. And such, probably, would prove the unhappy consequences of any Loco banking project that may be in contemplation for the embryo state of Wisconsin. The Whigs of Dane, therefore, desirous of securing the public weal against the hazard of such calamities, come out in the true spirit of genuine patriotism uncontaminated by the baleful influences of party rancor and sectional strife, and propose to provide a constitutional barrier against the bank-making propensities of hypocritical Locofoco legislators. The perfidiousness and double-dealing of our crafty and unscrupulous adversaries are everywhere notorious: they have proved themselves especially untrustworthy with regard to the bank question; for, notwithstanding their clamorous croaking about "bank reform," they have chartered many of the most fraudulent and insolvent banks which have had an existence in the Union; and have done more by their rash, extravagant, and insane legislation to vitiate the currency than was ever dreamed of in the philosophy of ordinary sharpers. Let the people beware of furthermore trusting such shameless deceivers, or they may be again most wofully betrayed and robbed of their rights.

LOCOFOCO PRINCIPLES

[August 4, 1846]

The organs of both the Old Hunker and the Tadpole Locofoco cliques of this place are wailing most piteously in view of the prospective defeat of their candidates for the convention, and, to excite public sympathy in their behalf, are charging the Whigs with the folly of stealing their principles. On the contrary, so far are the Whigs from either coveting, admiring, approving, stealing, or wishing to adopt their "most cherished principles," that they look upon most of them with perfect loathing and disgust—even as upon pestilent receptacles "filled with rottenness and unclean things." The chief cause of complaint is the position assumed by the Whigs at their late county meeting in reference to banking and free suffrage. Now we will not go into a long argument to disprove the above-named false accusation concerning Locofoco principles, but will merely advert to the *practices* of some of the apostles of the party to show what those principles really are: and then let the public judge whether they are embraced in the Whig resolutions or not.

Andrew Jackson and Levi Woodbury were supporters of the Pet Bank system; Martin Van Buren was the father of the New York Safety Fund and the Subtreasury banking systems; Attorney General Benjamin F. Butler was principal manager of the Sandy Hill Shavers' Bank; President Polk was formerly a champion of the Local or Pet Bank system, but has latterly bowed down in reverence to that of the Subtreasury; Vice President Dallas framed a charter for a National Bank, which he strove hard to have established; and General Lewis Cass, now the "first choice" of the *late* "Phiphty-Phour-Phorty" Locos as a candidate for the next presidency—this Lewis Cass, as governor of Michigan, signed the charter of the Bank of River Raisin—which bank lately failed, and by it the community has lost hundreds of

thousands, notwithstanding its Locofoco president was one of Mr. Polk's recently-appointed United States marshals and has been proposed as a candidate for governor! The Locofoco party also created the "Individual Liability" Bank of St. Clair, the Bank of Michigan, Bank of Constantine, and about fifty Wild Cat banks in Michigan; and chartered the banks of Gallipolis, Canton, Binghampton, Manhattan, West Union, Lebanon, Circleville, Owl Creek, Kirtland, and scores besides, "too numerous to mention," and which it is not necessary to mention—for they have left among the people worthless notes amounting in the aggregate to millions of dollars as mementos of the folly and improvidence of Locofoco legislation. In short, *three-fourths* at least of all the insolvent banks which have failed since the origin of Locofocoism have been created by the Locofoco party. We care not what may be their hypocritical professions. We prefer to judge of them by that better criterion of merit, their actions. The latter are almost invariably a perfect burlesque upon the former. Sooner would we trust a famished dog with our dinner than a set of ranting Locofocos with the power of granting bank charters. They are sure to wield it, and wield it so unwisely, too, as to render it the agent of grievous calamity.

And now with regard to the right of citizens to vote: When, where, and how, have the Whigs ever opposed universal suffrage—properly so termed—as has by implication been alleged? Never, anywhere, in any manner whatsoever. As a party they have always advocated the measure; they still adhere to it with unabated zeal, and intend to abide by it through every vicissitude of fortune. And furthermore they will endeavor to dissuade men from the prostitution of this inestimable prerogative to base and unworthy purposes, even though the success of such dissuasion haply imply defeat to some of the darling projects of progressive locofocoism. But the representation in the *Argus* conveying the idea that the Whigs of Dane are in favor of negro suffrage is a wilful fabrication—the ebullition of a morose temper—the

offspring of a little mind and vindictive spirit. With as much truth and greater propriety might it be declared that our opponents are in favor of enfranchising not only the Ethiopian race, but also the Indians, outlaws, convicted felons, paupers, idiots, infants, and wax dolls. Perhaps our contemporary mistook the doctrines of some of the distinguished members of his own party for those of the Whigs. The Locofoco states of Virginia, New Hampshire, and South Carolina restrict the right of suffrage to freeholders; and Martin Van Buren would have done the same thing for New York, when a member of the convention to amend the constitution of that state, and was moreover the champion of negro suffrage—plated with gold, however, to give it respectability! All we need now say respecting the Native American movement is, that it originated with the Tammany Locofocos of New York City. The *Daily Aurora,* a Locofoco paper, was transformed into the accredited organ of the Native party in that city, and Mr. Levin's Locofoco paper became the organ of the Native party of Philadelphia. While the Whig party has stood aloof and refused an alliance with the "Natives," the latter have found kindred spirits in the Locofoco ranks. A distinguished Locofoco member of the Ohio senate, a few years since, earnestly declared in a public speech that if there was any difference between a Dutchman and a hog, it was his opinion that the difference was decidedly in favor of the hog! Such an opinion the Whig party does not entertain. It is Locofoco "thunder," and we are not disposed to filch it from the party.

THE ISSUE

[August 25, 1846]

The question is now fully before the people of this district, and especially of the county of Dane, whether we are to have incorporated into our state constitution humane and liberal provisions—whether we are to receive by that instrument

the "greatest good to the greatest number." We consider it a question of political life or death. If the principles advocated by the Whigs, as set forth in the proceedings of the mass meeting which nominated delegates to the convention, are left to go by the board, if they are betrayed and deserted in the house of their friends, who will answer for such criminal neglect? If they are sustained—if the people come to their rescue, the country will rejoice and prosper in their success. If not, we must remain as we are, hirelings and slaves to executive dictation!

I believe the fact is undisputed that the Locofoco party opposes Whig principles—that it lives and has a being for no other purpose under the sun. We are warranted in coming to this conclusion by long experience of the fact; and it matters not how salutary the measure of reform, if the Whig seal is placed upon it *opposition* is the cry and the watchword.

The country has long seen and felt the evils of a landed aristocracy. New York has suffered from it, and she still suffers. Other states in the Union feel it a clog upon their prosperity, paralyzing the energy and crippling the industry of their yeomanry. If the people of Dane County are indifferent to their interests and the interests of our new state they, too, may reap the bitter fruits of a powerful yet legalized aristocracy. The Whigs are opposed to its existence, and ask that it never shall be allowed to breathe the free air of Wisconsin!

The Whigs ask that the people may be allowed to elect their own civil officers. They are met with opposition. They are told that corruption and intrigue will be resorted to in obtaining office, that the bench will be corrupted, that the ballot box will be polluted, that the people are not supreme, that their "agents" alone are capable to appoint them, and that life tenures are preferable to short ones. The Whigs advocate an elective judiciary, and insist upon short tenures in office!

Nor do they stop here. Every principle which ennobles and gives dignity and sobriety and character to human na-

ture calls loudly upon us, now that we have the power, to secure to each family in our wide country the means of subsistence—to secure to the farmer, mechanic, and laborer a competence when he has once obtained it; to protect him from the avaricious grasp of the merciless creditor; to make him what God designed he should be, a free man—an independent, virtuous citizen. Strange as it may seem, the Whig principle that the homestead of the citizen shall be exempt from sale under an execution is met with opposition—simply, I suppose, because it is Whig doctrine!

The Whigs hold that we are all members of the same family—all bound to the same irrevocable destiny. It is for this that they would extend free suffrage to the foreigner—welcome him to all the rights, immunities, and privileges of citizenship. If the self-styled Democratic party adhere to this principle, why have they not asserted it?

In this county we have opposition candidates to the state convention. One set is avowedly, fearlessly, and fully in favor of these measures; and if silence, as still as the deep caverns of the earth, has meaning, the other is avowedly hostile to them.

Under these circumstances they are before you. The one with their principles openly promulgated—the other, with none at all.

The packed convention which nominated one set was fighting only for men; the other, which was composed of the people in council, was contending for principle.

Such was the Locofoco—and such was the Whig convention! Draw the contrast, and then judge for yourselves.

Farmers! Mechanics! Laborers! Citizens of Dane County, can you be long in deciding what course to pursue? Look at the "no-principle party," and then inquire if this is the way in which your great interests shall be treated, in which you all have the most important questions that have ever occurred! Will you be satisfied with such a representation as they have presented for your support? You are

soon to determine the question—a question, I repeat, of political life or death. Your interests are at stake, and upon you the consequences must fall.

A Whig.

WHO IS THE ARISTOCRAT?

[August 25, 1846]

The man who is for making the rich richer, and the poor poorer. Who is for robbing the poor man of the little pittance of worldly goods which would enable him to give bread to a starving family and [for] giving it to a rich and lordly creditor to swell his already overgrown wealth. How, you ask, is this done in a country of laws? It is done by law. Two-thirds of the laws upon the statute books are made to enable the rich to collect their debts. But are they not as much for the benefit of the poor? No; the poor man cannot, if he dare, go to law; and if he dare to, he will soon wish himself out. There are but few poor men who can spare their fives, their tens, or their fifties to be placed upon the checkerboard of the law, though they may be certain of the prize. The rich [man] speculates upon the poor man's inability to meet the expenses of the law: five dollars may pay his way into a justice's court, but that is only the beginning; ten must go to the lawyer in the court above, fifty to the lawyer in the court above that, and so on from court to court, till the poor suitor finds that he is beat for want of funds to go on, or that he has spent a hundred for every dollar gained. What mockery, then, to tell the poor man that the halls of justice are open alike to all. Here, then, is a system which cannot force the rich man to pay his debts, where the poor man is the suitor. Does it force the poor man? Aye, does it; and sometimes twice over. The same causes which prevent the poor man from prosecuting will prevent his defending. How often has the lordling's curse been heard—"I'll beggar that man and his family, forever." A few years will tell the tale;

the law screw is applied a few times, and all is gone—the little pittance which would enable the poor devil to subsist himself and family, and call himself a man,—his log hut, his last cow, his last bed are gone—and himself, wife, and children are in the streets. Where next do you find them? The toiling, drudging slaves of some lordling—perhaps of the very man who has ruined them. How, you ask, is this to be remedied? Exempt to the poorer class from the merciless graspings of the rich enough to keep them from utter destitution and want: that, though poor, they may still be free. Exempt to every man from his creditor's grasp the clothes which cover his nakedness, the house that covers his head, and his necessary furniture, the tools and implements of his trade or calling, a sufficiency of land on which to dig a living, and enough of its products to live upon. And then, though poor, he may be as free and independent as the millionaire.

It is the policy of every republic to keep all its citizens as nearly equal as it is possible for them to be; to give to all equal political privileges—for that is power; to give to all free access to common schools—for knowledge is power; and to prevent wealth from accumulating in the hands of the few —for wealth is power.

How necessary, then, is it in adopting a state constitution, that there should be provisions to protect the poorer and weaker classes of the community against the rich and powerful. Some men will tell you that they are in favor of all this, but, they say, put no such things in the constitution—that it will lumber it up too much, and that it is best to leave such things for the legislature. Men who talk thus are aristocrats. They know that such provisions in the constitution are permanent, but that an act of the legislature is subject to repeal whenever the wealth of the state may demand it. And that they will demand it is as certain as that the big fish will devour the little ones.

FREE SUFFRAGE

[August 25, 1846]

The *Argus* of last week has a long article in reply to our interrogatories relative to Whig opposition to universal suffrage. The *Argus* asserts and attempts to prove that the Whig party has made such opposition, but its effort is about as bungling and unsuccessful as was that of the *Democrat*. The editor first cites as proof a Native American movement in the city of New York, and misrepresents it as having been "a great demonstration got up by the Whigs"; and then in order to make the Whigs appear responsible for that movement he quotes a paragraph from the Albany *Daily Citizen* and declares that Native organ to be "a rank Whig, high tariff paper!" The editor very well knew the demonstration he speaks of to have been a Native American and not a Whig demonstration, and also that the Albany *Daily Citizen* was a thorough-going Native American paper. Hence this paltry trick of his to saddle the responsibility of the acts of a political squad, consisting largely of Locofoco dissenters, upon the Whig party, is seen to be destitute of facts to sustain it. It is rather too stale a joke to be told to people of intelligence and discernment.

The *Argus* next endeavors to show that the Whigs opposed the principle of free suffrage by refusing to aid the Locofocos in 1843–4 in making a radical change in the established method of choosing public officers. This change was proposed, not from any motive of benefiting the mass of [the] community—not from a disinterested desire on the part of its abettors to redress a public grievance—but it was designed solely as a temporary expedient to be used on a particular occasion for the exclusive benefit of Locofoco office-seeking demagogues. If a portion of the Whigs opposed the measure, it was only because they considered it a delusive scheme intended to subserve sinister purposes, and calcu-

lated to foster factious misrule rather than promote the ends of good government. The measure was not conceived in the pure spirit of philanthropy, but was designed to secure the success of selfish and mercenary party objects. Its authors did not intend to bestow upon foreigners the elective franchise merely as an affectionate boon, but to offer it as a bribe for their votes. If the act of opposing a measure designed expressly *for such an object* can properly be said to evince hostility to the genuine doctrine of universal free suffrage, then perhaps a small portion of the Whig as well as of the Locofoco party may be charged with having opposed that doctrine in some extreme cases—but not otherwise. In their anxious efforts to show that the Whigs as a party are opposed to free suffrage, our opponents have always failed—will ever fail: for they strive by sophistry to establish a falsehood.

JOHN Y. SMITH DENOUNCED

[September 1, 1846]

Mr. Editor: Strange events are transpiring around us, and it seems that they deserve a passing notice. Whether the fact may be attributed to the influence of locality, or to a series of singular coincidences, it is a fact that Madison is peculiarly distinguished by the preëminent hauteur of its corps editorial.

Do you ask to what I allude? Let me answer your question by asking one. Have you seen the *Argus*—the rainbow of literature—the choice excerpt of all that is beautiful in the editorial horizon, or magniloquent on or off the stage—the able and efficient advocate of the free-trade theory? You have, you must have seen it, you "take the papers," and cannot plead ignorance of the being of that prodigy. To let it pass without notice would be worse than a blunder—a crime!

I have just arisen from a perusal of the haughty reply of the editor of that sheet to interrogatories of a "self-consti-

tuted committee'' who had the unblushing impudence to ask of him his ''opinions'' upon certain questions relating to our future state constitution.[2] The committee (self-constituted) after reading his condescending reply, must have felt their own importance dwindle down to an atom, and with uplifted hands exclaim:

''Upon what meat has this our Caesar fed, that he has grown so great of late?''

What business is it of theirs whether the aforesaid editor believes this or that? Whether he is in favor *of,* or opposed *to?* The packed convention knew their business—and acting as their superior judgment dictated, asserted that principle was a matter of little or no account.

The sang-froid with which this ''committee'' thrusts itself upon the notice of J. Y. Smith and other Democrats par excellence is truly astounding—astounding even among the thousand miracles in that line which locofocoism has scattered far and near for the edification of those who are silly enough to dream of the possibility of human perfection, in the attributes of honor and modesty with which this ''committee'' is so plentifully endowed.

The ''committee'' probably were not aware that they had started a spirit which, like Banquo's ghost, ''would never down.''

Dizzy with his unexpected elevation, his weak brain forgot to look forward, and prattled prospectively, as chance or habit dictated. In him the ''committee'' beheld a newly-installed exponent of an old and corrupt faction, glittering with the spoils of victory, and destitute of all other adornment.

The ''committee'' need not be perplexed with this phenomenon—this magnificent example of political knavery, unlimited and unqualified. Other and better men have been foiled in endeavors to solve the enigma. He is in market for the purchase of all the sweltering rottenness of the land, and for the sale of himself, the whole included, to that party whose

[2] For the reply of John Y. Smith see *post,* 402.

foe he has been for several of the most consistent years of his eminently consistent life.

Gentlemen of the "committee," lower your peake as becomes you, and allow me to congratulate you upon your happy choice in the selection of the once Whig orator to lead your column, and the distinguished figure you make in his procession.

Who will dare to point the [finger][3] of shame at you? Your good standing as citizens renders you obnoxious to the charge of hyprocrisy.

The people, and you know it, have no right to question Mr. Smith as to his views. That would be "dogmatical," "mandatory," and "menacing"—a compromise of his dignity to answer their impertinent questions. And there is much common sense in taking this position. Has he not for some time past officiated as the high priest of locofocoism? Has he not assumed all the various political hues the mind ever conceived of? Whig? Abolitionist? Locofoco? "The committee may not be aware" of these facts, but the people know all about him. A man who has ever lived that he might enjoy the spoils, who changes his opinions with every full of the moon, and knows no rule for political action but the rule of expediency, is generally well known to the people.

They wonder that such a man should talk about "established party principles." But they are not surprised to see him advocating today one set of principles, and tomorrow condemning the children of his adoption.

We record the opinion of the committee and of all honorably disposed citizens, when we say that such a man is not to be trusted with an election to frame our state constitution. A station of the highest political moment—a station involving the destiny of Wisconsin so long as she remains one of the confederacy.

K.

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[3] In the original article the cut of a hand with forefinger extended appears at this point.

"A VOTER" STATES HIS VIEWS

[September 1, 1846]

The "committee," consisting of "B. Holt & others," is in blast, and through their candidates are speaking forth the views of "the party," and surpassingly honored and edified am I thereby.

The story of Aladdin's Lamp, or Sindbad, the Sailor, possesses far less of amusement than the reply of our Locofoco candidates to the committee, in answer to interrogatories put to them by "B. Holt & others." The reply of one George B. Smith (who was nominated to save the party from a split) was very well written, and possessed evident marks of superior statesmanship. From its reading, one would have supposed that its author had just returned from at least twenty years of service in Congress. "My opinions," says this young embryo, "are so well known, that it is useless to express them here." Modest and unassuming young man, did you lay the corner-stone for the Democratic edifice? Are you the projector and father of the Locofoco creed? Are your opinions so well known, that a repetition of them is altogether unnecessary? Such a rare specimen of modesty ought to be rewarded—and the possessor elevated, at one bold push, to the highest niche in the temple of political fame. Sun Prairie was fortunate in adopting so worthy a sire to lead her sons and daughters to eminence and fame.

Next comes John Y. Smith—the modern Sampson—the political Hercules—and with one dash of his mighty pen, carries away the slender foundation on which this "B. Holt & others" had planted their hopes of political salvation. He denies their right to interrogate *him,* and without much ceremony bids them mind their own business. He owns, however, that he is opposed to banks or monopolies of any kind, opposed to an elective judiciary, opposed to the reservation of the farmers' homestead, etc., etc. On the whole, I think

J. Y. Smith was sincere when he published to the world that he was not related, politically, to "one G. B. Smith." I commend him for his honesty in this particular.

Benj. Fuller, Esq., comes next with his manifesto. How it will suit the views of the party remains to be seen. He acknowledges what Mr. Smith protests against, to wit: the right of the committee to interrogate him. Question I relates to banks. Read his answer:

> I am not in favor of the establishment of a bank, etc., unless the corporation of the bank gives as good security, in real estate, for the redemption of their notes (aside from specie actually in their vaults) as they would ask for the loan of money.
>
> I would place a prohibition in the constitution against the incorporation of any bank or banks, unless so restrained, and I would prohibit in the constitution the establishment of any branch of a bank chartered elsewhere.
>
> We can have as good a constitution, as good a currency and credit as any people in the world; therefore I hope the people will not delegate power to the legislature to make "wild-cat" money, or to do anything to injure the credit of the state, so that if we have bank notes at all, we shall have such as people will be proud to see Wisconsin on the face of it.

Here is an avowal in direct opposition to the creed of the Locofoco party in Wisconsin, as expounded by the *Argus*. The *Argus* man says that if he is elected he will oppose any kind of banks; Mr. Fuller will vote for them on certain conditions. He is opposed only to "wild-cat" issues—and in the name of common sense who is not?

Mr. Fuller says he "would" impose restrictions on the elective franchise. He wishes to let the people know that if "they are convicted of a state's prison offense, they forfeit what every American holds dear"—the privilege of voting, we suppose he means. Strange doctrine, that! A most explicit and full reply to the question of the committee! I am not prepared to say whether Mr. Fuller means to evade the question, or that he does not comprehend the meaning.

Mr. Fuller, however, cannot be misunderstood on the exemption question. The question is put: "Are you in favor of, or opposed to, exempting any real estate from being taken on execution," etc. Mr. Fuller replies in the following words:

> I would not place such exemption in the constitution but I am in favor of the legislature exempting a team, tools, household furniture; and I would not object to a house and small piece of land.

Farmers, do you hear that? The Locofoco candidates for the convention are in favor of exempting a team, tools, and household furniture, while they would allow the merciless creditor to turn you out of doors. But they are not willing that even this small pittance shall be guaranteed to you by the constitution. They wish to leave the matter open for future legislation—for party quarreling and party capital. I deem it better by far to settle this question by constitutional enactment. It will save much foolish and unnecessary legislation—it will save much time and money to the people. But it will accomplish a much more desirable object. It will secure the widow and orphan their home—it will dry up a fruitful source of misery and human suffering. The Locofoco candidates are opposed to the measure; yet they would not object to the reservation of a "house and *small* piece of land,"—made so by statute law and liable to be repealed at every session of the legislature.

The reply of Mr. Fuller to the question of "electing all executive and judicial officers" is not commendable to the head or heart of that gentleman, and unworthy of notice by any candid mind. It is evasive and shuffling—wanting grammar and wanting sense. About the same may be said of the other points which I have not deemed it proper to notice.

It is to be hoped that every elector in the county will look well to the men and measures they are about to support. Names are nothing in this contest. Party dwindles to a mere dwarf in comparison with the great questions at stake.

A single vote in a town or precinct may tell with effect upon the action of the convention. A single vote in that body may secure to you for all time to come political freedom—political life. Look to it!

A VOTER.

THE ELECTION: ITS RESULTS

[September 8, 1846]

After a well-contested battle, the Whigs of this district have succeeded in electing their candidate for the Council. In Dane County they have elected their candidates for sheriff and register. The Locos had so well succeeded in palming off their spurious doctrines on the Norwegian voters in this county as to obtain, in a great measure, their unanimous suffrages in behalf of their candidates for the convention and thus destroyed all our hopes from that quarter. This vote, and this only, was the cause of the defeat of at least a portion of the candidates on our convention ticket. The Whig party are accused of having used threats, bribes, misrepresentations, promises, lying, and fraud, getting up split tickets, trading off their candidates, and much more besides to secure the success of their ticket. All these accusations of "bribery and corruption" are worn out and stale, they are stereotyped charges with the Locofocos, they appear periodically, and die off naturally for the want of sustenance. But we submit that the charges in relation to split tickets and trading off candidates come with a peculiar ill grace from the side of our opponents, when it is so well understood that the leaders of the "Tadpole branch" of the Locofoco party in this place exerted all their influence for the avowed purpose of defeating John Y. Smith, one of the regularly nominated candidates on their own ticket; and now they proceed to denounce the Whigs for practices of which they themselves have been so notoriously guilty. Verily, "those who live in glass houses should not throw stones."

SELECTIONS FROM THE MILWAUKEE *SENTINEL AND GAZETTE*

THE POWER OF BORROWING MONEY

[July 28, 1846]

One of the most important subjects which will demand the attention of the convention for the formation of a constitution for this state is that of borrowing money—whether it shall be left exclusively with the people or given to the legislature. The experience of the several states has shown us the evils of delegating the money borrowing power to agents —evils so apparent to all who care about informing themselves on the subject that we shall now enumerate but few of them.

It is a sound political axiom that money should always be granted by the people to their rulers with a sparing hand. In monarchies there exists a disposition on the part of the monarch and nobility to apply as much of the earnings of the great mass of the people to their own use and benefit as they can reach. In republics the same disposition also exists; but its gratification is restrained by the operations of free institutions. It was well remarked by a distinguished member of a convention in Virginia, that "every spark of freedom in Great Britain arose from the power to give or withhold money. "Give money," said the king. "Give power in exchange," said the commons. "Give money," said the Crown—"money I want and must have." "If then," said the House, "this money is so deeply important, give us in return security for our rights and liberties, for our birthright."

There is one appalling fact connected with national or state debts—never yet has one been fully paid off! The

effect and tendency of any public debt whatever is to increase and not to diminish. The history of every state in the Union that has resorted to loans proves this. In Ohio, Pennsylvania, Illinois, and other states, their public debt has increased far beyond the expectations of those who originated them. It is questionable whether more misfortune and misery has not been entailed upon the world at large by the borrowing of money and pledging the taxes for the payment of interest than there has been good produced by the invention of money itself. This system was first introduced into England by King William, and enabled him to raise money for his ambitious prospects to a great extent. The public debt of Great Britain at his accession to the crown was but one million, and it has gone on increasing from that time to this, until it has reached the enormous sum of £900,000,000 sterling, at an annual charge upon the industry of the working and productive classes of the nation of about £40,000,000 sterling. This is the natural tendency of public debts. In monarchies, where the supreme power is in the king, public debts are said to be supports to the throne; they interest large numbers of people in the perpetuation and the support of the existing order of things, lest, by a change, they should lose their money. But in a republic, where the sovereignty is in the people, this argument, which is the only one yet adduced in favor of a standing public debt, has no force whatever.

Guard the exercise of power as we may, by written constitutions or otherwise, experience has shown that "its natural tendency is to steal from the many to the few." The constitution, as has been well and truly observed, is the basis of the legislative authority; it lies at the foundation of all law, and is a rule and commission by which both legislators and judges are bound to proceed. The acts of a legislature cannot be supported in any other way than by reference to the constitution which created it. It has no power whatever in-

General Rufus King

From a photograph in the Wisconsin Historical Library

dependent of that instrument. Let the convention, then, which frames our constitution, fence round and protect the interests of the people by explicit declarations not to be misunderstood or liable to be twisted to suit the purposes of mischievous and designing men. Private property should be so well guarded that not the value of a cent could be demanded for public uses except compensation, in money, be paid to the owner. A legislature without such a check might take private property for public use upon a promise to pay, and thus entail the debt upon posterity; and if authority be given to take private property without payment in money, there would be no limit to the power, inasmuch as promises can be made more abundant than money.

Having some further arguments to advance on this subject, and on the one immediately connected with that of borrowing money—taxation—we shall defer them for another article.

TAXATION—BORROWING MONEY

[August 1, 1846]

We submitted on Tuesday last a few remarks on the subject of granting the power of *borrowing money* to legislative bodies, pointing out some of the evils to the whole community by its delegation of this power, etc. We now propose to offer some further reflections in continuation of the subject, in connection with the one so immediately united with it, on that of taxation.

It is, we believe, admitted that when a government is instituted and salaries to its officers authorized to be paid, the power to levy and collect the necessary taxes is included. To deny this power would tend to pull down the whole fabric of government, and no position has been better settled than that every government possesses the inherent power of sus-

taining itself and to raise all the means necessary to that end, until such time as it shall please the people to alter or abolish it. In nearly all our state constitutions there have been restrictive clauses introduced in regard to the exercise of the power of taxation, but these wise and prudent restrictions have been rendered nugatory by the practice recently introduced of borrowing money. The power to borrow money at will is a very important one and should be exercised with the utmost caution. With this power the legislature must necessarily possess the means of carrying it into effect. These means are nothing more nor less than transferring from ourselves to our representatives the right to mortgage every dollar's worth of property in our possession for its repayment. A wicked or unwise legislature might borrow more money than the people will be able to repay in half a century. The power of taxation may also be abused. So may all other powers granted. But there is an extent beyond which abuses cannot go. The abuse of taxation, for instance, cannot extend further than the ability of the people in any one year to pay, whilst the abuse of the borrowing [power] may be felt for ages to come. The exercise of the right of taxation has justly been called a "high sovereign power." The right of borrowing is a higher power still. The power to borrow is just so far greater than the power to tax as the whole and entire control of the fee of our lands is greater than one year's product of them. Excessive and unnecessary taxation in any one year can be corrected by the ballot boxes of the next, but a mortgage upon our lands cannot be removed in that way. If one legislature can bind successive legislatures to any extent if may deem proper—if one legislature can draw upon and squander the resources of the state for many years to come, and can bind not only its immediate constituents during their natural lives, but posterity, by its acts, our annual elections are so many farces. It has been denied that one legislature binds another; this may be so, but when the public faith is pledged

by the constituted authorities that pledge ought to be redeemed.

It has been said, "The legislature is the people, and cannot the people trust themselves?" The members of the legislature are the agents of the people. They act for the people by power of attorney. So far as their acts are within that power they are good and valid; so far as they go beyond that power they are null and void. Although the people should and do confide in the representative of their own choice and trust him to do everything in the range of the trust delegated to him, yet he is not invested with sovereign and independent power. There is no sovereign and independent power except in the people. "It should be remembered," says Jefferson, "as an axiom of eternal truth in politics that, whenever any power in any government is independent, *it is absolute also,* in theory only, at first, when the spirit of the people is up, but in practice as fast as that relaxes."

It may not be improper to offer some observations as to the power of taxation as applied to the matter under discussion. "Money," says Alexander Hamilton, "is, with propriety, considered the *vital principle* of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions." Now, so far as this "vital principle" is abstracted from the body politic, so far as it is dissipated and squandered, so far is life and motion paralyzed and its essential functions weakened. The object of every wise government, more particularly of a government founded upon and sustained by the will of the governed, is to protect the life, liberty, and property of all within its sphere. A government that fails in the protection of property, or wrongly seizes upon it, degenerates into tyranny; for the essence of tyranny consists in taking from us our hard earnings without giving a fair and just equivalent. Whether this be done under color of law or, as in the Turkish Empire, by force and violence, matters not. The effect is the same. Our revolutionary ancestors took this view of it.

They were not oppressed by taxation, but the fear that they should be drove them into rebellion. The result is well known.

We should look well to these powers when delegating them to others and see that our "natural, inherent, and inalienable" rights are properly guarded in the proposed constitution. Let us be certain that, in giving a portion of our private property, * * * we secure to ourselves protection and security for the remainder. Among the rights of man, as enjoyed in a state of nature, are life and liberty and the proceeds of his labor. As with our property, so with our personal liberty. We voluntarily agree to certain restrictions upon our liberty so that the balance or greater portion shall be better secured. In this way every individual avails himself of the whole power of the community for the safety of the bulk of his property, and for the protection of his political rights and his freedom of action. Every individual, by this wise arrangement, affords and secures protection. The perfection of republican governments consists in relinquishing as little of property and liberty and securing as much of both as is consistent with these ends.

VIEWS OF "R" CONCERNING THE CONSTITUTIONAL CONVENTION

[August 8, 1846]

Messrs. Editors: Some valuable, appropriate, and important remarks have lately appeared in your paper on the subject of the state constitution soon to be acted upon by a convention of delegates to be chosen for that purpose. There is, apparently, too much apathy and indifference among the people on that highly important subject. Important principles are to be discussed and acted upon, and it is hoped that men of ability, capable of doing justice to the subject, will immediately enter upon the discussion. It has already been too long delayed.

We are about to establish organic laws, which differ widely from legislative enactments. The one is permanent and not easily altered, while the others may be modified or repealed at pleasure. Our future prosperity depends in a great measure on our system of laws; and it is our own fault if we do not adopt a good one.

The subjects you have already alluded to are very important, and I hope they will be thoroughly canvassed. There are others, also, which should not be overlooked; without going into particulars (for I have neither time nor ability to do it), I will briefly advert to one or two.

I am no advocate for sanguinary laws, except so far as is necessary for the protection of human life. So far as human nature is what it is, the strongest possible safeguard should be thrown around life. And this is the death penalty—a penalty enacted from the beginning by the Great Creator himself, and it cannot be shown that it was ever abrogated. On the contrary, we often have remarkable instances of the interposition of divine providence in the detection of murderers where human efforts seem to fail. What is this but an indication of the divine will in the matter? Abolish the death penalty, and where would be our security? As it is, murder is of late not unfrequent among us. And whence this fearful increase of crime, but from an imagined impunity. It is believed by many that the recent murder in our vicinity would not have been committed had it been *certain* that the penalty would have followed.

The acquittal of Vineyard was a disastrous precedent.[4] It is but natural to feel alarmed when so strenuous exertions are being made to uproot (as I solemnly believe) the very foundations of civil society. I do not say that it is so here. I do not know that it is. But we do know that in the states there are many, and their number is increasing, who are so engaged. One of their cardinal measures is the annihilation in all cases of capital punishment. They have suc-

[4] James R. Vineyard shot Arndt in the Capitol, at Madison, February 11, 1842.

ceeded in Michigan. She is trying a fearful experiment. Let us await the result before following the example.

A prominent argument with the enemies of capital punishment is that imprisonment for life is more to be dreaded or a greater punishment than death itself. Now this is all moonshine and contradicted by facts. A case occurs to mind and directly in point. Some years since, a bill was introduced into the legislature of New Hampshire abolishing capital punishment. During its pendency, and when many supposed it would pass, a murder was committed—the criminal arrested and thrown into prison. The bill, however, did not pass. When the criminal heard of it he was seized with the greatest consternation and distress, declaring that when he committed the crime he supposed that if convicted he should only be imprisoned. One such act as this outweighs a volume of argument.[5]

In the article referred to allusion is made to the right of suffrage, with the expression, "that there will be little difference of opinion" on the subject. This is rather vague, but I suppose it means universality. If so, it may admit of question; probably a majority of the people of the territory will be opposed to it literally. We have a party among us, not to be despised for talent or numbers, who think that the man of color is entitled to equal privileges with the whites. Although not nominally of that party, I am with them in that. I could never see the justice or propriety of disfranchising a fellow man because our common Creator saw fit to give his skin a different tint from my own, and that only in the light, for, according to the discoveries of modern science, there is no difference whatever in color, or rather, there *is* no color in the absence of all light. See Dicks' *Practical Astronomy,* page 107.

I have said more than I intended at the commencement. My sole object was to draw others competent to discuss important principles. The occasion may never again occur,

[5] For a refutation of "R's" arguments on capital punishment see *post*, 189.

and the time allotted is short. As this is my first, so it will probably be my last, communication to you on this subject. I ask your permission in doing so, to say a few words on the importance of sending suitable men as delegates to the convention. And here I would premise that I am one of your old-fashioned "Bay Yankees," and belong to that class to whom you refer, "who cling with affection and reverence to the time-honored usages of the past, and regard the common law, and the established rules of administering it as approaching nearly to the perfection of reason and experience." And why not? For they are based on the principles of eternal truth and justice as originally laid down and enforced by the Divine Lawgiver to man—principles recognized by all free and enlightened governments.

Old men for counsel, is as true a maxim now as in the days of Solomon, although in practice it has in a manner become obsolete. But such are the men we need in this convention. Men of age, wisdom, and experience. Party considerations should have no influence in their selection. No political demagogue should be returned to that body. Yet it is scarcely to be expected but that some such will find their way there. But if the people are wise and do their duty, their numbers and influence will be too small to do much harm.

Send no man there whom you cannot trust without a public pledge, for the chances are against you that he will violate it if a strong temptation occurs. I do not, however, object to a public declaration of sentiments by the candidate if called for. It is right and proper they should be known by the people.

R.

Lisbon, August 4, 1846.

LETTERS OF "JEFFERSON"[6]—No. 1

[August 10, 1846]

MESSRS. EDITORS: The Whigs hold these truths to be self-evident: "That all men are created *equal;* that they are endowed by their Creator with certain inalienable rights; that among them are life, liberty, and the pursuit of happiness. That to secure these rights governments are instituted among men deriving their just powers from the consent of the governed."

In our transmigration from a territorial form of government to an independent state sovereignty, the people should sedulously and cautiously guard against every encroachment upon their natural and inherent rights.

The right to select their servants (for I eschew the term "rulers") should be brought home to the electors as near as possible. The election district should be so arranged that each individual elector can know for whom he is giving his support. For it is folly to call upon men to elect those of whom they have no knowledge. With a view of securing this privilege, I should advocate that the single district system should be adopted as far as practicable.

This mode of electing officers will give more general satisfaction than ony other, and is peculiarly adapted to a democratic form of government. Each voter can then know the candidate who there claims his support, and can investigate his fitness to hold the trust which is to be reposed in him.

Our party may not have so strong a representative from a county, perhaps, where they hold a large majority over the other, as they would by the general ticket system; but what they lose in such a county they will be able to gain in another county where they are in the minority. Besides, the present

[6] A letter in the *Wisconsin Banner*, September 5, 1846, shows these letters by "Jefferson" to have been written by Mr. B. Butterfield, of Milwaukee.

dominant party may, the next year, be in the minority and their opponents will be in the ascendant. And then they may save to themselves some part in the administration of the government, which otherwise would have been wholly lost.

The duty of each officer should be simply and clearly defined. The executive officer should not be embarrassed by the nominating or appointing power. His whole business would be to carry out the will of the people. Why should the governor be called upon to appoint the surrogate, the notary public, the clerk, or the judiciary? Can he know better than the people of Milwaukee County who will best serve them? If he cannot know as well as the people, who are proper candidates for office, why should he be invested with the appointing power, or the right to nominate? Cannot the people of the county of Milwaukee, for instance, better select their servants of trust than the executive who resides in Madison, and who is dependent entirely upon the representations of others as to the fitness of the candidates for office? And why should the executive officer be troubled with such matters, which can better be done at home and by those who are immediately interested in them? Where the right to nominate or appoint is vested in a single individual or in a small body of men, it often happens that the people are forced to accept the services of men who could not have been elected by the people.

This is not the way that men transact their own ordinary business. If a man wishes to employ a hand to perform an important private trust for him, he chooses to know personally his qualifications to discharge the duties to be confided to his care, and the inquiry whether he is worthy and well qualified is diligently made. Should it not be equally so with public as well as private servants?

But aside from all these objections, there is one still greater. Whenever the power to nominate and to appoint public servants is removed from the people and given to an individual, or to a few men, it tends to create a central power,

around which all the corruption of office seekers is centered, and produces aristocratical dictation and favoritism, and is used too often for base and selfish purposes. The honest man is too often overlooked, and the mere tool of party is exalted to posts of honor and responsibility, to the manifest injury of the people and the public good. For these reasons, I hold the people should retain in their own hands the sacred right of nominating and electing every public officer. And that all officers shall be accountable to the people for their stewardship.

JEFFERSON.

LETTERS OF "JEFFERSON"—No. 2

[August 14, 1846]

MESSRS. EDITORS: I trust that I have sufficiently shown in my previous numbers the importance of withholding from the executive the nominating and appointing power. I now propose to show that this power ought not to be given to the legislature.

The power of the legislator is the most elevated and important that can be bestowed upon man in any civil society. To exercise this power requires a high degree of wisdom, a perfection of knowledge, and a clearness of judgment, which few are happy enough to possess. To manage one's own private affairs, to regulate all one's actions so as to produce the best results, requires all the sagacity of the most talented. But to manage the destinies of a whole people, to lay down the rules of action for a state or a nation, justly requires a sagacity more exalted, more discriminating and penetrating than falls to the lot of most men. And before a man should take upon him so great a responsibility he should search well his own heart to see that he is actuated altogether by the love for, and good of the people, to see his own capability, and that he is better fitted to promote the public good than any other individual. He should be well skilled in all human knowledge. Men and things should be as familiar to him as the keys of an

instrument to the most skillful performer. He should know the wants of the people he is to serve, and the best manner to satisfy those wants. He should be a lover of man and possess a strong desire to render his constituents happy. He should vanquish all selfishness in himself and act singly to promote the public welfare. His soul should blaze with patriotism, and his life should be his country's. He ought to be such as Washington, Jefferson, or Franklin. He should be endowed with such wisdom and foresight as will enable him to comprehend the past, the present, and the future; he should be able to act with that perspicuity of forethought that falls little short of prophetic. For on him depends the good or the evil of generations to come. Though the act at the time it springs into notice may be but small, yet it may be as a single cog in the vast machinery of human events which will entirely change the destiny of nations for the better or for the worse. Though Brutus gave the last stab to Rome's assassinated and dying tyrant, and though a nation was already avenged by the blood of its oppressor, still that stab was the most fatal to all tyrants, and carried with it more power than all that preceded it. It controlled the destiny of the nation. Without it, Caesar would have expired. But without it Rome would not have been suitably avenged. The receiving of thirty pieces of silver for the base turpitude of a traitor was in itself but a trifle, but on that act hung the destiny of the world of mankind. The levying a duty of three pence upon a pound of tea was of itself unworthy of notice; but it ignited a fire whose flame can never be quenched so long as nations shall people the earth.

Who then, let me ask, is capable of executing this high trust of dictating to a free people the rule of civil action? Let him stand aloof from all contaminating influences—let him be guided by one all-controlling desire of benefiting his constituents with his whole might and mind. Let him leave all patronage with the people and give his whole efforts to legislation; and when he has performed his trust, let him return to the people to enjoy with them the fruit of his labors.

JEFFERSON.

UNIVERSAL EDUCATION

[August 22, 1846]

The convention to revise the constitution of New York, which is now in session at Albany, has adopted the following article on the subject of education:

6. The legislature shall, at its first session after the adoption of this constitution, and from time to time thereafter, as shall be necessary, provide by law for the free education and instruction of every child between the ages of four and sixteen years, whose parents, guardians, or employers shall be residents of the state, in the common schools now established, or which shall hereafter be established therein. The expenses of such education and instruction, after applying the public funds as above provided, shall be defrayed by taxation at the same time and in the same manner as may be provided by law for the liquidation of town and county charges.

We should rejoice to see a similar article incorporated in the constitution of Wisconsin. We consider it to be one of the paramount duties of government, to provide the means of education for every child in the state. This can be done and only done through the medium of free schools, maintained at the public expense and open to all who may choose to seek these fountains of light and knowledge. Free schools are to be found in the New England states and in some portions of New York. If the provision we have quoted shall be adopted by the people they will become general in the Empire State. But they are more necessary in Wisconsin than in any of the older states. It is only by means of free schools that our heterogeneous population can be made to assimilate, and that the children of the German, French, Irish, and Norwegian emigrants who are flocking hither in such large numbers can be thoroughly Americanized. Let the people, then, instruct their delegates to the convention to engraft such a provision upon the constitution of Wisconsin as shall secure to every child within our territorial

borders in all time to come the blessings and benefits of a good education, "without money and without price." In no way can they contribute more effectually to the influence, reputation, and prosperity of our nascent state.

VIEWS OF "R" ON CAPITAL PUNISHMENT ANSWERED[1]

[August 22, 1846]

Messrs. Editors: I have watched from time to time with much interest and pleasure what has appeared in your valuable paper from your correspondents in relation to the constitution of our future state. And as you have informed us that you lay their productions before your readers for what they are worth, without any responsibility on your part, I thought I might venture to give the opinion of one Whig, and perhaps more, by joining issue with the gentleman of Lisbon (Mr. R.) upon the subject of capital punishment. The gentleman in his first article speaks strongly in favor of capital punishment. He seems to be of the opinion that for the safety and well-being of the people of this flourishing territory we must stick to the system of hanging; and [he has] brought up one case which has come under his own observation to prove that there will be less crime committed in the country while we continue to hang men, than there would be, if we should cease to take that life which I believe God alone has a right to take. And now, sir, I cannot discover that the case cited proves anything very conclusively. For a man to say that he should not have done as he once did in a fit of drunkenness if he had known the consequences, should not, in my opinion, have the least weight. It is altogether probable if that man had not been drunk he never would have murdered his wife. I have never heard a case of that kind but what the murderer would testify that had it not been for the intoxicating dram, or had he been himself, the foul deed would

[1] For "R's" argument, here answered, see *ante*, 182.

never have been done. I would ask if it can be proved that by hanging men crime is to be lessened. I think the history of this country ever since the time of hanging witches (and not the history of this country alone either) plainly tells us that capital punishment does not, never has, nor ever will, lessen crime. But, sir, to take the pardoning power from the executive in cases that are now called capital, and then imprisonment where the culprit may be kept in safety till He who gave the life may see fit to take it from him, would be as safe to the community, crime would not increase, and the guilty [would be] less likely to go unpunished; and I may add there would not then be (as has many times been the case) an innocent man hung. I will say no more now, although I have said but little; I know there are many who can take hold of this subject ably and I hope to hear from them. Now is the time to speak out.

Yours, etc.,

Milwaukee, August 20, 1846. T.

APPEALS TO FOREIGNERS

[August 14, 1846]

We observe that as the election draws nigh some of the more unscrupulous of the Locofoco presses are revamping many of the exploded falsehoods which they have hitherto circulated in regard to the principles and measures of the Whig party, and rely upon such means to secure a triumph in the coming contest. Among these inventions of the enemy the favorite one just now seems to be the charge that the Whigs, as a party, are opposed to granting the right of suffrage to foreigners, and upon this is founded an appeal to the Irish, German, and other immigrants to vote the regular Locofoco ticket, as the only means of securing to themselves equal rights and privileges under state government. Those who thus seek to array adopted citizens in a body on one or the other side of the dividing party lines are their very worst

enemies. And the pretext upon which the demagogues in the Locofoco ranks strive to do this is as false and unfounded as the object in view is selfish, reprehensible, and unpatriotic.

The Whigs, as a party, are cordially and unitedly in favor of extending the right of suffrage and every other civil and political right to all the citizens of Wisconsin, native or naturalized. Far from desiring to draw any line of distinction between the two classes, it is their earnest wish to see them placed on an equal footing so that, as years pass on, they may gradually become *one people*. Those who falsely represent to our adopted citizens that the Whigs are inimical to their rights and interests do so with a single eye to party advantage. The Locofoco leaders know full well that unless they can retain the united foreign vote on their side they must speedily lose their ascendancy, not in Wisconsin only, but all over the Union. Hence it is that they stoop to any artifice, however disreputable, to prevent adopted citizens from judging for themselves and dividing, as the native citizens do, upon the various political questions of the day, without regard to sect or birthplace.

It is an undisputed and undeniable fact that the large majority of American-born citizens are Whigs. Can any better prima facie evidence be required that the Whig policy is the true policy of the country? And does anyone doubt that if immigrants coming to this country, learning our language, adopting our sentiments, and accommodating themselves to our habits, should form their own deliberate opinions as to what policy to uphold and what party to join, a very large, if not the larger, proportion would side with the majority of those who, having always lived in the country, might be supposed best to understand what principles were most congenial to the spirit of our institutions and what measures were best calculated to advance the national welfare? Why, then, it may be asked, do we find the Germans, Irish, and other immigrants arrayed in mass on the Locofoco side? Simply because it is the constant and studied effort of the Locofoco leaders to make this class of our population believe that the

Whig party is hostile to their rights and would if they could deprive them of all voice and participation in the affairs of government.

The near approach of our territorial election has been made the signal for the renewal of these efforts at misrepresentation on the part of our opponents. That they will be to some extent successful in inducing our adopted citizens to band together under the Locofoco flag cannot be doubted. It must be the work of time to expose the falsehoods and dispel the delusions so industriously conjured up by our opponents. But truth will prevail in the end. The more intelligent among the German and Irish settlers already understand the game and rightly estimate the motives of the principal actors in it. Once satisfied that the Whig party is not inimical to them, they will disregard the earnest appeals of Locofoco leaders, and judge and decide on all questions of public policy upon their intrinsic merits, uninfluenced by any such narrow, illiberal considerations as are so constantly urged upon them by the organs of the Polk and Texas party. When they shall do this we do not doubt that the principles and measures advocated by the Whigs will commend themselves to their confidence and receive their enlightened and hearty support.

TACTICS OF THE ENEMY

[August 24, 1846]

The editor of the Madison *Argus*, a renegade Whig, is one of the Locofoco candidates for the convention in Dane County.

This circumstance seems to have stimulated afresh his zeal in behalf of his new associates and, like all turncoats, he is especially denunciatory towards those with whom he but recently acted. We esteem the Whig party especially fortunate in getting rid of all such soldiers of fortune, and we shall not quarrel with the editor of the *Argus* for deserting

to the enemy. But in adopting a new set of principles for himself he has no right to misrepresent and falsify those upheld by his former political friends. We find in the last *Argus* the following among other paragraphs aimed at the Whig party:

> We care not what a mere handful of Whigs may find it convenient to *profess*. We know what are the principles of the party and we know that, give them the power, and they would saddle us with a batch of banks at the shortest notice, and that, once saddled, we should be ridden at their pleasure and for their profit—the whole Democratic party would instantly be under the ban of the bank power.

The effrontery of a charge like this would amaze us in anyone but a political turncoat. The fact is notorious that five-sixths of the banks in the United States were created by Locofoco legislatures. The old "monster" itself owed its existence to the party of which the Locofocos of the present day claim to be the legitimate heirs. When this institution was broken down some six hundred local banks, the offspring, for the most part, of Locofoco legislation, started up in its place. These institutions were not only made to subserve political purposes, but the very stock was distributed among the favored few of the party and no man was allowed to have a finger in a bank pie who did not swear allegiance to the Locofoco leaders. We venture to say that the whole history of our country will be searched in vain for such glaring instances of corruption, rascality, and abuse of power as are to be found broadcast in the Locofoco bank legislation during the eventful years of '34, '36, '37 and so on to 1840. And yet, with a full knowledge of all these facts, the Madison *Argus* falsely and impudently charges upon the Whig party the wrongs and robberies committed by its own political associates. No doubt the editor hopes by such gross and wilful misrepresentations to help himself in the coming canvass. But a victory won by inglorious means and dishonorable weapons will yield but a barren and short-lived triumph.

LETTERS OF "JEFFERSON"—No. 3

[August 27, 1846]

Messrs. Editors: Our opponents are moving every power under their control to induce the good people to believe that they are their especial friends. And it seems to me that their hypocrisy has been sufficiently apparent, to put honest, thinking men on their guard.

They have asserted that low wages for the laborer is for his greatest advantage; also, that if our labor is done in England it will be greatly for the interest of the common laborer. And many other as foolish and base pretenses have been urged for the good of the industry of the country. But among all their pretenses there is nothing more black-hearted and false than that they are the advocates of universal suffrage. Let us look one moment at this pretense, and see if there can be any, the least particle, of truth in it.

Has not the Locofoco party been in power now some seventeen years, except one month when Harrison held the chair of state?

Have they not had the power to enact any law they chose during that time? And why is it, if they are the exclusive friends of the foreigner, that they have not repealed the law of a five years' residence before a foreigner can have the privilege of voting? What good reason can they give why a man who has abandoned his native country, in order to enjoy our free institutions, should be compelled to a residence of five years to become equal to any of our citizens? I have heard them argue as a reason why they have not repealed this provision, that the foreigner has never claimed any change. Yet they urge on the eve of the election that they are opposed to any distinctions between natives and foreigners.

The Whigs, on the other hand, have always held that all men are created equal; that location, birth, or any other cir-

cumstance makes no distinction; that the mind is the true standard of man; and that when a man, wherever he may be born or whatever his condition, comes to this country with the mind to be an American and a freeman, he is qualified to act as a freeman. The Whigs hold that residence cannot change him for the better; that all he should be called upon to do, in order to entitle him to all the rights and immunities of a citizen, is to become a resident and to make known his intentions to be such; that five years' residence cannot fit such a man better; that paying taxes adds nothing to his capacity; that holding real or personal property will not qualify him better; and that a man who hates our government will not love it better because he is rich nor hate it worse because he is poor.

They hold that the act of abandoning their native home and indicating their intention to become the recipients of our free institutions are the strongest proofs that can be given in favor of that state of mind which is requisite to make a foreigner a good citizen. And that all such men should be allowed to vote for all the officers which are elective. And I ask, why is it, since our opponents have held the power to give to all this right at the coming election, that a part of our population is entitled to vote for only a part of the elective officers? They are residents and may vote for delegates, yet are deprived of the right to vote for the legislators. Are they not to live under the laws to be made to govern, as well as the constitution we are to live under? Does it require more capacity to enact laws than to lay down a foundation for our government! Let every voter look to these men who pretend so much interest in them at elections, and never do anything for them.

JEFFERSON.

THE WISCONSIN DEMOCRACY'S LOVE FOR THE IRISH

"Veritas nihil veretur, nisi abscondi"

[September 5, 1846]

MESSRS. EDITORS: Aware of the courtesy with which you treat even those who differ with you in political opinion, I take the liberty of soliciting a place in the columns of your widely circulated paper for the following facts in relation to the conduct of the self-styled leaders of the Democracy of Wisconsin towards that portion of the adopted citizens for whom they profess so much friendship. I mean the natives of the "Emerald Isle." I will commence with Racine County.

At the Democratic caucus held for the town of Southport in the spring of 1844, three Irishmen, namely Quigley, Harkins, and Callaghan were nominated for township officers, but on counting the votes on the day of election it was found that the names of those three persons, although of unexceptionable character and qualifications, were erased from forty-seven of the fifty-five Democratic tickets polled on that occasion. This circumstance created quite an indignant feeling amongst the Irish generally, but their ire was assuaged by a solemn promise gratuitously made by the office-hunting demagogues, that one of their countrymen should be nominated at the county convention during the ensuing autumn for a seat in the legislature. The autumn arrived, the convention assembled at Kellogg's Corners but there was not a single Irish delegate present, nor was any Irishman nominated for office. The most remarkable and bare-faced fraud in the affair was that the Irish were excluded from the caucuses held in townships where they actually formed the majority by a trick of the conjuring clique which enabled them to hold secret caucuses in houses remote from the actual places of holding town meetings. In the township of

Brighton, for instance, a large number of the Irish had assembled on the day of the caucus at the house of Mr. Ward, where the caucuses had been held for several years, and they were there informed by one of the dictators that no caucus was to be held for that township and consequently returned to their homes, while their informant repaired to the residence of a Mr. Coffin, in a remote portion of the township, three miles distant from the nearest Irish settler, and there, with three other conspirators held a secret caucus at which one of these political swindlers elected the other three as delegates to the county convention. So much for the Humbug convention of Racine in 1844, when the Irish population of that county numbered over 3,400 souls or nearly 600 families—all of whom were Democrats and amongst whom were the proprietors, cultivators, taxpayers, and actual settlers of about 72,000 acres of land.

At the Democratic election in Milwaukee held about the same time, Mr. John White, the regularly nominated candidate for sheriff and the only Irishman named on the ticket was defeated by some 300 Democratic votes.

At the Iowa County election last autumn Mr. Dennis Murphy, an Irishman and one of the oldest, most intelligent, and most wealthy citizens of that county, and one of the regular nominees of the Democratic convention for the house of representatives was rejected on the day of the election.

During the recent Democratic conventions it is a remarkable fact that neither Dane, Walworth, Jefferson, Dodge, Iowa, Grant, Brown, Portage, Columbia, Rock, Green, Calumet, Richland, Marquette, Crawford, St. Croix, Sheboygan, nor Manitowoc counties (all of Wisconsin Territory, except Racine, Milwaukee, Washington counties) have nominated a single Irishman—although all, with the exception of Rock, are decidely Democratic. Nor has there been a single native of the Green Isle nominated for an office from any of the five wards embraced within the limits of the beautiful city of Milwaukee.

Mr. Ryan is among the nominees for Racine County. He is decidedly the principal lawyer in that county and the knowledge of this fact may have contributed to secure his nomination, yet I assure you he can hardly be considered as an Irishman as he never identified himself with them since he came to our territory. Indeed, I will venture to say that one-fourth of the population of Racine County are ignorant as to the country of his birth.

I learn that in the Irish townships in Washington and Milwaukee counties a few nominations have been made from amongst the Irish, but I am under the impression that those nominations will not be sustained in the ballot box on Monday next.

Time will tell, however, and I feel confident that the Irish citizens, when they discover the game, will not suffer the clique to impose upon them any longer.

Yours respectfully,

A consistent Democrat,

SEMPER PARATUS.

THE CONSTITUTIONAL CONVENTION

[September 22, 1846]

The convention to which has been entrusted the task of preparing a constitution for Wisconsin is to assemble at Madison on the first Monday in October, a fortnight from yesterday. The duty with which they have been charged, although an important and responsible one, may be easily accomplished within four weeks from the time of meeting. Having the constitutions of all the other states in the confederacy to guide and direct them, the labors of our convention will be limited to the work of comparing these together and selecting from each such provisions as may seem best adapted to our wants and most congenial to our habits and opinions. There is no reason why several months should be wasted in unprofitable debate, as in the convention now sit-

ting at Albany; nor why, as in the recent instance of Missouri, so obnoxious a constitution should be framed as to be rejected almost unanimously by the people. Both these errors may easily be avoided by the delegates-elect, if they will carry with them to Madison the simple and single purpose of making a constitution for the people and not for a particular party, and of being governed in all their acts and deliberations by an honest desire to secure private rights and to promote the public welfare. If they will give us a constitution, with few and plain provisions, simple and efficient in its machinery, equal in its requirements as in its benefits, and thoroughly republican in its letter and spirit, there can be little doubt that the people will approve the result of their labors.

We anticipate no great difference of opinion, save on two points only—the judiciary and the subject of currency. We assume that single districts will be established for the election of members of the legislature, for the obvious reason that this is the fairest, the simplest, and the only democratic mode of apportionment. We assume, too, that the right of suffrage will be freely, as rightfully, conferred upon every male inhabitant in the territory who has attained the age of twenty-one years and has lived here long enough to acquire a residence and entitle him to the rights and privileges of citizenship. We assume, further, that it will be made the duty of the legislature to provide for the education of every child within the limits of the future state of Wisconsin, so that all who will can come and drink at the fountain of knowledge without money and without price. Upon all these points the great mass of our people are of one mind and thus far, at least, the convention will have a plain duty to discharge.

We have said that we anticipate difference of opinion on the subject of the judiciary. The system, we suppose, will not and need not be greatly altered from that which is at present in use in our territory. But as to the mode of selecting the judges: Shall they be appointed by the governor,

chosen by the legislature, or selected by the people? Which of these three modes will the convention adopt? It is very easy to see which of the three is the worst, viz: the appointment by the legislature; for that opens the door and holds out the temptation to all sorts of logrolling, caucusing, and corruption. Let us, at least, have no judges chosen by the legislature. But it is not, perhaps, so easy to say which is the best. In theory, no doubt, the selection of judges by an upright and intelligent executive, with the advice and consent of an honest senate, offers advantages which no other mode of appointment holds out. Could we reasonably promise ourselves that the future governors of Wisconsin, of whatever political party, would always, in the selection of judges, give the preference to private worth, conceded talent, and extensive acquirements, we should not hesitate to declare ourselves in favor of conferring the appointing power upon the governor and senate. But what has been in the other states, will be in Wisconsin. We have no right to assume that our governors will be any better men than those of Pennsylvania or New York. The influences which have always controlled executive appointments at the East will be equally potential at the West. If, then, we are to have judges appointed by the governor, we may rest assured that, as a general rule, they will be such as party conventions may recommend, or party leaders agree upon, or party interests and advantage seem to require. Heaven preserve Wisconsin from a judiciary so chosen!

There is another consideration which naturally presents itself in this connection. Suppose that the selection of judges should be left to the executive—how much power and patronage this arrangement would confer upon the first governor of the new state! If a weak man, he would be apt to appoint incompetent judges; if wicked, he might inflict upon us corrupt judges; if a designing man, he would doubtless select such as would be most devoted to his personal interests and advancement; even if a good man, he could

scarcely fail, in choosing so many, to make one or more bad appointments. Shall we put it in the power of any *one* man to mould the judiciary of Wisconsin according to his own pleasure and purposes, for years to come?

The alternative, of course, is an election by the people and there is much, we know, in this naked proposition to startle and alarm those who have not maturely considered it. But the principle is one which, in respect to justices of the peace, the first round of the ladder, is familiar to us all and has been in successful operation for thirty years past. Nay, in New York, the members of the Court of Errors, the highest judicial tribunal in the state, as well as the justices of the peace, who compose the lowest, have been elected by the people ever since 1821. Why not extend to the intermediate grades the same principle of selection which has been successfully applied to the highest and the lowest? But it is said and by many believed that in an elective judiciary those who attain the ermine will bend their decisions to popular clamor, local and temporary prejudices, or considerations of personal interest and aggrandizement. How shall these dangers be guarded against? Can we fence round human frailty so as to protect it effectually against the promptings of ambition, the thirst for gain, the lust of power, the dread of undeserved censure, or the desire of unmerited applause? We may not, perhaps, render our judges proof against temptation, but we can accomplish something towards it by the adoption of a few salutary provisions. Let the term of office for instance of our judges be eight or ten years, and a fixed and liberal compensation be assigned for their services. Let them be declared ineligible to and incapable of holding any other office during the term for which they shall have been elected. And let them be chosen on a day specially set apart for that purpose and so distant from the usual periods of holding elections as to diminish if not destroy the probability that the result will be influenced by merely political or party considerations. With such guards

we freely confess that we should look with more of hope and confidence than of doubt and apprehension to the working of an elective judiciary. But the length to which these remarks have extended admonish us to pause for the present.

THE RECENT ELECTION

[September 28, 1846]

Two paragraphs in a late number of the Madison *Democrat* reveal a part of the machinery by the successful use of which our opponents were enabled to secure so large a majority of the delegates to the constitutional convention. They are as follows:

> Notwithstanding the *extraordinary* inducements that were held out to our Norwegian friends to support the Whig delegates for the constitutional convention, yet they, with a sincere devotion to Democratic principles, gave our ticket an almost unanimous support. In the "banner precinct" of Cottage Grove in this town, they alone deposited over 100 straight Democratic ballots; while but one solitary one of their countrymen voted for the Whig ticket, and even he promised to "sin no more."
>
> In the precinct of Reeveville, in Iowa County, there were sixteen straight votes polled for the Democratic delegation and not one for the Whig ticket. This precinct is a branch of the English settlement in this county, and we hope hereafter to see the returns from Gorstville showing the same unanimity on the part of the Democrats in that region.

What the *Democrat* here claims to have been the secret of the party success in Iowa and Dane counties was, with very rare exceptions, equally the case throughout the territory. In almost every county the whole aim and effort of the Locofoco leaders and presses was to induce the immigrants to band together as Germans, Irishmen, or Englishmen and vote in mass for what they were told was the Democratic ticket. Of course, in order to effect such a result it became necessary for the leaders to misrepresent the principles and malign the motives of the Whig party; but as this necessity

involved no unusual or unaccustomed breach of truth, it neither troubled the consciences nor taxed the invention of those with whom deception has become habitual and whose creed teaches that "all's fair in politics." Thus the newly-arrived immigrants were assured that the Whig party were opposed to their acquiring any of the rights or privileges of citizenship; that they were in favor of building up a privileged aristocracy; that their policy favored the rich at the expense of the poor; and that the party which, lacking the substance, is prodigal of the *show* of "democracy" was the only one in whose keeping their interests would be safe, or at whose hands they could ever expect any favors.

These and similar appeals were industriously addressed to the thousands of English, Irish, and German immigrants who have settled in Wisconsin within the last two years; and it can excite no surprise that they were so far successful as to induce these classes of our population to vote for those whom they were taught to regard as their only reliable friends. It would, indeed, have been a matter of astonishment if, with such lights as were before them, they had acted any differently. But now that the election is over, it may well become those whose suffrages have determined the result to reflect seriously and dispassionately upon the consequences of their peculiar action; nor will it be out of place for us to consider whether this political division of our citizens is likely to be a permanent one and what, if so, will be its effect upon our social, political, and business relations. It can hardly be necessary for us to say to the readers of the *Sentinel and Gazette* that we have no sympathy with the Native American party. From the day it first drew breath in Tammany Hall, New York, to the hour of its temporary triumph in the Democratic districts of Philadelphia, we have regarded its spirit as evil; its motives, illiberal; its tendency, injurious; and its object, anti-republican, ungenerous, and unjust. Satisfied that the end would be to array the native against the adopted citizens, and to infuse into our political contests, already sufficiently earnest and heated, the bitter-

ness of sectarian strife and the violence of national prejudices, we regretted its rise, mourned over its progress, and rejoiced at its fall. But if we have contended against those who strove to band together the native against the adopted citizens, equally must we condemn those who seek to array the adopted against the native. If we have depreciated the formation of an American party to war upon the foreign-born portion of our population, we must denounce every attempt to organize and embody the latter class to act, in mass, against the former.

We can conceive, indeed, of no more unfortunate state of things in our territory than the introduction of such a spirit of clanship among either our native, or our adopted citizens. It would be drawing a line between these two classes of our population which no true patriot could wish to see established. It would engender bitter feelings and lasting feuds in our midst; transmit the prejudices of one generation to the next, and postpone, if not wholly prevent, the fusion of all the different compounds which go to make up the population of our territory into one homogeneous whole. Are these desirable results? Can any man who has really at heart the prosperity and welfare of Wisconsin wish to see such distinctions perpetuated among us? Are there any of our citizens, except the sordid place-hunters or selfish demagogues, who can lend their countenance or approval to political appliances fraught with so much mischief to the best interests of our future state? We appeal to our adopted citizens, themselves, to say whether those who would have them associate and act together at the polls as foreigners and not as Americans are what they so loudly profess to be, their true friends? Are these disinterested, reliable, patriotic advisers, who counsel them to keep up, in the country of their adoption, a political fellowship founded upon the place of their birth? Is it not clearly their interest, and as clearly their duty, to distrust these insidious counsels, to disregard these unworthy and selfish appeals and to divide, on all the political questions of the day, as native-born citizens do,

without regard to sect or birthplace, and according to the dictates of reason and the promptings of patriotism? Such, at least, do we conceive to be their duty, and it is upon these principles and in this spirit that we exhort them, henceforth, to guide their political action, however loudly professing friends and practised electioneerers may appeal to them, as Germans or as Irishmen, to stand by the "Democratic" party and support the "regular ticket."

CAPITAL AND CURRENCY

[October 7, 1846]

In some remarks, a few days since, upon the probable course of our convention, we expressed the belief that upon two subjects only, the judiciary and the currency, would there be any great disparity of views among the members. We have already adverted to some of the differences of opinion which are likely to prevail in regard to the former question, and it remains to speak of those which are to be looked for relative to the latter. And by way of preface it may not be inappropriate to glance at some peculiar features in our condition as a people. We are in want of capital for our ordinary business purposes and labor under the disadvantages incident to a new country for the lack of the means to develop its resources. Of the thousands and tens of thousands who are flocking to our territory, few possess more than barely enough to provide themselves with a homestead, or to start in the business in which they propose to embark. The introduction of capital into a new country is proverbially a slow process, partly because of the instability and uncertainty of our laws, and partly because much less regard is usually paid to the obligation of contracts than in older communities. If to these ordinary obstacles be superadded those arising from restrictive and ill-considered legislation, a long time must elapse before suffi-

cient capital will accumulate to impart a healthful activity to the business operations of the country.

Wisconsin, thus far, has suffered materially for the want of sufficient business capital. For several years we have been without any bank of discount and destitute of any local currency, except what has been furnished by the insurance company located in this city. Having no bank paper of our own, we have been dependent upon a foreign currency and while we have often suffered from its depreciation, we have been compelled to pay to eastern bankers a heavy rate of interest, which, under a different system, might have been retained at home. Our merchants, wheat buyers, forwarders, and all, in fact, who have had occasion to borrow money have been compelled to pay a high rate of interest because we have not possessed those moneyed institutions which would have introduced capital and by competition reduced the rate of interest.

We are aware of the strong prejudices existing in many quarters against banks, and as these institutions have heretofore been conducted in some of the states these prejudices are not without good foundations. But because one banking system has been found defective or vicious, does it follow that all others are necessarily and equally bad? Because the notes of some moneyed institutions, through fraud, mismanagement, or defective organization have proved worthless, must an indiscriminate warfare be waged against all bank paper? Is it not possible to devise a system which shall be free from the well-founded objection of conferring upon any man or any set of men, peculiar and exclusive privileges and which shall furnish the circulating medium necessary to carry on the business of the country? We must remember that the question is not now bank, or no bank, but whether Wisconsin shall have moneyed institutions of her own, subject to her own supervision and control, and in which her own citizens can take an interest, or whether we are to remain, as heretofore, dependent upon banks scattered all over our country from Lake Michigan

to the Atlantic sea-board, of whose solvency we can know comparatively but little and in whose management we can take no part. We cannot destroy bank paper. We cannot even drive it from our borders. In spite of the most stringent laws that we can adopt, the bills of Michigan, Ohio, Indiana, Canada, and the eastern states generally will continue to circulate in our territory. The question then resolves itself simply into this: Shall we have our own bank paper, convertible always into specie at our own doors, or shall we be compelled to take up with that over which we can exercise no control, and around which we can throw no safeguards?

Bank paper, or, in other words, credit is so closely interwoven with our commercial, agricultural, manufacturing, and mechanical pursuits that you cannot dispense with it, without severely crippling each and all of these great interests. The experience of others on this point is full of value and instruction to us. In every one of the older states there exists a banking system. In New York and Massachusetts, perhaps the two most prosperous states in the Union, there are numerous banks, furnishing a local currency of known value, redeemable in specie on demand and of immeasurable service in simplifying and expediting the everyday transactions of an active, enterprising, busy people. Fancy all these banks suddenly or even gradually blotted out of existence, and a positive prohibition made against the circulation of any more bank paper. Who can calculate the confusion, distress, depreciation, and ultimate ruin which would follow in the wake of so fatal a change? In each, if not all, of the older states the banking system has undergone great and various modifications. In each of them the people have suffered more or less severely from revulsions, suspensions, and occasional failures. But the experience thus dearly bought has prompted them not to destroy, but to amend. If abuses have been detected, uses have been discovered. If one system has been found, on trial, to work badly, another, by the same test, has been

found to work well. It may be regarded indeed as a most striking proof of the conceded value and indispensable necessity of a well-regulated banking system that in every one of the older states such a system is in successful operation, regulated and controlled by laws adopted by the several local legislatures, approved by the people and confirmed by time. And whether it be in Maine, New Hampshire, or Virginia, where the Democratic party has almost invariably borne sway; or in Massachusetts, Vermont, and Connecticut, where the Whigs have usually been in the ascendant; or in New York, New Jersey, and Pennsylvania where each party has alternately succeeded to power; in not one of these states do we find either political party, or any portion of either party, contending for bank destruction or calling for the extinction of all bank paper. Must not the united experience and unanimous verdict of all the older states on this point be deemed and taken as entirely conclusive?

What then, will our convention do? Will they heed the testimony and profit by the experience of the older states, or will they carve out a new and untried path for themselves? Will they discard all moneyed institutions, thus bringing us down to a hard-money currency, or making us dependent upon foreign banks, which are strangers to us and to our interests; or will they vest in the legislature power to establish such a system as our growing wants, enlarging trade, augmenting population, increasing productiveness, and yet undeveloped resources imperiously require? Will they, by stringent and unwise restrictions, deter moneyed men from investing any portion of their surplus means in this territory; or will they, by wise, well-considered and salutary provisions, encourage the introduction of capital, invite the aid of credit, foster the spirit of enterprise, and secure the wages of labor? Will they, in a word, listen only to the supposed requirements of party, or will they consult the wishes and act for the interests of the whole people? It is a high and honorable trust which has been confided to their hands; let it be worthily, honestly, and conscientiously discharged.

THE BANKING SYSTEM IN NEW YORK

[October 9, 1846]

The New York constitutional convention, in the progress of their labors, have at length got through with the provisions which related to the business of banking. The article as adopted by the convention is in the following form:

1. The legislature shall have no power to pass an act granting special charters for banking purposes, but associations may be formed for such purposes under general laws.

2. The legislature shall have no power to authorize, nor to pass any law sanctioning in any manner, direct or indirect, the suspension of specie payments, by any person, association or incorporation issuing bank notes of any description.

3. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

4. The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes, or any kind of paper credits, to circulate as money after the first day of January, 1850, shall be individually responsible to the amount of their respective shares of stock in any such corporation or association for all its debts and liabilities of every kind, contracted after the said first day of January, 1850.

5. In case of the insolvency of any bank or banking association the bill holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

6. The legislature shall limit the aggregate amount of bank notes to be issued by all the banks and joint stock associations in this state, now existing or which may be hereafter established.

Such is the banking system recommended by the New York Reform Convention. It was adopted by very decisive majorities and embodies the views of four-fifths of the delegates. A motion to amend the first section so as to declare that "the power of issuing paper money shall not be granted by this state" was voted down by seventy-eight nays to eleven ayes—nearly seven to one. The delegate who offered it is one of the very few persons in New York who contend

for the extinction of all bank paper; but in a convention composed of 128 members, a majority of whom profess to be, and were, elected as "Radical Democrats," he could obtain only eleven votes for this "anti-bank" proposition.

The provisions we have quoted seem to us wise, equal, and impartial. The business of banking is thrown open, as it should be, to all who choose to embark in it, the state taking care, however, that no individuals or associations shall issue notes as currency unless ample security for their redemption in specie shall have been previously deposited with the proper authorities. Thus protection is ensured to the bill holders and if through any mischance or mismanagement any of these banking institutions should fail, the bill holders are made preferred creditors. Why cannot this or some similar system be adopted for Wisconsin? Why should not our convention follow, in this particular, in the footsteps of their New York predecessors? Are not the authority and experience of New York of some weight and value in the premises? Can we reasonably expect that there will be more talent, more experience, or more "democracy" in the convention now assembled at Madison, than in that which has just closed its session at Albany? And if not, why should Wisconsin hesitate to receive the testimony and profit by the experience of New York?

SELECTIONS FROM THE MILWAUKEE *COURIER*

STATE GOVERNMENT

[November 12, 1845]

We believe that the people of the territory are in favor of organizing a state government as soon as it can be legally and conveniently done. We believe that the legislature at the approaching session may provide for the holding [of] a convention to form a constitution, apportion the delegates to the same (on the present basis of representation in the legislature), and designate the day of election as well as for holding the convention. We believe that all this may be done and a constitution framed in season to be presented to Congress at its next session, and Wisconsin [may] become a sovereign and independent state of the Union before the fourth of July, 1846.

This is the will of the people, and the representatives know it as well now as they would if the people had voted upon the question, when such vote, at any rate, would be informal, and could have no more force than public opinion expressed in any other way. This public opinion is already expressed. The time is propitious, and the expediency of the measure undeniable.

ELIGIBILITY OF MINISTERS TO OFFICE

[November 19, 1845]

One of the features of the Texas constitution, we hope, will not be imitated by Wisconsin. No minister of the gospel or priest is eligible to the legislature there. We believe that ministers and priests are quite as good as other men, and quite as safe depositories of public trusts; therefore we would have them eligible to the legislature. Indeed, as they have pre-

cisely the same interest in the country, in every respect as other humans, we would have them vote, fight, pay tax, run for Congress, and in all things, so far as the law is concerned, occupy precisely the same ground as other people. We want no church and state legislation.

The above article, from the Southport *Telegraph,* was copied into the last *Wisconsin Argus* without any disapproving comment, and in the absence of any note of disapproval we perhaps are justified in presuming that the sentiments of the *Telegraph* are endorsed by the "metropolitan" paper.

Whatever the views of the *Telegraph* may be in this particular (though sanctioned by the *Argus*) yet we feel confident that it does not properly reflect the wishes of the majority of the people of the territory upon this subject. This question has been considered upon to a very great extent; and we know of no one topic viewed in connection with our state constitution that has been in conversation so universally approved of by all parties as this feature in the Texas constitution that the *Telegraph* condemns. We know that a very respectable portion of our people will make a clear exposition upon this point a *sine qua non* in depositing their votes for delegates to frame the constitution. Such a provision as the *Telegraph* objects to has long been engrafted upon the New York constitution, and the restriction, we are satisfied, has been attended with the best results.

The messengers from God to man have, or ought to have, a holier ambition in carrying out the precepts of their divine master than in entering the wrangling field of political debate. The mild influences of the one are lost in the angry turmoil of the other. We are willing they may "vote, pay tax, and run," not for Congress, however, but "in the race that is set before them," satisfied that in confining themselves to their proper Christian duties they will reflect a higher and nobler honor on the cause they have espoused than if they are found as political disputants and candidates of a party, which to some extent at least must inevitably weaken their power upon more serious subjects over the

minds of those who are politically opposed to them. A true minister of the gospel, one who faithfully practices the solemn injunctions of his God and whose aim is to add luster to His name, should keep his skirts clear of everything which might, even indirectly, impede his Christian course or lessen that influence which his sacred calling gives him; all of which, if we properly understand what appertains to his profession, should be exclusively exercised for the spiritual improvement and benefit of his fellow man.

We cheerfully subscribe to the last suggestion of the *Telegraph,* that "we want no church and state legislation," and hope to see no union of the kind; and if the ministers of the "church" will confine themselves within their proper sphere, we think we can assure the *Telegraph* that the "state" need apprehend no danger from that quarter.

ELIGIBILITY OF MINISTERS OF THE GOSPEL TO THE LEGISLATURE

[November 26, 1845]

Our neighbor of the *Gazette* is "both surprised and sorry" at the position which the *Courier* assumes upon this question. It need not surprise or grieve our neighbor to find us differing upon many matters of political concernment. If a difference of opinion is to have this effect upon them, we fear they will have occasion to be sorry very often. We took the bold stand for the exclusion of ministers of the gospel from seats in the legislature after due consideration and a somewhat extensive observation of cause and effect in political matters. We have witnessed the baneful effect upon society of mixing politics and religion, and we wish as far as possible to remove the inducements to do this. We acknowledge the truism of the *Gazette* that "Ministers are men like ourselves, possessing the same passions, and liable to the same temptations," and hence the danger of holding out before them the prizes of the political race, to incite a

worldly ambition, and to tempt them to abuse the holy confidence of their flocks, which their ministerial calling has given them. Who so blind as not to foresee the result upon society should an ambitious man assume the robes of a priest in a popular church to work out political distinction? His office of gospel teacher admits him into the most confidential domestic relations of life, and his influence over the minds of his flock, through the various members of their families, is of the most binding nature. If to this is added the strength of political party organization, he holds an undue and unjust influence as an individual. Supposing him then to become a Whig or Democratic candidate for representative in the legislature or the councils of the nation, the issue would be made a religious and not a political one. If he was a Catholic priest, the religious force of the other churches would be used against him; and if a Presbyterian or a Baptist political priest, he might reasonably calculate to have the opposition of the Catholics, whose church has been denounced by the *candidate* from his *pulpit,* as one that should be opposed politically. Thus the politic-religious issue would be joined, and who has not seen enough of such controversy to know that the most malignant passions of the human heart would be loosed? And after a contest of this nature, waged by crimination and recrimination, one party or the other being victorious, who would answer for their conduct or moderation? The recently enacted scenes in New York and Philadelphia are instructive upon this point.

The admissions of our neighbor are such as no man can deny, and are the very foundation of our position. But we beg leave to differ with them when they call our position an illiberal one. We believe it to be the only one that will preserve our elections from the illiberality of sectarian strife, and keep our state affairs free from the dictation of church.

THE PLEA OF "HIBERNICUS"

[March 25, 1846]

FRANKLIN, W. T., March, 1846

* * *

There is another question in conjunction with the division of the county to be decided at the coming election, viz: Whether we shall remain as we are, a territory, or vote to become a state. That question has been discussed in the last legislature, and I have but few remarks to make on that subject, and only such as have not been put forth to my knowledge by those who have spoken before me upon the subject. It is generally understood, I presume, that Congress has stopped our rations, thereby giving us a gentle but sharp hint that we must for the future work for and board ourselves. We are now come of age and we ought, by all means, to set about developing the resources of our future state; that we never can do till such a time as we become a state. Not many years ago a portion of our territory in the mineral region west or northwest of Lake Superior was ceded to John Bull in consideration of a patch of woodland on the Aroostook. That transfer never could have taken place if we had been a state. Second, we are losing severely by reason of having no internal improvements in our territory of any consequence. If we were once in possession of a great central railroad leading from our lead mines to the principal towns upon our lake shore, particularly to the city of Milwaukee, our city in a short time, comparatively, would become like New York and Boston. White lead factories would in a short time be established in our city, and it would be the means of bringing * * * an immense capital into our town which would make hard money plenty throughout the country; besides, a vast amount of merchandise would be transported to the interior of the state, and they, on the other hand, could send in their surplus

produce to Milwaukee, where there is the best market town in the territory.

The greater part of our lead at present, I believe, is shipped by the way of New Orleans. Our men of capital and enterprise are far behind the spirit of the age in forwarding their own interest and that of their country. We must for the future awake from our lethargy and put our shoulders to the wheel, and all those who are legally entitled to a vote will first of all vote to become a state, and those who are concerned in the division of the county will consult their best interests by casting their votes against that fatal measure. I do assure you, fellow citizens, that this address has been written by no unfriendly hand; I will only remark that your humble servant has always been and ever shall be a staunch friend of the settlers on the canal lands, vowing never to cast a vote for any man who is not in favor of their getting their lands at one dollar and a quarter per acre, the minimum price of government land. I do think that to charge them any more is contrary to every principle of law and justice.

There are two or three great advantages that we will gain by becoming a state and getting public works in a state of progression. First, the great number of men working on the public works would settle the interior of the country on the route, and we would have the representatives in Congress, and our portion of the senators; these would be an offset against the "Native American party members from Massachusetts and Philadelphia." Besides, it is much better for us to come into the Union now when the Democrats are in power, because we will be more sure of a liberal constitution, and we can without any difficulty, please God, elect our venerable Governor Henry Dodge to the same office that he now holds. In conclusion, I deem it highly important to call upon all foreigners, more particularly, my countrymen, the sons of "Erin's Green Isle," to lose not one minute, but go and declare their intentions to become citizens of these United States, and then, according to law, they will be en-

titled to a vote at the coming struggle at the next town meeting, and for delegates to form a state constitution. I remain, fellow citizens, your ever faithful servant.

HIBERNICUS.

OUR STATE CONSTITUTION

[May 20, 1846]

Several of the newspapers of the territory have approached the subject of the formation of a state constitution, and [have] given their views in relation to certain features which they wish to see incorporated in the constitution. We are glad to see this early awakening upon a subject of such vital importance. Experience has proved that the fears which operated upon our ancestors in framing the early state constitutions, of giving too much power to the people, were groundless, and that the appointing power has proved to be the most corrupt source of power in the general or state governments.

Much has been said of the danger of an elective judiciary; but is there any enlightened politician in the state of New York who, after twenty-four years' experience, can be found to advocate the abandonment of the present system of electing justices of the peace, and a return to the system of appointments? Yet even Martin Van Buren, who strenuously opposed the proposition of electing justices of the peace in every town by the people, on the ground that they would be too much under the influence of local and party feelings, said that it was perfectly obvious that every consideration that would be urged in favor of electing justices of the peace would apply in favor of having the judges of the higher tribunals also elective; and that even fewer objections exist to having those courts selected in this way; and also that there was an inconsistency in having the judicial officers appointed and the justices of the peace elected.

What we most religiously believe, is that legislative appointments are the most corrupt, because there is no way in which legislators can be made personally responsible for a bad appointment. Every man who has taken the pains to observe for himself has seen that logrolling secures appointments without regard to the qualification of the candidate.

VIEWS OF "ORMOND"

[August 19, 1846]

The time is approaching when the representatives of the people of the territory will, pursuant to law, assemble to frame a constitution under which the star of Wisconsin is to arise and take its place in the national constellation.

That our state constitution will be republican, is certain. That it will be democratic is, I conceive, also certain. It must be republican in order to satisfy the paramount constitution of the United States. It must be democratic in order to satisfy the people of Wisconsin.

As it is hoped the spirit of liberty will animate our delegates, there will doubtless be much discussion upon minor points and possibly some difference of opinion on matters vitally important.

There is one head upon which there has been some discussion and upon which I hope there will be more, for it is *one* of the most important if not *the* most important which our delegates will have to consider and pass upon.

I mean the judiciary. It is said by many that our judiciary ought to be elective. Many others are for adhering to the time-honored system of executive appointment, by and with the advice and consent of the senate or upper chamber of the legislature. Lights are called for, and discussion is invited. In these enlightened days a *name* is absolutely necessary to give weight to an opinion, and I hope I will be pardoned for presenting a rather lengthy extract

from the learned author of the *Commentaries* on American law—the Blackstone of the United States.

Many may dissent from the views of Chancellor Kent, but all must respect his opinion. He says (*Commentaries,* I, 291)[8] * * *

So much for the authorities and precedents cited, and for the views of Chancellor Kent on the subject of the judiciary. The advocates for elective judges may quote the constitutions of Mississippi, Vermont, Rhode Island, and two or three other states, but they will hardly desire to weigh them in the balance against the great majority of the most important states in the Union and the Constitution of the United States with them.

It is true it is possible we might have good judges by electing them for a term of years. The people may have discrimination enough to choose their judges, and virtue and magnanimity enough to support them in the administration of the laws upon all occasions and in all emergencies—but it is asking too much, and risking too much. It is possible the people *may* always do their duty, but, as the authority I have so freely quoted from says, "all plans of government which suppose the people will always act with wisdom and integrity, are plainly Utopian, and contrary to uniform experience. Government must be framed for man as he is, and not for man as he would be if he were free from vice."

There may be many men in Wisconsin who as judges (under any circumstances) would act honestly and uprightly. But, I will repeat, it is asking too much and risking too much. We have nothing superior to men in Wisconsin, of which to make judges (except the ladies; but although they are all judges by immemorial prescription, with jurisdiction universal and supreme, yet they will only preside—whenever they please)—and therefore we cannot expect superhuman virtue and consistency.

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[8] Here follows a long citation from Kent's *Commentaries*, which we omit to print.

Suppose a judge is elected for a term of say six, eight, or ten years. As soon as he begins to feel easy on the bench, he begins to think of a reëlection; and it is perfectly natural that he should. Having left, perhaps, a lucrative business for a seat on the bench, he will be anxious to preserve his seat, for he will know that his former business has been flowing in new channels, and he may conceive that it might be rather difficult to get it back. As time rolls on, instead of applying himself to study and increasing his store of legal knowledge, he must begin to make political capital. He must read the newspapers, instead of "the authorities." Instead of getting acquainted with reports and decisions he must get acquainted with politicians and wirepullers; and instead of holding communion with "the illustrious dead" in his library, he must hold communion with his "fellow citizens" in the streets.

I do not say that the power of appointing by and with the advice and consent of the upper legislative chamber is not liable to abuse. The question is not what plan is perfect, for perfection in unattainable, but what plan is the best and most conducive to the public good and to the interest and honor of the state. And experience and reason seem to concur in forcing the conviction that a judiciary appointed by the executive with the advice and consent of the upper branch of the legislature, each judge holding office during good behavior, or until he should have attained the age of sixty-five or seventy years, and having secured to him, by law, a liberal, stated, yearly compensation, which should not be reduced during his continuance in office, is the best that is known, and the safest a people can have.

ORMOND.

VIEWS OF DANIEL FITZSIMMONS

[August 19, 1846]

To John A. Brown Esq., Editor of the Milwaukee Courier:

Dear Sir: You will very much oblige me and a very large portion of the Democracy of this city and county by publishing the following statement of our sentiments and wishes in relation to our state constitution.

To the Democracy of the territory of Wisconsin—I particularly address myself to that large and respectable portion of them who are anxious to extend the right of suffrage to the adopted citizen in the shortest period that has been allowed by the most liberal states in the Union, Illinois, for example. Fellow citizens, a crisis has arrived in the history of our territory, when it behooves every honest, liberal, and patriotic man to do his duty fearlessly, candidly, and perseveringly. If you carelessly permit the present opportunity to go by without a struggle to establish your rights, all our future exertions will be in vain after the constitution is formed and our hands tied up and our voices stifled by those who are hostile to our most vital interests.

Therefore, if it is your wish to have a free and liberal constitution established in Wisconsin, I earnestly request of you to attend to what I have to say, as it seems to me that the following remarks are of the utmost consequence to yourselves and your posterity.

First, let no voter cast his vote for any candidate without knowing what his principles are with respect to the right of suffrage. Let the questions be definite not vague. If he is in favor of the alien becoming a citizen in twelve months after taking the oath of allegiance, and is an honest man, capable, and otherwise a sound Democrat, use your best endeavors by all honorable means to procure his election.

This principle of aliens becoming citizens in one year after taking the oath of allegiance (I mean white men who are of age, and who contribute to the support of the state by paying taxes or otherwise) has been advocated by the liberal and enlightened ex-Governor Seward of New York, and by our no less illustrious, patriotic, and liberal governor of Wisconsin, Gen. Henry Dodge. No honester or truer patriots than these gentlemen that I have just mentioned ever, in my opinion, held office in these United States. Our present Governor in 1843 expressed himself as follows, in reply to inquiries whether he would be in favor of foreigners, without taking the oath of allegiance, voting for delegates to frame a state constitution. He answered in the affirmative, and further added that, "Taxation and representation should go hand in hand." Such was the opinion of our venerable Governor in '43; and no one doubts but that such are his opinions now, for he never was known to change his democratic creed from the day that he was first appointed by Andrew Jackson, the hero of New Orleans, up to the present day, in office or out of office.

Now let us hear what the patriotic ex-Governor Seward says upon the subject of the naturalization law. In addressing himself to the Irish repealers, he said that the Native American party principle of requiring foreigners to be twenty-one years in this country after taking the oath of allegiance was monstrous in the extreme, and at variance with our constitution, and to our free institutions, and belieing our Declaration of Independence. He further stated his wish to make an amendment to the Native American party principles by taking away the figure 2 and leaving 1. Having given the opinion of these two great statesmen I shall proceed to state some of the other articles we wish to have put in the constitution. It is our wish that upon the adoption of the state constitution every white male inhabitant who is of age, and not otherwise incapacitated, shall, by contributing towards the maintenance of the state and taking the oath of allegiance, be entitled to all the privileges of citizenship.

No property qualification to be required of voters, nor any property qualification to be required of office holders other than giving sufficient security for the faithful performance of their duty.

Third, adopted as well as native citizens to be eligible to any office in the state, governor not excepted.

Fourth, the article upon state debts in the Iowa constitution would in my opinion suit us very well, viz: "no state debts over a certain amount to be created by the legislature, or other liabilities exceeding the sum of one hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless it be by a vote of the majority of the people."

Fifth, the article also in the Iowa constitution on incorporations we might adopt with perfect safety; it prohibits particularly the creation or renewal of bank charters, the making, issuing, or putting in circulation any bill, check, ticket, certificate, promissory note or other paper, or the paper of any bank to circulate as money. The general assembly of this state shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking, or creating paper to circulate as money.

Sixth, there shall be civil and religious liberty to persons of every denomination, without prohibition or inequality.

Seventh, there shall be vote by ballot.

Eighth, the principal officers in the state to be elected by the people, the officers of the judiciary [and] circuit judges, included; and all above that grade, might, in my opinion, be left to the wisdom of the legislature to be elected. A reasonable salary to be given them, not too extravagant nor yet too niggardly; sufficient to live comfortably.

Ninth, the school lands when brought into market to be sold outright and deeds given in fee simple, not leased, and part of the purchase money to remain on bond and mortgage at a reasonable interest.

Tenth, the lands that are to be granted to us by Congress when we become a state to be solely appropriated for educational purposes, for the erection and endowment of colleges, academies, and the support of common schools; all, without any distinction, to participate in the fund thus raised.

Eleventh, there shall be provision made for the unfortunate debtor, and a comfortable homestead allowed him that will be exempt from seizure by his creditors.

Twelfth, the duties arising from goods that are sold at auction shall be appropriated for the use of such city, village, or township that such goods may be sold in.

There are many other essential articles that ought to be inserted here, but my space will not permit me to go further. The four great cardinal points that we must adhere to, are, first, civil and religious liberty; second, the shortening of the time of aliens becoming citizens; third, no special taxation without a vote directly from the people; fourth, as few appointments as possible, the great body of office holders to be elected by the people. The secretary of state, auditor, and treasurer ought to be elected by the people, and to hold their office two years. These three officers are elected by the people agreeably to the constitution of the state of Iowa. I do think that we are entitled to as liberal a constitution as any state in the Union. We are equally as moral, as industrious, and intelligent as any of our sister states or territories.

A controversy was carried on last winter or spring between the Whigs and Democrats, the former charging the latter with having made odious distinctions between the native and adopted citizen, requiring of the adopted citizen a property qualification and longer residence than was required of the native citizen. It appeared from the evidence that was produced by the Democrats that there was no such odious distinction in the draft as originally drawn by the Democratic trustees of this town; but it appears that the odious distinction complained of was made by the Democratic legislature at Madison. If so, it will behoove the

Democratic convention to wipe off the foul stigma from their character by granting a liberal constitution to the people. This is the only means by which they will be able to regain the former confidence that the adopted citizen has invariably reposed in them.

Fellow citizens, I have now, to the best of my ability, performed my task, both as a delegate at the Democratic convention held at the courthouse on the eighth instant, and now upon paper. I have in both places given expression to my opinion freely and boldly, but not with disrespect to anyone.

It now remains for you to do you duty at the polls on the day of election in September. Remember before you cast your votes to make a binding contract with your Democratic candidates that they will to the utmost of their abilities carry out the principles of equality as laid down in this address. If any there be, those who turn recreant to the confidence reposed in them, upon their return home, let them be met with the hisses and scorn of an injured community, whose interests they have betrayed. Let them remain in obscurity never to be noticed by the Democracy again. I feel confident, fellow citizens, that the delegation we have chosen will prove as true to their trust as the needle to the pole, and are every way worthy of your support. Let there be no division in our ranks when we come to the polls; let us all have but one grand object in view, to elect the whole ticket, and to use our best exertions to obtain a liberal and free constitution for Wisconsin, that will be the means of bringing immigrants of character and capital into our young state, settling on our unoccupied lands, establishing factories upon our streams, opening new stores in our townships and villages, and building splendid dwelling and commercial houses in our seaport towns. In a word, there is nothing wanting but a good, liberal state constitution to make Wisconsin the queen and glory of the "far West," and Milwaukee the commercial emporium of the Upper Lakes.

I remain, fellow citizens, your ever faithful friend,

DANIEL FITZSIMMONS.

Milwaukee, August 10, 1846.

AN APPEAL TO ALIENS

[September 2, 1846]

Bark River, Waukesha Co., W. T.

Sir: As a member of the Democratic party I feel in duty bound to express my feelings on a momentous question that is agitating the public mind, and which is dear to every lover of his country, and a question which is of the greatest interest to the people of the state of Wisconsin in the formation of our state constitution, viz: the right of suffrage. The Democratic creed is universal suffrage, equal rights, equal privileges, and equal protection to all—no distinction as to nativity or religious principles. On the other hand, the Whigs are opposed to those principles, particularly to the right of suffrage, which is the most dear to every lover of his country. But at the county convention in this county, Waukesha, held by the Whigs on the twenty-second inst., I discover they have taken an entire[ly] new tack. Resolutions were passed all at once in favor of negro suffrage. Now, sir, to this I have not the least objection, but it seems strange to me that such a resolution should have passed unanimously as is stated by the proceedings of that convention, for to my certain knowledge there were delegates in that convention who have always advocated the doctrine of a property qualification, allowing no person to vote or to hold office unless he was a freeholder. And it appears also that those very men to whom I allude in particular are nominated to the constitutional convention. Such is the inconsistency, so glaring in its nature, that I can't see for the life of me how such men can claim the confidence of any man, much more claim his vote. But, sir, the object is too plain to be misunderstood by any common sense man: it is to try and catch votes from the Liberty party, but in this they will find the viper has gnawed the file. True men of the Liberty party cannot be duped in that way; they have made a nomination which they will truly support.

But suppose the Liberty party did not support their own ticket—they had better support the Democratic party than the Whig party, because they have the best evidence that the former is the true friend of universal suffrage without distinction as to color. [In] the legislature last winter, when the bill was on its passage providing for the formation of a state government, a motion was made to strike out the word *white* so as to allow all male persons to vote for delegates, etc. Ten Democrats voted in the affirmative, and every Whig in the house voted in the negative. One of the Whigs, when his name was called, not being satisfied with saying "No!" exclaimed at the top of his voice, "No! Never!" Four of the Milwaukee County members voted in the affirmative—one of whom is now a Democratic nominee in the county of Waukesha to the constitutional convention.

Here we have the evidence recorded of the fact that a large portion of the Democratic party have done what the Whigs of this county (a few of them) pretend they will do if elected. But my motto is not to trust them until after election. Now let us look at the next resolution. After they let the negroes vote they resolve themselves into their old track again and confine the right of suffrage to citizens only, thus depriving about one-half of our enterprising white population and taxpayers of the right of suffrage a long time. The English, Scotch, Germans, and Irishmen must stop five years before they can have a choice in their rulers. Is this republicanism? Is this equality? No, sir! It's nothing more or less than downright old federal whiggery; and it is an example that will not be set by the framers of the constitution for the Eldorado of the West if the voters are true to their interests and elect Democrats to the convention. For example I will illustrate a case in point which I lay down as a rule in contrasting the difference between the Whig and Democratic parties on the question of universal suffrage. One of the Whig nominees is a resident of this town; he has repeatedly and for years past advocated the property qualification; he has stated, as can be proved by a number of

persons, that no person ought to vote or hold an office unless he was possessed of a freehold estate and also that a foreigner ought not to vote even then, unless he was a citizen, and had become enlightened enough to understand the constitution and laws of our country, because, says he, he is so ignorant that he don't know how he does vote. On the other hand, one of the Democratic nominees is also one of our townsmen, and has always advocated the right of universal suffrage. In the legislature last winter he supported universal suffrage without respect to color, birthright, or otherwise. I select those two persons out from the rest for no other purpose only [than] to contrast plainly the difference between the two parties; the one follows the creed of his party by supporting universal suffrage, the other follows the creed of his party by depriving about one-half of our taxpayers of this sacred right until they have been in the state five years, and would extend the time to twenty-one years if they only had the power. The extension of the time has been advocated by the great soul and body of the Whig party. It is obvious that, by extending the time to twenty-one years, the foreigner never could enjoy the right of suffrage, for the aggregate foreign population have come to middle age when they arrive in this country; keep them twenty-one years longer and their time is no more.

One of the main arguments of the Whigs against foreigners voting as quick as they get their first paper (which is the Democratic creed) is this: They say that if you let them vote as quick as they get their first paper they never will complete their naturalization; hence they are not liable to be called out in defense of their country in cases of invasion or insurrection, etc. To some extent this is true and has created great prejudice against the foreigner; and it is due the foreigner as well as the country that such a state of things should not exist. I see it is advocated by some that our constitution should be framed making the foreigner a citizen in one year. It's true they can be citizens of our state in one year, but this will not make them citizens of the United

States; therefore, I would propose to remedy the evil in a different shape. I propose that the following article be engrafted in our constitution, viz:

Section 1. All male citizens of the age of twenty-one years or upwards, who shall have resided in this state six months, shall be allowed to enjoy the rights of suffrage, and shall be eligible to any office in said state prescribed by this constitution or the laws of said state.

Section 2. Any male alien of the age of twenty-one years or upwards, who shall have resided in this state six months, and who shall have declared his intention to become a citizen of the United States according to the acts of Congress on the subject of naturalization, shall be allowed to enjoy the right of suffrage, and shall be eligible to any office in this state. *Provided,* That after an alien shall have resided within the limits of the United States a sufficient length of time to have become a citizen, and who shall have refused or neglected to become a citizen of the United States, shall thereafter be debarred of the right of suffrage, and shall be ineligible to any office in this state, until he shall have become a citizen of the United States according to the acts of Congress on the subject of naturalization.

I think that such an article and proviso engrafted into our constitution would be the proper ones to prompt aliens to become citizens as quick as the acts of Congress would permit them. I think [neither] the alien nor the citizen can object to such a proviso; the alien could not vote until he had been here time enough to have become a citizen, which is now five years. Should Congress shorten the time, well; should they lengthen the time, it would be all the same. And if the alien would not become a citizen when he has the privilege he could blame no one but himself for losing his right to vote or hold office. I think such a provision is the most salutary one that can be engrafted into our constitution.

Democrats of Waukesha County, I have given you the issue between the two great parties of the day so far as re-

gards the right of suffrage; and you have Democratic nominees before you that you may well feel proud of, county and legislative inclusive, and, depend upon it, they will prove as true to their creed as the needle to the pole. Democratic aliens, on the first Monday of September comes the tug of war, for [on] the choice of men on that day depends the welfare of you and your posterity. English, Scotch, and Irishmen of Lisbon, remember on the one side your enemies are set in battle array against you some of whom have declared that no man ought to vote unless he was a freeholder. Remember it has been told to your face that you ought to be deprived of this sacred right. Remember it was told to your face by Whigs in that stone schoolhouse that a state government ought not to be formed until the clause in the law allowing aliens to vote for delegates was repealed. Now is your time to brand with political infamy all who will allow themselves to dabble in such dirty water. Those of you that have not got your first papers, go to the nearest clerk of the court and get them, and vote your friends into the constitutional convention; once you lose this chance and let whiggery gain the ascendency, all our future exertions will be in vain, the constitution will be formed, and your liberty blasted forever. Democrats of Menominee, your enemy is close to your doors—remember the man that said the d——d foreigners never ought to have a vote. Remember the Democratic nominee of your town who has always been as true as steel. In fact remember all your own nominees and go the ticket, the whole ticket, and nothing but the ticket. Democratic foreigners, I myself am an adopted citizen, and I know whiggery so well that again I say get your papers and do your duty, and on the first Monday in September we can put a veto onto whiggery with a two-thirds vote.

Yours truly,

D.

HINTS TO OUR DELEGATES—No. 1

[September 9, 1846]

There is a story of an eastern monarch who was always ready to hear advice from his subjects upon any matter of public policy or state government; but the adviser, previous to opening his budget, had to agree to one condition, and the King, previous to being enlightened, was graciously pleased to agree to another. The volunteer cabinet counsellor was placed standing upon an ingot of gold, and if his advice was good (that is agreeable), he was rewarded with the precious footstool; if otherwise, he not only obtained no reward, but had also to undergo some dreadful punishment for his presumption.

Thanks to the benign spirit of democracy, if their majesties, the people, do not always reward with *gold* their volunteer advisors, they never punish them—except by neglect.

In talking to, or at, our delegate, I do not think it at all necessary to "hint" anything whatever with respect to our being allowed to enjoy civil and religious liberty in the fullest and most comprehensive sense of the terms.

No delegation that could by any possibility be elected in Wisconsan (we spell our own way) would think of depriving us of any more of our natural liberty than is absolutely necessary to bind us to the observance of the social compact.

We no more expect to hear of their abolishing our right to trial by jury, to the writ of Habeas Corpus, to assemble peaceably and petition for redress of grievances, to keep and bear arms, and the other fundamental rights guaranteed by the Constitution of the United States, than of their abolishing our right to live and breathe and have our being. Nor do we expect to hear of the establishment or endowment of any religion, or of any restriction of the free exercise of any mode of religious worship, any more than we look for the suppression of moonshine and the establishment of perpetual sunlight.

But if our delegates stand in need of no "hints" about what they *won't* do, a few on some of the things they *shall* do may not be altogether unseasonable.

We will have a legislature; and it is also taken for granted that it will be composed of two distinct and independent houses or chambers.

Let us call the lower house or chamber, the "chamber of deputies," and the upper, the "senate," both chambers—or the legislative department—let us call the "State Assembly."

How many members shall compose the "chamber of deputies?"

The act of establishing our territorial government gave us a lower house, composed of twenty-six members, a number sufficiently large for the then population of the territory.

We are now upwards of 150,000, and although it would not be for our interests to have a very numerous chamber of deputies, yet to be fairly represented our deputies ought to number more than twenty-six.

When sufficient knowledge of the wants and wishes of the citizens in every part of the state is concentrated the end of representation is attained; and aside from the expense, it would be impolitic to send men to the legislature who could not impart any additional information of the legitimate subjects—the wants and wishes of their constituents.

To allow a deputy to every certain number of inhabitants would not be well, because the constitution of our state should be so formed as not to need amending or altering for ages, and if every certain number of inhabitants be represented by a deputy, and our state continues to increase in population as it inevitably shall—either the "certain number" must be increased or the number of deputies will soon be too large for profitable debate, or for convenience and dispatch of business.

Let our constitution say that the chamber of deputies shall be composed of forty members, that to each county shall be apportioned a number of deputies commensurate

with its population, and that [to] every organized county shall be apportioned at least one deputy. That when the state shall contain a population of half a million, the number of deputies shall be fifty; that when the population shall be one million, the number of deputies shall be sixty; when one million and a half, seventy, and so on increasing ten for every half million of increase in population, until the number of deputies shall be two hundred; beyond which the number shall not be increased.

Let the deputies be elected to hold office for four years, or two regular sessions of the State Assembly (it being understood that the regular sessions shall be biennial).

When assembled for the first time let them be divided into two classes, one of which shall retain their seats but for two years, or one regular session; so that at all subsequent sessions at least one-half of the deputies shall have the experience of at least one session.

Let the senate be composed of twenty senators. Let them be apportioned among the several counties according to population, in the same manner as the deputies, or to districts, when one county is not sufficiently populated to be entitled to a senator, and let the apportioning and districting be made at least once every ten years, as soon as may be after the rendering of the decennial census returns, and in such manner as the State Assembly shall by law direct.

When the state shall contain a population of half a million, let the number of senators be twenty-two, when a million, twenty-four, and so on increasing two senators for every half a million of increase in population until the number of senators shall be fifty, beyond which the number should not be increased.

Let the senators be elected to hold office for six years, or for three regular sessions, and when first assembled let them be divided into three classes, the first to keep their seats during the full term, the second to vacate their seats at the end of the fourth year, and the third to vacate their seats at the end of the second year, so that at all subsequent

sessions there may be senators of one or two sessions' experience in the senate.

Let the compensation of senators and deputies be one hundred dollars for their attendance at each session of the State Assembly, regular or special, and two dollars per day for every day they shall be actually engaged in public business or the duties of their respective chambers. Their travelling compensation should be ten cents per mile and no more.

Every citizen of the state should be eligible for the senate or chamber of deputies, and a "citizen of the state of Wisconsan" I would define thus: A free, white man, of full age, and sound mind, who is a citizen of the United States, or has had his declarations of intentions to become a citizen filed at least one year, and who has resided within the state for six months."

I am aware that the word *white* will be regarded as a *black* spot by many worthy and respectable citizens, and it is to be wished—"devoutly to be wished"—that it could be dispensed with. I believe it is nothing more than justice—nothing more than common right—for the African and his descendants to have the same measure of political liberty as the European and his descendants. It is clear, however, that if the state of Wisconsin confers privileges upon the negro which he does not enjoy in any other of the free states of the Union, we shall have an influx of "colored population," and I would ask any philosophical man or political economist if such a population is desirable.

It is true [that] during the last session of the territorial legislature an honorable member drew a very enlightened comparison between the negroes and the Norwegians, in which I believe the former had the best of it, but I believe the gentleman proved nothing more than that *he* was not in his proper place.

Although the peasantry of the north of Europe (in fact of all Europe) are comparatively rude and uneducated, yet have they not the capacity—are not their intellectual and moral capabilities as great as those of their more fortune-

favored countrymen, among whom are to be found "the masters" in every art and every science, and are not the immediate descendants of European peasants among the first men in the land?

The Celtic, the Teutonic, the Scandinavian, and all the minor branches of the great Caucasian race, though differing in language, religion, and manners, yet readily amalgamate. The blending of these different races—or rather portions of a race—has formed, and is forming, the great American people. The negro never has been, and never can be, united with them; and if the judgment or feelings, or taste, or (if you will) prejudices of our people did not present an inseparable barrier, it would be the soundest public policy to prevent such a consummation by legislative enactment.

The efforts of the patriot should be directed to improve his countrymen—physically, intellectually, and morally as well as politically, and he should never think of introducing among them an inferior race.

The Africans and their descendants are an inferior race. This is not mere assertion. It is a demonstrated physiological fact. Give them the same advantages you give to Europeans and their descendants, and although they are certain to advance considerably, they are just as certain to remain in the rear. No change in their political condition can emancipate them from the disabilities which it has pleased the God of nature to impose upon them—the Ethiopian cannot change his skin.

The "colored population" of our territory is small. It should be the care of our delegates not to give a constitutional invitation that would make it larger; for it is obviously impolitic to encourage in the same country the growth of two distinct races, who by no possibility can ever amalgamate.

But enough for the present. Next week (if permitted) a few more "hints" may be given.

ORMOND.

HINTS TO OUR DELEGATES—No. 2

[September 16, 1846]

The executive department of the government of a free state should be framed with jealous circumspection, yet with enlightened liberality. The governor should not be allowed too wide a field for the exercise of his discretion or caprice; neither should he be cramped by restrictions that would make him little better than a automaton.

Four years would, I think, be a proper term for our governor to hold office. A much longer term might make him "forget to remember" that his office was the people's gift; a much shorter term would not be long enough to enable him to give a character to his administration.

He should not be eligible for reëlection for at least four years after the expiration of his term of office, for if he shall be eligible for immediate reëlection, it is nothing more than reasonable to suppose that the power and patronage of the governor will be employed to keep a *man* in office, and that consequently the executive department will hardly be administered with desirable purity. His compensation should be at least $2,500 per year.

I do not see the necessity of having a lieutenant or subgovernor. Governors or presidents seldom die, and yet less frequently resign or become incapable of holding office. Our governor will certainly, as far as climate is concerned, have as good a chance for life as the president of the United States, or any governor in the Union, and if one dies in half a century it is as much as any gentleman "in the line of safe precedents" can expect.

The death, resignation, or incapacity of the governor should operate as a call for convening the senate forthwith, and as soon as convened they should, without adjourning, choose a governor, whose term of office, however, should be but the unexpired portion of his predecessor's term.

A limited veto power should not be unpopular among a thinking people, although its exercise may sometimes cause displeasure and be even reprehensible, for if the history of the exercise of that "one man power" be reviewed, it must be allowed that it has often proved a most salutary check upon hasty legislation and exemplified the truth of the proverb, "Second thoughts are best."

Our governor should have a limited veto. A bill, etc., to become law without his assent should at least pass the deputies' chamber by a majority of two-thirds of the deputies voting, and the senate by a majority of the whole number of senators.

He should also have a power to pardon, and to remit and commute punishment; and here I would notice a subject which has been of late pretty largely discussed, both in our territory and the neighboring and eastern states; I mean capital punishment.

Without regarding the universal precedent that has been given in all ages of the world, from the earliest period to the present day, and the divine sanction of the punishment of death—it does appear that the world is not yet arrived at that happy epoch, when man will regard the life, liberty, and property of his fellows as sacred; or even to the less desirable (though much to be desired) era when human life will not need the strongest guards that can be set around it.

I am no advocate for a sanguinary code of laws—for a long list of "felonies by statute." Death should never be inflicted by man upon his fellow, except as a penalty for the commission of the darkest atrocity; but it would be highly impolitic by the entire abolition of capital punishment to deprive life of that adamantine safeguard it has always possessed in every creature—fear of death.

*Ut poena ad paucos, meta ad omnes perveniat.** It is said that perpetual imprisonment is worse than death—that incarceration for life is more to be feared than the scaffold, and I admit that it is so, to many temperaments. But one might

*Though few are punished, the fear of punishment affects all.

as well argue that poverty is worse than death, that to have once honor wounded is worse than death, or that to have "got the mitten" is worse than death. Hundreds—thousands of men who could not

> ".....bear the whips and scorns of time,
> Th' oppressor's wrong, the round [proud] man's contumely,
> The pangs of despised [disprised] love, the law's delay,
> The insolence of office, and the spurns
> That patient merit of the unworthy takes—

have dared to become their own executioners, and rush uncalled to

> "That [the] undiscovered country, from whose bourn
> No traveller returns....."

Yet no one will contest that the love of life is a principle—an instinct—the strongest in our nature. The prospect of the scaffold has often humbled the most hardened felons. How different would their feelings have been, had they been assured that the laws they had violated could not be enforced by the penalty of death.

It is to be hoped that it will be long before the infliction of that high punishment will be called for in our state; but if, unfortunately, it should ever be deemed necessary for the due maintenance of the laws and the proper administration of justice to pronounce the life of an individual forfeited, no absolute bar should be presented by the constitution.

The fear of imprisonment for life does and always will operate as a preventative of crime; but the fear of death is a stronger and a surer guard: and why should it be dispensed with? Why should a deliberate villain be allowed to plan and perpetrate a capital offense with a full assurance that however aggravated his crime may be he cannot be hanged.

Our sister state, Michigan, has been the first to abolish capital punishment. It was a fearfully important experiment. Let it be fully tested before any other state adopts the

innovation. If no evil consequences result, we can lose nothing by being slow to follow the example. If evil does result, we shall escape it, and profit by the lesson.

ORMOND.

HINTS TO OUR DELEGATES—No. 3

[September 30, 1846]

There are two classes of statesmen that (I conceive) should have nothing whatever to do in the great work of framing a constitution for a free state. The one adheres to everything old, merely because it is old; and the older it is the better satisfied are they that it should be perpetuated. The other will have nothing but what is new, merely because it is new; and the newer it is, the better satisfied they are with it.

It is not improper to make experiments in law and government, any more than in other sciences, if they are made with sufficient care. The pages of a statute book, however, should be the field for such experiments, not the parchment of a constitution.

If anything improper, impolitic, or inexpedient shall at any time find a place among the statute laws of our state, it will be easy to amend or repeal it; but if crude doctrines, untouched by the test of time and but partially understood, even in their direct bearings, are admitted into our constitution, the body politic may suffer severely before a proper legal remedy can be applied.

The new doctrine advocates are opposed to having the judge appointed by the executive, with the advice and consent of the senate, because (I suppose) it is an old doctrine (though not so old as it ought to be) and is only sanctioned by the example of the United States, Great Britain, France, the Netherlands, and nearly all the most important states of both Europe and America.

It is said that the old plan is imperfect, inexpedient, and antidemocratic—that the executive might be partial, perhaps corrupt, in his appointments—that there would be what is popularly termed "logrolling" in the disapproving or confirmatory action of the senate, and that, therefore, to prevent the possibility of "logrolling" or other sinister management, "the people" should elect their judge.

It would appear that such advocates for the new doctrine forget that our state will not, in fact cannot, be a pure democracy. They speak of having "the people" decide on a matter as though it were possible for all the citizens in the State to assemble at one point and have a pure democratic election.

Such a thing cannot be—to suppose it would be absurd. It must therefore be understood that the new doctrine is for "the people" to choose their judges not of themselves—not by their own act, but through the intervention or agency of delegates; and I should like to know on what principle it is supposed that "the people" will be more discriminating in choosing delegates to elect a judge to interpret and decide the law than in choosing legislators to make the laws by which the judge as well as their fellow citizens are to be governed.

It is contended that because "the people" are "enlightened," "capable of self-government," etc., that they are "capable of choosing their judges." Granted it is so—"the people" *are* "capable of self-government," but what is the reason they do not govern themselves? Why do they employ a "governor"?

"The people," too, are capable of making their own laws, but why do they not make them? Why do they send representatives to a legislative assembly, and pay them for doing what they can do themselves?

The people are also capable of choosing their judges, but will they choose them? It is obvious they will not. They will—they must employ delegates or agents, and what agents can they employ with more confidence than the men on whom their suffrages have conferred the highest legislative honors of the state!

It is admitted that senators in rejecting or confirming the nominations of individuals to the bench may act unfairly, dishonestly, corruptly—may "trade" and "logroll," but I would ask if "the people" send "logrolling" senators to the legislature to make laws for their rule and government, what assurance is there that "logrolling" delegates shall not find their way into a convention assembled merely to elect a man to an important and honorable office.

The importance of having an independent judiciary had never been practically demonstrated in this country, and although under our democratic institutions it is almost impossible that a spirit of animosity such as other lands have witnessed can ever arise between the executive and the people, and though it is yet nearer the impossible to believe that the courts of justice ever can be converted into the engines of a party or the instruments of vengeance of a faction, yet it is of the utmost importance that our judiciary should be entirely independent of both the people and the executive—that is, should hold their offices, and have their salaries secured to them, so long as they should behave themselves well—they should be placed in such a position that they could perform their duties fearlessly, without a possibility of being made amenable to either people or government, directly or indirectly, for their legal and judicial acts.

The administration of justice heretofore in our territory has been upright, faithful, and popular. It is to be hoped it will not be otherwise in our state; but it is not impossible that at times circumstances may arise and concur when the lives and liberties of our citizens may depend upon the firmness and integrity of our judges.

Mackintosh closes his account of the judicial proceedings in the west of England, which followed Monmouth's rebellion, and which the King (James II) jocularly termed "Jeffrey's campaign" by saying, "The administration of justice in state prosecution is one of the surest tests of good government. The judicial proceedings which have been thus carefully and circumstantially related afford a specimen of those

evils from which England was delivered by the revolution. As these acts were done with the aid of juries, and without the censure of parliament, they also afford a fatal proof that judicial forms and constitutional establishments may be rendered unavailing by the subserviency or the prejudices of those who are appointed to carry them into effect. The wisest institutions may become a dead letter, and may even for a time be converted into a shelter and an instrument of tyranny, when the sense of justice and the love of liberty are weakened in the minds of a people."

I conceive that judges of the superior courts, at least, should keep their seats during good behavior, or until, say, sixty-five years of age; and they should be allowed a liberal compensation for their services, which should not be reduced during their continuance in office.

To insure good men, and to guard against the effect of a mere party vote, it shall be necessary for two-thirds or three-fourths of the senate to concur in confirming the appointment of every judge.

In each county having a population of ten thousand there should be a judge called a barrister, or bune, who should be elected by at least a two-thirds majority of the board of supervisors. He should hold office for at least four years, and should be allowed a liberal compensation for his services, to be paid out of the county treasury. He should hold a court on the first Monday of every month, and sit from day to day until the month's business should be gone through with. He should have jurisdiction in all civil matters to the amount of two hundred and fifty dollars. He should have power to fine not exceeding that amount, and to imprison in the county jail for any period not exceeding one year.

He should have [original] jurisdiction concurrent with [that of the] justice of the peace and appellate [jurisdiction] of all matters tried before such inferior tribunals.

Each county might be divided into two, three, or four divisions as the board of supervisors might deem proper, in

each of which the court might be held in rotation, or as the business of the respective divisions might require.

I think it would be proper for our constitution to express the minimum extent of territory that should be set off and erected into a county.

If the principle sanctioned by our legislature last winter is carried out, any township in the state may be blessed or burdened with a county government. I should think that no organized county should contain less than twelve full and entire townships, or (in case of being bounded by a lake, navigable river, or other natural or political boundary) an area of at least four hundred square miles.

It would be right, too, I believe, to make provision for the revision of the statute laws of the state, at least "once in so often," that is, about two or three times in an age.

One "hint" more and my "hints" are ended. Let our delegates not think of doing "anything else" than submitting the charter they shall frame to their constituents as soon as it is finished, and during their labors let them never cease to remember that they are but special agents, commissioned for a particular purpose, and that if they exceed their expressly or impliedly granted powers, their employers, "the people," will be prompt to repudiate both them and their acts.

But they know their duty and they will do it. Many of them have spent the better portion of their lives in framing and studying laws and contemplating political structures.

The constitutions that have been recently framed in the East, West, and South are entitled to profound consideration, and although they should not be servilely imitated, yet many profitable "hints" may be taken from them, and the time which our delegates may devote to their study might easily be less profitably employed.

Although conscious that in government as in all other things perfection is unattainable yet we should endeavor to approximate as nearly as possible to it. From time to time abuses will inevitably appear, no matter how excellent our constitution may be, but if the people are vigilant they can

never attain a very startling magnitude nor acquire claims to respect on account of their antiquity.

Other forms of government live and are supported by abuse. Take away what is rotten and corrupt and they fall to the ground: but a wisely formed constitutional republic, based upon enlightened democratic principles and supported by an intelligent, educated, honest people possesses, like the atmosphere, a self-purifying power; it is free from every principle of decay, and falls short of perfection only in obedience to the eternal law which ordains that in all things earthly there must be dross.

ORMOND.

REPLY TO "ORMOND"

[September 30, 1846]

In another column will be found the second [third] communication from our correspondent, "Ormond," on the subject of the judiciary. We are compelled to differ with "Ormond" upon this subject, being ourselves decidedly in favor of allowing the people to select their own judicial officers.

The history of our country for nearly seventy years has conclusively established the fact that the people are capable of self-government; and that they possess sufficient intelligence and discrimination to make a judicious selection of public servants. Yet at the formation of our national constitution the entire Federal party refused to accord to them this intelligence and discrimination. Alexander Hamilton, upon the subject, held the following language: "The people are turbulent and changing; they seldom judge or determine right." Fisher Ames, another distinguished Federalist, declared that "our Federal Republic was manifestly founded on a mistake—on the supposed existence of sufficient political virtue in the people, and in the permanency and authority of public morals." When we reflect that at that period we

had but just thrown off our colonial dependence from a government which we had ever been taught "was the best the world ever produced," we shall not be surprised that so many were skeptical in regard to the capacity of the masses; but that this skepticism should still exist does, to us, indeed seem strange. Our correspondent, to support his position in favor of an appointed judiciary, in his first article quotes Chancellor Kent. Now that Kent is a distinguished jurist we admit, and that upon a purely legal question his opinion is entitled to great consideration, but that he is a better judge of law than he is of the virtue, capacity, and intelligence of the American people is clearly demonstrated by his action in the New York convention in 1821, of which body he was a member. He there expressed the following very creditable opinion: "There is a tendency in the poor to covet and share the plunder of the rich." The mind that could harbor such a sentiment is better calculated to exercise its influence over the *serfs* of a despotism than the sovereigns of a republic. Kent at that time was a leading Federalist; he is now a staunch Whig. Our correspondent, in his article published today, says: "There are two classes of statesmen—the one adhere to everything old, merely because it is old, the other will have nothing but what is new merely because it is new." Now we are not in favor of an elective judiciary for either of these very cogent reasons, but simply because we believe the people (the same as a private person) should have the privilege of selecting their own servants, and for the further reason that in making their selections we are satisfied that they exercise a sound discretion. The Constitution of the United States vests in them the power to choose their chief magistrate, who will assert that they have ever abused that power, or that it would have been as judiciously exercised had it in the first instance been placed where the constitution now places it, in case there is no election by the people. But to return, we do not adhere to this thing merely because it is old or to that because it is new.

Because a people have existed under a certain system does it follow of necessity that that system could not be safely changed or improved? Most certainly not. Yet such is the force of the argument, if any force it has. As far back as the dark ages when an effort was made to do away with the feudal system, the cry of sacrilege was raised—the cry that new and dangerous innovations were about to be made upon their old and time honored laws, laws under which their fathers had lived and died—and from that day to this, whenever any movement has been made to do away with any of the relics of the dark ages, or to ameliorate the condition of man, the same cry has been raised, and by the weak, timid, and corrupt it has been stigmatized as dangerous, visionary, and impracticable.

We would have our constitution expressly provide the manner of creating the judiciary. We would not by any means (as suggested by our correspondent) vest that power in the legislature. We would place it beyond the control of hasty, corrupt, or selfish legislation. It is termed an experiment. We do not consider anything as an experiment which has been thoroughly and successfully tested, as an elective judiciary has been in several of the new states, or that which is so clearly based upon the broad and eternal principles of justice and democracy.

Our correspondent seems to go upon the supposition that our judicial officers must be either appointed or elected by delegates in convention. To either of these modes we should be opposed. It is true candidates may, and probably would, be nominated in convention, but they can only be invested in the "gown official" by the people at the ballot box.

It is a mistaken idea that the people are unmindful of responsibility when it is thrown upon them. If such were the fact, why do they so critically, freely, and fearlessly canvass the characters and capability of their candidates. He who asks at the hands of the people power or station must be, to pass unscathed, like Caesar's wife, above suspicion. In the

election of a judge every elector would have a great and direct interest; they would feel it and act accordingly.

The great mass have no unworthy or selfish purposes to subserve; therefore their action would be independent and high minded. The action of the executive together with the legislature might or might not be the same. The very fact of their occupying stations presupposes them to be politicians; the fact of their being politicians is presumptive evidence of ambition; and the fact has been for years established, that the ambitious are not always over-scrupulous as to the course they pursue or the means they make use of to accomplish their objects. Perhaps the executive of the state may be ambitious to wear the senatorial robes at Washington. A corrupt but talented politician may stand between him and the object of his aspirations; he removes the obstacle from his path by placing the politician upon the bench. The executive has gratified his ambition; what matters it to him if he has done it by polluting the halls of justice. The idea that a judge should be above and beyond the control of the people is one that in our opinion should long since have been exploded. Like other public officers he should be but a public servant, responsible to the source from whence he derived his power for the faithful and honest discharge of his duties. We again repeat it is safer to leave power where, in a republican form of government, it legitimately belongs, to wit: in the hands of the people.

Many of the old and barbarous "landmarks," as they are termed, monuments of the iron ages, are passing away, and being superseded by a new order of things. The spirit of the age is the spirit of progress; its course is onward and upward; it moves with a power that cannot be stayed, and a velocity that defies pursuit.

SELECTIONS FROM THE RACINE *ADVOCATE*

STATE GOVERNMENT—No. 1

[February 24, 1846]

The most important act passed at the late session of our Legislative Assembly will be found on the first and second pages of this week's *Advocate*. It provides for the speedy formation of a state government, preparatory to the admission of Wisconsin into the Union as an independent commonwealth. The members of the legislature, who enacted this law, were "fresh from the hands of the people," and felt that a preference for state government prevailed with the great mass of their constituents. They accordingly adopted a measure which they conceived would be most in accordance with the sentiments of the citizens of Wisconsin, and passed the act which we have given in preceding columns. To this law, we most earnestly invite the attention of every inhabitant of the territory into whose hands this number of our paper may chance to fall; trusting that everyone will give it an attentive and thoughtful perusal, pondering the subject deliberately in his mind. Let every voter but do this, uninfluenced by false issues, and still more false representations, and we shall feel an entire confidence that the official annunciation of the balloting for and against state government, on the first Tuesday of April, now only forty-two days distant, will be: "The ayes have it!"

In noticing this subject hereafter, we shall endeavor to demonstrate to our readers that every consideration of self-interest and public policy prompts us now to determine in favor of self-government—to assume the reins and exercise the franchises of state sovereignty; that in our present de-

pendent political condition we are bereft of very many of those advantages which flow from an independent and permanent government, controlled in all its departments by ourselves upon principles of stability and duration, etc., etc.

STATE GOVERNMENT—No. 2

[March 10, 1846]

We have said that "every consideration of self-interest and public policy" required of the people of Wisconsin to vote for state government. We will go further, and say that duty demands it of them—downright shame, indeed, should urge them into the adoption of self-government. With a population of more than one hundred thousand souls, shall we remain the nursling of Uncle Sam, drawing our sustenence from his larder? No, no! fellow-Badgers; let us put on *pants,* and assume the dignity of free-*men*! Let us make unto ourselves a charter of rights as a *self*-governing community, and take our position in the line of the now twenty-eight confederated sovereignties.

A friend writes us from Washington that, could the few citizens of Wisconsin who deem it inexpedient to vote for a convention now only be present at the seat of government a part of a session of Congress, they would come home divested of every shadow of doubt on the subject, and would urge upon their fellow citizens the immediate adoption of state government; that it is humiliating to a high-minded Wisconsonian, cherishing an ardent affection for his beautiful home, to witness the cold neglect with which his territory is treated in the halls of Congress. Our delegate, who is the organ of more free people than any state representative in the Union, is doomed to play the part of a suppliant for favors, rather than demand rights for his constituents; and is driven to a mortifying course of solicitation in order to secure a small share of the benefits flowing from the National Government,

which in justice should be bestowed equally upon every portion of our common country.

Now our only chance of redress for these grievances is to vote "for state government" on the first Tuesday in April. This will enable us to assume the responsibilities and acquire the franchises of American sovereigns within one year from this date. Wisconsin will then shine forth as a conspicuous star in the bright constellation of free and "United States." She will then have her senators and representatives on the floors of Congress to advocate the rights and vote for the interests of Wisconsin and the West. We can then take a proud stand of equality with the other sovereignties of the Union; and shall then be enabled to realize and enjoy facilities for acquiring wealth, intelligence, and happiness, the elements of which have been so bountifully scattered throughout our territory by the great Architect of the universe.

* * *

THE CONVENTION

[March 24, 1846]

The convention that must soon be held to form a constitution for the new state of Wisconsin demands of its inhabitants the most severe thought, for it is from the mass of the people that the constitution must emanate, the members of that body being but agents. These agents, however, must be chosen for their qualifications, must be men in whom the utmost confidence can be reposed, and should be selected with a view not only to their intelligence, but to the confidence reposed in them by the people of the county they represent.

It is to be remembered that their legislation cannot be local, that they must act only for the whole state, and therefore that they should be selected from the county at large, without reference to any particular location. If any one town, whether it be even the smallest in the county or the

least populous, should contain the best men, they and they alone should be sent, and no man should permit a local feeling to enter his mind while making the selection of a candidate. Neither should the mere charm of talent or oratory be considered sufficient requisites (although a due importance should doubtless be given them) but men should be selected because by their acts they have won the confidence of the people, and because the people feel satisfied that they know where these men are to be found on each important question that will arise; and all this is equally applicable to both parties.

The Democratic party should look to those men they have known to be firm and steadfast in their faith, earnest in their labors, and ardent in their love for party principles, and they should take care that no minor questions should mingle with the great purpose for which they are about to select agents. Upon the result of the first convention depends the prosperity of the state for years, and experience too plainly points out that restraints are more necessary to a young and flourishing state than to any other. Cast but a glance across the broad waters of our noble lake, and see the suffering and misery that has been entailed upon a sister state by the want of restraining clauses in her constitution. Look along the shore, and see the same error with the same consequences. Both states ran madly into speculation, both indulged in day dreams of mighty wealth, boundless power, and early happiness, and both awoke to poverty, anguish, and disappointment. Yet many of the statesmen in each, perhaps the most of them, were as honest as they were earnest, and deemed they were doing good service to their fellows, and those to come after them. If there had been proper restrictions they would have been forced to delay, and delay would have saved them, opening the eyes of the people to the enormity of the undertakings.

We trust that we shall soon be a sovereign state, for to us it appears that no moment will be more propitious than the present. The whirlwind that so lately swept the Union has

purified the political atmosphere and men reason more coolly and justly. A few years ago, and the world was mad with great schemes. Now we think more of quiet happiness. We have made the discovery that neither the stability of a government, nor the comfort of a people are promoted by vast systems of internal improvement; but that on the contrary both must be endangered. The wealth of a state must of necessity be mainly drawn from its people, and when that wealth is excessive we may feel assured that either the comforts of the citizens have been, or are to be, abridged. Let us, then, taking warning from the many examples around us, look singly to the happiness and independence of the many. Let our legislation be to ensure as much as possible, reasonable advantages and reasonable comforts to all, and to help none to build up magnificent fortunes. Let our aim be to war neither for nor against the rich, but that honest industry and perseverance may meet its full reward, unobstructed by the stumbling blocks that are so often thrown in its way.

Nature has been so bountiful to us that we need ask but little from legislation. Strong arms and willing hearts can find abundance throughout our country, and channels are near enough to carry away all that we do not need for our own use. We want little save protection and equal laws to flourish prosperously, but, without these, we can only expect the extremes of wealth and poverty.

In order, then, to procure a frugal and economical government and to ensure a people possessed of the same qualities, we must be careful in the choice of candidates for the coming convention, sending men in whose probity and wisdom we have full confidence, and rejecting those we cannot trust, either for the want of the first quality or because they are ready to indulge in those daydreams of visionary greatness that are alike injurious to individuals and states.

It may be said that the fever of speculation has vanished, and that neither individuals nor states are now affected by it. It may be so at the present moment, but who shall say it will not soon return? We want constitutional guards against it,

and we want it likewise in the hands of the people as directly as possible. The career before us is full of prosperous hope. Our land is one of promise, and why should we mar its beauties? Beauty of climate, fertility of soil, health, comfort, and sufficient toil to nerve the body and strengthen the mind are all before us, and what more can government do for us, save protect us in the enjoyment of these?

Let us, then, act with proper energy and we can secure the little we want by insisting on proper restrictions now and a periodical restoration of all power to the people at large, and not to their deputies. To do this all local feelings must be abandoned, all local prejudices forgotten, and the selections made merely with reference to fitness. The stake is too important a one to allow anything foreign to divert attention from it. We are about to bind not only ourselves but our heirs, for they must either be benefitted by, or suffer from, the selection we are about to make. Let that selection then be made from the best, the purest, and most democratic of your citizens, no matter where they are, and the result must be propitious.

AN EXEMPTION LAW

[April 21, 1846]

For many years past, people have discovered the necessity of relaxing the old laws respecting debt. It is now considered a barbarous custom to imprison men for their misfortunes, and it begins to be considered little less barbarous to take from them the last copper they have, and in all probability the last hope they have of even paying their debts.

Some years ago, different states passed laws exempting a few absolute necessities from execution, and it was found that this exemption was of great service to those who had been unfortunate, while at the same time it did not injure others. Since that time, several states have increased the

value of property exempted by law, and this has also proved beneficial. Now, there seems to be a strong opinion abroad that it would be a most excellent thing for the country, if a portion of real estate of a definite value, with the necessary buildings and tools of trade or materials of cultivation, with the produce, etc., should be also exempted from all legal process, save for the payment of taxes, and this opinion seems to be a growing one.

To us it would seem that such would be a wise constitutional provision, and when thus recognized would work no injury to anyone, and would be worth much to the country at large. Of course no one would give a credit based upon such property, and no one would ask it. When a man knew that by earning this amount he would have a resource in case of misfortune, or would leave a competence to his family in case of death, it would at once become his dearest object to secure thus much, firmly, before he attempted to realize a large fortune by uncertain speculation. We all know that he who commences prudently and aims only at a competence is more likely to prove a good and useful citizen than he who attempts by wild speculation to realize a large fortune. The existence of such a provision would then induce men to exercise economy in order that they might first arrive at this certain point, and, after becoming fixed in such habits, he would be much less likely to launch out into extravagance and folly.

There would likewise be a certainty, in case of death, that the family a man left would be properly educated, and being brought up neither in extreme poverty nor in riches would also make good citizens, and, appreciating the value of the property that had given these advantages, each child would be anxious to save the same amount as soon as possible.

Another great benefit would be that a fatal blow would be struck at the small credit system; for of course those who had made themselves thus independent would not require credit, and those who were laboring for that independence would know well that it could not as easily be procured if

they should use credit instead of cash. Besides this the merchants would not be so ready to give credit as they are now, and could of course sell at a less rate of profit, while their own earnings would be as great or greater. We would not wish, of course, to render the collection of existing debts more difficult nor to impair the value of any present contract, but we see no reason why, on the commencement of a new state government, such a system should not be grafted in with as much reason as the more limited exemption of half a dozen chairs, a couple of swine, and thirty days' provision. The principle is the same in both cases, and the only question is how far it ought to be carried.

Unnecessary wealth it is not asked should be freed from debts, but it is asked to secure to every man a competence that will prevent either him or his family from coming on the town. Neither will he be obliged to keep this property; for, of course, if he deems it necessary or proper, he may sell it either to pay debts or to better his condition. We believe that few will ever, after having once secured this certainty, part with it lightly; and we believe that such a disposition will do much, very much, to secure to the state a body of the most intelligent and independent citizens in the whole Union.

We are not the advocates of great wealth, for we believe that few draw much enjoyment from such a source; but we are strong advocates for offering to men an independence, earned by their own exertions and secured to them against misfortune, aye, or even against folly. By so doing we believe we shall elevate the general tone of feeling. We think we shall induce men to prefer certain independence to uncertain wealth, and to base all hopes of distinction more upon mental effort than upon the paltry pride of money. We believe, also, that such independence will do away with what we may almost term the vice of small office-seeking, both from the disinclination to performing the difficult and often humiliating duties attached to many offices, and by rendering such offices for the most part needless.

We trust that the great body of the people will think this matter well over, remembering that to the rich they are holding out a certainty of competence in case of misfortune, while to the poor, they are offering an object so important that each will make heavy efforts to attain that independence that will induce them to devote more serious thought to higher matters than those merely pertaining to their daily bread. They will also remember that, by thus holding out inducements to the industrious and prudent, they adopt the only plan that can drive from their state the indolent and visionary, who can never live among those who are too independent to be tempted from their comforts by the false hopes of idle or vicious experimentalists.

THE JUDICIARY

[April 28, 1846]

Nothing, perhaps, can be more important to a state than a well-paid, independent judiciary. In this department, and in that of common schools, liberality is the greatest possible economy, and it is only by paying both well and forcing both to avoid entanglement in politics that we can assure ourselves of the pure administration and understanding of the laws.

We observe that in New York an effort is making to allow all persons to go into courts of justice without expense. To us this seems as certain a mode as could be devised of increasing—encouraging—litigation, and of taxing the main part of the people not only heavily, but in the worst possible manner. Of course, in such case, every man who gets in a little pet would have recourse to a court and jury, and a large portion of our citizens would be called as jurors to settle the quarrels of their neighbors. This kind of cheap law would be the dearest possible, and with an illy paid judiciary in the bargain the spirit of quarreling would be very apt to be

shared by bar, judge, jury, and the people at large. This would, indeed, be a mode of encouraging litigation, a spirit that we all want to see abate rather than increase.

In order that the administration of justice should be pure, it seems to us necessary that the office of judge should be considered one to which none ought to aspire and none could be called, except such as were well known for both probity and talent, and to such men you must hold out more inducement than the mere empty honor of a name. They must be liberally, not exorbitantly paid, else the name of judge will soon cease to be evidence of even a moderate degree of talent. As a general rule throughout the Union the judges are not sufficiently remunerated, and the consequences are that none but third-rate lawyers will accept the offices. Members of the bar who have real talent are sure, even though the profession is overstocked, of doing better than they can if promoted to the bench, and we often find judges actually electioneering for some office of less dignity but greater emolument, that they may provide for increasing families and advancing years. In New York it has become quite an object of ambition among them to look with an anxiety for a quiet descent to the clerkship of a court, and, when reduced to such a necessity, how is the dignity of the office to be kept up? When judges become electioneerers for recording offices that require no higher abilities than a decent handwriting and a moderate knowledge of business, such as any common dry goods clerk is supposed to possess, how is the bench to be held in proper respect by any?

When Wisconsin becomes a state we trust this system will be done away with, and that inducements will be held out to men of the highest talent in the legal profession to seek promotion to the bench. We trust ample and certain provision will be made for their wants, with the certainty of being able by decent prudence to accumulate competence for their families, and then you may place on the office such restrictions as will compel judges to avoid the excitements that attend the lives of all politicians. Men now study and practice law not

with the intention of rising to the dignities alone in the grasp of the profession, because those dignities are worth nothing in themselves. The law to them is only the means of attaining political power and distinction, and when they accept judgeships you may be sure, if they are men of talent, they deem them only stepping-stones to other offices sought after with more avidity, because either more profitable or leading to much greater distinction.

Now it would be our desire to see all judges deprived of even a voice in political affairs. Elect them by the people, let their selection be as democratic as you choose, but make it a rule that when they mount the bench they throw aside at once all party, all political prepossessions, and place themselves above and beyond those feelings that cannot fail to make him a partisan who takes a warm interest in politics, or [that] look beyond the high office he has assumed, to some one that may be more brilliant, but cannot be more important. Place such other restrictions on him as you may deem fit, oblige him as far as possible to seek no reward out of his profession, and even there to look for it only from a fearless discharge of his duties and a constant exertion of the talent he possesses.

All will at this day concede the impropriety of a judge being a party politician, and this feeling precludes him from making displays at popular meetings, but do not we all know that judges are often, very often, the leading men of a party, and many of them paltry wireworkers, who look to the success of party measures as a success that will reward them with not a better but a fatter office? And is this to be wondered at? Can we expect talents and worth when we refuse them a decent compensation? Can we look for self-denial where want exists, not the want that starves, perhaps, but the want that keeps a man below that level he deems he is entitled to?

If we want purity in our judiciary we must pay for it. If we want talents of a high order we must pay for them; and if we want men who will be uncontrolled by the prejudices of

the hour, we must place them out of the influence of those prejudices. We want but few judicial officers in a young state, and if a proper system is pursued, and one that will tend to discourage litigation, and especially small litigation, we shall never want many, but then those we do have must be well paid, or else we may soon look for an increase in the number of such officers that will in the end tax us infinitely more than high salaries.

Look at the army of unpaid judges, as they are often called, in many of the old states. Does any man suppose those men work for nothing? We imagine not. Do not most men know that such numbers must be paid, somehow, much more than would pay the best men for the same services? We think they do. And have not all perceived to how low a point the bench has been brought where these hordes of insufficiently paid and ill-qualified officers have been introduced? We know they have.

Let us, then, make an effort to obtain in Wisconsin a judiciary that will be endowed with high talent and great purity. This can be secured if we choose, and will be, not in the end only, but at the very outset, the most economical mode of administering justice. When every judge looks upon his office as one of which he has a right to be proud, and looks upon legal promotion as his sole aim, and an end that can only be reached by convincing all that he has the high attributes to fit him for it, we shall see our own courts looked upon with respect and we may be sure that any improper outbursts of feeling will be calmed by the dignity of those we have elevated to stations where they are presumed to stand, like the laws they administer, above all reproof.

BANKS

[May 5, 1846]

We believe that at the present day there are few, even of the Whigs of Wisconsin, who are not opposed to state banks or banking, if not even to a United States Bank, and yet it is but a few years since the general cry of the whole Whig party was that without banks we should lose all hope of prosperity throughout the Union.

It is curious to look back a few years and see the expansions and contractions that took place under the old system, and it is still more strange to see how men could sit so calmly under them, fawning upon the very hand that scored them without mercy. It is true that some men made money by them, and would fain have persuaded all that they, too, were aided. Many, too many, believed this, and banking was extolled to the skies as a panacea for all the evils of poverty, a sure way to make capital plenty, even though there might be none, and in fact looked upon as the "tree of life" whereupon all business was to quicken and grow. An extract from Milton's *Paradise Lost,* with a shrewd query by Coleridge, will place it in its old point of view, as it stood with the Whigs.

> And all amid them stood the Tree of Life
> High eminent, blooming ambrosial fruit,
> Of vegetables gold (query, paper money?) and next to life
> Our death, the tree of knowledge, grew fast by.

They deemed banking, indeed, the tree of life, and held, too, that upon one tree alone could the true fruit be brought to perfection, and that tree was the United States Bank. Another opinion, also, was that Mr. Biddle alone could pluck the fruit from the tree,[9] and so, to use the words of Milton

[9] Nicholas Biddle, famous financier and president of the United States Bank. Against him and his bank President Jackson waged the famous "bank war" of the early thirties.

again (though we must apologize for the harsh epithet that rounds off the last line) they gave him a strong boost, and

> So clomb this first grand thief—
> Thence up he flew, and on the tree of life
> Sat like a cormorant.

It was then that Mr. Biddle was the great man of all great men, the only one who could wield the banking scepter, and of course the only one who could control the destinies of the nation. But Mr. Biddle fell to rise no more, and with him fell the long cherished hopes of the "bankites." Since that time the feeling in favor of banks has been growing less and less daily, and now we trust that in general it is lost. Some old bank editor will occasionally break forth in a fit of querulous grumbling, but he scarce dare breathe a bank article boldly and freely, as he was wont to do in times past.

Let us hope, then, that the feeling in favor of banks has passed away entirely. But at the same time let us guard against its renewal at some future period. Let us, when Wisconsin is a state, see that all banking privileges be made unconstitutional, so that, even should our people become for a brief period as crazy as we all were throughout the United States during the prevalence of the speculative mania, we should be obliged to revert to the full sober second thought before we could bring on ourselves the misery that has invariably followed in the footsteps of banks.

Nor is this all we should do. We should guard against other incorporations as well. All special incorporations, if not watched closely, will do a limited banking business. And even if they do not, we can see little use in them. If corporate powers are necessary let them be made as limited as possible in extent, and as available as possible to all. Let general incorporation laws alone be passed, even for villages and cities, so that at certain periods, and under certain restrictions, all may avail themselves of them. We have heard it observed that different villages want different powers, that some want control over harbors and rivers, while some

have neither harbors nor rivers to control. The answer to that is obvious. If all have the necessary power over them, those that have none will only find that part of the act a dead letter to them that cannot hurt them.

Another thing, too, strikes us as important in this matter, and it is that not only villages but towns and counties be prohibited as early as possible from issuing county orders, a species of bank paper that takes money from the laboring man to put in the pocket of the broker. We see no reason why counties, towns, and villages should not be obliged to raise their taxes beforehand and pay in money for services done, except such, indeed, as may be paid by all in labor at certain periods, or in money to procure labor at the time. We, of course, allude more particularly here to road taxes, which can always be thus paid without doing wrong to any one.

None can doubt that such a course would tend greatly both to economy and improvement. To economy, because, having money on hand, labor would be more readily procured, more cheerfully accorded, and more usefully expended. To improvement, because the taxpayer, seeing that his taxes were expended so as to do the utmost good, would be the more willing to tax himself heavily where the objects to be attained were worth the sacrifice.

In this village a tax was raised for the harbor, that was far heavier than was ever voluntarily borne by any community of such limited means, and yet at the same time great donations were made, but then every man felt that the object was of importance and that the money would be expended as nearly according to the exact way in which he wished it as was possible. It would be so, too, everywhere. It is not the taxes that people grumble at so much as the misapplication of them, and nothing would have a stronger tendency to prevent that misapplication than the destruction of this petty banking on local orders that has grown so prevalent over the whole Union.

It is a strange thing how banking creeps into all business,

when it can once find an entrance. Let a village issue shinplasters and at once every man of business does the same, and if the orders of counties, etc., were once forced into circulation now, we should soon find orders from individuals quite as plenty. We certainly hope that no village or county will, after we become a state, be allowed to issue any evidence of debt, and we feel satisfied that a great majority of the people will agree with us that it is as unnecessary as it is injurious, and if there are some who may insist that these orders have no relation to banking, we can only say that, although the county does not reap the profit on these bills to obtain a reluctant, a forced credit, yet there must be some persons who do, or else these evidences of debt would not be for sale and purchase in the market like depreciated bank notes. If the persons who make the profit are to be called money brokers, instead of bankers, be it so. We shall assent to that, the rather because of late years the connection between banks and brokers has become so intimate that it is scarcely possible to tell where it is. Let us, then, prevent counties, etc., from becoming parties to it, reaping no benefit, and doing injury to themselves and those whose property their orders represent.

THE JUDICIARY AGAIN

[May 12, 1846]

If we understand the *Advocate* correctly, it proposes to make a resort to the courts for the attainment of justice expensive, in order to discourage litigation. Southport *Telegraph*.

We are not certain whether it was our fault or not, but we are not clearly understood by the *Telegraph*. We do not propose to make a resort to the courts expensive in order to discourage litigation. Our objection had direct reference to a New York proposition that we quoted, permitting all litigants to come into court without paying the court fees.

Those fees we would like to see made as low [as] possible, and are perfectly willing to bear our share of the loss and see the amount of legal printing reduced to as low a point as will be consistent with the convenience and safety of the public. When the fees are made low enough let the litigants pay their costs; for they must be paid by somebody, either by the public at large or by the parties themselves. Now as the work done is not, in civil suits, done for the especial benefit of the public, but of the litigants, we think it is they who should pay for the adjustment of their difficulties.

Our objections are to making courts open to all while the public at large bears the expense, upon the ground that the litigious will avail themselves of the privilege of suing at the expense of all, while those who dislike a recourse to law, even independent of expense, will be forced to pay a portion of the cost. It is, moreover, to be remembered that in nine cases out of ten recourse is had to law because the parties have done their business carelessly, and they, therefore, ought to be the ones who should pay. Our chief objection to the system was as it would affect the small courts—the *pie poudre* courts—where, in case there were no costs, men would rush in, hot foot, as the old phrase was, and juries would, of course, be summoned, to the great inconvenience of the more peaceable portion of the neighborhood, who would thus be made eternally the arbitrators of petty disputes. It is true, we hope, that when Wisconsin is a state, we shall have none of those courts to perplex us, but knowing how difficult it is to insure such reforms, however good they may appear to many, we wish the people to revolve in their minds, not only the question of no small courts, but the question of how they shall be made of the least possible injury, if we are obliged to endure them for a while, feeling, as we do, fully persuaded that, after a few years at the outside, many of the states will reject these courts and make small debts actually debts of honor. We should prefer that Wisconsin should set the example in this; but it may be that the convention will not be prepared to restrict the duties of justices of the peace to

their proper sphere, the punishment and prevention of crimes and misdemeanors, and the securing of those suspected of them until trials can be had.

We hold that it is every man's duty to share in the burdens of government, and to take his station on a jury as cheerfully as he would in the ranks of the militia were his country invaded; but we do not believe he ought to be called out in either case unless it is absolutely necessary. We have before said that we consider the right of trial by jury as one of the most important guaranteed to us, and we consider it not only important in criminal, but in civil cases; yet we feel, and we think everyone must feel, that juries are too often called to decide upon trifling cases, and that by throwing the courts open without cost, or rather at the expense of the entire public, litigation would increase greatly to the discomfort of all peaceable men.

We believe in economy in everything connected with government, but we never shall believe that parsimony is economy. We do not believe in paying men more than they earn in any case; but we do believe in paying all men according to their abilities, and thus holding out an inducement to talent to seek the highest offices of the state, not for the salary alone, although that must and will have weight, but for the honor as well as the emolument.

What lawyer of high reputation, of great talents, of splendid acquirements, who felt assured that he could earn fortune as well as reputation at the bar, would accept a judgeship that would barely afford him a subsistence, and leave him at the end of his career as poor as he began? In this country there are too many avenues to distinction open to talent, to leave a hope that men would, for station alone, sacrifice the solid hopes of fortune, and hopes of fame equally as high. Yet we do not wish it to be understood that we advocate anything like enormous salaries.

We would see a judiciary well paid. We would see our judges beyond all necessary care for money, with enough to live comfortably, and lay by enough to provide for their fam-

ilies in case of death or accident, within a reasonable period, by the practice of decent economy. We would remove them as far as possible from temptations of all kinds. In other words, we would see them independent of trade, speculation, or politics, and would wish to see the whole country frown upon their intermeddling with either.

The precise amount of salary to be paid to judges would of course depend much upon the nature and extent of their duties and responsibilities; but the adequacy or inadequacy of any given sum would depend much more upon the system introduced into our new state government. If a government shall be formed that will prohibit all monopolies, discourage all splendid schemes of either state or individual aggrandizement, and introduce among the whole people that proper economy, true independence, and scorn of outward show that ought invariably to mark the whole people of America, a small sum will be a competence. If, on the contrary, a spirit of speculation is engendered by governmental action, a large sum will only afford a glittering show and a splendid poverty.

We are glad, very glad, to see the *Telegraph* taking up this subject, and trust it will continue to differ or agree with us on those points that ought to be at this moment discussed daily by every inhabitant of the territory, until a state government shall be formed as nearly as possible in accordance with the wishes of the whole people. We should be rejoiced to see every press in Wisconsin devoting a portion of its columns, and a large portion, too, to discussions of this kind, and exerting all the energies of its conductors to lay before the public the various improvements it would wish adopted.

We know, as a matter of course, that no constitution will be formed that will suit us, or any one man; and while we shall feel satisfied as long as the people are, we hold it the duty of everyone connected with the press to throw aside minor disputes and devote great space to matters that must soon be settled for a long term of years.

We learn that we have made some suggestions that have been made heretofore by the *Telegraph,* and we are happy to learn that such is the fact. Our ambition is not to say that we have started a particular measure but to have it said that we have been able and industrious in the support of a good one.

We look upon the present situation of the country as one that demands the energies of all to excite the people to constant and temperate discussion of measures, and we feel that there is a difficulty in this that is not to be found at the eve of an exciting presidential election, while the importance of the movement is infinitely greater.

Let us, then, all do our duty, and we may rest assured that we shall be well repaid by a prosperous future for our exertions. We have now but little else to do, and that little is of no great importance. We shall welcome all into the field, and shall be happy to follow every lead we may think better than our own, or to add such suggestions to the projects of wiser men than ourselves as shall in our opinion render their projects still more useful to the community.

PREVENTION BETTER THAN CURE

[May 19, 1846]

It would be well at this period for the people of our territory to look around them at the many constitutional reforms that are proposed in other states, and see that by their own state constitution such measures shall be adoped as will fully guard against those mistakes and faults that have crept into other communities. It has been too truly remarked that power is constantly stealing from the many to the few, and it is against this abuse especially that we ought to guard.

In the state of New York we find most papers of both parties anxious to throw more power into the hands of the people by making more officers elective and less dependent upon the pleasure either of the governor or the senate; but it seems to us that even there they do not go far enough. We

think one important provision in a constitution ought to be the denial of a power in the legislature to create at pleasure new offices. Many are occasionally introduced that are at first thought to be of little moment but turn out in the end to be not only offices of great profit but offices that tend greatly to corruption. Indeed, throughout the whole state of New York office-seeking has been for a few years past a mania among the whole people; and few citizens of the state have not felt inclined to blush at the eagerness with which men labored to obtain the pettiest offices as well as the greatest.

In addition to the army of justices of the peace, police justices, constables, and deputy sheriffs, the state has of late years formed a whole army of inspectors, and cities, following the example of the state, have added to them, so that in many places it was impossible to buy even a load of wood without employing a man in authority to decide how much you were buying. It is useless to say that these offices are all necessary, and it is equally useless to say that even where necessary the numbers have not been too great. And these offices, for whatever purpose they have been nominally created, have in fact been made to give or to keep in the hands of the few that power that the whole people of the state have long been wishing to see placed in the hands of the many. A convention in New York now proposes, among other salutary reforms, to place all this power in the hands of the people; and this so far is well: but would it not be still better were offices to be reduced to the lowest possible number that could carry on the business of the state, and to fix that number beyond the possibility of increase, unless by the determination of the people, made known by a direct vote, without any reference to the man who should be called to fill the office proposed to be made.

We have pointed out the state of New York the more especially on account of its peculiar present position, and because that state has suffered so much from the continual accumulation of offices that the people have found it necessary to resist the power thus thrown into the hands of the few.

We are now on the eve of becoming a state, and to us it seems a matter of the highest importance so to reduce the number of offices that we may avoid the one rock upon which so many communities have split. If, in the coming convention, the proper provisions are introduced, we may not only avoid hosts of useless officers throughout the state, but we may render an increase of offices absolutely impossible, unless actually desired by the whole people. Every state office, or almost every one, may be made elective, and the number may be reduced much below that of any state in the Union. We want no boards of internal improvement, no inspectors of necessaries or luxuries, and if we can determine to do away with the collection of small debts, making them what they really should be, debts of honor, we should want no small courts, small court judges, or small court officers. The justices of the peace would then be, what they ought to be, only conservators of public peace, and the office of constable would be one held by good citizens to restrain or punish crime in those evilly disposed.

There will always be in a state sufficient offices to satisfy all honorable ambition, to spur men on to the exercise of all their abilities to promote the public weal, and that is all that is wanted. Every unnecessary office opens a door for intrigue, corruption, bickerings, heartburnings, and all the curses that follow, both to the successful and to the disappointed. The people are never dissatisfied because men of talent are elevated on account of talent and purity; but when they see intriguers elevated to office they become at once distrustful of the institutions they have fostered, and often hopeless of even the most rational improvements that can be proposed. When they make all the selections this cannot happen; and, moreover, their representatives, being cut off from the power of assisting men to office, will attend more faithfully and steadily to the wants of their constituents.

A simple form of government, few officers to execute the laws, and those few paid well but not extravagantly, will prevent any great desire to seek office, or to tinker with the

laws. We want, in a country like this, but few legislative enactments; and we want to remove from among legislators the constant endeavor to make a trade of politics and secure a support out of the state for themselves and their friends, either by procuring offices of profit or by enacting laws that will benefit a few persons, among whom they will of course be found.

"Purity of elections" is another cry among the older states. That purity will be best effected by making offices so few and so immediately derived from the people that no ulterior object will be sought by parties. It is not the great measures before the public that lead to frauds. It is the hopes that voters entertain of gaining by the election of particular candidates. Men who would commit frauds at elections would never care much about carrying out measures for the good of the country. Men do not, as a general thing, seek to bribe people into voting for or against a great measure; it is only for or against a certain set of candidates. It is only for a certain distribution of offices that corruption is used. No one heard a charge made of any corruption in the state of New York upon the question of convention or no convention; and yet that question was one of the most important that could have been placed before the public. But it involved no distribution of offices, and therefore there was cool consideration but no excitement.

Let us, then, look to other states, not with a view of copying them but to prevent the possibility of our falling into the errors from which they are trying to extricate themselves. Let us not only avoid their errors, but let us so fortify the people in power that they will not only be called upon at stated periods to review their own work, but that, if an emergency should arise, means would be ready to place directly within their control the whole subject, after that due deliberation that should always be given to so grave a project as that of amending the constitution of a state.

JUSTICES' COURTS

[May 26, 1846]

The Janesville *Gazette* differs from us altogether on the subject of abolishing the jurisdiction of justices of the peace in civil cases, contending that such a step would prevent the poor man from enforcing the collection of debts under fifty dollars, and seeming to think that a moment's reflection would convince any person that such a course would be productive of unmixed evil.

We can only say that, although we may be wrong, we have bestowed not only moments, but days [of] reflection on the subject, and have also made numerous inquiries among poor men as to the effect of the present laws of collection; and both reasoning and the results of these inquiries convince us of the great benefit that would be obtained by abandoning the present system.

Many intelligent men refuse to sue for small debts on the ground that they cannot afford it; and unless the debt is very near the amount of fifty dollars it is in nine cases out of ten a loss, even when recovery is certain and the debt can be collected. Loss of time by adjournments, by actually trying the case, loss of expense by fees to lawyers, and by the trouble of hunting up witnesses, and by the many other unavoidable annoyances make even success of doubtful benefit, while losses by want of witnesses, by the forgetfulness of witnesses, by accidents of various kinds—and there are many of them—combine to make many other suits greatly detrimental to both parties. Besides this, we all know that of the many executions on the dockets of our justices few indeed are ever satisfied by the payment of the sum recovered, and of those few a majority are paid at so distant a date that the plaintiff, had he known how long he would have been obliged to wait, would never have commenced the suit.

Of the suits in justices' courts, many are commenced in a moment of passion and abate when the passion has cooled off. Many get in judgment, it is true, but no farther, because the plaintiff finds he cannot collect if he tries. The dishonest man can almost always get rid of paying, while the honest man will almost always pay as soon as he can without suit. The truth is that the whole system has proved a failure. These courts were instituted for the benefit, perhaps, of the poor man, but they have proved a failure and only assist others, while they actually injure him.

The editor of the *Gazette* seems to think that an appeal to the honor of employers would be [of] little avail in any case. There again we differ from him very widely. We believe that now such an appeal is futile because an answer has become so pat in such cases, and it is, "Well, you have your remedy, there's the law," and a very poor remedy it is. Let there be no remedy and men for their own sakes will look more to the character they might obtain from their laborers. They would feel that, unless they had the reputation of dealing justly, they could never command labor at the time when it would be most valuable to them, when all things were hurried. They would seek to maintain a high character for punctuality and justice, knowing that it would enable them to have work done with greater punctuality and truer economy.

It is well worth noticing that, the greater legal restrictions you throw round men, the more they neglect the simple commands of justice and honor and satisfy themselves with living up to the mere letter of the law. Where they can legally evade a payment they will, where they can even put off one they do so, and even when they feel the injustice of their conduct, they apologize by saying that it is to punish the man for having sued them; and that, as the plaintiff took advantage of the law to collect his debt, they have a right to take advantage of the delay the law allows to put off the payment.

But the strongest proof of the inefficacy of these courts is the reluctance with which (even now, when men have no other dependence) the best of our citizens approach them. You may seek out every good man in the country, every man who is willing to pay when he owes, sure to satisfy all by his punctuality and workmanship, who is noted as an excellent citizen and as a prudent, cautious man getting along in the world well, and you will find him the man who refuses to resort to these petty courts, preferring a small loss in money on settling a demand to a large one in time, and—we must say it—also in character. Now the pig-headed, litigious fellow, who never gets along in the world and never gives satisfaction in any job he performs, is always the man who resorts to these courts, who will never give up his rights, however doubtful they may be, to others, and who will never pay until eighteen men have declared he must, and who will even then boast that he can "beat the plaintiff on the execution" —he is the man who is admirably suited with small debt courts. It gives him an air of importance, an excuse for being extremely busy in doing nothing, and frequently teaches him in time a few terms of practice and a few tricks to stave off suits that enable him to talk, as he thinks, very learnedly about law, and that in the end bring him into a scrape that gets him laughed out of town, to run the same career in some far off place. He learns at last the truth of a French saying that "a man may be more cunning than his neighbor, but it will trouble him to be more cunning than all his neighbors."

We consider, then, small courts as a nuisance. We consider them alike injurious to the public and to the legal profession. We would like much to see them done away with, and we know we shall see that. We would prefer Wisconsin should set the example, for we know she will follow it when set; and that will be before much time has elapsed.

Courts of chancery generally refuse to take cognizance of suits where the property in dispute is under one hundred

dollars, and courts of law would do well to follow their example. It would be a deathblow to the present credit system, and that would be one good thing, and it would create a credit system where the claim to confidence would be based on a known character for probity, which would be a much better one yet. We have spoken before of the saving to the community at large, and will not repeat; but we must add that few look sufficiently to the importance of relieving the community from this immense tax. A tax on their time as witnesses, jurors, plaintiffs, and defendants, and a tax on them (and on the most industrious it falls the heaviest, as all taxes do) to support constables, justices, and unfledged (and never to be fledged) lawyerings, who live and die in the petty courts alone.

FREE BANKING

[June 2, 1846]

The *Wisconsin Argus* objects to free banking as well as any other, saying it would as soon be shaved by incorporated shinplasters as by individual trash.[10] So would we; but we do not want to touch either. When we speak of individual banking, we speak of that free banking that we are inclined to think cannot be properly suppressed by law, and can, of course, do no harm.

Every man has a right in our opinion to issue his note of hand, and it is of but little consequence whether it is printed or written. If, in addition, he can convince men that his promises to pay are trustworthy, we hold he has a right to do so, and has established the only kind of bank that we cannot refuse existence to. We do not ask men to do this, nor do we wish to see any man's paper make a currency, however limited its circulation may be, but still, believing it to be one of his proper rights, we say let him exercise it. Whenever

[10] For this article see *post*, 444.

you take any right away from a man, however unimportant it is, you may be sure you have given someone else a privilege he ought not to have had, and that has of course done injury to the mass of the people. Incorporating banking companies was in fact the mode by which the individual system of banking was destroyed, and the world has suffered enough to throw away privileges and return to rights.

We have no fear that at the present day free banking will ever be able to furnish currency. We believe it will only supply the place of exchange, and take the position that shaving brokers have usurped. We believe that individual bankers will exist and that their paper will be furnished to merchants for exchange, either in the shape of bills on each other or in the shape of individual notes; and this will be a proper business, and one to which no one ought to object.

It may be that men will be enabled to make a currency, and we can only say so be it. We hate banks in any shape with a tolerably bitter hatred; but if a man can make his own notes so good that his neighbors choose to take them as money, why we cannot object to it. If their confidence rests in his property, very well, if in his honesty, better yet; if in nothing at all, it is their lookout. They will not be obliged to take his paper because when there are no incorporations there will be enough specie for circulation.

To us it seems necessary, before passing any law, to ask whether there is in it anything that restricts a man in the exercise of his natural rights, or anything that favors a set of men, or a man, improperly. If either is the case the law is wrong. In banking laws we have been giving privileges throughout the United States for many a year; and bitterly have we paid for it. Losses upon losses have been borne by the poor because they were unable to help themselves. They were obliged, not by law but by the effect of law, to receive bank notes as coin; and, although they had little confidence in them, still the very legislation that made them a currency

made them hard to be come at by the very poor it was pretended they were to assist.

At the present time there is a mixed currency here; and people touch the paper part of it as if it was remarkably hot. Your most inveterate bankite will pocket the silver and hand over the note to pay his bill. Your merchant will at this moment prefer a produce draft to a bank bill, and that is equivalent to saying that he prefers the bill of a private banker whom he can trust of his own knowledge to the bill of an incorporated shaver whose only character is derived from an act of the legislature, and has at last become about as bad as it well can be.

The *Argus* hopes we will not consider it over ultra. No, we will not. What has generally been called ultraism has been the very place we were sure to stick in. Leggett was ultra, and we stuck closer to him than to anyone else we can remember. No. We are ultra and obstinate, and we hope to remain so; that is, we mean that the timid and conservative, as they style themselves, shall call us so. If a man means to do any good in the world he must be ultra, he must go beyond those around him, and must expect to bear sneers and to feel rubs, and he must also learn to be obstinate enough to care but little about them.

We have got somewhat tired of the common cant about ultraism. Ultraism and reform are precisely the same thing; and it is only the miserably timid, who fear every change of breeze, that fear them. We ought in this country to aim to reform, at ultraism, for years to come. The government of the country was ultra and was condemned as such by all Europe. Bonaparte was ultra in his notions of fighting and he beat all Europe by his very ultraism. Who would not be ultra in good if he could? Who would not go beyond others to do good things? This is all that ultraism means and it frightens none but the timid.

Geology was ultraism once and the whole church was afraid of it. Now it is to be learned by everyone. Astron-

omy was in the same position. Everything that is good has been at some time denounced as ultra; but then, it is true, the denunciations come from the weak alone, from those of whom St. Paul says that they must be fed with milk and not with meat. They come from those who dare not believe, cannot think.

We like to see people earnest, to see them state their opinions strongly and defend them boldly. We would ten times rather argue with a bold, obstinate man than with one who will half agree with us. The latter we have no hope of, the former we may convince, and if we do we gain over a man who will fight for us as hard as he fought against us.

THE SCHOOL FUND

[June 16, 1846]

Whatever disposition may be made of the school lands, whether they are made a state fund, a county fund, or a town fund, they ought to be declared by the constitution a sacred deposit, and if by accident they should become diminished, a direct tax should at once be resorted to to make their value good.

We all know of how great value to a state is the education of the children of the whole people, and we likewise know that a liberal fund provided for such purpose is a great economy to the people at large. If knowledge is wealth to its possessor, the knowledge of a people is a still greater wealth to the state, tending not only to advance all in the race of improvement but to diminish crime and excess and to give people a resource above the mere thirst for wealth, that too often urges men to drive a state into expenditures they themselves would avoid as imprudent and useless.

For ourselves, we confess we should consider separate school systems better than one great state system with all its machinery at the capital, and with the interest removed from the people. We do not insist that a state system must be bad,

but it has some very strong objections. Among them are these. The superintendent has too much to do to oversee all the schools of the state. The whole machinery is too far removed from the people. The supervision of the common schools does not excite enough interest at home. The money is not generally funded to the best advantage. Donations are seldom made because a small sum would seem too pitiful to swell so large a fund, and none but rich, very rich men could afford to make one that would.

We are not now going to argue the question whether the whole lands ought to form one common fund for the state, or whether each section ought to be applied to the use of its own town, because we know that this must depend much upon feeling, and must probably be settled in the end by concession. We wish, however, to impress upon the people the necessity of thought upon the subject, and would suggest that, however the lands may be disposed of, either a county or town system, by division of funds, or by aggregation of them, would be preferable to a system too extended, provided that either the town or county be made liable for the funds and in case of its diminution, either by dishonesty or carelessness of officers, be forced to impose upon itself a direct tax to make up the amount. This would oblige us to appoint trustworthy officers and to take such security as should be reliable, and would ensure the safety of the fund in any event, while it might be increased in various ways, and the increase would be secured in the same manner.

We look at small school organizations as the most profitable on many accounts. The whole matter is under the immediate eye of the people and any one organized district, whether it be county or town, can be allowed to tax itself by vote as much as it chooses and make a fund ample enough for its own desires. Men who have the means can give to the fund and will see the benefits that accrue from the gift. Wherever the best organization is, that place will be held up as a model to others, and thus a strife for excellence will be engendered throughout the state that will do infinite good.

A greater interest, a greater pride will be taken by all and everyone who has the means will be anxious to do something for schools. Many, too, may seek popularity by a liberality towards this great object, and even though their motives may not always be as pure as they ought to be, still they will do much more good by such means than by the lavish expenditures often thrown away upon elections.

We look upon the future excellence of our common schools as of the greatest possible importance, and we hope all will agree with us that they should be made as excellent as our abilities will allow. The fund from the school lands is a large one itself, if it is only taken that care of that men would take of their own property. One thirty-sixth of all Wisconsin is set apart for schools, and surely if we take care of that it will form a very large fund. We all remember, though, that this same proportion has been wasted elsewhere, and we should be jealous lest a single acre of it here be thrown away. It was given for a great and holy purpose. Let it never be said that the people of Wisconsin have diverted the smallest portion of it from the object for which it was intended. That object, in our opinion, was common schools.

We hold to common schools, and common schools alone—no academies, no colleges out of this fund. It was set apart for the education of all the people—not a select few. You may have as many higher institutions of learning as you please, but let them not be paid for out of this fund. The fund is large but not too much, and you have no right to use it for anything but common schools in any event. Make the common schools as good as possible, let the sciences be introduced among them if they can afford it. Let your schoolmaster be paid as high a salary as his talents deserve. Spend your money freely, liberally upon common schools, but do not fritter it away among institutions that cannot be brought into general use. The fund was intended for schools, for schools for the people generally, or in other words for common schools, and to them let it be restricted, for to them it belongs alone and the diversion of it is dishonesty.

Begin to teach as you ought; begin at the rudiments, and when you find that the whole people have the means to obtain a good, scientific, English education, you may then raise your common schools to a higher point, introducing French, Spanish, German, and the dead languages if you choose. "But," many will exclaim, "this is impossible; ten times the fund would not do all this." Very well, then, do not divert it, let it be our common school fund, let it belong to the people, not to a few, and let it make the schools as excellent as it will, and then be sure they will keep improving until your select schools will have to give way to them and the children of the whole state will commence their educations together.

Colleges you may have—as many as you choose—but not out of our common school fund. They are not, and cannot be, of course, much benefit to the many, to the poor; and the rich can afford to institute them by their own means and in their own way. If you once see that men are well grounded in a common school education they will find the means to procure such other knowledge as they desire. Colleges are doubtless an assistance but they assist only a few, whereas common schools well digested, well taught, give to all that desire for learning that alone will teach the way to do it. The rudiments are the most difficult part, the first steps the most desirable, and it is to direct these that our efforts should be mainly used. When we have men well grounded, they can assist themselves with comparative ease.

But the constitution should see to the perfect safety of the fund in any event, taking care that all waste should be repaired by immediate tax, making the whole state liable for the integrity of the fund and directing the state on subdivision to make the districts subdivided liable in the same way. In this manner a sure fund will be provided to meet the wants of the community and to increase those wants. Increase the wants of education by increasing the desire for it, and you make men avaricious of the only property a legislature should desire to increase to excess, the riches of a well educated mind.

BIENNIAL SESSIONS

[June 30, 1846]

We observe that this measure is attracting considerable attention throughout those states which are about to revise their constitutions. In New York there is a strong party in favor of holding sessions of the legislature every other year only, and if with the great business of that state such an interim between legislative sessions could be allowed surely it might be done in those states that have not so much general business, and no heavy system of internal improvements to fill the legislative halls with petitions and politics.

We should certainly prefer biennial sessions and we believe that almost all would also prefer them could they be convinced that the country would not suffer for want of legislative action; and of that we think there can be no danger if we discard from our legislative halls those abuses that have been creeping in year after year, from the increasing disposition of legislatures to interfere with all private contracts and to give to certain individuals and certain corporations privileges that may be denied to others. In the very act of incorporation of a city or village there is constant lobbying, constant additive powers given, and almost always powers are vested in these bodies that are at variance with the feelings of the people, and often with the pure principles of justice. Property is taken from individuals in a most summary method, and they are almost as often assessed as heavily for an injury inflicted as for a benefit conferred. This is wrong, and we do not think there is any good reason why such corporations should not all be embodied in a general law so that, under certain restrictions, these communities that chose might enjoy them, and all might be upon an equal footing. Property should never be taken unless for the general good, and then of course it could not be enjoyed by one more than another and all would feel the necessity

and submit willingly to a deprivation for which they would be fairly compensated.

The business of legislation can be made infinitely less than it has been for years past and then biennial sessions will be preferable to annual ones, but in order that this shall be done it must be made of no pecuniary advantage to legislators to protract their sessions. A suggestion in the *Democratic Review* that legislators shall be paid a certain salary quarterly during the term for which they are elected, without reference to the time of service, not to be diminished either in illness or on account of resignation, strikes us as the best proposition we have seen. This would induce men to labor during the session that it might prove a short one, to discountenance party resolutions that always consume time and engender bitterness of feeling, to pass laws that should be invariably general, and would prevent a multiplication of useless statutes—in short, to do their work as if they were sent there by the people and not merely to gain a little ephemeral distinction for themselves.

Another suggestion from the same periodical seems to us all important. It is that no law shall be passed remunerating an individual for accidents or misfortunes that have happened to him while fulfilling a contract for the state. Individuals do not do so in their private transactions and the agents of the state ought to be quite as particular. This might in some cases prove a hardship but when the practice is indulged in, as it has been among all the old states, it proves constantly a hardship to the whole people and opens a door for the most extensive corruption and favoritism. Nor are the hardships of these cases done away with for although many may be saved from loss yet there are many more, and generally the most meritorious, who, after dancing attendance upon the legislature for years, not only find their first loss confirmed but have added to it a loss as serious of time and of temper, and have also become disgusted with the government under which they live.

Throughout the United States there is at the present moment a strong disposition to reduce all legislative proceedings to a greater simplicity than has obtained for many years past. Men have seen the internal improvements of states almost destroying their energies and their integrity, and they are beginning to think that the best plan is never to force upon a country those improvements that must come of themselves when they are wanted. Where capital can be profitably employed there it will come, and although the action of the legislature may hasten the advent of some extensive system of improvements, it can very rarely do any good, and must almost always lead to the ruinous consequences we have seen in Michigan, in Illinois, and elsewhere.

Wisconsin must ever be an agricultural state, with the addition of a strong mining interest. It wants no state protection for any of its interests. It wants no laws to build up vast bodies corporate, whose interests shall be diametrically opposed to the body of the people in their employ. It wants few laws, but wants those to be readily understood and rigidly enforced. It wants but few state officers, and those elected by the people. It wants no central appointing power to rule by corruption that will gradually creep in. It wants no useless offices, no idle officers, and above all none of those situations that call forth crowds of office-seekers, who wish only to secure to themselves either large salaries or opportunities to enrich themselves by means inconsistent with the welfare of the state and often with common honesty.

With a strictly defined constitution, and one that shall prevent the passage of useless laws and the creation at the pleasure of the legislature of useless offices, biennial sessions would be sufficient for all our purposes, and they would also be short. The people would be spared the constant search after good men to represent them, and the constant mortification of finding the men they had chosen were more bent on personal aggrandizement than on the performance of their duties. Without such restrictions it would be useless trying to avoid the annual long sessions of other states, and use-

less to hope to exclude that mere partisanship that has so long mingled with state elections everywhere.

We do not wish to see politics excluded from our state for we feel certain that the checks of parties on each other are highly beneficial, but we wish to see acerbity of feeling lessened, and argument resorted to by men, rather than irritation. All know that it is upon trifles most generally that the quarrels are most bitter, and that the usual weapons of partisan politicians are recrimination and abuse. There is too much done nowadays by legislators, and each act calls out the bitterness of party feeling. Let sessions be short, let them be held every other year, and men will argue more coolly, will avoid excitement, and will settle more generally upon those things they wish done.

Of course the governor should have power to call an extra session when he chooses, but as this would not produce extra pay or hold out inducements to do more than was necessary it would be called as seldom as possible, never without a strong necessity, and would end with the consideration of the special measure for which it was called.

AN ELECTIVE JUDICIARY

[July 14, 1846]

We copy from the *Wisconsin Argus* a long article on the subject of the Judiciary,[11] in which the elective mode is condemned as insufficient and dangerous. We do not agree with the writer in his positions, but many of our friends do, and we therefore think it right to lay the subject fairly before our readers for consideration.

We always approach this subject with a feeling of hesitation, for it is one of the most important for a new state, it is one we should much fear to see abused, and while the truly

[11] See *post*, 473 article on "The Mode of Selecting Judges," from the Madison *Wisconsin Argus*, July 7, 1846.

thinking men of all parties and all professions disagree so entirely on the subject it would seem to us that every man ought to hold his own opinion with some grain of doubt, while he should consider the opinions of others entitled to much respect.

The *Argus* states truly that our system of government, except only at primary meetings and in the election of very few officers, is not democratic but representative. We do not have a direct voice in the choice of our legislators because they must be nominated in some manner by agents and must be supported as party men. Yet we do not see that this is more an objection to the election of judges than of many other officers.

To our minds the great desideratum is to get judges who will hold themselves above politics, whether they be appointed or selected, and if anyone will show us how that object can be secured we will give up all our own favorite ideas and adopt his. We want to see the best men among us on the bench, and we want to see those men so well paid that they may feel willing to remain there.

There is one thing, however, that seems certain to us, and that is, our convention will be much governed in this matter by the state of New York. If the men in that convention think they dare run the risk of the election of judges by the people we do not doubt that it will increase the feeling on the subject here, for most of us feel satisfied that in an agricultural state, where cities are few and large villages rare, people will always elect better men, whether for the bench or the legislative halls. If, on the contrary, New York, after cool deliberation, shall decline making the change, many among our people, who have been long doubtful, would be decided against the measure as one that had been condemned by men of ability.

If it were only among lawyers, even eminent lawyers, that an opinion adverse to an elective judiciary was held, we might set it down as professional prejudice, but this is not so. Lawyers do not stand alone. There are many of our

best and purest statesmen who shudder at the idea of an elective judiciary, while there are others who believe it to be the simplest and best mode of choosing the purest and most capable men. For ourselves, we must acknowledge that we cannot see the danger in the elective system, while we would not be certain that a better might not yet be brought out.

The many systems to be laid before the New York convention will soon be fully canvassed, and it is to be expected that some one will become the great favorite there, and if so we must canvass it on its own merits, as the one we will be most likely to adopt, with perhaps some alterations to suit the difference of the countries.

CURRENCY: USURY

[July 21, 1846]

A Mr. Godek Gardwell as he styles himself (but whether the name is a real one we do not know) has sent us a long paper on the evils of the currency and the remedy for those evils, and requests us to publish such parts of it as we may deem fitting or else to give a synopsis of the whole. We must decline doing either. We will, however, notice his grand panacea, which is that the government should establish a grand safety fund for the people, whence all who wanted money and could give security might borrow at three per cent. In order to prove how entirely all this might be done Mr. Gardwell goes into a long account of figures, which we doubt whether he understands, and know we shall not attempt to.

Currency tinkering seems to be the besetting mania of a portion of the people of this country, and each has his great plan by which some kind of money can be made safe and plentiful. When Pitt had increased the national debt of England to so great an amount that people became frightened lest the government might fail there were hundreds of treatises spawned each year to prove how easy it would be by

this plan, by that plan, and by t'other plan to pay off the debt with very little expense and no inconvenience to the people.

To us it appears that the two projects are about equally wild. You cannot pay a national debt without taking the funds from the people. You cannot make money plentiful by legislation without doing injustice somewhere, and in the end everywhere. You might, indeed, force the half dollar to pass for a dollar by a law, but we all know this would be as foolish as wicked.

From fifteen to twenty states of this Union have been for from thirty to forty years past mainly endeavoring to form safe systems of banking, and not one of them has yet succeeded. The talents of our first statesmen have been employed in the work, common sense has been brought to its aid, experiments after experiments have been tried, but all have failed. With these facts before us is it not fair to presume that there is something radically wrong in these attempts to force a currency—that it would be better to abandon the whole matter in despair?

A large party in this country considered for a long time a United States bank as the only reliable currency maker that could possibly be formed, and many think so yet, but the question was brought before the people, the bank wisely, as we think, condemned, and although many differ from the great majority on the question, still we believe there are few who do not agree with us that it would be utterly impossible to revive the institution.

To us it seems evident that no panacea will ever again find favor in this country. The precious metals must sooner or later become the currency and exchanges be made by mercantile enterprise and depend upon mercantile credit for the credit of the paper. Such is, in fact, the case now, among all business men.

It is true we have bank paper, but it is little used for exchange; it is in fact only used because the banks have power to force it into circulation among the mass of the people. It

has very little credit of its own and every day is taking from that little.

In its best days the United States Bank was a convenience to merchants, and so in good times is any bank. It is in hard times they fail, only then. It is when you want assistance that you cannot expect it. When you do not want it, it is proffered to you liberally. Now we think that no sort of tinkering can do the least good, and we hope it will always be discouraged. Safety fund systems, banks, fiscalities, and all such things are getting to have an odious savor, and we believe few even of those once strongly in their favor would care to see them revived.

Usury is another matter that has attracted much attention, produced many stringent laws, and caused those laws to be repeatedly broken by the very classes they were intended to protect. Indeed, a man who pleads usury is, in nine cases out of ten, looked upon with contempt. Now, a law that is thus treated has something in it fundamentally wrong; and while in the present state of things we cannot point out a remedy, we still think if the currency were once regulated by not being regulated at all, the protection against usury would be much less needed, if it were needed at all.

Usury in all the states is the same, that is, taking unlawful interest, and is a crime, but the difference of interest that may be taken in the different states is very various. In the eastern states it is a crime to take over six per cent on loans. In New York this is not a crime, but it is to take over seven per cent. In Louisiana ten per cent is, or was, allowed, and here a man may take twelve per cent, or double the rate he may take in New England.

Thus, when the legislator is making a law to declare usury a crime, he has first to say what amount shall be allowed, and to do this he has to look to the wants of the country. After the law is once made it is stable, but the value of interest is not, and while the law here might declare six per cent to be the rate, ten might be profitable to the borrower, and yet the very next year he might not wish to give even six.

We are strongly of opinion that the laws against usury, where there are no banks, might be done away with. At all events they ought not to apply to more than the excess of interest; and even if the usurer were to be punished for his crime, the man who agreed to give usurious interest ought not to be rewarded for his wrong doing. He at least ought to be obliged to pay the money borrowed with legal interest, and if a penalty is to be paid let it be paid by imprisoning the wrongdoer or by mulcting him for the benefit of the people.

We feel a strong confidence that with no banks in our country, in our state, with products which bring cash from abroad, with widely scattered independence, the usurious loaning of money would soon be done away with. At present it cannot be for there are many causes at work that force men to require moneys for short periods at vast sacrifices. Those causes, however, are fast wearing away, and in a few years will have mostly disappeared. Then, without banks to get mortgages on real estate, and with a surplus of produce to part with every year, we doubt whether it would [not] be more profitable at least to throw aside for a while all restrictions on money, even that of usury.

THE CONSTITUTION

[July 28, 1846]

We are happy to find that almost all the papers in the territory are discussing the points of the new constitution. It is well that so much interest is felt in it, but it would be still better if men would remember that while a good constitution is one of the greatest blessings, yet, to be good, it must not be expected to embrace too much or to possess too little.

The matter of the judiciary is one of the most important and has been discussed perhaps more fully than any other; but there are some who seem to us to go too far in deeming that the constitution should do away with the abuses of the

common law and of practice. If this can be done at all, and we think much may be done towards it, it is to be by the introduction of a code of laws that shall have been formed after long deliberation, and adopted after a full investigation by the legislature, and then we may rest assured that it must be amended constantly by subsequent legislation.

Rules of practice must prevail; they may be bad now, but still they are necessary, and no constitution can be amended with much ease unless all its value is destroyed.

A constitution is intended as a check upon legislators, forbidding them to enact improper laws. It is approved by the people as a check upon themselves, forbidding them in a year of passion from destroying restraints which they know are wholesome. A constitution is a general declaration of what is morally right and what is morally wrong, and is to be set before legislators as a warning for all time, and a first spring whence all their laws are to proceed, or by whose rule laws may be repealed. It is true that with a constitution that contains proper judiciary provisions there will be less difficulty in adjusting all the minor details of law. In most states there are too many courts, and they are too frequently resorted to one after another, thus employing two or three sets of jurors and two or three benches to carry up to final trial a case that all knew from the commencement must be decided by the interposition of the highest court in the land.

Incorporations may be guarded against by the constitution, and thus the quarrel for banks or public works put a stop to until the constitution shall determine either by a call for a new one, as in New York, or by a constitutional call after a certain period, which we hold to be the best plan.

Another provision talked of in other constitutions and that certainly should be introduced in ours is to make the state as liable to be sued as an individual. The old doctrine that the sovereign state can do no wrong seems to us as untenable as the divine right of kings; and we can see no reason why a man who has a just claim against a state should be forced to become a humble suppliant to its legislature,

where want of time, violence of political feelings, and a thousand other things may affect or destroy his right, when a legal enforcement of his claim could be guaranteed to him and a justice done both parties with more certainty and much earlier.

All the provisions of the constitution should be brief, clear, and general, and the greatest care taken that none will be introduced of so doubtful a character as to render it necessary to amend the constitution by ridding it of them. We may be obliged in a new country like this to make in time some additions, but we should take care to introduce nothing that may tempt men to evade the constitution and plead the miserable apology of expediency.

When expediency is once made a rule the chief value of a constitution is gone. The spirit of the instrument ought to be kept always in view and the whole people ought to be willing to endure the extremity of inconvenience rather than infringe one particle of it. Provisions ought to be made for amendments, but they ought only to be used on extraordinary occasions.

It is proposed in New York to allow all men over eighteen to vote. We think this is wrong and hope no such provision will be introduced in our constitution. If you choose to define who shall be voters, well and good; but do not extend this right to such young men for their own sakes. If they are fit to vote they are fit to be entrusted with property and all other civil rights, and we all know that when such very young men are allowed to be their own masters they are too often ruined by it.

The age of twenty-one is as early as a young man ought to enter into business or politics; and the argument used that young men are generally of purer feelings than men of more advanced age, if true, is certainly as true of boys much under eighteen, and would at length bring you to the selection of voters as soon as they can read a newspaper well enough to know the difference between parties. Besides, this argument would teach us that nearly all men keep growing worse,

and that after a certain age they ought to be debarred the privilege of voting on account of age alone.

The argument, however, is incorrect; men improve oftener than they deteriorate. There is many a man who, fifteen years ago, would have thought it a cunning thing to have slipped in an illegal vote, who would now be ashamed to connive at the admission of one for his own party.

The profligacy of politicians results from the too great power to give office that falls in their hands when they hold office, and here the constitution can interpose a check. Every possible office that can be made elective by the people should be made so; and there should be as few officers as it is possible to conduct business with. No corrupting central power should be tolerated, and to every office, whether elective or not, a certain salary should be affixed that could not be increased. Offices with fees to them should be abolished, or rather the fees should be taken away and a stated sum paid.

When fees are paid the people are often much deceived, and find out in time that they have been paying an enormous tax for very small services. Inspectors, clerks, registers often receive more pay than governors or judges, and then perform their duties mostly by deputy. A short clause in the constitution would prevent this mischief, and if a legislature had to affix a salary openly whenever an office was made it would prevent much unnecessary office-making.

We intend to resume this subject at an early day and shall soon begin to watch with interest the proceedings of the New York convention as its plans begin to be matured. We all feel that if her constitutional provisions are good, we shall adopt them with such modifications as may suit our different conditions; and if they are not, we shall feel much disappointed, and have more to do in our own territory to make a good constitution.

THE CONVENTION

[September 23, 1846]

The immense Democratic majority now ascertained in the convention gives the fullest assurance that Democratic principles must rule and that the constitution may be made as thoroughly Democratic as that of any state in the Union. Yet, in order that this may be the result, it will be necessary that there should be a proper spirit of compromise on almost all the provisions that are to be inserted in it.

That this can be the case there is no doubt, but in order that it may, no man must go there so filled with his own particular notions that he can consider no one else near right. If he does, however good in themselves may be his own notions he must become a mere mischief-maker, and a mere consumer of time for purposes worse than useless. Indeed, he will not only induce all to look upon him with ill feeling, but he will risk the loss of even those very measures that he looks upon as, and that perhaps are, the most important to the new state.

No two men in the territory can agree upon a constitution; no two men can agree even upon more than half a dozen of the leading articles to be engrafted in it. How then can any one man expect that a whole convention can agree with him even upon one single leading measure precisely as he brings it forward? Or how can he suppose even a majority can be brought thus to agree with him?

There are a few of the leading Democratic principles that will be at once approved of by all, but even on these there will be found differences of opinion. On the subject of banks, for instance, and incorporations, generally, it is probable there will be but little difference of opinion, but even in these there will be some. The most stringent provisions against them will in all probability be adopted, but we may expect that many Democrats will evince some timidity lest they

may drive away foreign capital,—a timidity in which we do not share in the least, but which we feel satisfied yet exists.

On other questions there will be much wider differences, and many will introduce hobbies of their own that they will be surprised everyone else is not willing to ride as madly as they are. Everyone will see his neighbor's folly if he has one, but none will be willing to own that he is in the same case.

Now, in order that a convention should be harmonious all should be willing to concede those matters they consider not of vital importance, and none should insist where they see that their obstinacy will only produce ill feeling; for they may rest assured that such a course will endanger much that is of importance, and that, too, for no earthly purpose except to make it evident they cannot drop an idea until the last, however hopeless of its adoption, and when they know they are losing all chance of being useful in future by their pertinacity and wasting the time of a convention that must by the necessity of the case be of short duration, and that ought to be the whole time earnestly employed.

We have one great fear that we may as well mention now as at any other time. We fear that there will be too many men in our convention who will think that all sorts of matters are to be incorporated in it, who will think it ought to be a code of laws, a system of morals, and a full plan of state government, and that these men will bring forward many wild schemes that will waste much time in their disposal, create necessarily some ill feeling, and make a sad waste of labor.

A constitution is to be only a few fixed rules to guide and to restrict legislatures, and a few declarations of strict principle to show what all are to be guided by. If this is overpassed you instantly place your constitution in danger. You make a constitution that the necessities of the state must break, and that, therefore, becomes worse than useless. You may define the duties of a judiciary, number under certain restrictions the officers, say how far the legislature may have

it in its power to interfere with the powers and duties of certain portions of it and where the legislature may not be allowed to interfere, but you cannot prescribe in a constitution rules for practice or forms of law of any kind. This may be done afterward by legislative enactment, by even adopting a code if you choose, but cannot be done by constitution.

The judiciary is one of the most important subjects to be considered, both in reference to the number of courts and judges, to their mode of selection, whether by appointment in the various ways or by election, and to many of the duties the courts are to assume, but in all countries there must be a door open for necessary change, and in ours the necessary changes must be made by the legislature.

It is to be remembered we are a growing country, and one that is to grow rapidly. Alterations will then be more necessary than in older countries, and all the constitution can do is to place such safeguards around them that they cannot be made on the mere spur of the moment or at the dictates of party caprice.

We regret that our constitution numbers so many members. Less would have done the business probably as well, certainly with more rapidity, but as this number was not expected to be so great, and was only caused by our having a population much greater than the most ardent of us supposed, why, it could not well be helped. The only thing, then, left for us to do is to make the best of the great number we have, and try to induce all to act in that spirit of forbearance and conciliation that ought to be used on the occasion, and that cannot fail of producing the best results, and throwing out the wild propositions of those who are anxious for something, without having thought long enough over the subject to discover that they ought to look elsewhere for the measures they wish adopted.

We hear frequently that there are too many lawyers in this convention. If there are any poor ones in it there are just so many too many. The good ones we welcome to it

with pleasure, assured that they will do good service. It is true we may not agree with them in many points, and may think that in some they are influenced by the prejudices of a legal education. But what shall we say of those who prejudge them? Shall we not say they must be influenced by the prejudices against the legal education? And do not we all know that these prejudices are very strong? They are so certainly, and they are much stronger than most people are willing to allow. Neither are men very consistent in them. They will oppose all lawyers at home, merely because they are lawyers, but they will vote for Henry Clay or Martin Van Buren for the highest office, although they know both are lawyers.

We should be perfectly willing for the sake of the bar that lawyers should be debarred from all offices unconnected with the courts, and even from much more, but a move of this kind never has been made, and, so long as they are not given certain privileges, that they may choose between them and the privileges of others, we can follow no crusade against them, any more than we could against any other body of men. Those who earned their bread by labor were once, even in this country, greatly under the ban of public opinion when they sought high office. We think that was wrong; and we think to place the lawyer in the same situation would be equally wrong.

That lawyers of small brains and great pretensions may create much disturbance is true, but so may other men in the same predicament; the only disadvantage in this case against the lawyer is that he has been in the habit somewhat of public speaking and feels more confident; yet such men are easily put down.

We trust, however, there will be no necessity for this. Many are doubtless elected to this convention who have not yet given sufficient thought to the business they are to perform. These men may make mistakes and offer measures that cannot be adopted, but we hope there will be good sense enough in the individual members to withdraw all motions

that they feel are improper or ill-timed. With this feeling an excellent constitution may be formed, and although in all its provisions it cannot be expected to suit any one man, yet with the many good examples before us we may choose the best; and with the strong democratic feeling that exists in the country make a constitution that will be acceptable as a whole to the community, and will place us highest among the Democratic states of the Union.

SINGLE DISTRICTS

[September 30, 1846]

Those who will take the trouble to look at the old states of the Union, as represented in their legislatures, cannot fail to see that the greatest possible strength is given to strong counties or districts, while the weak ones are shorn of the small power they ought to possess and are swallowed up by their more powerful neighbors.

The plan of sending a number of delegates to the house from each county of a state has now been tried for years in most of the old states and the people have become completely disgusted with it. In New York more especially has this been the case, where the great city, with more than one-tenth of the delegates from the state, can march up in a body, and with its controlling vote insist that its own selfish measures be carried or that it will use its mighty influence against all others, however reasonable their demands.

When, for certain purposes, a few of these overgrown counties join together, they have all power in their hands, and the poor counties that send only one or two delegates can do nothing but look on, and are asked to do nothing but vote on party questions where their principles will not allow them to vote against what they believe right. Their own local interests, however, are gone; or if they do get some trifling law of relief passed it is done rather as a charity than as an act of justice.

But even this is not the worst of the system. Indeed, its evils are too numerous to mention in a summer's day. It induces men to be guilty of logrolling to the greatest possible extent. It induces them to make the legislature a place of bargain and intrigue, and raises men among legislators who hold an influence over their delegations seldom used for good, often sold for evil. We say sold, for that is the proper word. Many do not know that they are sold, for the price they receive is perhaps only some small favor for a village or a ward in their county or city where they have an interest; but the man who has the influence, who drills the delegation, he knows he has sold them, and he receives the price, and that price is often the one that injures the most of his representatives, while it only benefits him and a few of his constituents.

Go to one of the state capitals where election by counties prevails and how soon will men be pointed out to you as men of great influence, and without whom, if you wish a law passed, you are told you cannot get along. Inquire whether these individuals are eminent for high talent, or learning, or oratory, or for pure and exemplary lives, and you will be laughed at, while you are told that, although pure from having any such claims as that to influence, they are generally suspected of being not over scrupulous, not over informed, not over talented, but that they lead such and such delegations, and through them control such others, and such and such single members. In fact they have a power like men in the British House of Commons, who boast that they have in their pocket so many votes that they can cast as they choose on any question, the only difference being that, in the case of the British vote-holder, he absolutely controls the members he puts in parliament, and in our case the control is gained by cunning and without the person under control knowing that he is made a perfect dummy of.

Of course we do not mean that all can be affected in this way, but enough can to impede the course of just legislation

and to convince the honest legislator that he is rendered almost powerless by the vogue. It is true that important occasions will often arise where these managers, not having the talent to conceal their views, overshoot the mark, disgust those who have served them, and lose their power at once and forever; but new men arise after the ferment has subsided and the same round of chicanery is played again.

All must admit that the single-district system is more democratic. It brings the delegate and his constituents more closely together. They know him better and the nominations are made more at home. Besides, there is none of that logrolling in conventions where distant interests will join to foist nominees upon a county that would not be their first choice. In short, the single-district system brings the power closer to the people, and that is what we should all strive to do upon all occasions.

We are all well aware that there have been many objections raised to this plan, the most prominent of which has always been that in many of these districts there will be but little choice of men, or, in other words, that in many there are none but farmers, who have not that refinement of education or habit of public speaking that is so much more readily found when you have a county to ransack. To this we answer that these accomplishments are not necessary. There will always be speakers enough in the legislature,—always be men enough of really superior minds, and if you fill up the remaining numbers with plain, sensible men you will have a legislature fit for all emergencies.

To the men who make this objection we would like to ask a question or two. How is it with the large-district system? Do you select men of great talent, of great oratory, great purity? No. You do not; and why? Because it cannot be done. The system is bad in itself and to get one good man in your delegation you are often forced to admit the remainder to be all indifferent. In large districts there are too many interests to allow of a choice of good men. They

are there, it is true, but you dare not choose them for fear of injuring yourselves with some of the petty but widely extended influences that always make themselves felt in large districts.

Another advantage of the district system is that it prevents what is called gerrymandering. Where this system prevails no cunning can make much difference in laying out contiguous districts, the more particularly in a state such as ours will be, where certain lines can be prescribed and the minority in politics must have as nearly as possible its proper number of delegates.

We trust that when Wisconsin becomes a state this will be taken care of and that we shall then have not only our lower house so elected, but our upper house as near as it may be. Indeed, we would prefer that it should be likewise arranged according to the single-district system alone, even if we only elected in three or four years. We, however, think four or even three too long, and believe a senate might well be renewed every two years if there are annual sessions, and four where the sessions are biennial.

Another advantage will be that where each portion of a county is sure of its representative there will not be such an anxiety to multiply counties for the sake of influence, and none will wish to go to the expense of new county buildings, etc., unless the increased convenience to a considerable portion of country will pay not only that expense, but the extra burden of another set of county officers.

It ought to be a sufficient inducement to us to try this system, the mere seeing how discontented with the old one all have become in other states. But in addition to everything, a new state requires it more than all others. Among us there will be constantly new men coming in, who may be well fitted for office, well known in their small districts, and perfectly trusted, while in the county abroad they are entirely unknown. In the old states men do not often come into a county unless it be to remain for many years, and never look

for office until the old stagers shall have lost popularity or have been promoted, and under the county system when one of them goes his place is supplied by another from the same clique.

Another advantage yet would be the breaking up of the influence of those little knots of politicians, who, lacking any other capabilities to gain power, gain it by industriously canvassing a county and then let themselves out for the hire of some little office as tools to some ambitious man who has rather more sense than they and guides their exertions.

We are inclined to the belief that the single-district system would be far the best for us and far the most popular among us; and we hope the convention will so arrange the matter that the election of members for both houses will be brought as near the people as possible, and the candidate for office chosen from such a small territory that he may be as well known as possible to those who send him on to do for them the duties that must be performed by delegate.

SELECTIONS FROM THE PLATTEVILLE *INDEPENDENT AMERICAN*

LETTERS OF "A FARMER OF GRANT"—No. 1

[December 31, 1845]

As we are shortly to be employed in forming a constitution for the government of the state of Wisconsin, it is right and proper that every paper should begin to discuss the subject; and indeed every citizen has a right, through the press, to give his views of what features in the fundamental law of the country would, or would not, be likely to promote justice and happiness.

We are here collected from all the states of the Union and other countries; therefore we ought to exchange ideas freely, with an honest intention of stifling prejudice and coming at truth, by inquiring of many people. It is not uncommon for men to believe that the things to which they have been habituated are preferable to all others. This disposition has shown itself in all the conventions, from that that formed the Constitution of the United States down to that of Texas. John Adams once said, at the table of Mr. Jefferson, "The British government is the best in the world, if it were trimmed of some of its little errors." Mr. Hamilton being present replied, "As it is, it is the best." Likely they were both right, but an original thinker, like Franklin or Jefferson, would have been likely to inquire whether it could be made better, or whether it fully answered the purpose for which governments were instituted among men, viz: to secure their rights, and to promote justice and happiness. This should be the polar star to guide the framers of all constitutions and laws, and perhaps the whole should be resolved into the word justice; for when a man has strict jus-

tice done him in every respect, if he is not happy it is not the fault of the laws of his country. Nearly all robberies that have been committed by legislation have been carried through under the pretence of promoting happiness. All the bankrupt laws, the stay laws, the loan office laws, the lottery laws, the distribution laws, the state debt and internal improvement laws, the bank and tariff laws, with a thousand others of a similar cast for individual benefit, have been carried forward with the pretence of promoting happiness; but in my view he that is willing to sacrifice justice to promote general happiness is on the wrong track, and will not accomplish his object, and all such legislation should be prohibited by the constitution.

As the constitution of Texas is the latest improvement in that way, I will notice a few of its sections. Article I, section 11, says: Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. All courts shall be open, and every person, for an injury done him, in his lands, goods, or reputation, shall have remedy by due course of law.

It can easily be seen that this section is the production of a lawyer. This remedy is just no remedy at all. To sue a man at law is about equal to challenging him to fight a duel, and as dueling is prohibited in another part of this constitution, it was perhaps thought right to let them fight their battles in court. When a man is about to challenge his adversary to fight a duel, he reasons thus: "The scoundrel has done me an injury; therefore I will take the risk of getting a shot in my body for the chance of putting one into his." So if he sues him at law: "The rascal has done me an injury, I will take the risk of a shot into my pocket for the chance of putting one into his"; but there is this difference—in the latter case both shots are sure to take effect, while in the former they may both miss: of the two evils the dueling is undoubtedly the least.

Article I, section 12. "No person for the same offense shall be twice put in jeopardy of life or limb, nor shall a per-

son be again put on trial for the same offense, after a verdict of not guilty; and the right of trial by jury shall remain inviolate." Here again we meet with protection for the craft of the lawyer. Trial by jury was once a valuable thing, but what was then called trial by jury is now called trial by arbitration. What we now call trial by jury is merely a trial by law; and law is costly, tedious, and not understood by any man now living. The judge instructs the jury, according to law "as he understands it"; if they decide agreeably to the instruction, well; if not, the verdict is set aside as contrary to law, so that the substance of trial by jury is gone, and nothing but the shadow is left.

Were I making a draft of a constitution for Wisconsin, I would include the above two sections in one, as follows: "Section ——. That jumble of nonsense called the common law shall be forever eradicated from our system of jurisprudence, and its place be supplied with common justice, administered by common sense and common honesty; and, that justice may be cheap, quick, and brought home to every man's door, all disputes shall be settled by arbitration instanter, or as soon as the facts can be ascertained. The number and qualification of arbitrators should be regulated by law, and in such manner that they would be likely to understand the cases which they were called to decide.

Article 1, section 15. "No person shall ever be imprisoned for debt." One of these two things is clear: a person should be compelled to pay his debts, or he should not. If he should be compelled to pay, then every means should be resorted to to force him; but if he should not be compelled to pay, then this section should read, "No person shall ever be forced *by law* to pay debts hereafter contracted." If A. could compel B. to give him credit, then justice would require that the law should compel A. to pay, but, as this is not the case, B. ought to have great confidence in A. before he gave him credit, and A. ought upon honor pay, or his credit be gone forever.

Section 22 of article 17 of this constitution makes provi-

sion for the legislature to pass a law to allow the head of a family $2,000 worth of property to be exempt from forced sale. This should not be. If a man uses industry and economy till he acquires wealth, there should be no law against him in favor of those who either went idle or spent their earnings as they went along; there should be no law to punish good actions and reward bad ones; there should not be a law for the man worth two thousand dollars and another for the man worth three thousand.

Article 3, section 27. "Ministers of the gospel, being by their profession dedicated to God and to the care of souls, ought not to be diverted from the duties of their functions; therefore no minister of the gospel or priest of any denomination whatever shall be eligible to the legislature." This is a good section as far as it goes, and it [is] copied in substance from some of the best constitutions of the older states; but it ought to have continued: "and lawyers being directly interested in having the laws ambiguous, unintelligible, hard to be understood, and even without meaning, therefore no practising lawyer shall ever be eligible to the legislature." The necessity of this clause may be seen in all the constitutions and laws of the Union.

Article 7, section 19, is a sample. It says, "All property, both real and personal of the wife, owned or claimed by her before marriage, and that acquired by gift, devise, or descent, shall be her separate property, etc." Now I would like to know if a young girl were to claim ten leagues square of land in Texas, whether the clause of the constitution would confirm her title and make it her separate property after her marriage. If it has any meaning at all, that is the idea it would seem to convey, and likely some *smart* lawyer had it inserted for that very purpose.

Should you think this worth a place in your paper, in my next I will consider the doctrine held forth in this section and the preceding one.

A Farmer of Grant.[12]

[12] "A Farmer of Grant" was Stewart McKee, an unsuccessful candidate for election to the first constitutional convention.

LETTERS OF "A FARMER OF GRANT"—No. 2

[January 16, 1846]

CONSTITUTION OF TEXAS

Article 7, section 15. "It shall be the duty of the legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial."

Who will say, after reading this section, and knowing that lawyers ruled the convention of Texas, that they, as a class, are interested or selfish. Had they been so, this section, in imitation of many others of this constitution, and the constitutions of the other states would have provided that "all differences shall be settled by due course of law" and might have continued "that no person shall be eligible to any office of trust or profit in this state, unless he is a lawyer, or has had at least six lawsuits on his own account in the last year preceding his election or appointment."

Supposing the clergy of Texas had been assembled in general conference, synod, or whatever name they choose to give their assemblies, would they have been likely to pass a resolution "that every person, who chooses, shall attend to his own salvation," without their assistance? If they would, it would go far to prove that Texas is no part of Mexico. Were the doctors the rulers of any public assembly, would they pass laws or resolutions, that a sensible woman who had raised a family, might attend to her own family, or that of her neighbor's, in case of sickness? Notwithstanding a majority of them could not avoid knowing it to be the best policy for such family. Let no man then say that lawyers, as a class, are inferior to other men, though the circumstances in which they are placed, as well as that of other professions, have to them rather an immoral tendency; and the system, which requires so much of their services, at so

great a cost, cannot be the very best that might be adopted for society at large.

This section would have been greatly improved by the word "either" after the word "when" in the last clause of the section; but in the constitution of Wisconsin I would like to see it written thus:

"Section —. All differences and disputes shall be settled by arbitration, and when one of the parties proposes this mode of adjustment, if the other refuse, then the party so refusing to settle shall have no further recourse at law."

I hope the people will vote for no constitution without this clause.

Article 7, section 34. "The legislature shall, at the first session thereof, and may, at any subsequent session, establish new counties for the convenience of the inhabitants of such new county or counties; provided, that no new county shall be established which shall reduce the county or counties, or either of them, from which it shall be taken, to a less area than nine hundred square miles (except the county of Bowie), nor shall any county be laid off of less contents. Every new county, as to the right of suffrage and representation, shall be considered a part of the county or counties from which it was taken until entitled by numbers to the right of separate representation."

This is an improvement on all the constitutions of this Republic. There have been more expense, time, and talent wasted on this subject than on any other which has occupied the attention of the legislatures of the new states and territories. Indeed, there is commonly a majority of their members who have, individually, a scheme of this kind for the aggrandizement of himself or next friend, which turns the whole body into a logrolling. Many a member has logrolled for a whole session to get a county seat, and then missed it; others have done the same and succeeded, and yet made no fortune thereby; and yet some who did succeed with their locations, and made fortunes, would have done better for their children and grandchildren could they only have got

justice between man and man established on a firm basis; for then every industrious, economical person would be sure of a living. Hence it is the better policy in the framers of constitutions to promote justice and suppress speculation, and everything that leads thereto. Every speculation aims at a fortune, every fortune aims at the inequality of the people, and the inequality of the people aims at the overthrow of republican government, and would, ere this, have sealed the fate of this nation, were it not for some lucky* ingredient in our system which commonly prevents the wealth of the avaricious grasper or the lucky adventurer from descending further than the second generation.

I would, therefore, recommend that the constitution of Wisconsin should provide that no new county should be of less dimensions than nine hundred square miles, and laid out as nearly square as possible, with the county seat located not more than two and a half miles from its geographical center; to be allowed no court until its population amounted to three thousand, unless called for by a vote of two-thirds of its legal voters, to have one chief magistrate, elected by the people, who should be registrar of deeds, with as many township or district magistrates as were found necessary in all civil disputes, the magistrate to summon a jury, who should judge both of the law and of the facts, and give their decision without any regard to any other law than their own sense of right and justice; and in criminal cases, to try, and, if they should find guilty, to assign the punishment in the

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* I use the words "lucky ingredient" rather than wise provision from the fact that when this government was organized property had a much greater precedence of person than at present. In any of the conventions that formed the constitutions of the old states, if a member had proposed that the governor should not have the property qualification he would have been laughed to scorn. In Massachusetts, even now, a German or an Irishman who owns an ass worth six dollars can vote, while one of the descendants of the Pilgrims would be denied the right of suffrage unless he had property to that amount. This, in some measure, accounts for that state and others like it always being in the front rank in granting privileges and monopolies to large capitalists at the expense *even of their own hirelings*, as well as of the people in general, and those of the South and West in particular.

same manner. When the population would be over three thousand to continue the same system at their own discretion.

In the first settlement of these mines the people found themselves out of the limits of any state, territory, or county government. While they remained in this way, with very little attention to rules and regulations, they had very little trouble with thieves or any other bad men; in one or two cases they found a culprit guilty, tried him, put him in a canoe, and sent him afloat on the Mississippi. Then their mineral, tools, wood, provisions, and everything else were safe. Where they left them, they were sure to find them. Not a lock was in the country, and no need of any. But shortly the state of Illinois found them to be within their limits, and in her unbounded benevolence thought proper to send them the blessings of civilization, and with the blessings of civilization came the blessings of thievery, fighting in groceries, gambling, brothels, swindling, jumping of lots, with all the other blessings that are now brought forward and debated in court. These are facts within the knowledge of the old settlers, and susceptible of judicial proof. So long as we have men of great talent and learning making a good living by protecting crime and criminals, so long we may expect to have plenty of crime and criminals to protect.

A Farmer of Grant.

A CONVENTION EDITORIAL

[February 13, 20, 27, 1846]

I

Most persons, in countries where men are allowed to think and to speak, frame to themselves, within their own minds, some fabric of government which they believe best suited to human nature and best adapted to the wants of mankind. But even among men who have been accounted benefactors

of their race, different and conflicting plans have prevailed. The march of improvement is said to be onward; and although many affect to bewail the dishonesty of these degenerate days, they cannot deny that now the aggregate knowledge of any enlightened country is much greater than it was a century ago. Antiquity is a grand thing in its proper place, but that is not a sufficient reason why error should be worshipped, though wrinkled and hoary with age. Governments have usually been the result of fortuitous circumstances. As the chained earthquake in its subterranean struggles has thrown islands above the surface of the sea, so men in asserting their natural rights, and tyrants in attempting to crush them, have whirled into existence the iron-handed systems by which nations are ruled, not to say oppressed. Yet there doubtless have been instances where persons, from the beginning, have, from liberal, extended, and benevolent views, meditated a plan and carried it out in the main according to the original design. Our own national government is a case in point. Wisconsin is fast approaching her majority—she will soon apply to be admitted a sovereign state of the Union. At a crisis like the present it would be well for the people to discuss the prominent features of a contemplated constitution. While we have the name of a republic, give us, at the same time, the spirit and soul of republicanism. These subjects need to be agitated, lest when the time arrives for the work to be done we shall not have deliberated upon it as its importance demands; and not knowing what we want shall leave our delegates to the convention unenlightened as to the wishes of their constituents. Upon many of the topics involved there will necessarily be conflicting opinions.

II

In the formation of a state constitution it would be well to keep in view the principles upon which republican governments profess to be established. All legitimate power proceeds from the people. This could not be denied, even

among men who wished to frame a monarchy. Men do not differ so much in premises as in conclusions; nor in theory so much as in practice. Hence we sometimes find men, nominally liberal, practical tyrants. The governed should beware of transferring too much authority into the hands of rulers; for, forgetting that they are the servants, they too often become the masters of the people. Individuals are more ambitious and more tenacious of power than the mass, and all history has proved that in times of peace and quiet the former are apt to make inroads and aggressions upon the latter. It is the tyrant's business to fortify himself, to accumulate strength, to build his throne on an immovable basis; in doing which, he is aided by those who expect to receive bounties at his hands. It is the business of no one, but of the many to arrest the stealthy step of usurpation. Hence it is that nations are enslaved. The world is not only "governed" but gulled "too much." Under the head of implied and constructive powers, tyranny may find a plausible pretext to stamp his foot, rough-shod, upon the neck of the American eagle.

III

Would it not be a difficult task to convince the crowned heads of Europe that they have not a "divine right" to rule? And that their posterity, though imbecile in intellect, have not, by inheritance some godlike superiority over every untitled subject of the realm? Do not these subjects swallow down the monstrous dogma of nobility, and worship the reptile while it gnaws upon their vitals?

Take, for example, the English government: and what is it but an ingenious fiction—a positive lie. It says that "Her Majesty, by the grace of God," reigns and dispenses the blessings of liberty all over the kingdom. Whereas, a few salaried demagogues, "instigated by the devil" and the love of hereditary power, delude the nation with highsounding words and live in luxury and debauchery at the direct expense of the taxed, destitute, and starving millions. "Her

Majesty,'' left to herself, would be as inoffensive as any other woman of less than ordinary intellectual and more than ordinary animal capacity.

Here on American soil our rights are based upon the truth, without any artful invention of falsehood. The persons that constitute the nation are the source of all delegated power. The people should retain within their own grasp as much of that power as is compatible with the healthy functions of the body politic. In all cases, except where it is absolutely impracticable, let the people in their own proper persons vote at the ballot box in the choice of their servants, in preference to letting their representatives act for them.

LETTERS OF ''A FARMER OF GRANT''—No. 3

[March 6, 1846]

That we are soon to have a state government is now known to all. It is, therefore, time that those who are to be members of the convention to frame a constitution should begin to think seriously on that subject. Each individual who expects to be a candidate should furnish himself with a copy of all the American constitutions and make them a particular study. He should endeavor to find out the effect that each section was intended to produce, whether it did produce the effect intended, and, if not, what was the cause of its failure.

Take the constitution of Vermont, for example. Chapter 1, article 4, says: ''Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character; he ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformable to the law.''

This article is, of itself, almost constitution enough, if the measures therein mentioned could be carried out. Who

doubts that these measures, perfectly carried out, would greatly tend to produce a happy state of society? But does "every person within the state of Vermont find a certain remedy, by having recourse to the law, for all the injuries, etc."? Everyone knows that they do not. Who does not know, notwithstanding these wise provisions of the constitution, that there are cases in Vermont where the person applying to the law for remedy for wrongs done to his property, person, or character, instead of getting such remedy "freely, and without being obliged to purchase it," has sometimes to pay double or treble the amount contended for; instead of getting such remedy "promptly and without delay," sometimes obtains it at the end of five, ten, or perhaps twenty years, and is sometimes actually denied it altogether?

The truth is that the whole article, nay, the whole constitution, is vetoed by the last four words, "conformably to the law."

In all the states there are similar circumstances, with similar provisions in their constitutions, and for similar reasons, that is, that these remedies are obtained conformably to the law, or, in plain English, not obtained at all.

It is not to be expected that self-government will make much progress in community until it is first understood by individuals; that is, until the rising generation is taught the reason of things and the art of happiness, so that it will be able to keep its propensities completely under the control of the moral sentiments. This cannot be looked for so long as the old system of governing by violence is continued; and while the teachers of science and morality are publishing lengthy articles on the laxity of family government, we cannot expect the old system instantly to disappear.

The child whose actions are regulated by the strap and the boo-man, whose youth is directed by the cowhide, and who, when he outgrows that jurisdiction, is handed over to the awe of the clergy and the devil, is much better fitted by education for a slave than a free man, for the subject of a king than a citizen of a republic under self-government.

Taking the circumstances as they are and not as we would wish them to be, we must content ourselves with the improvements within our reach, and in whatever we do to promote justice great care ought to be taken that it will have the effect that we intend, and not be nullified by some legal phrase.

A Farmer of Grant.

AN ELECTIVE JUDICIARY ADVOCATED

[May 8, 1846]

In a pure democracy the people meet en masse and enact their laws, instead of electing representatives to legislate for them. Such a government is better adapted to the wants of the governed and contributes more to their happiness than to any other. The constitution of mankind is such that we are better satisfied with the mere necessaries of life when they come of our own volition than with luxuries forced upon us. One exhilarating breath in a free land is of more worth than the whole perfumed atmosphere of the tyrannical Indies. A pure democracy being the most perfect model of human government, it follows that where from large extent of country or amount of population that form is impracticable, the nearest possible practicable approximation to that form is best. The representative plan is deemed to be the nearest allied to a genuine democracy. But men are apt to trust too much to those who are elected to represent them, and to permit them to exercise power which, to keep as near as possible to our model, had better be retained in the hands of the people. As, for example, we hear persons protest against having a judiciary elected by the people. How would you have it done? And what objections have you to letting the sovereign people establish the oracles of the law? Who are interested in that subject, if they are not? Perhaps you want an "independent" judiciary. What do you mean by that? Do you mean that you want John Bull with

his magic roar to summon my Lords Coke and Bacon from the shores of the Styx, and to enthrone them in our midst? It is presumed that they would be "independent." It is admitted that they would constitute a grand court, learned in all the erudition of the law. But would it not be a little more congenial to our tastes, to our happiness, to the spirit of freedom, for each of us to have some part in constituting that most important branch of our government?

Would you have the legislature elect a judiciary? Why would you have them do it in preference to the people? Does that august body know our wants better than we ourselves? If so, we must give up the right of instruction. Are legislatures more honest, more capable, or less corruptible than their constituents? If so, away with the elective franchise, and let us cherish the divine right of kings—exchange the *vox populi* for the *vox diaboli.* Disguise it as you please in beautiful garb or plausible sophistry, a constitution prohibiting the people from electing a judiciary is highly seasoned with the spice of arbitrary power, and ought to be ranked with the tyrannical edicts of the feudal ages. There is not a particle of republicanism about it. The time is at hand when *Wisconsin* will have to decide for herself upon this subject. Democracy, what say you to it?

LETTERS OF "A FARMER OF GRANT"—No. 4

[July 24, 1846]

To the People of Wisconsin: You are about to build a fence around your future legislature to prevent them from destroying the fruits of your industry: see that you send the right kind of men to do it. With twenty-nine constitutions to copy after, the principal talent that will be required is honesty and interest similar to that of the great body of the people.

With the experience we have in constitutional law, we have much the advantage of the framers of the first American constitution and ought to be able to make many im-

provements. One of the many improvements we require is the reëstablishment of the ancient trial by jury, now commonly called trial by arbitration. Such a feature in our constitution would depopulate our courthouses, would make the fields of our farmers blossom like the rose, and the coats and boots of our lawyers require patching.

To accomplish measures like this, who will you send to do it? Will you send lawyers? As well might the people of England send their bishops to abolish tithes! As well might the people of this country send the lords of the loom to abolish tariff taxation! The principal men in the American conventions have been lawyers, and the result is we are destroyed by litigation—we are devoured by lawyers.

If you send the men of tweedle dee and tweedle dum, the talking machinery of the country, to the convention, you may expect a constitution not to be understood even by themselves, but frequently interlarded with the terms "conformably to the law," "agreeably to the law," etc. But if you send sensible farmers, mechanics, or other producers of wealth, the words "conformably to the law" will be supplied by the words "conformably to justice," and a provision made that that justice shall be ascertained by a certain number of arbitrators, properly speaking, jurymen. No man knows what is "conformably to the law," or what the law is, but every man knows what justice is, and what is "conformably to justice."

If we should have another wet day before the election you may happen to hear from me again.

A Farmer of Grant.

LETTERS OF "A FARMER OF GRANT"—No. 5

[July 31, 1846]

To the People of Wisconsin: In my last I spoke of the reëstablishment of the ancient trial by jury. Another great improvement might be made in the constitution, in comparison to that of the other states, on the subject of education.

The state of Illinois has had a large school fund wasted or destroyed by their speculators for want of a provision in the constitution to guard it, to increase it, and to put it in action. The constitutions of Missouri, Alabama, and some others have articles on education, but in my view they are very lame. The constitution of Missouri says: "Schools and the means of education shall forever be encouraged in this state." It might just as well have said "the citizens of this state shall forever be encouraged to build frame barns and brick houses," but it goes on, "and the General Assembly shall take measures to preserve from waste or damage such lands as have been, or hereafter may be, granted by the United States for the use of schools within each township in this state, and shall apply the funds which may arise from such lands in strict conformity to the object of the grant; and one school or more shall be established in each township as soon as practicable and necessary, where the poor shall be taught gratis." Now no individual member of any future legislature was bound, by this section, to act on this subject, and if no individual moved in the matter nothing would be done; therefore, the only thing done by the constitution in this matter is granting to the legislature a privilege which it had already; but the latter clause of the section is the unkindest cut of all: "where the poor shall be taught gratis." It ought to have been, "where the children of the people shall be taught gratis." Perhaps I ought to ask the pardon of good society; for its delicate ear may take alarm at the idea of their children being taught gratis, and that, too, in the same school with those of the poor. I would most respectfully admonish the better sort of people to look back fifty or an hundred years and see where they came from; to look forward fifty or an hundred years and see where they are to go. If they examine carefully and reason correctly they will surely discover that what is good for one is good for all; that moderation, industry, economy, honesty, and justice is the best policy. Let them look at the mushroom aristocracy that was planted in the charter

of the United States Bank. Twenty-five years demolished all their castles in the air. They were heard calling loudly for a bankrupt law, a robbery law to exonerate them from their creditors. They got it. Their debts were wiped out and will soon be forgotten; but the robberies committed on widows and orphans, the debaucheries created in the large cities, and the immorality spread over the whole face of the community will never be forgotten: they are recorded in the Book of Heaven.

I hold that the road to knowledge should be opened at the public expense as well as the road to the mill, the market, or the county seat, and that all the people should have an equal right to travel it, and besides being done much better it would be done much cheaper. There is money enough spent now on education in any state in the Union to educate every child in the land were it managed with economy, all under one head.

There is more or less of aristocracy in every convention and legislative body, and, commonly, enough of it to rule, and where such is the case it is vain to look for equal legislation, for equal justice between man and man, but still more vain to look for equal privileges for the workers and the idlers.

It was the declaration of a great statesman "that all men are created equal," but I believe it has been left for my humble self to declare that all men ought to be raised equal, at least in education.

A Farmer of Grant.

THE VIEWS OF "RIO GRANDE"

[August 7, 1846]

Mr. Editor—Sir: Inasmuch as we are about to elect delegates to form a constitution by which our legislature, as the representatives of the people, will be governed (until amended), we are bound by our individual interest as well as

for the good of society, of which every individual is a member, to cast our votes for such men as will most likely advocate and secure such measures as will produce the greatest possible good. We are about to build a fence around our executive and legislative authorities and [to be] taken into full membership of this mighty Republic and, as a number of our citizens have volunteered their services to assist in establishing so desirable an object, as a citizen I would like to know the kind of timber they propose to use; likewise, the shape and boundaries of said fence.

It would be gratifying to many voters for the candidates publicly to express the views which they entertain, in the public papers of the county or on the stump; then every man could hear and decide for himself. We most assuredly must expect a great diversity of opinions upon the many important subjects which will be, necessarily, brought before that honorable body; consequently, we see the great necessity for the candidates publicly to express their views to the people. As we know that our neighboring states are frequently altering and amending their constitutions, invariably do they adopt more and more of the republican principles: that the people are the sovereign power, who have a right, and are fully competent to govern.

The incorporating powers, executive, legislative, and judiciary, are the leading measures which will be discussed and adopted by this convention. Therefore, it is desirable to see the incorporating clause so trammeled that, when the legislature grants a charter, the contract, on the part of the people, cannot be consummated until it is approved by the next legislature, who will be elected by the citizens. Consequently all monopolies would have three ordeals to pass through: two with the legislature, and one with the people.

Therefore, it is requisite that the legislature be elected annually. It was a remark made by Dr. Franklin that when annual elections cease tyranny begins. This is good authority, and perfectly consistent with the social rights of man, for each member would be called to account at least once a

year. Every man, politically as well as religiously, should not be so ungrateful as to forget the being (or beings) that made him.

A part of the above reasons will apply to the judiciary. Therefore, the old custom of appointing judges during good behavior should be abolished for one made elective by the people, for the term good behavior cannot legally or morally be precisely defined. Perhaps some of the volunteers are in favor of electing them by the legislature; this would be an improvement, but would not so effectually cut the sinews of wealth and aristocracy as placing it in the hands of the legal voters, for one man is easier corrupted than five hundred. Perhaps their time will be limited to seven years; therefore, no legislature should have power to do what their successors cannot undo, if requested by their constituents.

As to the executive, one individual will be satisfied if he be divested of the appointing power, for he would feel more like a common man—the clerk of the district court and attorney, set to work by the individuals that pay them.

Therefore, as our personal rights, privileges, and obligations are equal, we have each, as an individual, a right to claim a voice in the formation of the constitution. Hence, by delegating this privilege, great responsibility rests upon the legal voters of Wisconsin to act their part, for it would be an infringement upon natural justice to neglect the right of suffrage. Therefore, if these conclusions be correct, the candidates are equally bound publicly to make known their views. I now have given a few of the many reasons which might be advanced to sustain the principles herein contained. I do not presume that we will all find men whose views will precisely chime in with our own, but I shall cast my vote for such men as will with me the nearest agree. Therefore, come along with your stump speeches and circulars, and, should you differ with me, you have a chance to make a convert.

Rio Grande.

LETTERS OF "A MINER OF GRANT"—No. 1

[August 14, 1846]

Mr. Editor: We have had several communications through your paper upon the subject of the formation of a constitution for Wisconsin; and as the subject is one of vast importance, one in which all are vastly interested, I thought I would submit a few remarks by way of giving my own views upon some points.

I do not fear but that the constitution in contemplation of being formed will be as strictly republican as the most republican constitution in our Union: I am not afraid of its falling behind the advancement of the age nor of its granting very many exclusive privileges. Indeed it is probable that the convention, when assembled, will procure copies of the constitutions of all the different states and draw from the most liberal of them; hence there are only a few subjects likely to agitate and to detain the convention.

1. The naturalization of foreigners is a question of vast importance. It is not likely that the doctrines of the party styling itself "the Native American party" will be urged before the convention—they are certainly too absurd. The population of our country has increased more than 17,000,000 within the last sixty years, and is still increasing in geometrical progression. A great portion of this increase is owing to the influx of foreigners; and if a liberal policy is kept up towards them, they will, no doubt, continue to come, and the time is not far distant when our nation will be bounded by oceans and when the example of an extensive and powerful republic will cause thrones to quake and potentates to tremble. It is hoped that Wisconsin will be no less liberal towards foreigners than the general government has heretofore been. Shall the Irishman be restrained from voting merely because, according to the notions of some, he votes with the wrong party?

2. The expediency of incorporating companies is being discussed by the people. It is certain that corporate powers for whatever purpose or in whatever shape they may be granted, are exclusive privileges, extracted from the rights of the people. Still, benefits may have sometimes accrued to the people from them, in the erection of public works and in the government of towns and villages. But the tendency of all corporate bodies is to issue paper money and flood the country with a fictitious currency; this is a serious objection against their existence, and if it cannot be remedied it would be far better to dispense with them entirely.

3. The practicability of electing the judiciary by the people was distrusted by the founders of our government. However, since the plan of electing justices of the peace was adopted in our territory we have had just as competent justices as we had when they were appointed by the governors. Indeed, it has been proved by the experience of many of the states that the election of this branch of the judiciary is practicable; and if it is at all practicable to elect the judges of the circuit and supreme courts, it is right, for it is republican. It appears to me that all the arguments urged against the election of judges by the people would apply with equal force against the election of any other officer; but what Democrat would presume to say that the people are incompetent to elect their own governors! New York, in her new constitution, has provided for the election of her judges, and let Wisconsin not be behind.

I propose, next week, to take up two other subjects, namely: the providing by *law* for the observance of the Sabbath, and the prohibiting of skeptics from giving testimony before our courts. There are a great many sincere Christians who would shudder at the idea of establishing Christianity by law, but who, nevertheless, believe law to be necessary upon these subjects; I shall, therefore, endeavor to discuss them with candor and fairness.

A Miner of Grant.

LETTERS OF "JACOB FAITHFUL"—No. 1

[August 21, 1846]

Mr. Marsh—Sir: I have been gratified with a perusal of several worthy communications that appeared in your paper, touching the subject of forming a state constitution, and I think it will not be presumptuous in me to make a few brief remarks touching that subject. I would state as an excuse for this rude production that I have not an ability to angle for fame with the bait of periods, nor a motive for consulting a temporary taste by a dish of perfumes, but there are several small items to which I would call the attention of the people of Grant for their consideration.

1. "That all power is inherent in the people," and by their authority all free governments are established.

2. That no precedence should be shown to any class or denomination whatever.

3. That no person should be prohibited from giving testimony before a proper tribunal because he is candid and does not profess to believe that which he thinks he cannot consistently believe, or in other words, that he is a skeptic.

4. That no religious manifesto should ever be required as a qualification to any office of trust.

5. That the right of electing judges should be given and necessarily belongs to the people.

I would wish to say one word as regards the men that have to perform the arduous task of forming a constitution. They should be men of integrity, energy, and firmness—endowed with much good common sense, and men that understand the theory of law. I do not wish to be understood that I would have them all practical lawyers, for I am aware that lawyers are generally arrogant, selfish, and distrustful. However, I should like to see enough of them "to give tone."

The foregoing has been elicited, not that I expected to give so much light on the subject, but that it might have the effect of inducing others, better qualified, to extend their inquiries. This is its chief hope and utmost expectation.

JACOB FAITHFUL.

Toadville, August 18, 1846.

LETTERS OF "A MINER OF GRANT"—No. 2

[August 28, 1846]

Let truth prevail in the affairs of government as well as of religion. It is the basis of good government, and without it religion is a chimera.

It is necessary and proper in the organization of governments that each individual should surrender certain natural rights and privileges for the benefit of the whole community of which he is a member; but it is by no means necessary for the good of the community nor for the existence of good government that any individual should be required to give up the right to labor for his own and his family's sustenance. Community undergoes much more inconvenience from an indisposition on the part of its members to labor than from an excess of labor.

If the "Christian Sabbath," as it is called, could be proved to be a divine ordinance, then its violation might be placed upon the same grounds as that of the great moral laws. But there are two reasons given in the Bible for the institution of the Jewish Sabbath. First, Exodus XX, 2: "In six days the Lord made heaven and earth, the sea and all that therein is, and rested on the seventh." And second, in Deuteronomy V, 15, it is spoken of as "a remembrance that thou wast a servant in the land of Egypt, and that the Lord thy God brought thee out thence; through a mighty hand and by a stretched out arm." If the first of these reasons be the true one, it proves most positively that it is the seventh day of the week, and not the first that should be kept. How is

it possible to conceive anything more absurd than to keep a day of rest in imitation of the Great Creator of the universe, but that to be a different day of the week from the one He kept. If the second reason is the true one, it is evident that it cannot be binding upon any other people than the Jews. The institution is spoken of again and again as being peculiar to the Jews. "It is a sign between me and you throughout your generations"; "It is holy unto you"; "It is a sign between me and the children of Israel forever." Exodus XXXI.

Justin Martyr, who must have known all about this subject, remarks "that on the Sabbath, the prohibition of certain kinds of food, etc., the ceremonial law, with all its ordinances and sacrifices, were designed to counteract the inveterate tendency of the Jews to fall into idolatry." And [add] to this, that there is no mention made in Genesis of the observance of a Sabbath; neither is it mentioned in the book of Job. The patriarchs kept no Sabbath. Their marriage and other feasts are spoken of as continuing seven days—(see Jud. XIX; Gen. XXIX; Gen. 1). Nor have the best biblical critics been able to find any trace of the institution among any of the early Gentile nations. The ancient Egyptians divided time into periods of seven days (most likely to correspond with the seven quarters of the moon; they were skilled in the science of astronomy); but there is no evidence of their having set apart any one of the seven days as a day of rest, nor of the Jews having kept a Sabbath during the two hundred years and upwards that they remained in Egypt. The Bible expressly declares, in speaking of the covenant made with the children of Israel, and which includes the Decalogue, that "the Lord made not this covenant with our fathers, but with us, even us, who are all of us here alive this day." Deut. V, 3.

Thus it appears to me that the command to remember the Sabbath and to keep it holy has no reference to Christians at all; but if it does it is Saturday that must be kept, and not Sunday. It is in vain that Sabbatarians will look in the

New Testament for authority to change the Sabbath from the seventh [day] of the week to the first; or for a single verse or text which recommends or inculcates the observance of any day of the week as one of peculiar holiness. There is not one word said as to Sabbath breakers—nor a text that contains the slightest idea that it was deemed unlawful by Christ or his immediate followers to do any work on the first day of the week that was proper to be performed on any other day. Christ said, when he was persecuted by the Jews for working on the Sabbath, he was Lord of the Sabbath, and that "the Sabbath was made for man, and not man for the Sabbath."

There are a variety of texts in the New Testament which forbid, not only the observance of the Jewish Sabbath, but the keeping of any one day as a day of peculiar holiness. "But now after ye have known God, or rather are known of God, how turn ye again to the weak and beggarly elements, whereunto ye desire again to be in bondage? *Ye observe days and months and times and years. I am afraid of you, lest I have bestowed on you labor in vain.*" Gal. IV, 9, 11. Again, "Let no man judge you in meat or in drink, or in respect of an holy day or [of the] new moon, or of [the] *Sabbath days.*" Col. II, 16, 17.

It is not from the primitive authors of Christianity, Jesus Christ and his Apostles, that the doctrine is obtained that the observance of the Sabbath is a conservative principle of the world, and of perpetual obligation like the moral law. But that it is necessary for almost all men and animals to rest, at least as often as one day in seven, I believe; that it is convenient to have a uniform day of rest, I admit; but to force all men to rest, without regard to their necessities for labor, is unjust, an infringement upon republicanism, and a violation of the rights of man. And it is to be hoped that the constitution of Wisconsin will leave the subject to the entire control and guidance of public opinion. The Sabbath would be better kept, for it is the nature of man to resist coercion. What objection could any genuine Christian have

to the identical words of Paul, the great apostle of the Gentiles, being adopted into the constitution, "Let no man judge you in respect to an holy day or of the Sabbath day." This would secure men's rights on this subject.

I have been much more lengthy on this subject than I had anticipated; therefore I postpone till next week my other subject, namely, the prohibition of skeptics from giving testimony before our courts.

A Miner of Grant.

"A FARMER OF GRANT" QUESTIONED

[August 28, 1846]

To "A Farmer of Grant." Sir: In your first communication respecting the state convention you speak of the "re-establishment of the *ancient* trial by jury, now called trial by arbitration." Whenever, in the course of my reading, I meet with a remark which does not accord with my own knowledge or my preconceived opinions, I feel a desire to investigate the matter thoroughly, and thus correct any erroneous impressions I may have received upon the subject. Such, sir, has been my course in relation to your implied assertion that the ancient form of trial by jury was the same as what we now call trial by arbitration. I have endeavored to call to mind all the passages of history that I have ever read which could have any bearing upon the question, and I have examined all the authorities within my reach, but without coming to a satisfactory conclusion.

The only thing I have been able to discover that is in the least analogous to our arbitrations, is the arbitrative authority of ecclesiastical pastors which is coeval with Christianity. This, however, was not a civil, but an ecclesiastical institution: though by a law of Constantine the civil magistrates were directed to enforce the execution of episcopal awards, and at various times afterwards similar support was extended to these decisions.

With regard to the present form of trial by jury (which is, in my opinion, as free from objections as any that could be substituted), I believe it can be satisfactorily proved to have existed as early as the reign of Alfred, although many modifications and improvements have undoubtedly been made since that time in the mode of selecting jurors, etc. I have no desire, however, to go into a disquisition upon the subject, had I the space to do so. My object is to obtain information; and I find by conversation with some of my friends that there are others besides myself who know nothing of ancient trial by arbitration.

I will now, sir, respectfully request of you to give through the columns of the *American* an account of ancient trial by arbitration, with the authorities on which you predicate your conclusions. And I do this without wishing to insinuate a denial of your assertion. I have been much gratified in reading your communications, and generally I agree with you in opinions. I should like very much, if it were agreeable to you, to have an exposition of your views with regard to the election of judges by the people. I am in favor of such a law, but not without some salutary restrictions.

Respectfully yours,

B. B.

LETTERS OF "A MINER OF GRANT"—No. 3

[September 4, 1846]

One of the plainest and most positive commands given in the New Testament is, "to swear not at all." But public opinion has, by indulging men in *jockeying* and misrepresenting in their commercial and other pursuits, caused so great a distinction to be drawn between the crime of telling a lie and that of swearing to a lie, that swearing, notwithstanding it presupposes that men will not adhere to truth until they are pledged by some formality, has become absolutely necessary.

Some religionists have sought to save both the command not to swear and the custom of swearing by adopting the term "affirmation" instead of oath; but I can perceive no essential difference between them—they both require formality. Others, again, have got over the command satisfactorily to themselves by construing the words, "But I say unto you, swear not at all, neither by heaven, etc." as merely prohibiting the use of certain interjections.

But it is not so much my object to discuss the propriety of swearing as to show the impropriety of requiring religious faith as a test of the qualification of persons to give testimony before our courts.

The statute of Wisconsin provides that "Every person believing in the existence of a Supreme Being shall be admitted to be sworn, if otherwise competent."

Now there is a Supreme Being, that is, an independent existence extraneous to man, or there is not; and such a being exists or does not exist, whether men believe or disbelieve: thus far there can be no disagreement; no one pretends that either the affirmative or the negative of this question is dependent upon his opinion; the truth is because it was always thus or so; he merely professes to have discovered it; had he not discovered it, it would nevertheless have been the truth. It must, therefore, be obvious to every man's mind that, let men decide as they may on this agitating question, their decision neither creates nor annihilates, but merely relates to an antecedent fact.

The existence of the universe, the continual motion of its parts, the decomposition and the recomposition and new composition which matter is constantly undergoing, the existence of life—both animal and vegetable life—are evidences which are calculated to convince the mind of every sane man of the existence of a Supreme Being; in fact, it is not a matter of mere belief but of positive knowledge; and to doubt it would be just as unreasonable as to doubt the truth of the effects. No skeptic ever did doubt it. It is not, however, the simple question of the existence of the Supreme Being that

skeptics and religionists differ about; but it is as to the attributes possessed by that Being. The latter, or many of them, suppose it to be made up of attributes only, without any substance, whilst the former pretend not to know of its possessing any other attribute than that of power—power to do whatever is done—nothing less and nothing more.

But the question at issue is as to whether belief or unbelief in the existence of a Supreme Being has any influence on the conduct of life. If it can be shown that all those who profess belief in a Supreme Being are good men, because such belief has a natural tendency to goodness, and if, on the other hand, it can be shown that unbelief tends to immorality and is, therefore, incompatible and irreconcilable with virtue and truth, then the religionists would have reason for pressing the importance of their dogmas. But if neither can be done, if there can be found among those who doubt men eminent for the correctness of their lives, and if, on the other hand, there can be found among those who believe both in the existence of a God, as well as to ascribe to him the possession of the various attributes claimed for him by any or all the different religionists, men who are reckless and vicious, immorality will have to be accounted for on some other principle than that of faith. Let us examine this subject.

The idea is found to be running all through that most inimitable composition, Pope's "Essay on Man," that God is everything, and that everything is God. Now, although we hear the doctrine promulgated from the pulpits that God is omnipresent, yet it is never held by any religionist that God is omniform; hence Mr. Pope would be termed a skeptic (I use the word skeptic as being synonymous with atheist), and the cant argument "that he believed all things came by chance," would be urged against him. But when was ever the veracity of Mr. Pope doubted? Or who ever questioned the rectitude of his life?

Thomas Jefferson, the third president of the United States, in writing to Peter Car, a young man whom he es-

teemed (see Jefferson's correspondence vol. III, 215), advised him "to fix reason firmly in her seat, and question with boldness even the existence of a God." Now when we reflect that the God of nature, that is, the unknown, and, therefore, mysterious cause of effects, is the only God that it is possible for man to arrive at a belief in through the medium of reason, and as it is certain that Mr. Jefferson had done what he advised his young friend to do, the conclusion is inevitable that he was a skeptic. But to find a man possessing so much effrontery as to enable him to have impeached the testimony of the philosophic Jefferson would be to find a crazy man.

We will now look to the other side of the question. For the purpose of arriving at facts, it is only necessary to attend our justices' and other courts.

I lay it down as a position that I presume no man will undertake to controvert, that the slightest intentional prevarication on the part of a witness is a wrong of as great turpitude, and not unfrequently fraught with consequences as deleterious to the rights of the parties in suit, as though the witness had sworn that white is black. When a witness is sworn "to tell the truth, the whole truth, and nothing but the truth," he is as culpable if he abridge, as though he added to the facts within his knowledge. But everyone knows that it is not uncommon, especially in those large mineral suits so common among us, to hear a witness hesitate, profess an inaccuracy of memory, and, indeed, misstate when they suppose that the facts given in answer to questions propounded to them would militate against the interest of their favorite party to the suit. *Utility* is the moral tie that binds good men to truth, to speak the truth on all occasions, either in court or out of court, and he who will not be bound by this tie will not be bound by the ceremonies of a religious oath.

There is one other point to which I wish to call attention and I shall have done.

The inevitable tendency of a "test oath" to cause hypocrisy is an objection to it which should cause all good men to

deprecate it. How many avowed skeptics there are, who, if their right to give testimony was challenged, on account of their skepticism, when it was [to] their interest even to tell the truth in behalf of themselves or their friends, would profess faith in the God of Moses! But there are men who would sacrifice all they possess rather than violate truth so much as to make such a profession. And it is for the rights of this class of men that my feeble and unskilled pen is raised.

In conclusion, I take this occasion to invite discussion on this question. There are talented men who hold different opinions from those expressed above. Let them come out and show cause why *a test oath* is necessary and proper. This is a subject of vital importance; it is absolutely necessary to the securing of the rights of individuals that they should be allowed to depose in behalf of themselves; and if there is any good reason why they should be deprived of this privilege on account of their religious faith let it be given.

We boast of our liberties and the right of free discussion and as the *American* will be published again before the election it is hoped and expected that gentlemen will take the field. I hold myself open for conviction on this as well as all other subjects; and if good reason can be shown why I am wrong I will yield; otherwise I shall feel it to be my duty to vote for no man as delegate to the convention who goes in for a *test oath.*

A Miner of Grant.

LETTERS OF "JACOB FAITHFUL"—No. 2

[September 4, 1846]

Mr. Marsh—Dear Sir: As I have been importuned to give my views upon the judicial and political powers of the states and federal government, it shall be my aim to speak as intelligibly as possible and make this composition as in-

teresting as my ability will admit of. It appears that according to our political theory judges are invested with a species of political power, not for the purpose of destroying or altering constitutions nor to disarrange the powers of political departments, but for securing the rights of individuals. Constitutions and their divisions were intended for the same end, and it was not intended that one precaution should destroy another. Both state and federal judges, in the trial of individual suits, are obliged to say what is law and what is not law. They could not render justice to an individual by leaving him to suffer without or against law. Hence unconstitutional enactments are not laws. If Congress or the state legislatures pass unconstitutional laws it would be no more obligatory than a law passed by a mob calling itself a congress; and why not? Only because the state possesses an inherent right of self-preservation. The two supposed laws, being of equal validity, are equally liable to be met by this right, or it could meet neither. There is no difficulty in reconciling the right of self-protection, mutually possessed by the political departments, with the right of dispensing justice attached to judicial power. Both these rights exist in England and one does not invade the other—one ends where the other begins. The rights of a political department are of a different order to those of individuals, and were bestowed as safeguards for those individual rights. If the rights of political departments are destroyed, they cannot fulfill the intention for which they were constituted.

It is, therefore, an obvious error to suppose that a judiciary, created as an additional security for the rights of individuals, can destroy or impair the rights of political departments, created also for the preservation of individual rights. The people have confided the custody of their political rights, divided as they conceive in the best mode for their security, prohibiting each from exercising powers intended for the others. No power is given to the judges to compel one department to submit to the encroachments of the others; they have only to leave collisions to be settled by the

mutual right of self-preservation, as is done in all other countries by judicial power, and as is done in all cases [of] collisions between the two departments. Nothing can be more subversive of acknowledged principle than a habit of inferring from security for individual liberty a power to overturn other constitutions so far as regards a previous negative—its preservation was a recent, and should be considered a happy discovery; but if they have tacitly blundered into the still newer idea of exalting judicial above political power, and investing it with an irresponsible right of meddling politically, they have obliterated their chief principles for the preservation of individual liberty, and tacitly expunged what they expressly enacted.

This is about all I shall say upon this subject. If the critical reader should find any very egregious errors let him bear in mind that I have not had the advantages of a classical education, nor much experience in judicial or political matters.

JACOB FAITHFUL

Toadville, August 25, 1846.

A SARCASTIC SCRIBBLER

[September 4, 1846]

MR. EDITOR: In your paper of the twenty-eighth of August I find an article over the name of "A Miner of Grant," which appears rather a novel production of the age. I quote from it:

"And it is to be hoped that the constitution of Wisconsin will leave the subject (the observance of the Sabbath) to the entire control and guidance of public opinion."

Being myself an old miner of Grant, I shall not attempt to vindicate the Divine institution of the Sabbath—let older and wiser men do that—nor put my veto on leaving that subject out of the constitution and laws of Wisconsin. But I would simply suggest that the constitution of our state so

leave also the other matters found in connection with the observance of the Sabbath, in the twentieth chapter of Exodus. One of them relates to murder, another to theft, another to perjury, and another to adultery! Why not leave all these evils to the "entire control and guidance of public opinion"? For it is well known that "it is the nature of man to resist coercion."

I believe all the states in the Union have legislated on each of these subjects, and yet their laws have from time to time been violated. Now let majestic Wisconsin, in this day of progressive light, show her older sisters that when no coercion is used towards man he becomes an angel.

When I pen anything for the press, I generally sign my name.

Respectfully,

A. Scribbler.

Dodgeville, August 31, 1846.

LETTERS OF "A FARMER OF GRANT"—No. 6

[September 4, 1846]

To "B. B."—Sir: It is now eight months since my first communication which you allude to appeared in print. Had you come out then and denied by "implied assertions," as you term it, I should have felt bound to produce the authorities on which my conclusions were predicated, but as "A Farmer of Grant" has lately come out in proper person in the name of Stewart McKee, and as Stewart McKee is a candidate for the convention, and proposes, if elected, to advocate a clause in the constitution for the reform of lawsuits, "by constituting as many courts as there are townships in the state wherein injuries shall be redressed in an easy and expeditious manner by the suffrage of neighbors and friends" (arbitration)—I say, as these are the circumstances which now exist, you will pardon me for suspecting

that your request came in the same spirit of questions put to a reformer about eighteen hundred and forty-six years ago. (See Matthew XXII, verses 15 to 18 inclusive.)

These suspicions are greatly strengthened by the fact that it is well known that Stewart McKee is a very plain man, that his education at first was barely sufficient for a farmer or mechanic, that he performed manual labor for forty years, a great part of the time working by the day, the month, or the year for others, and that consequently he could not be very well versed in ancient history, or the two hundred thousand quarto pages of the common law.

You have been very kind, however, in furnishing me with the knowledge of "the arbitrative authority of ecclesiastical pastors," and its being enforced by the civil magistrates, and is a law of Constantine, and of receiving similar support at various times afterwards. This I esteem as proof, to some extent, of arbitration and ancient trial by jury being one and the same thing.

For the benefit of those whose votes I expect to receive I will give a question [quotation] or two from Blackstone, remarking as I go along that my principal guide will be justice and reason rather than ancient forms, but as I think the ancient forms will bear me out here they are:

Blackstone, Book III, chapter 4, says:

> The policy of our ancient constitution, as regulated by Alfred the Great, was to bring justice home to every man's door, by constituting as many courts as there were manors and townships in the kingdom, wherein injuries were redressed in an easy and expeditious manner, by the suffrage of neighbors and friends. These inferior courts, at least the name and form of them, still continue in our legal constitution; but as the superior courts of record have, in practice, obtained a concurrent original jurisdiction with these, and as there is besides, a power of removing actions thither from all the inferior jurisdictions, upon these accounts it has happened that these petty tribunals have fallen into decay, and almost into oblivion, whether for the better or worse may be a matter of speculation,
> * * *

Judge Blackstone says, Book III, chapter 23:

The subject of our next inquiries will be the nature and method of trial by jury (called also trial by the country) a trial that seems to have been coeval with the first civil government thereof—certain it is that they were in use among the earliest Saxon colonies, and hence it is that we find traces of juries in the law of all those nations which adopted the feudal system, as in France, Germany, and Italy, who had each of them tribunals composed of twelve good men and true *(boni homines)*, usually the vassals or tenants of the lord, being the equals or peers of the parties litigant; and as the lords' vassals judged each other in the lords' courts, so the king's vassals, or the lords themselves, judged themselves in the king's courts.

(No learned judges there to instruct the jury.)

This tribunal was universally established among all the northern nations, and so interwoven in their very constitution that the earliest accounts of the one give us also some traces of the other.

With regard to the present form of trial by jury, you say that, in your opinion, "it is as free from objection as any that could be substituted." This is only matter of opinion. My opinion is quite different; but as I am only a common farmer my opinion of itself has but little weight. I will, therefore, call to its aid the opinion of a man honored and beloved for his wisdom and virtue, not only by the people of these states, but by the whole world—a man who filled the highest office in the gift of a free people with profit to them and honor to himself—the only man that ever lived whose fame and reputation could excite the envy of Bonaparte. His name is George Washington. I will give his opinions by an extract from his last will, as follows:

In this construction of this my last will and testament, it will readily be perceived that no professional character has been consulted, or has had any agency in the draught; and although it has occupied many leisure hours to digest, and to throw it into its present form, it may, notwithstanding, appear crude and incorrect—but having endeavored to be plain and explicit in all the devises, even at the expense of prolixity, perhaps tautology, I hope and trust that no disputes will arise concerning them;

but if, contrary to expectation, the case should be otherwise, from the want of legal expression or of the usual technical terms, or because too much or too little has been said on any of the devises to be consonant with law, my will and direction expressly is that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding—two to be chosen by the disputants, each having the choice of one, and the third by those two; which three men thus chosen shall, unfettered by law or legal constructions, declare the sense of the testator's intentions; and such decision is, to all intents and purposes, to be as binding on the parties as if it had been given in the Supreme Court of the United States. In witness, * * *

[Signed] GEORGE WASHINGTON.

Here, sir, is some authority for settling disputes by friends and neighbors, arbitration or ancient trial by jury, as established by Alfred the Great, as you please to term it; and that too, cheaper, quicker, and more certain than our present form. A FARMER OF GRANT.

SELECTIONS FROM THE LANCASTER *WISCONSIN HERALD*

CANDIDACY OF THOMAS P. BURNETT

[January 29, 1846]

To the People of Grant County:

Fellow Citizens: During the spring and early part of the summer, I was frequently solicited by citizens in different parts of the county to become a candidate for delegate to the convention. To these requests I generally replied that I thought the station one of too much importance, the duties to be performed too serious in their consequences to the people and to posterity, to be sought after with avidity and managed for by the common tricks of electioneering. I said that as a citizen I would rather see the people act deliberately and select from among themselves the men best qualified by their capacity and integrity to serve them, than to see individuals pushing themselves forward for a trust of such high responsibilities. I, however, said that, if the people desired that I should serve them in that capacity I would not refuse to do so.

When I left home to attend the supreme court at Madison I knew not whether I should or should not be a candidate. While absent, I was written to from this county upon the subject, and I authorized some of my friends, if they should be satisfied upon inquiry that it was the wish of the people, to place my name before the public: and these are the circumstances under which it has appeared among the list of candidates. Trusting the matter entirely to the candid judgment of the people, who alone have a right to say who shall serve them, I had not intended to say anything upon the subject myself. Having prescribed this course for my own action, neither feeling nor making any opposition whatever

to any candidate for popular favor, and considering the circumstances under which my name had been presented, I had hoped that my merits, whatever they may be, would be considered fairly, and that it would not be thought necessary by anyone to misrepresent me. A little reflection, however, might have satisfied me that this was a vain expectation.

Upon reaching home from Madison on the twelfth instant, after an absence of near four weeks, I received a letter that had been sent to my house before I returned, by a friend in Beetown, informing me that a report had been started "that I was in favor of the 'Alien Law,' " and that in proof thereof it was stated, "that, in a public speech in Madison last winter, I declared that personally I was in favor of that law, and the reason why I opposed it was because my constituents wished its repeal." I received another letter from a friend at Lancaster written about the same time communicating the same information.

My first impression was to pay no attention whatever to so gross a falsehood. Some of my friends, however, seem to think that silence might be construed unfavorably by some, and have urged me to correct the impression that has been attempted to be made against me; and in accordance with this desire on their part, I now address you this communication.

The report alluded to has not the semblance of truth for its foundation. Since the legislature first undertook to confer the right of suffrage upon foreigners not naturalized, I have never expressed any such sentiments as those attributed to me by it, either at Madison or elsewhere, in any public speech or private conversation. I have always believed, and still believe, that the power is possessed by Congress alone of prescribing the terms upon which foreigners may become entitled to the rights and privileges of native-born citizens, and that the local governments cannot constitutionally exercise that power. I have expressed no opinion to the contrary of this upon any occasion. I believe that many who favor the contrary doctrine do so for the purpose of courting foreign influence to advance their own selfish

views. I have never, myself, courted any such influences. I am willing to be judged by the truth, by all parties and by men from all countries. I have no prejudices or unkind feelings against foreigners. I do not wish to see them deprived of the smallest portion of their just rights and privileges. I consider the naturalization laws to be about as they should be, and that if they are wrong Congress is the only power that can, constitutionally, alter or amend them. When foreigners come into our political household by the right door, I am not in favor of making any distinction in relation to them, except such as I would make towards all mankind—that sort of distinction that virtue and intelligence may demand.

When the state government bill was before the House of Representatives last winter, Mr. Pole, of Iowa, offered an amendment to it, the object of which was to restrict the right of suffrage to citizens of the United States. I, with my colleagues from this county, voted for the amendment. I had consulted with Mr. Pole on the subject before the amendment was offered, and we came to the conclusion that he should offer it instead of myself, though, if remembered correctly, it was originally drawn by me. I also voted against the passage of the bill, principally on account of its provisions respecting the qualifications of voters, although the bill was to my mind highly objectionable in other particulars. In view of what has been my uniform course upon this subject, both in public and in private, I am at a loss to conceive who could have been so lost to all sense of truth and justice as to have fabricated so false a statement as that which has been put in circulation against me. I am unwilling to believe that it was anyone who possesses the smallest claim to respectability in any community. From the manner of putting forth the report, and the time selected for it, when I was absent from the county and not expected to return in time to obviate its effects before the election, it would be a violence to reason to imagine any honorable object designed to be effected by it.

From what I have observed for more than a year past, I

have no doubt that a strong effort will be made in the convention to incorporate the alien suffrage principle into the constitution. I believe this to be the ulterior object of the friends of the present law from the beginning, though there were but few who would avow it. They have since grown more confident, and some of the candidates for delegate to the convention in other parts of the territory have already given pledges in favor of the measure, and they confidently expect now to establish their principles permanently by the constitution. I think, then, that it is important that every man who seriously reflects upon the consequences of such a measure ought to consider well as to whom he will cast his vote [for] at the coming election.

I commenced writing this address a week since, but was prevented from completing it by a sudden attack of fever and have not been able to finish it before this time, and it may now be too late to have any effect. I do not expect to be able to see the people generally before the election, nor do I feel very much disposed to make stump speeches upon an occasion like the present. My name has been placed before the public as a candidate under the circumstances already stated. I did not seek to have myself placed in this position. I had no desire of my own to become a candidate. It is the right of the people to do just as they please in relation to the matter, and whatever their decision may be, it will be cheerfully submitted to by me. I trust, however, that the people of Grant will not give a response to falsehood and misrepresentation, directed against one who has endeavored to serve them faithfully, and, whatever may have been his errors, has tried in all things to act consistently and for the best. Should I be chosen among others to represent you in the convention I can only say that this renewed confidence shall be met with renewed exertions on my part to fulfill all just expectations.

Respectfully, your fellow citizen,

THOS. P. BURNETT.

Grant County, August 25, 1846.

THE CONSTITUTION

[February 14, 21, 28, March 7, 14, 1846]

One of the most important objects to be secured by our new constitution will be the proper and safe distribution of power. We must clothe the state with ample power, and the question is, how can it be made at the same time most efficient and most secure from abuse.

DISTRIBUTION OF POWER

All experience of popular governments in America shows the necessity of dividing power into three distinct departments, composed of separate bodies, and each department confined strictly to its own sphere. Upon the nice and accurate adjustment of these checks and balances, greatly depends the well government of the state. These departments are: First, the legislative; second, the executive; third, the judicial.

OF THE LEGISLATURE

The legislature is the grand medium through which the popular will expresses its decrees and infuses vitality into the body politic. Even in our present embryo political condition, it is the umbilical cord of our territory. It enacts laws and provides the money and means necessary for the enforcement of its will. The legislature is the popular voice, speaking through the constitution and modified by the constitution alone. It is composed of two branches, a senate and house of representatives, both elected by the people and both representing precisely the same interests. The Senate in Rome, like the House of Lords in England, represented the landed and aristocratic interest. We have only one interest to be represented; still it is found to be a salutary check upon rash and inconsiderate legislation to be represented in two legislative branches, in each of which every bill must pass through all its stages in regular form before its final enactment, thus affording time for deliberation, and

instruction from primary meetings of the people. Members of the senate are usually elected for a longer term than members of the house of representatives. Two years, the present term of members of the council, is a term of very suitable duration—short enough certainly. As for the lower branch, the members ought to be elected annually. Much diversity of opinion exists as to whether the people should be very fully represented in the general assembly or not. The ratio of representation cannot be fixed to suit all. One will insist upon incorporating in the general assembly as many of the people as possible, while another will urge the difficulty of uniting a multitude of discordant minds in support of important measures often embracing a great variety of details upon which a fewer number of more intelligent minds would readily coincide. Again, the great expense of an overgrown assembly is an important item of consideration with the people. A large legislative body, embracing, as it generally does, a smaller proportion of men who do their own thinking, than a smaller and more select body, is more in danger of being *led* by a handful of artful demagogues.

OF THE EXECUTIVE

The office of governor is the highest and most responsible office in the state. The governor is not only the highest civil officer, but he is also the highest military officer in the state; and much depends upon his promptness and decision in emergencies threatening the peace of the state. There is but little danger of an abuse of authority by the governor of the state, and therefore he should be clothed with ample authority. Our first experiment in state government will probably be made under the administration of Governor Dodge upon whom all men of all parties will unite as *the man* to hold the helm when our new vessel of state shall be launched from the stocks. The governor ought to be elected for a term long enough to give effect to the measures of his administration. A term of four years is about right. The veto power has been conferred and after much experience found salutary in most of the state constitutions. In this as in

other matters we have little faith in innovations and experiments in government.

OF THE JUDICIARY—No. 1

We next consider the third division of power, viz: the power conferred upon courts of law.

That the machinery of law is cumbrous and expensive, that it often fails of the due administration of justice, is true. The atmosphere of the common law is that in which we were born and which we breathe from the cradle to the coffin. Our habits, our modes of thought, our notions of right and wrong are shaped and perhaps sometimes distorted by it. It was fastened upon our infant republic like a coat of mail which then protected it, but has now become too tight, so that the iron enters into the soul. The natural tendency of multiplying judicial decisions for centuries is to multiply legal refinements, legal subtleties, and legal technicalities. The process of hairsplitting like a series of infinitesimals has no end. The people feel and know this fact, or rather the results of it; but neither the people nor the wisest of their legislators have been able to invent any better remedy than to try to avoid lawsuits. Those who think that lawyers endeavor to make law an intricate labyrinth do the profession gross injustice. The intricacy of law is mainly owing to the imperfection and ambiguity of human language, to the infinite diversity of interests and rights which law has to protect, and [to] the fallibility of evidence. That a more simple and economical system of jurisprudence may yet be invented, we are not prepared to deny; but we *do* deny that the man is now living who can overthrow the great framework of law now existing in England and America and build up another of new materials, which would not violate established rights and the principles of sound reason. It is sheer quackery to pretend it. We must either have judges who will be governed by law and the principles of justice as already known and established, or we must submit to the arbitrary rule of our judges, and have in fact nothing to shield us from their

unlimited despotism. In fact, law, imperfect as it is, is so near the perfection of reason that when its principles are once understood they cannot be obliterated from the mind—and they *will* govern its decisions. Annihilate reports, decisions, and authorities, and your judges would still be governed by existing principles of law. If you select for judges men who are ignorant of established principles of justice, they will only be groping in the dark to find these same principles. Like blind Samson, they would feel for the pillars of justice. Would they not, like him, overthrow the temple?

The more one studies this subject in all its bearings, the more difficulty he will find in effecting a radical change. All possible plans for arbitration or umpirage in the end resolve themselves into lawsuits. Awards, like verdicts and decrees, must be made up according to known methods of investigation, established principles of right, and sound rules of evidence or they will never satisfy the reason and sense of mankind. The great inquiry will still be, What is the law and evidence? The agency of lawyers and a scrutinizing investigation of the principles governing the case will still be requisite, conduct the trial as you may; otherwise decisions must be purely arbitrary, and litigants might as well settle their differences by crack lieu [crack-loo] or flipping coppers; and presently every unprincipled scoundrel in the neighborhood would challenge you to determine by the game of chance whether you or he should have your horse or your farm.

ON THE SALARIES OF JUDGES

Everything has a relative value, from a potato up to a president. When the people go into the market to hire the services of an officer, they have to consider how much money will be necessary to render that officer an equivalent for his services; and those services are worth as much as that officer's talents will enable him to command in another sphere. If the state of Wisconsin had occasion to hire four stonemasons to hew stones for building a penitentiary, they might probably be hired at $2 each per day; but if it were necessary

for the state to employ four competent sculptors to provide the statehouse with statues the state could hardly induce artists of acknowledged genius, who had spent the prime of their existence in the study of the great masters and in the seclusion of Italian studios, to do their work at $2 each per day. Nor is it to be presumed that lawyers, whose talents and legal attainments will enable them, after a life of patient study and perchance of poverty in the most laborious profession in the world, to command a lucrative practice, will be decoyed from the bar to the bench, by any such paltry salary as that provided by the rejected constitution of Iowa. We must pay state officers as well as the federal government pays them, or they will seek office under the federal government. We must pay them as much as they can make in any other way, or we must do without them and employ a class of smaller men. Twelve hundred dollars is no more than each of our judges ought to receive per annum. Have cheap fences if you will—slop clothing if you will—cheap watches if you will—but for God's sake don't have cheap judges!

OF THE JUDICIARY—No. 2

We have now in Wisconsin three judicial districts. Every year adds not only to our population, but also to the number of counties and the business of the courts. Under the constitution there ought, perhaps, to be four districts. But at any rate, courts ought never to be multiplied beyond the absolute necessities of justice; for courts, like barrooms, the more they are multiplied the more they will be frequented. The more litigation is indulged, the stronger becomes the passion for it. We concur in the opinion expressed on this subject by an eminent lawyer in New York, who says with reference to that state that under a pretense of obtaining speedy justice our judicial system has been from time to time greatly enlarged. Still, we now find ourselves farther than ever from this desirable object. The truth is that the passion for litigation has kept pace with the extension of the system. Its administration is made the most honorable and

profitable employment, and the present judicial arrangement seems admirably adapted to inspire the community with a litigious spirit. Such gigantic and imposing legal facilities tend more and more to increase the number of litigants and to make litigation the predominating passion, and with many the main business of their lives.

The remedy proposed is to cut down the system to the smallest possible dimensions and simplify it in all its details —instead, therefore, of increasing, to lessen the number of the courts, for the more terms held in the several counties the greater would be the calendar of causes at each court. A general discussion of the various plans by which this reform could best be accomplished would lengthen this communication beyond a readable article. All that now is intended, therefore, is to suggest the basis of a judicial improvement.

Manifold are the evils of litigation, and with us it is fast becoming an absorbing passion. It engenders bad feelings, keeps the community in a perpetual state of warfare, and is a fruitful source of crime. The more the people are engaged in it the more the desire increases for this kind of strife and its attendant excitement. Their minds should, therefore, be as much as possible turned from it. The system is a dead weight on the body politic, and its enormous expense is maintained by the hard labor of millions. Hence it should be made as economical as possible. This great subject opens a vast field for investigation, involving human progress and the best welfare of the people. Our experience and reflection has led to the belief that a radical change ought to be made in our judicial system upon the principle suggested.

It is a law of human nature that the more any faculty is exercised the stronger it becomes. The greater the facility, therefore, for such exercise, the more rapid will be its growth. Hence Napoleon's brilliant military career made war the ruling passion of his time. It was peace and the occupations of peace that allayed this passion.

Those entrusted with the formation of governments should reflect deeply upon these principles. For political constitu-

tions ought to harmonize with the human constitution. A thorough knowledge of the latter is, therefore, highly requisite for a skillful construction of the former. Tendencies to violence should be avoided, for the more the passions are aroused the stronger they grow. The obvious tendency of all human laws should be to restrain the animal propensities and strengthen the moral sentiments.

APPOINTMENT OF JUDGES

There are three modes of making judges: First, by appointment of the governor with the advice and consent of the senate; second, by election by joint ballot of the house of representatives and senate; third, by direct vote of the people at the ballot box.

In favor of the first mode, i. e., appointment by the governor, it is urged that the chief magistrate of the state would necessarily be well acquainted with the most prominent talents in the state, and peculiarly well qualified to select judges of eminent abilities. To this it will be objected that governors are often demagogues, and generally have friends and partisans to reward. It will be asked whether the president of the United States, elevated as he is, does not daily appoint to offices of trust the basest of party hacks, who deliberately plunder and unblushingly rob and steal? It will be said that a necessary result of clothing the executive with such patronage is to surround him, when elected, with party hacks, to whom, as the necessary instruments of his promotion, all offices within his gift have been already pledged before the meeting of the party caucus by which he was nominated.

In favor of electing by joint ballot of the legislature, it is urged that that body will embrace the select talent and wisdom of the state, fully represented from every quarter—that this mode of appointment will deprive the executive of patronage dangerous to be exercised by one man; and that this mode of appointing judges has been favorably tested in the state of Vermont, where judges are thus chosen for a term of five years.

On the other hand, it will be urged that legislators, being generally ambitious men, are ready to logroll and manage to promote one man or to put down another, not so much with reference to his merits as with a view to their own aggrandizement or the accomplishment of some cherished scheme of legislation.

Against the last mode mentioned, i. e., the election of judges for a term of, say five years, by direct vote of the people, it is argued that the people are not suitable judges of judicial qualifications, that the judges would lack independence, would be mere creatures of the popular will, and that their decisions would be influenced by the prejudices and opinions of the multitude. In reply to such objections, it may be said that it is an old federal axiom that the people are not to be trusted. If this axiom be true, we cannot too soon change our form of government. Those savants, who assume to be invested with extraordinary wisdom, and to be themselves the peculiar guardians of conservatism, ought to ask for letters patent of nobility. No, the people must govern, and no disguise about it. As power with us has but one source, let it be simple and direct in its application. We say—*let our judges be elected directly by the people.* We shall then have a simple, effectual power of correcting abuses, a power lodged where it ought to be, in the hands of those who suffer by abuses, and who, depend upon it, know when reform is needed as well as anybody can tell them.

Such, in brief, are some of the arguments for and against these several modes of appointing judges.

OF JUSTICES OF THE PEACE

These officers should be elected. Their office is one of much responsibility, especially in the mines, where they almost of necessity must have jurisdiction in actions of forcible entry and detainer. Our experience in the election of justices in Wisconsin is decidedly in favor of that mode; for although a man may be occasionally chosen justice of the peace, but little better qualified than the Arkansas justice who kept for his docket a bundle of shingles, yet our justices are gen-

erally about the best men in their respective precincts. In Illinois and in many other states justices of the peace have jurisdiction to the amount of one hundred dollars in assumpsit. Here their jurisdiction cannot exceed fifty dollars. In this as in other matters we are opposed to altering existing and well-known laws, unless such alteration be clearly beneficial. Our present frame-work of jurisprudence need not be utterly torn down.

IDEAS OF "J. T. M." CONCERNING REFORM

[August 29, 1846]

What fantastic follies dance, caper, and turn their somersaults under the specious banner of *reform.* The royal astronomer, Alphonso of Castile, boasted that had he been of the Creator's privy council he could have given him good advice in the construction of the solar system! Alphonso had a *royal* bump of self-esteem, but not greater than many republicans have, who do not entertain the least doubt that they could deposit in the patent office of the universe a model of a system which the All-wise Creator would be glad to follow in his future operations. Man, his laws, his habits, if we take an extensive survey of his condition, is marching onward to a happier, higher destiny. Taught by experience he *slowly* reforms his habits—gives his tobacco to the worm that devoured Jonah's gourd—no longer allows his soul to be hearsed by blasts of opium to a delusive Elysian [Elysium], in comparison with which even the bright plains of China are cold and bleak as Nova Zembla. He even abandons ardent spirits, canonized alcohol, the elixir of life, the late discovered juice of that same apple that was to make a goddess of Eve, and cause wings to break forth from her armpits. Yes, this long-loved fiery beverage men can repudiate—they now can stigmatize it as the spittle of old Diabolus, made by masticating malt and brimstone. Such is the character of all genuine reforms—not a military "face about," a direct retracing of the back track like a lost dog. But when men

take a tack, they cut the circumference of a huge circle, a circle of the sphere. Like a steamboat, a ship, or a comet round the sun, in all genuine reforms men alter their course, gradually, gracefully, circularly—never suddenly. If they take the back track, *literatim et verbatim*, like a pendulum, an opposite impulse will dash them to their starting point. This is vacillation—change, but not reform. Well, perhaps the deputy editor has been preparing a weapon to wield against the radical reforms contemplated by some of our conventionists? Exactly so. The candidates have their sleeves rolled up; some are determined to reform the judiciary, another the executive, another the legislature; another menaces the common law. This brave knight has mounted his Rozinante and with lance in hand is pursuing the common law all over the county, and there is no chance for the old hag. Come to her funeral, lawyers, and weep and cry, "Alas! my mother."

Communities slide imperceptibly into all beneficial reforms, for destiny favors man. When society in its progress comes to two roads, destiny invisibly points out the right road. When the experienced engineer has surveyed and prepared a better and a shorter road, then he may, with diffidence, close up the old one. Solomon says, "My son, be not given to change." But some of the candidates scorn to call Solomon "daddy"; they turn time end for end. One affirms he is Solomon's grandfather, another that he is his great grandfather. They all locate their origin nearer the source of wisdom than ever Solomon pretended to have traveled. Stop up the track which a community of ants have been accustomed to travel—even if you offer them a better one, you nonplus them, retard their work, and time passes off before they adopt the improvement. And how does the least alteration bring the entire community to a dead pause—perhaps the alteration is not half worth the disorder it creates. We do hope that the candidates will have diffidence enough to teach them the extreme difficulty of making judicious reforms of constitutional law. The least *guano* in their shoes

might force a growth beyond that of Jefferson or Jackson. Should they outgrow the elephant that is making the same circuit, what will the showman do? J. T. M.

THOMAS SHANLEY'S PLATFORM

[August 29, 1846]

To the Voters of Grant: Having been solicited by my friends to become a candidate for the delegacy, I deem it a matter of justice to the public to state what principles I think ought to be engrafted on our constitution.

I am sincerely in favor of all foreigners being allowed the privilege of voting under our future state government, when duly naturalized, but I am strenuously opposed to the hocus-pocus process of making voters out of foreigners adopted by political demagogues. "Go in gammon, and come out salmon"—I don't believe that any worthy foreigner prefers such indecent haste in making him a partisan; I don't believe in moulding them, like plaster paris busts, into Whigs and Democrats as soon as they reach our shores.

Again, a farmer's best bank being a bank of rich soil, and being a farmer myself, I am steeply opposed to your sandstone banks, and your shinplaster delusions, and believe they were hatched by "Old Nic" himself. I want money that will jingle. Nevertheless, as it is impossible to foresee the necessities of our future state, I am not in favor of tying the hands of future legislatures. Only let the stockholders be made personally liable and no company will meddle with banks unless they can stand their recoil. The blunderbuss ought to kick behind with as much force as it projects paper balls and bills before; then let the corporation "touch it off" who dares.

The people being the source of power, all judges and ministerial officers should be elected by them. Fresh from the people, our judges will be honest and like the people, and do justice to the people. Give me cool water, breathing the cool

breath of the sparkling fountain—so give me officers fresh from the people, with the people's flavor upon them, with hearts warmed by gratitude to the people—then you would not see a set of dull, loafering, indolent, insipid officeholders who become official paupers and whom the people must forever feed with a spoon. No—let them go out from the people, then return to the people, and they will not forget they are parts of the people.

These are my true, real sentiments. A Republican of '76—I want a young constitution just like old Uncle Sam's; and hope that those electors who are my way of thinking will give me their hand. THOMAS SHANLEY.

VIEWS OF "Z" ON MINORITY RULE

[September 19, 1846]

MR. EDITOR: I had the satisfaction of having an expression of sentiment from the stumps from some of the delegates, previous to the election, in regard to what they considered the essential features of a constitution. This expression embraced all the principles that have been agitated in the community, but there is one of general usage in American jurisprudence which was not discussed by the delegates, nor has it been by the people.

I allude to that plan of elective franchise adopted by the federal, and nearly all the state governments, which renders minorities competent to elect. Notwithstanding it is a well received doctrine of representative democracy that the majority ought to rule, yet, from the details of the laws regulating elections, generally, such is not actually the result.

I submit it, therefore, to the people of Wisconsin and their delegates, whether or not there shall be a provision in our constitution making a majority of the whole, instead of a plurality, necessary to elect.

Long established usages which have been sanctioned time and again by the wise and the good, I am aware, ought not

to be abolished without mature deliberation; but the science of self-government is progressive in the same ratio as is the development of the human mind; and, in the establishment of the fundamental law or new charters of government, it is not only admissible but it is imperative upon us to examine cardinal principles with freedom and candor.

Plurality is the principle that governs elections in this territory—the candidate getting the highest number of votes is elected; and how does it operate? Why, whenever there are three candidates for any one office a minority of the whole most generally elect, and whenever there are seven or more (as in Grant County this year for sheriff) the minority are sure to elect. Compare the number of the sheriff's votes with the whole number polled in the county, and you will see the operation of this principle. Thus a diminutive integral of the suffrage of Grant County, under this mode of election, constitutes a ministerial officer who legally assumes a function and enters upon the discharge of duties peculiar to the interests of the whole county.

Now, we all know the people are the source of power—we know, too, that an election is nothing but a transfer of power, and it is palpable, also, that if the principle of a majority's ruling be lost in a primary transfer of power it can never again be reached. Of what use would it be to enact law by a majority of the legislative department when the vote of a minority elected that department? The writer has seen political phenomena of this character in his native state. More than once he has seen a majority of the members of the legislature returned by minorities of their several counties, thus constituting a coördinate branch of the government of a state by a minority of its suffrage. Such have been the practical effects of the principle in other states; such effects are rendered mathematically certain whenever office-seeking becomes the rage of a community, and if there be any safety in judging the future by the past, the enormous demand for public service at the hands of the people this last canvass would certainly make out a strong case so far, at least, as this county is concerned. Z.

SELECTIONS FROM THE MINERAL POINT *DEMOCRAT*

STATE GOVERNMENT[13]—No. 1

[October 8, 1845]

MR. BRITT: The time has arrived when Wisconsin may with propriety assume the dignified station to which she is entitled amongst her sisters of our republican confederacy. With more than the number of inhabitants required by the Ordinance of 1787 to authorize Wisconsin to knock at the doors of Congress and demand admission into the Union, her immense resources as an agricultural, commercial, manufacturing, and mineral producing country are daily and hourly being developed to such an extent as to justify the belief that she will rank among the first of the western, and, as regards those advantages, superior to many of the eastern states.

At various times within a few years the executive of the territory has recommended that a vote of the people should be taken on the question of state government; laws have been passed on the subject; votes have been received for and against the question; but the people themselves have never hitherto asked for the measure; and this consideration, together with the fact that the votes were taken at a general election when the minds of the people were more directed to the selection of territorial and county officers than to the abstract question of state government, which never had proceeded from themselves, may well account for the result;

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[13] These articles on state government, published in the Mineral Point *Democrat*, were doubtless written by Moses M. Strong. The *Democrat*, established in April, 1845, was published at Mineral Point only until the close of the year; it was then removed to Madison where it reappeared as the *Wisconsin Democrat*, under the editorship of Beriah Brown. A complete file of the *Democrat* is preserved in the Wisconsin Historical Library.

Moses M. Strong

From a photograph in the Wisconsin Historical Library

not one-fourth of the citizens of the territory have ever voted on the subject.

Petitions are now in circulation in all the election precincts of Iowa County calling on the legislature to pass a law, at as early a day as possible, to authorize the people of the territory to vote for or against state government, at a special election to be held as soon as practicable. And if the majority should be in favor of the measure, then that such further legislative action be had as to authorize an election to be immediately held to choose delegates to a convention, in order to frame a constitution for the state of Wisconsin. These petitions, so far as we can learn, are signed universally by reflecting men of all parties.

If the measure meets with the approbation of the people, Wisconsin may hold her state convention, form her constitution, and apply to Congress for admission into the Union before the adjournment of the next Congress.

It will suffice at present to state a few of the reasons which to my mind are imperative on the people of Wisconsin, immediately to adopt state government.

1. We have 100,000 inhabitants without a voice in either house of Congress.

2. We can now come into the Union with the prospect of obtaining such advantages as we may rightfully ask for: as Florida and Texas (slave-holding states) are now part of the confederacy, and the balance of state power in the Senate can only be preserved by the simultaneous admission of the free states of Iowa and Wisconsin. Hereafter, Wisconsin may be obliged to come into the Union alone.

3. The advantages above alluded to are, in part, "a relinquishment of the assumed right of general government to exercise a landlord's privilege over the mineral lands—a cession of public lands for internal improvements and state purposes—remuneration for unrightful abstraction of territory from Wisconsin by Congress, in establishing the state line of Illinois, and in compromising the Michigan and Ohio controversy at the expense of Wisconsin.

4. We acquire the responsibility of all officers to the people—our executive, our judiciary in all its branches; and the regulation by law of the tenure, salary, and accountability of all officers whatsoever, civil or military, in the state.

5. We acquire the right that our legislature may sit as long as they have business before them; and that they shall not be restricted to the number of days for which Congress may condescend to appropriate pay for them.

6. We receive our due weight in the Union by the voices of our senators and representatives in Congress.

7. State government will put an end to sectional differences as to delegate to Congress from the east or from the west. District representation will produce harmony of political feeling, and eventuate in the general political welfare of the state.

Many more reasons might be urged for the desired step of adopting state government as soon as possible: On each of the above enumerated causes for asking the voice of the people upon the measure, I will hereafter give you a communication, should you think proper to open your columns on the subject.

S.

STATE GOVERNMENT—No. 2

[October 15, 1845]

Mr. Britt: In my first communication I stated some of the principal reasons why the people of Wisconsin should be desirous of adopting a constitution and assuming state government; let us review them in their order.

"We have 100,000 inhabiants in the territory, and we have no voice in either branch of our national legislature."

If such a state of political affairs existed in any community claiming to be governed by free institutions, and no remedy against compulsory power was presented, short of revolution, the desirable end to be attained would justify the means by which it could be reached. The enactment of laws

of any character, by which a people are to be bound by a body or constituted power in which such people have no voice of approbation or dissent is an essential part of the definition of despotism. Such most certainly is not our case, because, under the compact and ordinance by which Wisconsin was laid off nearly sixty years since as a separate state, with metes and bounds accurately defined, and with rights and privileges designated and secured to her and her future citizens and inhabitants, she is entitled to walk into the federation and claim her station as a sister star whenever she has 60,000 inhabitants. That time has now arrived, and Wisconsin with more than 100,000 inhabitants ought no longer to hesitate in demanding her rights as a state, and that the sound of her voice be heard in the councils of the nation.

It is true that we have a delegate in Congress already, and a part of our business can always be attended to, at the seat of government, if our delegate be capable and industrious; but it is a part only. He may present petitions; he may reason with members of committees, and he may speak his sentiments on the floor of Congress; he may communicate his views to members of the Senate; he may weary his mind and prostrate his physical powers by over-exertion, and all his efforts may end in bitter disappointment. The delegate has no vote! He has no *quid pro quo* to give to his fellow members. He is always a supplicant for favors for which he has no remuneration to give, except the acknowledgment of the community that members of Congress have nobly done their duty, a reward which is little sought after, however well it may look upon paper, or sound in the ears of our legislators.

How different is the condition of the representative in Congress! He speaks for his state; he acts for his state as a component part of the confederated Union; he does not supplicate for favors to be sparingly granted to a poor relation of the family, but he demands his rights as one of the members of the firm, and enforces his claims by giving or withholding his voice on other matters of import to the great

partnership. The representative has his coadjutors in the Senate whose aid he can demand as especially representing his state whilst he may only represent a small district. The delegate has no coadjutors in the Senate, or in the House; he stands alone, with no more power than the colonial agents of the several colonies, before the Revolution, had in the British Parliament. These agents could present petitions, appear before committees of Parliament, make written or verbal representations of grievances to the constituted authorities of the mother country—but they had no voice in the enactment of laws—they were delegates not representatives. Colonial America had no voice in the British Parliament. Territorial Wisconsin has no voice in the councils of the nation. The one complained of the enactment of laws affecting their vital interests without their consent or disapproval being consulted. If the other will continue to struggle under worse than colonial vassalage it will be her own fault—the remedy is in her own power—the time has arrived when the one hundred thousand citizens of Wisconsin ought of right to demand admission into our glorious Union of state governments. This right cannot be withheld; it was guaranteed to them more than half a century since.

S.

STATE GOVERNMENT—No. 3

[October 22, 1845]

Mr. Britt: Wisconsin can now come into the Union with the prospect of obtaining such advantages as she may rightfully ask for: as Florida and Texas (slaveholding states) are now part of the confederacy and the balance of state power in the Senate can only be preserved by the simultaneous admission of the free states of Iowa and Wisconsin. Hereafter, Wisconsin may be obliged to come into the Union alone.

The mere statement of the above proposition may, to the minds of the mass of our citizens, carry with it self-evident

arguments favorable to immediate adoption of state government; some may require the exhibition of reasons why the now is more favorable than the hereafter. Let us glance at the subject.

The balance of power in the Senate between the slaveholding and the free states is not merely an abstract idea, but it has become substantially interwoven as an integral part of our political constitutions. The history of our country has afforded many instances of the jealousies and fears displayed in the political arena, on the accession of a new state, slaveholding or free. The Missouri Compromise may well be viewed as a mutual concession made by both political parties on the great question of slavery; but north of the established latitude there remain only the territories of Iowa and Wisconsin of which to erect free states. In the meanwhile, Texas alone may hereafter produce from five to six states, and Oregon, although all our own, may remain too long out of the Union, as a state or states, to cause the desired balance to be preserved in the Senate. Hence, the admission of Iowa and Wisconsin as free states, at this time, is desirable as a political measure; and their application for such admission would be viewed with peculiar favor by the nonslaveholding states. The admission of a slaveholding and a free state, at the same time, by Congress, and the retarding of such admission until the balance of senatorial power could be preserved has been of no uncommon occurrence in our political history. Wisconsin is already of right a state. She has been so denominated by solemn compact between Virginia and the United States for more than half a century. Her admission to all her rights as a state depends on her own asking, without the risk of a refusal—and yet, one time of asking may be more propitious than another. Wisconsin may enter the Union with more advantages in good company, than if she were obliged to knock at the doors of Congress alone. This event must not happen—it can now be prevented from occurring. Let us not lose the opportunity.

The advantages which Wisconsin may rightfully ask for, in coming into the Union at this time, will be the subject of our next communication. From the circumstances which now make the time propitious for our assuming state government, we may reasonably conclude that our rightful demands at least may be acceded to, and perhaps many important advantages conceded to us. Wisconsin must not be obliged hereafter to enter the Union alone.

S.

STATE GOVERNMENT—No. 4

[November 5, 1845]

Mr. Britt: The advantages possessed by an independent state government over a dependent territorial organization must be obvious to the minds of all who understand, even imperfectly, the nature of our civil institutions; the object of my present communication is not to amplify remarks on such advantages, because they are to be secured to ourselves by our own individual action, in assuming our rank as a state, with a constitution framed by ourselves, defining and guaranteeing our rights, liberties, and immunities. It is merely intended to point out such advantages as we may rightfully ask for, to be granted us by the general government in the shape of conceded rights and privileges, acts of bounty as well as acts of strict justice, and restoration of abstracted territory, or honorable settlement of territorial claims on stipulated terms. These rights, concessions, bounties, and settlements we may obtain if we enter the Union at a propitious time; we may in vain seek them if Wisconsin hereafter enters the confederacy alone.

The relinquishment by the general government of the leasing system in the mineral region and the consequent sale of the mineral lands is a matter of vital importance to the prosperity of a great portion of our territory, to the eventual benefit of the whole community, to the security of persons and of property, to the observance of law and of order in

civil society, to the peace, happiness, and contentment of all our citizens. It is not my intention to discuss the legal question of the right of reservation of the mineral lands from sale, under the several acts of Congress; the subject of this paper does not require such discussion. It is sufficient to say that the Supreme Court of the United States has been divided in its opinion on questions arising out of the acts of the general government in relation to the mineral lands, from the president of the United States himself down to the superintendent of lead mines, and all the intermediate agents. And when the highest legal authorities are of divided opinions on a subject which ever has been doubtful, as a matter of law, policy, expediency, prosperity, or of even-handed justice to the industrious and enterprising citizens, it is most certainly time to consider well on the act of immediate relinquishment by the general government of an erroneous, impolitical, and most unjust system. The continuance of the leasing system places the general government in the situation of landlord, and the citizen and miner in the humble capacity of tenant, from whom the despicable pittance of rent is most rigidly exacted—I say despicable pittance of rent, for it is well understood that the whole of the rents of mineral lands will scarcely half pay the agents employed to collect them. The character of landlord and tenant, as between the government and its citizens, is contrary to the genius and tendency of our political institutions; it partakes in its very nature of the federal tenures—it reminds us constantly of the king, or conqueror parceling out his acquired country to his soldiers, by them to be held not as allodial, but for stipulated service, either personal, in money, or in kind. The system is illiberal—it cripples the energies of the industrious miner—he cannot be expected to expend his labor and his money on land not his own, and which, when his industry and his knowledge, his labor, his health, and his fortune have all been prodigally lavished upon it, may be snatched from his hands at a future public sale, at a maximum price, by a cold-hearted speculator and monopolist; for let it be re-

membered that a reserved mineral tract is not the subject of a preëmption right. Sufficient on this subject may be this single view. If we come into the Union now we may demand that all public lands be the subject of public sale; that the character of landlord shall cease, although that of owner may be preserved to its proper extent. Our advantage now is, that we may ask for this measure with reasonable prospects of success; we may not do so, if Wisconsin enters the Union alone.

We may reasonably ask for a cession of public lands to the state of Wisconsin for public purposes, for the promotion of education, the foundation and endowment of colleges and seats of learning, the internal improvement of the state in roads, canals, bridges, and all works of public benefit, and the immediate disposal of all public lands whatsoever under proper restrictions, so as to encourage the settlement of the country by an agricultural and mineral producing population, which inevitably must result in the establishment of manufactures, and the extension of commerce. Doubts have been entertained by wise statesmen of the right of the general government being continued over public lands within the limits of an independent state, except under proper legal and defined restrictions, and for a definite period of time. It is not necessary now to debate this question; we allude to it only for the purpose of giving it as an additional reason for taking this propitious moment of going into state government, in order to have this question in some measure settled.

Wisconsin has been harshly treated in respect to her territorial boundaries in several instances by the general government, because she was helpless and alone. She had no senators or representatives of her own to watch over and vote for her rights, her properties, and her sacred immunities; she has been despoiled of her territory, and the metes and bounds of the state of Wisconsin, as laid down and solemnly designated by the original compact between Virginia and the United States, have been disregarded and set aside

by one of the parties to that contract, in contravention of law, justice, and the sacred obligations of a stipulated agreement. Illinois has been enriched with territory at the expense of Wisconsin; the state of Michigan compromised her rights to the territory lying north of a line drawn through the southern bend of Lake Michigan in consideration of receiving from the general government a large and valuable mineral region south of Lake Superior, at the expense of Wisconsin; and to crown the whole system of cutting and carving the territorial rights of the state of Wisconsin, Mr. Webster, in his famous Ashburton Treaty, has not only stripped the United States of a great portion of her integral territory at Pigeon River and the Kamenistiquia, but has done so at the expense of the state of Wisconsin. Wisconsin has been known and designated as a state for more than half a century in the political history of our Government.

What remuneration shall we demand for all these wrongs, when we come into the Union? Remuneration do I say? The compensation for inflicted injury cannot be computed by the general meaning of remuneration. Restoration of the abstracted rights might of right and propriety be demanded —wherever the impracticability of such proceeding is manifest, the demands of the injured from the injuring party may well be considered as imperative, when compromise may be proposed and accepted. Wisconsin has much to ask for from the general government as restoration of her own or adequate compensation for inflicted injury; time is to determine in what manner the demand may be made, and the terms on which the compromise, if any be proposed, may be effected; but now is the period when Wisconsin may stand on her acknowledged claims, and boldy ask admission into the Union on terms honorable to herself and the legal extent of her claims. She will have the aid at this time in coming into the confederacy which she may in vain look for, if hereafter she stands alone.

S.

SELECTIONS FROM THE MADISON *WISCONSIN DEMOCRAT*

AN EXEMPTION LAW PROPOSED

[January 10, 1846]

In view of the many dangers and privations that every new settler is compelled to undergo, in consideration of the labor necessarily expended in opening roads, bridging streams, and improving the marshes, incident to a new country, and all this, and ofttimes more, on his part cheerfully bestowed without a sufficient, if any, remuneration, we do conceive that it should be the duty of the whole people, in every possible means within their power, to favor and protect the interests and property of those who have thus labored for the public weal.

The first settlers in every new portion of the territory are generally poor; their resources are small, though the work by them to be performed in opening the way through the wilderness from the older settlements to their new homes is inordinately great. Every settler in this territory will acknowledge this, and it is for the protection of this poor class of settlers, and in their behalf we are now writing.

Under the Texas constitution we find that a liberal exemption law has been passed to protect the settlers in that state, and we think that justice, good policy, and humanity will sanction such a provision.

After a poor man by dint of the closest economy and prudence has succeeded in securing to himself a forty acre lot of land, we want it engrafted upon our constitution that whatever reverses may come, whatever havoc sickness or death may make within his household, in fine, come what may, we want that land, that homestead, secure from the grasping avarice of any creditor. If we all know that that property

BERIAH BROWN

From a photograph in the Wisconsin Historical Library

is not liable for his debts, of course no one will trust the farmer on the strength of the value of that property. We will act understandingly, with our eyes open, and no one need in consequence be the loser with such a constitutional provision. That the law should exempt from execution the household furniture of a settler is very well as far it goes, but what is the use of the furniture if you have no land to stand it upon and no roof to cover the beds which the law kindly permits one to keep. Shall he become a trespasser by placing his property and family on another's land, or must he betake himself to sleep in the highway that runs beside his former house?

Again, let it be but understood, publish it to the world, that in Wisconsin, where Heaven smiles upon a poor man's labor, the beneficent constitution of the state favors the fruit of that toil: that here in Wisconsin every man lives "under his own vine and fig tree," with no creditor to molest him or make him afraid, and it will have the happy effect of raising up a class of people as independent as the world ever saw.

Let this feature in our constitution be but known and honest hearts will seek a welcome in this land of promise; it will give an active impulse to immigration; it will develop the energy of the immigrant; it will enlarge his heart; it will ennoble his soul; it will quicken his enterprise; and, secure in his cabin that holds all that is near and dear to him upon earth, he can then stand forth a proud freeman in its fullest sense.

ELIGIBILITY OF MINISTERS

[January 10, 1846]

I cannot but believe that the readers of the *Argus* will very much regret the proffer of the use of its columns to correspondents upon the question of the "eligibility of ministers," for the space therein necessarily occupied might be so much more profitably filled with the luminous articles of the editor

upon the subject of the moon, the currency and its evils, plagiarisms from Say's essays, and the wrongs that "an injured territory" has received at the hands of the government in general and Mr. McKay, the chairman of the committee of ways and means, in particular, and I therefore decline sending this communication for the above reasons, as well as for fear of its rejection by the editor as unworthy an association with the opinions of Say and Gouge.

But to the article. The editor acknowledges the gross impropriety of clergymen leaving the sacred desk to enter the exciting arena of party conflict, and agrees with those who favor the restriction that a minister should not encumber his mind with the affairs of state, but while all this is conceded he seriously contends that, however much the whole people may demand it, yet they have not the "abstract right" to engraft this feature upon their state constitution.

This question of "abstract right" may be, to use a westernism, "run into the ground." The law solemnly declares that every man shall be tried by the country, and hence I would innocently suppose that he has the right to select a jury from the whole country, but yet he has not; the law restricts that right by exempting many persons from sitting as jurors, and, among the rest, clergymen; and, by the bye, they in this way possess a privilege not granted to the whole people, and if the legislature of nearly every state conceives that the ministers of the Word should not be brought in contact with jurors who do not acknowledge the obligations of religion, *a fortiori,* should they not become solicitors for the suffrages of such men.

Again, as an "abstract right" no man should be exempted from military duty, yet we know that whole denominations of Christians, who upon this subject entertain religious scruples, are thus favored by the law, and in this particular every minister of the gospel here enjoys another privilege. As a mere principle of right, the legislature has no authority to exempt churches and other public buildings from taxation, yet this is everywhere done, and there is no one but

properly favors this exemption. As a mere naked "right," lawyers should have the privilege of being admitted as jurors, but policy suggests that their acting as such might be improper. Hence we see that policy, circumstances, and the good of the whole people sanction restrictions and measures which, perchance, in the "abstract" may not be right. Perhaps as an abstract right Congress has not the power to declare that anyone holding a commission under the United States should be ineligible to an office created by the laws of the territory, yet no one has ever objected to this restriction; and if our people should, through their delegates in convention, declare that no one holding an ecclesiastical office shall be eligible to the civil office of a legislator, will they not be following congressional authority based on good policy? There is a greater incompatibility between the "divine office" of a priest, that has received his commission as he believes from a Higher Power, and the civil office of a state senator than there can be between the office of a justice of the peace and the constable that serves the process of his court; and yet, perhaps, the people, as an abstract right, have the authority to elect one man to fill both offices; but would not the legislature act a proper part by declaring that such offices should not be centered in one person?

From a slight knowledge of the clergy of Wisconsin Territory, I conscientiously believe that the restriction called for would not militate against the interests of half a dozen within our limits; and if they are so unmindful of their proper duty and of the errand upon which they were sent, they, as well as the people and the cause of religion, would be materially benefitted by their being taught their duty, and led to understand that they should hereafter confine themselves to their proper sphere of action. Although we believe ourselves to be a highly moral people, yet we assure those few political shepherds that there is a large field for their labor, and if they work strenuously through all the time allotted them on earth they will then fall far short of their duty; and as our people want all the good they can receive

they do hope that all those, who, from their education and professions hold themselves out as true teachers of the people, will persevere unto the end, and never deviate from that stony, narrow way, to pluck the fading flower that for a season blooms upon the broader path.

But, says the *Argus,* "If the clerical profession should by constitutional provisions be excluded from office, why not the legal profession also?" and then adds that "Lawyers are notorious monopolists of the honors and emoluments of office." We have no desire to bandy epithets with the "argus-eyed" editor, but this assertion clearly proves how often great men in little things may be mistaken. Look at the officers in this territory; neither the governor, secretary of the territory, marshal, auditor, treasurer, private secretary, clerk of the supreme court, territorial printer, and last and least, superintendent of public property, claim to belong to the legal profession. We believe there are but two lawyers in the house of representatives, not enough, certainly, to form a judiciary committee. We do not remember but three or four postmasters in this whole territory that follow the legal profession, and but one of the several receivers and registers of the land offices who was an attorney at the time of his appointment, and but two of the several clerks of the district courts are lawyers, when they certainly are *as well* qualified as any other class of persons to fill said clerkships. So much for the truth of this wholesale charge. Does the editor hope to hide himself by falsely directing attention to others? But again says the *Argus:* "If the work of decapitation is to be commenced, we would say by all means begin with the lawyers, and end where you please." Which we understand when literally translated to signify: Decapitate the lawyers first, then every other profession if you please, but end last of all with the editors of newspapers, and more particularly with the anti-"monopolists of office," the editor of the *Argus,* semi-territorial printer, and superintendent of public property.

A SARCASTIC ADDRESS

[January 24, 1846]

Sovereigns: You will soon be called upon to adopt a new form of government more commensurate with your amplified character and dignity. This is the most important event that can occur. Take care that, in escaping from territorial vassalage, you do not rush into state bondage. You will be called upon to appoint servants to frame for you a constitution. From past experience you will see how easy it is to be mistaken in that behalf. Whoever [*sic*] you shall choose for this service—let them be instructed to provide the following safeguards to your rights:

1. No contracts shall be considered binding after either party shall become dissatisfied.
2. Courts of law shall so offset their judgments that no one shall get more than he loses.
3. Chancery shall be abolished, and the powers conferred upon the Tiger.
4. No charters shall be granted without a vote of the people in their favor, and may be repealed at any town meeting.
5. The legislature may borrow money, but it shall never be considered that payment thereof is necessary or proper.
6. Judges shall be selected by the people at the democratic conventions in each county, and shall hold their office but for one term of court.
7. Provision shall be made whereby any public officer defeated at an election may hold over.
8. Abolish all tenantries at will when rent is unpaid.

These and a few other specifications of inalienable rights will effectually secure the popular sovereignty.

A. D. Smith.

Madison, January 20, 1846.

STATE GOVERNMENT—No. 1

[March 28, 1846]

On the first Tuesday of April next the people of the territory will have an opportunity, under the law of the last session of the legislative assembly, to vote upon the question of the formation of a state government.

This is no new question to our people: on two several occasions have they voted in opposition to any change in our present territorial government. At those times, and under the then circumstances of the territory their decision was doubtless a proper one. With a then comparatively sparsely settled country, with scarcely a sufficient population upon which, under "the original compact," they could have of right demanded to have been received into the sisterhood of states, common prudence sanctions their then disapproval of any change of government.

But now, how altered is the whole complexion of this question. Those best conversant with the improvement of the territory and its increase in population estimate our present numbers at at least 130,000, while many others contend that at least a score of thousands should be added to the above estimate. If, however, we have but 120,000 (double that upon which under the compact we are entitled to our admission), and are not now competent to assume the reins of self-government, when may we hope to be ready? Shall we beg and whine forever for the pittance that Congress so grudgingly bestows us? Shall we as a people or as individuals sacrifice our pride and sell our political birthright for the pottage of a paltry "appropriation," especially when we would receive of right an equal amount under a state government, what we now sue for as a boon from the hands of the general government?

We are one of those who believe that the people would now be gainers by the change, whether viewed as a question of self-pride and popular independence or of state profit.

And first as to our pride or independence as a people. There are some questions that strike our mind with such convincing power, that are so settled as political truths in the heart of every Republican, that to attempt to discuss them seems to be at variance with our very natures. In our country we all hold that an independent self-government is the first great cause of our political happiness. We all believe that the popular will is, and of right should be, the supreme governing voice of the state or nation. If these great truths are, as we feel them to be, sound political axioms need we attempt to argue to any freeman that his would be a more independent sphere of action where his voice with that of a majority of his fellows would be supreme? Under a properly organized state constitution every man can vote for the candidates of his choice, whether for the humblest official or the chief magistracy of the Republic, and we cannot conceive how any freeman who has a proper conception of the worth of liberty can refrain from grasping for this inestimable privilege when within his reach even though it were unattended with other political blessings almost as invaluable.

'Twas for such rights as these that our forefathers bled. They would not exchange their liberties for gold, else they might have saved their treasure and more sacred blood by yielding tamely to the encroachments of power and remaining craven dependants on another's will, without a voice in the election of those who were to govern them.

No one can but admit that the desired change would extend our liberties and advance our rights as republicans. The sister states are inviting us into the family fold—they would extend us seats in the great council of the nation. They would arouse our patriotism by pointing us to the less feeble states of Florida and Texas, and ask us to emulate their examples of independence. The flag of our nation's glory waits to enshrine another star upon its ample folds. The right to be heard in the national legislature will be ours, and of expressing our wishes and views through our senators and representatives upon the great questions that now

divide the great political parties of the day. The right of uniting with millions of freemen in elevating the candidates of our choice to the highest offices in the gift of a free people—the highest of all earthly honors—these and all other political liberties will be extended us as the common right by inheritance of the whole American people, and we cannot believe that these great boons will be rejected by men desirous as they should be of extending their privileges.

But, says the timid and overprudent man, consider the expense and cost, and endeavors to raise the bugbear of taxation in opposition to the generous impulses of the people which would translate us from our present state of political dependency to our proper sovereignty as a free commonwealth. Fortunately, however, this sordid objection is not a correct one. Upon our uniting ourselves with the confederacy we will receive as our marriage portion half a million acres of land, worth at least at the government price $625,000. This amount and the interest thereupon annually arising in the shape of the improved value upon the first cost of the land may be disposed of in any manner that the future state of Wisconsin may determine to be most beneficial to its best interests; and this sum alone, if properly guarded, should of itself be sufficient to defray all our necessary state expenses. Nor is this our only source of revenue. Under the present law of Congress the new states receive a percentage of five per centum upon all moneys received by the general government from the sale of lands within the boundaries of said new states. The sales of public lands during the last year at the several land offices amounted to nearly a half a million of dollars, and we all know that the amount is steadily increasing. During the next year the mineral lands will probably be thrown into market, and we have no question that the sales for this present year will amount to $600,000, five per centum upon which will yield us the sum of $30,000. The whole amount appropriated by Congress to defray the expenses of the legislative assembly, the executive department, judiciary, and expenses of courts for the past

year did not exceed, all told, the sum of $32,000: so that the sum that we would receive from the sales of the public lands for the next year will equal all the appropriations made us by the general government for the past year. As this source of revenue squares the account of congressional appropriations every other inducement will be necessarily so much clear gain to the state. Shall we, then, remain forever as suppliants for bare favor at the public crib, when our own garners can be made full to overflowing? And first among the profits we may place the grant of 500,000 acres of land, and to make this valuable it is necessary that the lands be settled at the earliest possible date. In a few years all the best lands in Wisconsin will have been sold and we then will be compelled to take the refuse that has been left by the settlers as worthless. Again, if we defer state government, the percentage which we could now receive and which would be now enough of itself almost to pay all our expenses will be very much lessened; if we defer making the change of government till nearly all the lands are sold, of course our percentage upon the remainder must be very trifling. Does not common prudence dictate that we should endeavor to receive the percentage while it is worth our consideration, and not defer it until the whole of this source of profit is clean gone from us forever?

Under a state organization, our university and school lands will become vested in the people of the state; these lands can then be sold and the proceeds appropriated to the great cause of education. The organization of our courts will be amended, the uncertain laws of the territory will be revised and rendered more stable and secure. A strict accountability from public officers will be required, and the will of the people be the great governing voice—a more healthy action in the tone of popular feeling will everywhere be manifest. The people will then feel that they can exercise their rightful prerogatives without any restriction. They will think and act more for themselves. They will not permit their popular sovereignty to be delegated to others

who now, because dressed "in a little brief authority" arrogate to themselves the authority of being thinkers for the people, and "the tongues o' the common mouth." To us such considerations are more weighty than gold. But if perchance our revenue will not equal our expenses, and we are compelled to raise ten or fifteen thousands of dollars to meet the balance—truly we may say, "What is that among so many?" Our numbers are daily increasing with such unexampled rapidity that in a year or so the number among whom the tax should be divided would be increased fifty per cent while the expenses of the government would not be in any manner whatever enlarged. Present this question as we may, view it in whatever aspect we will, the question seems to us free from any sound objection. Congress will doubtless pass the bill providing for the payment of the expenses of the convention before their adjournment, and if they should absolutely refuse to make the appropriation *now,* we may be satisfied that they will never alter their minds upon this subject. So that if any citizen objects to state government on account of the expense of the convention, it is an objection that will forever exist, for there never was a time when our chance for the passage of the act of appropriation is [was] as good as it now is and we do not believe it will ever be any better. So that if our present delegate should fail no one will press the subject upon any future Congress with any hope of success. Congress will not probably adjourn until June or July, and we feel satisfied from the great anxiety of the northern states for our admission that they will readily agree to the bill that has been introduced into the House.

We have extended this article beyond what we had intended * * * but as action upon the subject is so near at hand, we know of no one subject that ought to interest our readers more.

STATE GOVERNMENT—No. 2

[April 18, 1846]

Thanks to the independence and self-pride of the freemen of Wisconsin, the convention to prepare a frame of government for our young and growing commonwealth will assemble in October. It is a matter of deep interest to all that we should have wholesome provisions engrafted upon that "bill of rights." By placing them there they will not be subject to the whim or caprice of party, or of rash legislation. It is, therefore, advisable to look about and see what can be fixed in the body of the constitution with propriety. For one, I am extremely anxious to see one of those safeguards introduced into our constitution, concerning which something has already appeared in your columns. I refer to the provision that will always preserve the home of the poor man from the ruthless grasp of an avaricious creditor.

By reserving a home to a man in every vicissitude of life we in truth enable him much better eventually to pay his debts than by allowing the person to whom he may be indebted to drive him out of house and home. There should be no law to break down the buoyant spirit of man. Let him have the "comforts of the family around him, always secure from the assaults of oppression," and our people will never fail to bear up successfully against every other distress that may environ their paths.

A man's little home, in the eye of the law, should in very deed be his castle, a place from which he should never be expelled. If a man will trust another, let it be upon his personal responsibility and not at the expense of the peace, happiness, and comfort of his dear wife and children. I would that a man might keep the value of a forty acre lot and his cabin at every hazard. This arrangement will prevent families from being broken up, and helpless children from being exposed to penury and want. I would request

the electors to turn this matter through their minds, and, when the proper time shall arrive, that they will exercise the trust reposed in them, conscientiously, and for the benefit of the whole people.

Our Wisconsin constitution should be one of the very best that has ever been presented to a free people to pass upon. We have the doings of all former conventions to look at, and we will be able to see how their various provisions have worked since their adoption by the people of other states. We are, in fact, among the very last of the territories to frame a constitution, and are bound to make one upon the most perfect of models. We want the constitution of our Commonwealth so framed as to endear every man to its provisions, and make everyone living under it feel that he is indeed a freeman. There are other objects of public attention that I wish to see constitutionally disposed of, and upon which I will offer some suggestions in a future number.

CONSTITUTIONAL REFORM

[April 25, 1846]

In the April number of the *Democratic Review* we find an article on the "Progress of Constitutional Reform in the United States," in which some valuable suggestions are made. We extract the following, which we believe might properly be considered when our constitution is formed:

> We then maintained that in governments where all classes are so fully represented as in the United States of America, where public opinion is so rapid in its formation and circulation and so controlling in its authority, the constitution should be subjected to a thorough revision once at least in the lifetime of every generation, and such repairs made as are clearly and steadfastly demanded by a manifest majority of the voting population for whom it is designed.

If in the great state of New York, with its immense population, intelligence, and experience, an alteration of the con-

stitution is absolutely demanded during every generation, how much more should we, just entering upon the threshold of our political existence, provide that future conventions should be held to amend the constitution now so soon to be formed. Untried schemes of political policy, as well as more settled provisions, will doubtless be inserted in it, and how unjust to those who will follow us that they should be constitutionally tied down to what they in their progressive knowledge may know to be far behind the age in which they then may live, and that political as well as all other human knowledge is progressive no one can seriously deny. What severe lessons we have learned in political experience in only the last ten years. But that short time since, the evils of combined wealth in banking were not so clearly manifest nor so plainly understood and repudiated as in this our day, and we question not that many things, which for want of being tested may now meet with our full sanction, will, when they shall be better understood, be entirely exploded. For our own part, we should be pleased to have an opportunity (even if not exercised) of remodeling our state constitution two or three times during our generation. The workings of our political system may be better developed, and the wishes of the great majority of the people in this way better made known, and these we would hold paramount to any objection on the score of mere inconvenience or expense. We have no mode of estimating the future but by the past, and when we reflect upon the many improvements that have been made in the last fifteen or twenty years, is it too much to imagine that there are other reforms to be carried out? However an exalted opinion we may entertain of our superior political knowledge, we do not contend that we have nothing more to learn, and that we have arrived at our ultimatum in political science, and what we would is, whenever any particular principle of policy is determined upon, and when that policy forces itself to the favor of the great majority of the people, then that settled determined policy, whatever it may be, we wish to see it, as another step in our

political advance, embodied upon our constitution, that it may no longer be buffeted about by opposing parties as a mere "wind of doctrine," when its importance and popularity demand that it should be acknowledged as a constitutional "fixed fact." This much gained and firmly secured, we may then look around us for other evils to overcome as they may arise in our "great experiment" of self-government, and thus go on to improve from one convention to another as we may be experimentally taught.

In the article in the *Review* there is an epitome of several of the new constitutions that have been formed within the last two years, and in speaking of the merits of the different constitutions the writer adds that "the new constitution of Louisiana discovers more political insight and a more absolute reliance upon the principles upon which popular governments are based than appears in the fundamental law of any other state in the Union."

Our readers will see that this praise is just from the following extracts we make from the new constitution of Louisiana:

> No corporate body shall be hereafter created, renewed, or extended with banking or discounting privileges.

Fortunately for us in Wisconsin, we need only declare that no corporate body shall be hereafter created—as there are none in existence to be renewed or extended. If, however, the words "renewed or extended" increase in legal contemplation the force of the language of the section, or is [are] necessary to cover the case of the insurance company, then we want these words by all means kept in. We copy another capital provision from this same constitution:

> Corporations shall not be created in this state by special laws, except for political or municipal purposes; but the legislature shall provide by general laws for the organization of all other corporations except corporations with banking or discounting privileges, the creation of which is prohibited.

This constitution restricts the legislature from "pledging the faith of the state for the payment of any bonds, bills, or other contracts or obligations for the use of any person or persons corporate or body politic whatever," and also restricts the legislature from contracting debts so as to exceed the sum of $100,000, except in case of war, invasion, or insurrection, "unless the same be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means by taxation for the payment of running interest during the whole time for which said debt shall be contracted, and for the full and punctual discharge at maturity of the capital borrowed; and said law shall be irrepealable until principle and interest are fully paid and discharged, and shall not be put into execution until after its enactment by the first legislature returned by a general election after its passage." Although this provision does quite well, yet we would like the more summary one that no debt should be contracted by the legislature except in case of war, etc., unless a majority of the people of the state shall first vote in favor of the debt so to be created by the powers of the state.

Here is another good provision—"No divorce shall be granted by the legislature." We have long been satisfied that the courts alone should determine these matrimonial difficulties.

But we have not room to extract any more as equally salutary provisions in the constitution of Louisiana as those which we have noted. The article from which we have made the above extracts points out many of the beauties of the new constitutions of Missouri and Texas which are both models in many particulars. But we refer our readers to the article itself, and if they are not subscribers to the *Democratic Review* they ought to be, and close this article with two humane provisions which we find in the constitution of the state of Texas, which we commend to the attention of our readers:

All property both real and personal, of the wife, owned and claimed by her before marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

The legislature shall have power to protect by law from forced sale a certain portion of the property of all heads of families. The homestead of a family, not to exceed two hundred acres of land (not included in a town or city) or any town or city lot or lots in value not to exceed two thousand dollars, shall not be subject to forced sale for any debt hereafter contracted; nor shall the owner, if a married man, be at liberty to alienate the same, unless by the consent of the wife in such manner as the legislature may hereafter point out.

It may be that the number of acres exempted is too large, but we go the principle most decidedly, and hope within a year to find ourselves living under some such provision.

LETTERS OF "JEFFERSON"—No. 1

[May 30, 1846]

Mr. Editor: A subscriber ventures to send you a short communication, and as a progressive Democrat he feels he has the right to ask its insertion in a paper which by its course proves that its aim is to recommend and support such new measures as it conceives will be for the best interest of the people of the state, without regard to antiquated theories or old-fashioned practices. Among the many new improvements which I hope to see in our new constitution, there will be none more satisfactory, to myself at least, than a provision that the judges shall be elected by the people; and where is the Democrat that can truly say that the people are incapable of making the selection. What sophistry, indeed, is it to admit that the people have sufficient of discrimination and judgment to select members of the legislature, who make the law, but not the judge who is to explain it. These purely

disinterested gentlemen tell us that we may elect a governor and a legislature, but not a judge, who is, after all, but a creature made by the governor or the legislature. I contend that the people are just as capable of selecting good judges by voting directly for them, as by delegating that power to others to do it for them. If the declaration that all power is in the people is true, then why not leave that power where it naturally belongs? Why remove it from them, and impliedly say they distrust this first great cause of power in this country. It is flat nonsense, and is but a relict of old English prejudice. A few years since our justices were appointed, and I appeal to every man in the territory to say if we were better, if as well, served then, as now that they are elective. This innovation certainly has done no injury.

When we reflect upon the logrolling by which judges are elected by the legislature, we feel confident that there would be less of intrigue and corruption in going directly before the people than in submitting the appointment to a political caucus. The true Jeffersonian test of "is he honest, is he capable" can then be made to bear directly upon a candidate. With the people, honesty of purpose and the weight of moral character will have an influence that is never properly considered by a legislative body.

The old standing argument in favor of the appointment of judges is that they should be removed as far as possible from the people, and not [be] dependent on the popular will. What I contend for is, that they should be dependent, and know, as all other officers do, that they are but servants of the people. The governor who administers the law has to acknowledge his obligation to popular sovereignty, and we cannot conceive why there should be any reservations made in favor of the judiciary—and if the constitution should require that they should be elected every three or four years by the people, its present opponents will soon begin to acknowledge its force and correctness.

Another point made by the friends of gubernatorial appointment or legislative election is that judges should not

interfere with or become political candidates of party. In what, we would seriously ask, consists the difference between the candidate for the bench electioneering through his friends or by himself with the people, or the representatives of the people? None whatever if the legislature *truly* represent the wishes of their constituents. But the opponents of the proposed amendment know that it is much easier for an improper man to succeed with a small body that may misrepresent the people, than with the people themselves who are not so ambitious as their representatives, nor as easily cajoled or intimidated into a wrongful act. Upon serious reflection, I cannot conceive any good reason why the governor that swears to execute the law should be elected by the people that does not apply with equal force to the case of judges, who, if they are honest, will faithfully interpret the law without regard to the popularity of the cause—and if they would not do justice for fear of that influence, I do humbly conceive that they would not be rendered any more just by being appointed. The people will soon learn a man, and if they know him to be honest, and he proves by his conduct that he is not pandering for a reëlection, he will of all others be the one most likely to be resupported by the independent freemen of his circuit.

JEFFERSON.

LETTERS OF "JEFFERSON"—No. 2

[June 6, 1846]

MR. EDITOR: I had not expected, when I penned a few thoughts for your last number upon the subject of the election of judges, that so reasonable a proposition would have been opposed by any professedly Democratic paper, but as the *Argus* promises hereafter that it will oppose the suggestion, when it shall have heard all that has been said in favor of popular elections, I will assign, with your permission, a few propositions which its editor may perhaps notice when he has determined what reply he should make thereto.

First. Does the *Argus* recognize the "*vox populi,*" the will of the majority of the people, as the great governing voice of the state under all circumstances whatever; and, being of right supreme, have they the power to direct the mode in which all officers shall be chosen?

Second. If they possess that supreme political power, should they be restricted in any way whatever from a full and free exercise of that right?

Third. Should the people be governed by old precedents when they conflict with the progressive spirit of the age, and the doctrine of submission to the popular will, or popular sovereignty?

Fourth. Ought not the people to have the power of voting directly for every officer under a state government, when they by their taxes contribute to the support of such officer?

Fifth. What good reason exists for electing a governor who executes the law that does not apply with equal force to those who administer the same?

Sixth. As a principle ought the people to have the right of electing justices of the peace, who have jurisdiction up to fifty dollars, and if so what good reason exists to exempt from popular election the judge who can decide a controversy involving a greater sum?

Seventh. Are the people less competent to select judges, than justices of the peace, and if less qualified, why?

JEFFERSON.

LETTERS OF "JEFFERSON"—No. 3

[June 27, 1846]

MR. BROWN: In a late number of your paper I propounded a few queries to those opposed to an elective judiciary, asking whether in principle, at least, the friends of popular election were not correct; but as the *Argus,* as the organ of the Old Hunker system in opposing the election of the judges of the people, prudently avoids noticing any of the propositions

made, I will, with your permission, offer some further suggestions in favor of the popular mode.

The organ of an irresponsible judiciary naturally falls back upon the old cry that such was the mode prescribed some sixty years ago, and instances the Supreme Court of the United States as not inferior to any tribunal of the world, and asks whether that court has not been, "in point of ability and integrity, all that it could have been, and much more than it might have been under a different mode of selection." The friends of that federal feature of our government have always contended that its character was owing to the fact of their being life officers, and if they are right the mode of selection certainly has nothing to do with it. We do not believe that the *Argus* would venture in this day to recommend the formation of the United States Supreme Court as a model for us—it is life tenure and only removable by impeachment. The people in this day are so generally opposed to all life offices that it seems almost surplusage for anyone to combat it, even as an imaginary evil, so far as our state is concerned; but I will notice this feature of life tenancy in connection with the question of election, as that is far more reprehensible than even the doctrine of appointment by the governor, or election by the legislature, which to do, Thomas Jefferson says, "is a violation of the principle of the separation of powers." In every new state they have carefully avoided this most antirepublican organization, but I copy a paragraph from the June number of the *Democratic Review* upon this subject: "The abbreviation of the judicial term of office seems to commend itself so universally to the statesmen who have been recently called to consider the subject, that it is a matter of surprise that the system of appointing judges for life or till its decline approaches, should have been perpetuated so long"; and shows that in the new constitutions of New Jersey, Louisiana, Texas, and Missouri, that the judges are now chosen for a short term of years. Thomas Jefferson, in speaking of this very identical Supreme Court of the United States,

says: "We already see the power installed for life, responsible for no authority (for impeachment is not even a scarecrow), advancing with a noiseless and steady pace to the great object of consolidation. The foundations are deeply laid by their decisions for the annihilation of constitutional state rights and the removal of every check, every counterpoise to the engulfing powers of which themselves are to make a sovereign part. * * * That there should be public functionaries independent of the nation, whatever may be their merit, is a solecism in a republic of the first order of absurdity and inconsistency." The *Democratic Review,* in further treating of this subject, writes: "That much lauded independence of the judiciary supposed to result from the permanence of their dignity covers, we fear, a grave political fallacy. To have efficiency in a public officer as a general rule there must be a different though it be a baser sense of accountability than that which the incumbent experiences in communing with his own conscience." So much for this aristocratic model. In the same number of this *Review* the editor examines this question of an elective judiciary, and for that which I here copy from it I bespeak an attentive perusal. The editor frankly acknowledges that "the principle is plain enough," yet fears that its adoption in New York would not be politic at this time from the mode in which their officers are now disposed of.

We sincerely hope that the defects of which the editor treats may be cured under their present constitution, but as here in Wisconsin we have not these four or five thousand lucrative offices, we conceive that we are now in the position that the *Review* hopes New York may be [in] when they "will not have the slightest apprehension that the character of our judiciary would deteriorate by leaving their choice to the people":

> The election of judges by the people, however, presents a series of questions of far greater delicacy and difficulty. The principle is plain enough; but whether our society is conditioned to bear its strict application is yet doubted by many whose faith in popular government is absolute. It

is unquestionably the severest test by which the theory of popular sovereignty can be tried. Of this we are clear, that it would neither be wise nor safe to give the choice of the judges to the people in the state of New York, unless the political patronage of the state were greatly reduced, and the residue dispersed beyond the control of intriguing and unscrupulous politicians. We have the fullest confidence in the competence of the people to choose their officers more wisely than any officer they will appoint will choose for them, provided their wishes are fairly and fully represented. But that is impossible while the constitution places at the disposal of any successful political party some four or five thousand lucrative offices, and tolerates almost unlimited legislative interference with the industry and capital of the state. Until, therefore, political patronage and special legislation, which are the two great disturbing forces in our popular elections, are in a great measure annihilated, it might be questionable policy to extend the domain of the ballot box. But assuming that the changes are to be made which we have already suggested, having reference to these two cardinal defects of the present constitution, we have not the slightest apprehension that the character of our judiciary would deteriorate by leaving their choice to the people. Indeed, we believe a less technical and more equitable system of jurisprudence would gradually appear than that by which, in the disguise of justice, the people of New York have been weighed down for the last quarter of a century. We are aware that there are many men, not bigots either, who are shocked at the idea of electing judges. They, however, are very easy under the administration of justice by the present court of last resort, fourteen-sixteenths of which are thus chosen. We incline to think that if it had been the usage of the state to have its governor appointed by the chancellor with the consent of the supreme court, the same class of men would be equally shocked at a proposal now to make the governor elective. It was wisely ordained, doubtless, that none of us should know how much our judgments are under the dominion of habit; if, however, we were to realize it in this instance, the presumption is that our enfranchised minds would be lost in wonder that we had thus long tolerated so wide a departure from the theory upon which our government was planned and purports to be administered.

In none of the constitutions recently made or revised has the principle of an elective judiciary been extended, except in Missouri. It was originally determined in the convention of that state to make all the judges elective. They subsequently reconsidered their vote and determined to confine the elective principle to the circuit judges. The subject was dis-

cussed with great ability in the convention of Louisiana, and finally rejected on a vote of forty to twenty. We have been informed by a distinguished member of that body, and a friend to the election of judges, that that subject had not been discussed before the people at all, previous to the election, and that many of the delegates who were favorably disposed towards the system feared to take the responsibility of giving it their vote without further instructions.

In the course of the discussion in the Louisiana convention a very able survey of the whole question was made by Mr. Brent, a delegate from Rapides, from which, did our space permit, we should be glad to extract largely. We must confine ourselves, however, to the following letter relating to this subject, addressed to Mr. Brent by Judge Quitman, of Mississippi, where the elective system has been introduced, which letter the Speaker thus introduces to the convention:

"I have said that the testimony from Mississippi in favor of that system is strong and conclusive. I will prove it. In addition to the evidence of the delegate from Baton Rouge (Mr. Read) I hold in my hand a letter from a gentleman well known by reputation in this state, a lawyer of distinguished abilities, whose testimony upon this point is entitled to peculiar weight. The letter is addressed to myself, and reads as follows:

New Orleans, March 22, 1845.

Dear Sir:—

I have received your letter of the nineteenth inst., requesting my views upon the operation in the state of Mississippi of the system adopted there of electing judges by the direct votes of the people, and asking my attention particularly to the objection urged against the system, that such elections would, generally, if not always, turn upon party or political questions. Having no objections to the public avowal of my former opinions or present views upon this interesting subject, I cheerfully comply with your request.

At the time of the adoption of the revised constitution of Mississippi in 1832 I was, with a majority of the bar of that state, opposed to the system of electing the judges by the direct votes of the people. We regarded it as a new and hazardous experiment, beautiful in theory but dangerous in practice. Many of us did not doubt the capacity or intelligence of the people to make the best selections, but we feared that popular excitements would find their way upon the bench, that party spirit and political prejudices would generally determine the selection, and that the judges would carry these prejudices with them upon the bench, and a train of other evils. These and other objections were urged in the Mississippi convention with great ability. The system was, however, adopted, and, of course, its operation has been watched with deep interest and severe criticism.

The experience and observation of nearly thirteen years have convinced me and many others who opposed the experiment that our ap-

prehensions were not well-founded. So far the system has worked well in our state. We have witnessed no evils attending it which are not incident to any other mode of selection, and, on the contrary, the development of some advantages over other modes of appointment. Our judicial stations have been filled with as much, if not more, ability, learning, and weight of character than formerly. So far the people of our state have appeared to perform this delicate duty with as much intelligence and discernment, and I conceive with more integrity of purpose, than any other appointing power. We have seen the electors of districts, in the midst of political party excitement, elect judges differing from them on political questions; and I believe no instance has as yet occurred of the election of a judge in our state, upon mere party questions.

Upon the whole, after a careful observation of the operation of our system, I give it as my decided opinion that the experiment of electing judges by the direct votes of the people has proved eminently successful in our state.

I am, very respectfully,
Your ob't servant,
J. A. QUITMAN.

"We have seen from this letter of Judge Quitman that during the space of thirteen years this system has been in active operation in Mississippi, and that it has fully realized the expectations of its friends. We find that under its workings politics have been driven from the bench, and the judicial stations of the state have been filled with ability, learning, and weight of character. Can as much be said for the operation of our system in this state? So far from politics being driven from the bench with us, we have seen noisy and brawling politicians, yet smoking with the dust of the political battle fields, with all exacerbations of political strife yet clinging around their hearts, elevated to the important trust of deciding upon the lives, the liberties, and property of our people. The practical working of our system has been the very reverse of that of Mississippi. There can be no comparison instituted between the two. But as I have before observed, the testimony of this gentleman is entitled to peculiar weight. He was a member of the convention of Mississippi that adopted the revised constitution of 1832. In that convention he was the leader of the opposition to this principle. His pride of opinion, his prejudices, have all been arrayed against it; yet, as he informed me, the observation of thirteen years had forced him gradually and reluctantly to abandon his first position, and at this moment he regards it as the best possible system that could be devised. Should this convention think proper to adopt the amendment now under debate, thirteen years hence I have no doubt that the gentlemen who are now loudest in their opposition, if called upon for their testimony, would write a letter similar to the one I have just perused."

Thomas Jefferson, whose name is a tower of strength for whatever side he favors on a question of political philosophy, was a decided advocate of an elective judiciary.

In a letter to Kerchival upon the subject of calling a convention in Virginia for constitutional reform, he thus alludes to the subject:

"It is thought that the people are not competent electors of judges *learned in the law*. But I do not know that this is true, and if doubtful, we should follow principle. In this, as in many other elections, they would be guided by reputation, which would not err oftener, perhaps, than the present mode of appointment. In one state of the Union, at least, it has been long tried, and with the most satisfactory success. The judges of Connecticut have been chosen by the people every six months, for nearly two centuries, and I believe there has hardly ever been an instance of change, so powerful is the curb of incessant responsibility. If prejudice, however, derived from a monarchical institution, is still to prevail against the vital elective principle of our own, and if the existing example among ourselves of periodical elections of judges by the people be mistrusted, let us at least not adopt the evil and reject the good of the English precedent. Let us retain a moveability on the concurrence of the executive and legislative branches, and nomination by the executive alone. To give it to the legislature, as we do, is a violation of the principle of the separation of powers."

The *Argus* may possibly discover what it appears never to have known that one state at least has resorted to popular elections for the choice of their principal judicial officers and has acted under it for the last thirteen years, and although the friends of an elective judiciary may be, as compared with the *Argus* man, "politicians of moderate caliber," yet they are not for that reason to be deterred from presenting their views, new though they may be, to the Rip Van Winkles of Old Hunkerism, while they have the countenance of the constitution of a sister state, the patriotic advice of the great apostle of democracy, and the certain satisfaction of knowing that they are correct, and that the *Argus* cannot deny that in principle they are not.

JEFFERSON.

DECLARATION OF PRINCIPLES

[August 8, 1846]

At the Whig convention held in this village on the twentieth ult., resolutions were adopted purporting to set forth the principles of the Whig party.[14] This declaration of principles in many of its features so closely resembled the doctrines for which we had ever contended, and was so diametrically opposed to all of the precepts and practices of that party heretofore, as to lead to the conclusion that they had abandoned their old ground as untenable and impolitic, but being ashamed to acknowledge their error individually and join the party that had ever sustained the right, they were attempting to take possession of our ground by force of numbers and officer it with their own men. Had we believed that they were honest in their professions, and would carry out in good faith the measures which they avowed, it would have left us nothing to contend for but individual preferences for *men*—a matter of no general importance where the principles were right. But we doubted the good faith of these declarations, and subsequent events have strengthened these doubts into tangible certainty that they were but words signifying nothing—the merest clap-trap to cheat the unwary into support of men, who, once in power, would use it to advance and sustain their real sentiments. We make no charge of as grave a character as that of duplicity and fraud against any man or body of men without having the most positive proof to sustain it. In this case we will condemn them out of their own mouths. The second of the resolutions to which we refer reads as follows:

"Second. A direct and positive prohibition against the granting by the legislature of any charter for banking purposes, or the passage of any law whereby any monopoly or

[14] For this statement of Whig principles, see *ante*, 154.

any special exclusive rights and privileges may be conferred for private purposes."

The Madison *Express,* the accredited organ of the Whig party in this county, in an editorial in that paper of August 4 says:

> The universal Whig party hold it as an incontrovertible tenet of their political creed that a mixed currency of specie and bank notes (convertible into specie at the will of the holder) is indispensable to our individual and national prosperity; the steadfast support of our commercial enterprise; the efficient propagator of industry in all its manifold branches: and that to banish the paper circulation entirely from the Union, would be not only to curse the whole people with those fearful evils which resulted so disastrously to them from the curtailment of the currency during the reign of Martin Van Buren, but would ruin their fortunes, beggar their families, and crush their fondest hopes of happiness forever.

Comment is unnecessary. A few individuals in the party, for effect, declare one thing—the organ and exponent of the party declares its opposite, and all the previous acts of the party sustain the declarations of the latter. Would it be safe to follow the new light, so dim and uncertain? But to continue: the sixth resolution makes the following declaration:

"Sixth. The extension of the right of suffrage to every male resident above the age of twenty-one years in the territory at the time of the adoption of the constitution, being a citizen of the United States, and thereafter to every male resident above the age of twenty-one years, being a citizen of the United States, or having declared his intention to become so."

When this resolution was before the convention a member moved to amend it so as to read "every white male, etc." A. L. Collins Esq., who reported the resolutions, rejected the offered amendment with indignation, and asserted the equality of the negroes to the whites in such a manner as to give the impression to everyone who heard his speech that the resolution was intended to make no distinction of color

but to take them all in. Under this impression the vote was taken and carried with but one dissenting voice. There was no dispute in regard to this interpretation of the resolution until its publication. In the meantime much disaffection was exhibited in the ranks on account of it, and serious apprehensions were entertained of an open rupture. In the face of all these well-known facts, the party organ has the cool assurance to pronounce the representation that the Whigs of Dane are in favor of negro suffrage "a wilful fabrication." From the cross-shooting in their own ranks it would puzzle the keenest optics to see what they are aiming at. A reasonable conclusion would be, however, that they meant to hit all round.

By the reading of the resolution, it would exclude all from a participation in the government at the time of the adoption of the constitution, who are not citizens of the United States; but *thereafter,* at some *future* time, they will be willing to take in, on their simple declaration of intention to become citizens, persons of every nation and tongue. Give them the power first, and *perhaps* they will be magnanimous in the use of it.

One more incident in connection with the convention and we have done. The *Express* asks, "When, where, and how have the Whigs ever opposed universal suffrage?" We answer—in the state of Rhode Island they opposed it by the sword, by chains and imprisonment, and the Whig convention that declares for universal suffrage endorsed that opposition by placing upon their ticket N. J. Tompkins, a Rhode Island Algerine, who makes an open boast of his opposition to Dorr and his patriot band; and this, too, over Mr. Anderson, a Whig of more liberal views. In view of all these inconsistencies, are the people willing to trust to mere professions unsustained by a single fact?

EXECUTIVE VETO

[August 15, 1846]

The New York state convention has agreed to the provisions of the present constitution in allowing two-thirds of all the members present to repass a bill after its having received the executive veto.

This veto question was very seriously debated by the framers of the national constitution, and many of the statesmen of that day were opposed to granting this right to the president; yet, whatever may have been the reason of the introduction of this provision at the first formation of the government, or the necessity of continuing the same in the federal constitution, we are satisfied that as to questions of mere state policy or expediency the governor should not be possessed of a negative power that can thwart the will of the people as expressed by the legislature elected by them. In the organization of the federal government the senators are the representatives of their respective states and under the control of the state legislatures. To prevent encroachments of the states upon the several powers, among other reasons, this veto authority is given the executive that he may be able to oppose their unconstitutional intrusions upon the rights of the whole. Under state governments the senate and house of representatives are both elected directly by the people and alike represent their will. These men come up annually "fresh from the people," and are as well qualified to represent their varied interests as the governor possibly can be. In fact, as to mere matters of expediency, they of needs must be better exponents of the public will. If, however, they should err, the error can be corrected by a majority of the next legislature, instead of being required to elect two-thirds to pass the bill at the next session over the objections of the same executive, and we believe that a majority under our form of government should everywhere be respected. In

nearly every law passed by a state legislature no constitutional question can arise, but if so, let the point be submitted to the judiciary, who, from their education and pursuits are better prepared than the executive to determine constitutional objections to its validity. In nine times out of ten the members of the legislature are as well versed in such matters as the governor, and he may veto a bill upon constitutional grounds when his objections are not sound—which under the system in some of the states deprives the majority of the friends of a bill of their right to enact it as a law. In nine or ten states of this Republic the whole power rests in the representatives of the people where we believe it should always remain; the governor signs the bill and it is his duty to see the law faithfully administered. This we believe should be the only power conferred on him under state constitutions.

DEMOCRATIC CANDIDATES INTERROGATED

[August 15, 22, 1846]

To George B. Smith, Esq:

Dear Sir: The undersigned, having been appointed by the Democratic Convention to draft an address to the electors of Dane County setting forth the principles of our party, have, on mature deliberation, come to the conclusion that we shall best arrive at the true opinions of the delegates on the much mooted questions embraced in the following interrogations, by allowing each candidate to express his own sentiments on them, in his own language. The circumstances in which the party is placed [make necessary], in our opinion, decisive and categorical answers to all of them, and nothing short of such answers can harmonize the party and give to you the united vote of the same; you will therefore please inform us and the public whether,

First. You are in favor of the establishment of a bank or banks either for the issue or deposit of paper money in the state of Wisconsin? Or will you place a prohibition in the constitution of Wisconsin against the incorporation of any bank or banks, by the legislature of the state, or the establishment of any branch of a bank chartered elsewhere?

Second. Will you impose any restriction on the elective franchise, and particularly in relation to foreigners?

Third. What restraint would you impose on the legislature in the creation of state debts?

Fourth. Are you in favor of or opposed to making all executive and judicial officers elective by the people; and to hold the same for a short or a long term?

Fifth. Are you in favor of or opposed to exempting any real estate from being taken on execution against the owner and would you place such exemption in the state constitution?

The interests of the party and your success or defeat will require your earliest attention to those matters, and hoping there will be no delay in giving prompt and decisive answers to each and all of them and wishing you success in the ensuing campaign, we have the honor to be,

Your obedient servants and fellow Democrats.

BENJAMIN HOLT
DARWIN CLARK
J. G. KNAPP
CHESTER BUSHNELL
BERIAH BROWN

MADISON, August 15, 1846.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter bearing date August 13, setting forth several questions, the answer to which you deem of importance to the success of the Democratic party of this county.

I am happy at this time thus to have an opportunity of expressing to you, and through you to the public, my opinion upon these questions.

"Are you in favor of the establishment of a bank or banks, either for the issue or deposit of paper money in the state of Wisconsin? Or will you place a prohibition in the constitution against the incorporation of any bank or banks by the legislature of the state, or the establishment of any branch of a bank chartered elsewhere?"

Upon this question my views and feelings are so well known to you, and to all with whom I am intimately acquainted, that an answer would scarcely seem necessary; but for the information of the people generally, to whom we are mostly strangers, it is perhaps proper that I should publicly lay before them in a brief and concise manner my views upon this as well as the other questions which you, as the people's committee, have seen fit to propound to me. The evil effects and disastrous history of banks

and the use of bank paper to supply the place of money have long since convinced me of the inexpediency of ever attempting to establish any system of banking whatever, and time and circumstances have strengthened and confirmed me in that opinion; therefore, I am not in favor of the establishment of a bank or banks under any circumstances, or for any purpose whatever, and if elected I would use my influence to prohibit in the constitution the establishment in this state of any bank, or the branch of any bank chartered elsewhere.

"Will you impose any restriction on the elective franchise; and particularly in relation to foreigners?"

My answer to this question would unequivocally be, that I would impose no restrictions whatever upon the elective franchise of free white male citizens over the age of twenty-one years, except that they should reside in this state six months immediately previous to their offering to vote; and in relation to foreigners, whenever they have reached their majority and signified their intention to become citizens of this state, by a residence of the same duration, and by renouncing all allegiance that they might otherwise owe to any other government, they should, in my judgment, be admitted to *all* the rights and privileges of an American born citizen.

"What restraint will you impose on the legislature in the creation of state debts?"

In answer to this question I will say that I would impose every restriction calculated to prevent the legislature from contracting a state debt under any circumstances, except in case of insurrection or invasion, or the like, unless the question is first submitted by the legislature to be voted upon by the people of the state.

"Are you in favor of or opposed to all executive and judicial officers being elected by the people, and to hold the same for a short or a long term?"

Upon this subject, too, my views are well understood by the committee, as being in favor of the election of all officers by the people, and opposed to giving the appointing power to any officer or branch of the government. In my opinion the appointing power is a relic of monarchy, wholly inconsistent with our form of government, and should be eradicated as speedily as possible; and the elective and lawmaking power ought never to be entrusted to one and the same body. The term of an officer should be short, that he may constantly bear in mind his accountability to the people.

"Are you in favor of exempting any real estate from being taken on execution against the owner; and of placing that exemption in the constitution?"

This, unlike the foregoing questions, is rather a novel one, and although the principle of exemption may be old, its application to the reservation of a homestead has not been tested to any extent by public opinion. It is a subject, however, in which I feel a deep interest, and should be happy to see it tested to the fullest extent. By giving a man his home free from the possibility of losing it by any combination of circumstances you render him independent, and place within his reach the means of making himself and family comfortable and comparatively happy. You give him a home which he knows is secure in spite of the many misfortunes to which we are all subject and over which we have no control; and in my opinion you have removed, in a great degree, that grasping and money-making spirit that so distinctly marks the character of man of the present day—a principle which he does not possess by nature, but which is fostered and encouraged by the uncertain tenure by which he has hitherto held the means for the protection and support of himself and family. Could we be wholly certain of the means of subsistence during life, this motive to overreach one another and to amass large fortunes would be nearly or quite done away, and we would then turn our attention to the education, cultivation, and improvement of the mind; education would then be preferred to wealth, and happiness and ease to turmoil and strife; and, as one of the original friends of the exemption of the homestead from forced sale, I but here repeat what I have everywhere maintained upon this humane provision, that I am satisfied that a liberal exemption of land from execution will prevent not only the breaking up of families but to some extent pauperism and crime. It will necessarily produce the happy consequence of restricting the small credit system. It will enable the farmer and the mechanic better to meet his just liabilities. It will free our citizens from the slavery of debt, and add much to the morality, honor, and independence of our people. It will encourage the oppressed of other lands to seek a home where the rights, interests, comforts, and independence of themselves and families will be favorably regarded. It will prevent petty litigation. It will break down all distinctions of society based upon mere wealth, and make men respected according to their integrity.

If elected I will use my endeavors to place this principle of exemption in the constitution. In respect to the amount or value of real estate to be exempted, I perhaps need not speak. The principle I believe to be

good, and how much shall be exempted is a question which might better be left to the sound discretion of the convention.

These are my views in respect to the foregoing questions; such as they are, I respectfully submit them to you, and you are at liberty to make such use of them as you see proper for the promotion of the great cause of democracy, and the success of the Democratic party in this county.

I am, gentlemen, very respectfully,

Your obedient servant,

GEO. B. SMITH.

To Benjamin Holt, Beriah Brown, J. G. Knapp, Darwin Clark, and Chester Bushnell, Committee, Madison, W. T.

RUTLAND, August 18, 1846.

To Benjamin Holt and others:

I received your note of the 13th inst., yesterday, calling upon me as a candidate to answer certain interrogatories.

I, as a candidate, feel myself bound by my principles, to give candid answers to all political questions that may be put to me by a committee, or by any lawful voter in the county. Your first question is,

First. "Are you in favor of the establishment of a bank or banks either for the issue or deposit of paper money in the state of Wisconsin? Or will you place a prohibition in the constitution of Wisconsin against the incorporation of any bank or banks, by the legislature of the state, or the establishment of any branch of a bank chartered elsewhere?"

I am not in favor of the establishment of a bank, etc., unless the corporation of the bank gives as good security in real estate for the redemption of their notes (aside from specie actually in their vaults) as they would ask for the loan of money.

I would place a prohibition in the constitution against the incorporation of any bank or banks, unless so restrained, and I would prohibit in the constitution the establishment of any branch of a bank chartered elsewhere.

We can have as good a constitution, as good a currency and credit, as any people in the world; therefore I hope the people will not delegate power to the legislature to make wild-cat money, or to do anything to injure the credit of the state, so that if we have bank notes at all we shall have such as people will be proud to see Wisconsin on the face of * * * *.

Second. "Will you impose any restriction on the elective franchise, and particularly, in relation to foreigners?"

I would. My first object would be to prevent crime. For instance, let the people know that if they are convicted of a state's prison offense they forfeit what every American holds dear.

As to foreigners: Let them become fellow citizens as soon as may be after declaring their intention to become such, and [after they] have resided here a sufficient length of time to prove the same to the satisfaction of the people.

Third. "Would you impose any restraint on the legislature in the creation of state debts?"

I would. I think it is policy for the people in order to keep their credit good not to delegate to a legislature the power to create a state debt, without at the same time providing ways and means to pay the same.

Fourth. "Are you in favor of or opposed to making all executive and judicial officers elective by the people; and to hold the same for a short or a long term?"

I am in favor of the above for short terms.

My principle is, not to delegate to others the power to do for the people that which the people can conveniently do themselves, and to make their servants often responsible to them.

Fifth. "Are you in favor of or opposed to exempting any real estate from being taken on execution against the owner and would you place such exemption in the state constitution?"

I would not place such exemption in the constitution, but I am in favor of the legislature exempting a team, tools, household furniture; and I would not object to a house and small piece of land.

The above are my answers to your interrogatories, and I would state, also, that if it should be my fortune to have a seat in the convention I shall use my little influence to bring about the above or as near it as possible.

I also state to you that there are instances (in my opinion) where a person can best serve his constituents by choosing of two evils the least.

May true democracy prevail forever in Wisconsin is the wish of your obedient servant,

B. Fuller.

To B. Holt and others.

Madison, August 15, 1846.

Gentlemen: I have the honor to acknowledge the receipt of your epistle dated August 13. In your preamble you acknowledge yourselves a committee appointed by the Democratic Convention to draft an address to the electors of Dane County. In order to aid you in your deliberations you call upon the nominees of your party to give their opinions upon certain

questions propounded. I am willing you should know my opinions for the above purpose and for no other.

Question 1. I would inform you that I am a birthright member of the Democratic family, and have acted with them for fifteen years as a voter—seven years in Dane County. The whole of this time I have been opposed to banks or monopolies of any kind.

Question 2. In answer to this question—I am in favor of no restrictions upon the right of suffrage of white male citizens, further than that they should reside in the state six months; and in relation to foreigners, that they should be entitled to all the privileges of citizens, after becoming naturalized.

Question 3. I am in favor of restricting the legislature to a limited extent.

Question 4. I am in favor of the election of every officer by the people, and for short terms.

Question 5. I am in favor of exempting from execution for debt a certain amount of real estate; and, if elected, would use my influence to exempt as much as possible.

As it is the prerogative of the people to give instructions to their servants, I should, if elected, in all cases feel in duty bound to abide by their instructions, whether they correspond with my views or not.

Your most obedient servant,

ABEL DUNNING.

To Benjamin Holt, Darwin Clark, J. G. Knapp, Chester Bushnell, B. Brown, Committee.

THE REPLY OF JOHN Y. SMITH

The above letter [of the committee] was duly received by us, and without stopping to inquire into the authority of this committee, either on behalf of the convention which honored us with a nomination, or that from which they derived their appointment, to catechise the candidates nominated by the other convention, and passing over everything dogmatical in the questions and mandatory and menacing in the style of their letter, and most respectfully differing with the committee in the opinion that our success will depend entirely upon our doing precisely as they may direct, we avail ourself of their indulgence in "allowing the candidates to ex-

press their own sentiments on them (the questions) in their own language."

The committee may not be aware that the delegate nominating convention took into consideration the propriety of instructing the delegates upon the same or similar questions, and after deliberation, deemed it advisable to leave the candidates they had selected to the guidance of established party principles, and upon all new questions, to ascertain the sentiments and wishes of the people, with the expectation that as good Democrats they would at all times hold themselves open to instructions and in readiness to obey them.

So far as relates to the bank question, the recognized principles of the party are such that, by accepting a Democratic nomination to the state convention, we consider ourself pledged to use our endeavors to place an effectual barrier in the constitution to the existence of banks of any kind within the state of Wisconsin.

Upon the question of suffrage, the triumphant manner in which the present law of the territory has been enacted and sustained by the Democratic party, allowing all white male inhabitants over twenty-one years of age who have resided six months within the territory to vote for delegates to form a state constitution, we regard as a decisive indication that substantially the same provisions should be inserted in the constitution for the guidance of all elections under the state organization.

A restriction upon the debt contracting propensity of legislatures is a provision so obviously necessary and so strongly recommended by the experience of all new states that there can be no doubt but the people of Wisconsin expect it and will approve of it by acclamation.

We also regard it as a well-settled Democratic principle, that all officers should be elective so far as is consistent with the stability and efficiency of the government; but whether stability and efficiency would best be secured by the extension of the elective principle to the judicial department is a

question upon which not only individual Democrats amongst us, but Democratic communities and states differ widely. Upon this question the nominating convention did not attempt to give law to the party, nor do we believe that they expected the candidates would take upon themselves a responsibility which they distinctly declined.

Upon this question, we consider ourself under instructions from the convention to ascertain the wishes of the people, and to follow rather than to give instructions. We are daily engaged in this our business, and thus far we are free to say that the sentiment predominates in favor of an elective judiciary.

To release men from paying their honest debts cannot fairly be claimed as a Democratic principle. Upon this question the Whigs have the ground in the universal bankrupt law of 1841. Still we are in favor of exemption laws for the benefit of the poor debtors, and we believe they should be as liberal in their character as is consistent with justice to poor creditors. Guided by this rule, we regard as a matter of indifference whether the exemption consists of real estate or personal property, or both. But whether any exemption law should be incorporated in the constitution is a question which we think admits of some doubt. We should remember that the object of framing a constitution is not to frame a code of laws, but simply to create the several departments of government, and define and limit their powers.

Wisconsin Argus.

THE EXEMPTION

[August 22, 1846]

The principle of exemption, which is now being discussed to a considerable extent among us, seems to be misunderstood by some and either wilfully or ignorantly misrepresented by others. The exemption of a home from execution for debt was, we believe, first presented to the consideration

of the public in Wisconsin by this paper, and the sentiment was approved by every Democratic paper in the territory with *one* exception. We therefore claim the right to explain what is, and what is not intended by the measure. "To release men from paying their honest debts" is no part of the plan proposed. On the contrary, it is intended to secure to them the facilities for raising the means to meet their obligations, instead of turning them and their families naked into the street without the means of subsistence, perhaps to become a public charge, merely to gratify some Shylock whose exact sense of justice demands the fulfillment of "the bond." We would withhold from the creditor no *property* which of right belongs to him. We but ask that sickness or misfortune, or even the prodigality of the debtor, shall not deprive his family of the tenement, humble though it may be, which shelters them from the storm, of the little piece of land from which by their labor they draw their subsistence, and of the proper implements necessary to pursue their labor. Is there anything unjust or unreasonable in this? Allow the relentless creditor to rob them of these necessaries of existence, and are the ends of justice any better secured?

Either benevolent individuals or the public must furnish them with the shelter and sustenance of which they have been deprived, and thus, year after year, is pauperism and crime increased under the fostering care of our wholesome laws for the protection of capital.

Nine-tenths of our national and state legislation is for the encouragement and security of commerce and trade, for the protection of manufacturers, and for the benefit of capital in every way in which the labor of the many is made to supply the luxuries and increase the wealth of the few, and it is considered legitimate legislation. But, let any measure be proposed to ameliorate the condition of the producers of the country and relieve them in any degree from their slavery to wealth, immediately some "old croaker" who has succeeded, God knows how, in emptying the pockets of others into his own to a considerable amount, fearful that he shall

lose some of the powers which wealth has heretofore possessed, raises the cry of "agrarianism," "demagogueism," etc., in order to blind the people to their own interests.

Thank God for the progressive spirit of the age; the time will come—has come—when other rights than those alone which money gives will be respected.

LEGAL REFORM

[September 26, 1846]

Mind and matter must alike have a vent. The compressing band of so-called olden experiences can no more control the one than a toy fountain can extinguish the flame of earth's Vesuvius. The people, most fortunately, can and will think, and, notwithstanding all the halo of prejudice that Old Hunkerism is prepared to throw around any of its obnoxious theories, yet the fog must be dispelled and the smoke that surrounds it evaporated before the searching analysis of thought. We rejoice that we live in the day that everything that may be urged tending to the real enfranchisement of man can now be advocated with a sure confidence, and that nothing is per se too artificially sacred to resist the examination of mental scrutiny. New theories are necessarily innovations upon olden practices; but if "the light that burns within us" proves their injurious consequence and fallacy, we hold that all such subtle deceptions should be exposed and the false glare that surrounds them at once dispelled. As one of the "progressive democracy" we recognize this rule of conduct, that if a correct principle invokes a change, either as affecting our government or the natural rights of its citizens, we will not sanction the evil nor fear to combat the error as it may have heretofore existed. The sentiment of the purest of reformers, the lamented Leggett, meets with our fullest confirmation: "Satisfy me that a principle is right in the abstract, and I will reduce it to prac-

tice if I can." The monarchial glare that has surrounded the administration of justice should be dissipated under our new constitution, but the question arises how or in what manner shall the courts be made to assume a natural aspect? It is not to be wondered at that our fathers who framed the great charter of our national liberties should have fallen into the old mode of judicial dispensation practiced by the governments of the Old World from which they sprung. They looked upon any innovation upon the old mode of administration of justice as little less than sacrilege, and the bench as ministering at a holy shrine. We hold to the old-fashioned doctrine that all men are equal, and that courts and their attendant evils are no more sacred to the probe of our examination than the errors that have grown up under the unequal practices of banking or of tariffs, and, honestly believing the present mysterious system of organizing courts to be adverse to the interests if not to the rights of the great body of the people, we most cordially invoke a change. We would ask our unprofessional friends whether it should of necessity be required that all the special pleading of the lawyer must be retained to recover a judgment upon a plain promissory note, or upon a mortgage to which there is and can be no defense? Yet such is the arrangement under the rules and practices of courts, counsel must be employed to recover that which the defendant or mortgagor does not in any way resist—and the poor defendant finds the original debt incumbered with the additional charges of fees and costs, which have been made contrary to the wishes of both parties. Can no way be devised to remedy this? Why should not the plaintiff or mortgagee have the privilege (as he naturally has the right) to produce to the court himself the evidence of the other's indebtedness, upon a simple exhibition of the note or mortgage as the case may be? Can common sense justify the everyday practice of courts that throws the party out of court and endangers by delay the real administration of justice, in consequence of some trivial technicality of counsel? Every prudent business man knows

that a reference to two or three common-sense men, of any controverted case is far preferable to the tedious "uncertainties of the law." As a far lesser evil and which in the main would obviate many of the objections to the present system, we should be inclined to favor "courts of conciliation," as recommended by the Southport *Telegraph,* the creation of which is now meeting with the warmest support from many members of the New York constitutional convention. We look with great anxiety to the deliberations of that convention upon that subject as we know of no one thing that calls more loudly for alteration than the present expensive and irrational mode of administering both law and equity. We propose giving this subject further consideration.

OUR STATE LEGISLATURE

[October 3, 1846]

The organization of our legislature must of necessity form one of the most important subjects that the convention will be called upon to consider. The nearer the power is kept in the hands of the people, so, we believe, their interests and rights will be best secured, and in the formation of our state government the house of representatives may justly be regarded as the most important branch. By its numbers and the frequency of elections it has been made in other states the immediate representative body of the people, and is considered as the peculiar guardian of their political rights.

It has, therefore, become an axiom of the democracy of the freest states that this body should be composed of the largest number of members compatible with the convenient and proper transaction of business; and be elected from the smallest political districts into which the state is divided, so as to secure an intimate and perfect knowledge of the abilities and character of [his] representative by the elector, which under the present territorial system cannot be said

to be the case. It is at least admitted by all that one such a popular body should exist in every republican government.

We propose, therefore, for the consideration of the delegates to the state convention (and only propose, that they themselves may give the subject the consideration that may be its due) that, following the example in some respects of the New England states, the constitution shall provide that a representative be elected annually in this state by the inhabitants of each organized or incorporated town.

That each town containing—say—200 voters elect one representative.

That every incorporated town containing—say— 400 voters may elect two representatives.

And every such town containing—say—800 voters may elect three representatives, and for every 400 voters which each town may contain above 800, such town may elect one representative.

That the voters of each town at the annual election shall by a vote determine whether they will elect one or more representatives for such town according to the above ratio.

And that each town shall pay its own members at the town treasury by a tax to be levied by such town, and no member shall receive any other compensation for his services as such, or hold any other office during the term for which he is elected.

Under such an organization it rests entirely with the people whether they will send a full delegation or not, as they alone are to pay the expenses of their representatives, and in default of electing any representative they alone are to be injured. Give the people the right to a full representation, even though they may not use it, and while they keep the purse strings in their own hands the system will scarcely be more expensive than the one adopted under our territorial government. In Massachusetts, where a nearly similar system prevails, the sessions of the legislature are not unnecessarily extended, and, with the moderate per diem that they receive, we do not think on the mere score of economy that

tney are much the sufferers. Our wish is that the great body of the taxpayers be represented, and, let taxation really travel hand in hand with representation, * * * whatever mode, even different from the one we have suggested, that will give us a well represented people, we will be found to favor it, as we humbly believe that after a body exceeds one hundred in number it makes it but little less objectionable in consequence of mere numerical inconvenience, to extend it three times as large, if the additional expense can be in some way reduced.

Under our proposition many of the towns would fail to be represented, so that the expense to the great body of the whole people in making a moderate per diem allowance to those that do attend would not, probably, exceed a body of one hundred members drawn together under the old mode and paid a larger per diem out of the state treasury.

THE RECENT ELECTION

[October 3, 1846]

The Milwaukee *Sentinel* copies a couple of paragraphs from this paper—one in regard to the vote at the English settlement in Iowa County, and the other to that of the Norwegian settlement in this county—and makes them the text for a long lecture upon the subject of deceiving the poor foreigners into the support of the "Loco Foco" ticket.[15] To those who know how it was done, and are also acquainted with the character and course of the *Sentinel* editor, there is something irresistibly rich and droll in this complaint, and it smacks strongly of irony upon his own party for not following his example and "playing it finer." No man in the territory has made more appeals to foreign-born citizens as a class, attempted more "blarney" and cajolery,

[15] For the *Sentinel* article here referred to, see *ante*, 202.

than this same editor. It was the "generous Irish" and the "honest German" before election, but now if he dared use such expressions to express his real feelings, it would be the "d——d Irish" and the "black Dutch." In this county, among the foreigners, the Whigs had the field almost entirely to themselves, and used every appliance which could be brought to bear to win their suffrages. The Whig candidates quartered upon them—slept and ate with them (for particulars ask our friend Botkin), had their "Declaration of Principles" translated and placed in the hands of every Norwegian in the county accompanied by suitable personal admonition, furnished means of conveyance to the polls—but all to no purpose. They couldn't win, and hence the cry, "There's cheating round the board." We believe that there has been rascality practiced, but we know that we did not do it. The great mistake of the Whigs has been that they underrated the intelligence of this portion of our population, and after trying in vain all sorts of expedients to cajole them instead of doing them the justice to acknowledge that they thought and acted for themselves independently, they have invariably come to the conclusion that the Democrats, by some hocus-pocus which they have never been able to explain, have outwitted them. With the editor of the *Sentinel* we deprecate any action having a tendency to create distinct classes for political effect among us, and if this is the case with some of our foreign-born citizens, the Democratic party is not responsible for it. But it might be well to ask if the course of Whig editors generally would not naturally lead to such a result—courting them as a class before elections, and as a class abusing them afterwards. We would have all citizens equal in the enjoyment of all political rights, and bearing all the burdens of government, and this has ever been the doctrine of our party.

SELECTIONS FROM THE MADISON *WISCONSIN ARGUS*

THE "ALIEN LAW"

[October 14, 1845]

Whigs seem to regard this law as an extension of the right of suffrage.[16] In this respect they give us too much credit. It is rather an act to restrict the right of suffrage. The law as it now stands makes a residence of six months in the territory a necessary qualification for a voter for delegate to form a state constitution. Without some such law every male resident of mature age, wherever born, or however short a time he may have been in the territory, would be entitled to vote. The reason is that, in the formation of a new government by the people, which is to be for certain purposes and to a certain extent absolutely sovereign and independent, society is, to precisely the same extent, thrown back into its original elements and left entirely, absolutely, and necessarily without law; for, so far as they are bound by law in the formation of their government, so far their government is already formed and beyond their control.

Now, to what extent and for what purposes is the proposed state to be sovereign and independent? Without enumerating further, we must put down the right to define the qualifications of her voters as one of the absolute powers of state sovereignty—a power which no other state nor all the others together in their federal capacity can interfere with. The Whigs, it is true, have labored to identify the right of suffrage with citizenship, and, in respect to foreigners, with the naturalization laws; but those who have at-

[16] For an account of this law and of the whole subject of alien suffrage in this period see Louise P. Kellogg, "The Alien Suffrage Provision in the Constitution of 1846," in *Wisconsin Magazine of History* for June, 1918.

JOHN Y. SMITH

tempted it, have only exposed their ignorance of the fundamental principles of our government. The power to enact naturalization laws is, as everybody knows, conferred upon Congress by the constitution. The power to define the qualifications of voters, as everybody ought to know, is reserved to states respectively.

In forming a state government we shall not be acting in our territorial capacity, for the territorial government does not possess the power of self-annihilation which the formation of a state government contemplates. Consequently, the laws of Congress creating this government and defining its powers can have no reference to such a step. Congress cannot define the qualification of voters for the formation of a state government for the constitution confers upon Congress no power over the people of the territory except in their territorial condition—to govern them as territories. Congress can hold us in our present condition or release us from it as they please; but they must govern us as a territory or not govern us at all.

The state cannot define the qualifications of the voters for this purpose for it is not yet formed, and even the territorial government, the moment it makes the attempt, transcends its legitimate powers and its acts are merely advisory. Where, then, are we to look for authority upon the subject? Evidently there is no authority but in the people; because, in respect to a state, this is an original power resting with the people. Suppose Congress should attempt to define the qualifications of voters upon this question—by what means could their regulations be enforced? Suppose they make citizenship a necessary qualification, and the people, in their primary capacity, determine to let every man vote, and delegates thus chosen form a constitution and the people adopt it—what possible effect could the votes of one or five thousand foreigners have upon the validity of the proceedings, or of the constitution formed? Clearly none at all, for the constitution could be of no force at any rate until approved by Congress and the state admitted into the Union. Should

Congress choose to reject our constitution because we had not been governed by their dicta in its formation and adoption, they would have the power to do so; and so they would for any other reason or for no reason at all. But if the constitution were in all respects satisfactory, both to Congress and to the people of the proposed state, there could be no ground of complaint from any quarter and the constitution would be approved of course.

If there is no power above the people which can reach the question it becomes one of natural right and all distinctions of nationality must be abandoned, for the reason that, in respect to the new government, all the inhabitants are foreigners alike and must alike become citizens and subjects of the new government, by virtue of its being formed over them, which places them in all respects in the same situation as if they had been born under it. There is no principle of political or international law more clearly settled or more obvious in itself than that the conquered owe allegiance to the conqueror, and the peaceable succession of a government to the control of a country can be no less effectual to this end.

As the territory, therefore, assumes the character and attributes of a new and independent sovereignty, the subjects of foreign states residing in the country are, by the law of nations, absolved from their allegiance to their former sovereigns and become citizens and subjects of the new government, whether they are willing or not. They are allowed no choice in the matter.

If none are yet citizens of the new government, and all must become such in spite of themselves, then, in respect to citizenship, all stand upon the same common level and are equally entitled to participate in its formation. By what rule, then, can the people in their primary capacity discriminate between those who may participate in the transaction and those who may not? If we say to the Englishman, "You shall not exercise political rights because you were not born in America," he might with equal propriety deny us those

rights because we were not born in England. To deny a man's right to participate in the political power because he was not, in our estimation, born in a noble country, is just as aristocratic as to deny him that right because he was not born of noble blood—we refuse to accord the right on the ground of his humanity, and this done, it matters not what arbitrary conditions we may attach to it. If not having been born in a particular place is to be regarded in the abstract as working a forfeiture of political rights, we do not see why not having been born in another place would not have the same effect. Thus, by following the rule, no human being could claim any political rights whatever, for no man could reasonably claim to have been born in every place. Still it seems to be important that some rule for the regulation of the right of suffrage should, for this as well as for other purposes, be adopted; otherwise, multitudes of voters might be imported from an adjoining state or territory and admitted to vote by virtue of their being in the territory on that day. Every actual resident is entitled, by virtue of his humanity and the relations about to be formed between him and his new sovereign, to have a voice in forming the compact; for he is compelled to be a party to the transaction. But what shall constitute a residence is a question which ought to be settled in some way. How is it to be done? We do not hesitate to answer that it cannot be settled in any manner which shall be absolutely authoritative; for among Republicans the right of suffrage lies at the foundation of all state laws and must be exercised before any law can exist to regulate it. The only regulation, therefore, which can exist must be adopted by general consent and enforced by the same authority. If a majority sufficiently strong determine to exclude the minority from a participation in the founding of the government on account of their nativity, color, or for any other cause, they can do it, whether American citizens exclude the previous subjects of other governments, or the subjects of other governments exclude Ameri-

can citizens; and we can see no remedy in either case, but by the rejection of the constitution by Congress, which would be hard to procure if it were sound in its principles and framed and adopted according to the will of a majority; for this is the authority upon which Congress must ultimately act if they look for any authority whatever from the people.

This primary regulation might be adopted by a convention chosen for this and similar purposes, but the same question would arise in choosing delegates to *this* convention; or, in other words, the question to be settled would arise in respect to who should be allowed a voice in settling it. So with every attempt to settle this question by the only adequate authority—the people —the question itself comes up as the previous one, and cutting itself clean of all restrictions, demands to be decided by universal suffrage. If universal suffrage be conceded for this purpose the point is gained and it may as well be conceded for all other purposes. But should a majority impose conditions and restrictions the minority would be bound by it, if the majority could enforce their regulations.

It must be evident, therefore, that for the people in their primary capacity to adopt any regulation upon the subject would be attended with many difficulties. The next best authority is their chosen representatives in the territorial legislature. They, by a recommendatory act (for this is all it can be called) require, as a qualification to vote for delegates to form a constitution, a residence of six months in the territory as evidence of actual settlement. Had this act been adopted gratuitously by the legislature, and had [it] not passed under popular review, its authority would have been more exceptionable. But the principle has been made the test question in two general elections and the action of the legislature has been triumphantly sustained as a wholesome, primary regulation to be observed when the emergency shall arise.

STATE GOVERNMENT—No. 1

[November 25, 1845]

The question of forming a constitution and organizing a state government for Wisconsin is becoming one of general interest, so far as our observation has extended. The subject has been discussed at some length by correspondents of the Mineral Point *Democrat* and Southport *Telegraph,* both urging reasons in favor of the immediate adoption of the measure. The Milwaukee *Courier* is also in favor of immediate state organization, and proposes more summary measures than we have before seen advocated.

That a majority of the people are in favor of moving in the matter we are inclined to believe, though we do not consider it as reduced to an absolute certainty. As to the *modus operandi,* different opinions are entertained by those who agree upon the main question. Some would go no farther than to petition Congress for a law providing for the taking of a census and an appropriation to defray that expense and the general expenses of forming the constitution, to take effect whenever a majority of the people of the territory shall vote in favor of state government. Others would have our legislature call for a vote of the people at an early day, say by the first of March, decide upon the number of delegates which shall compose the convention, apportion them in the same ratio as the members of the legislature are now apportioned, and in the same act authorize the governor, in case the vote should be in the favor of the measure, to order an election of delegates and call the convention together as early as the first of May, submit the constitution to the people for their ratification as soon after the adjournment of the convention as an election could be called, and send it up to Congress in season to be admitted during the approaching long session of that body. Others, again, would take the consent of the people for granted and have

our legislature, without further ceremony, provide for the adoption of a constitution.

From present appearances we presume that each of these plans will find advocates among the members of the legislature. Racine, Walworth, and Rock will probably be in favor of more summary measures than the middle counties. Iowa will, we think, be in favor of the medium course, and also this and a portion, at least, of Milwaukee district. The North will doubtless be for proceeding with the greatest deliberation and may perhaps oppose any measure except to petition Congress for aid in the matter. Grant will probably, for the most part, be opposed to any action whatever until the so-called alien law is repealed. We may be mistaken, but we apprehend that these are very nearly the sentiments of different sections of the territory. That some measures preparatory to a state organization will be adopted by our legislature at the approaching session, there can be no doubt; but what those measures will be may be regarded as very uncertain; but we are inclined to the belief that summary measures will not succeed.

As to the main question of state government or no state government, our own opinion is that if Congress would deal with us in good faith and support the government they have established over us it would be better for us on many accounts to remain a territory for four or five years longer. It is a sound maxim in political economy that the ability of a state to sustain itself respectably depends more upon its wealth than its numbers. The first settlers of our western territories are always persons in low or, at best, in moderate circumstances—generally poor. In the settlement of a new country by poor men, who migrate to it because they are poor, however rapid may be the influx of population, time is indispensably necessary to the accumulation of wealth, and wealth is indispensably necessary to sustain an efficient and respectable government. A hundred thousand men who have nothing to pay can pay no more than one such man. The same number of men, possessing in the aggregate

but one hundred thousand dollars clear of their liabilities, cannot justly be called upon to contribute more for the support of the government than one man possessing the same amount of property. We are, either as an organized territory or [as] a settlement, not yet ten years old. Our farmers are struggling hard and depriving themselves of every luxury and very many of the common comforts of civilized life that they may get their farms under cultivation and the necessary buildings erected upon them. Our merchants and mechanics are practicing the same rigid economy, induced by similar necessities. Our county and town authorities are going to the utmost limit of taxation to build roads, bridges, and county buildings. Under these circumstances additional taxation cannot but set heavily upon most parts of the territory. We believe that our readers will agree with us that ten years hence 50,000 of our inhabitants (embracing an average of the wealth of the country) will be better able to sustain a state government than 150,000 are or would be now; and that a territory twenty years old, with only 50,000 inhabitants, would be regarded as young enough to enter the Union.

Political as well as pecuniary objections might be raised against the measure on the ground of our youth. We believe that a territory at ten years old, whatever may be its population or wealth, is scarcely better qualified to assume the responsibilities of a sovereign state than is a boy of the same age to assume the responsibilities of a sovereign man. We might assign many reasons in support of this position, and would proceed to do so, did not objections exist against our remaining much longer in our present condition, which to us appear to be paramount to every consideration which can be urged in favor of it upon the last-mentioned ground. Although we are, as a territory, young in experience, strangers among ourselves, possessing but limited resources for the support of a state government, and moreover possessing no legal right to state sovereignty but by the permission of Congress, yet the treatment we are receiving from the

United States is such as will fully justify us on the score of legal right as well as of expediency in forming a government for ourselves. It is true that the boy is under the legal control of his father, who is bound to provide for his wants and entitled to exact obedience; yet, when the father turns him adrift and denies him food and shelter the lad may well regard it as a hint that he must look out for himself. This is precisely the state of affairs between the United States and our territory. Congress refuses to support their own government over us, and, so far as they can by their own enactments, they refuse to let us support it for them.

Congress, in the exercise of the absolute and unlimited powers of sovereignty over the territories as conferred by the constitution, recognized by such commentators as Kent and Story, and sanctioned by the highest judicial tribunals, enact that no session of our legislature shall be held till they have made an appropriation to defray its expenses. Now suppose Congress should refuse to make any appropriation whatever for this object? What would be our condition? If their authority over us and our legislature is indeed supreme, as the courts declare that it is, and as Congress in the case of Michigan repeatedly declared that it was, we could have no legislation; our territorial legislature, for all practical purposes, would be annihilated. Their acts, if they should attempt to legislate, would be of no binding force; for the prohibition is not merely that they shall not legislate at the expense of the United States, but is absolute and unconditional. "No session of the legislature of a Territory shall be held until the appropriation for its expenses shall have been made." These are the words of the act of the twenty-ninth of August, 1842, and, in the absence of an appropriation, its effect must be the same as if no legislative department had been provided for by the organic act and we had been left in the first place to be governed by the governor and judges alone. Congress has not as yet wholly refused the yearly appropriations for this object, but the appropriations have become so much reduced that it amounts

to precisely the same thing. The legislative department of our government has within the last four years received stab after stab from the general government through the lying influence of Whiggery and Tylerism at home, until it has scarcely the breath of life left. While millions of the public revenue have been squandered upon worthless objects, the legitimate and necessary expenses of sustaining the territorial governments, especially of Wisconsin and Iowa, have been dealt out with a spirit of grudging parsimoniousness as if the existence of the Republic depended upon saving a few thousand dollars.

We have not had the full legislative session of seventy-five days to which we are entitled by our organic law since 1841–42. Our last year's appropriation was so small that our legislature, with the utmost diligence, could accomplish nothing without trenching largely upon the succeeding appropriation for the coming session. This, by a most singular freak of Congressional economy, turned out to be about one-third less than the previous one; and if the legislature, with the funds provided for the approaching session, succeed in accomplishing anything which will be of any public utility, they will be deserving of much credit.

If, then, in the language of the declaration of our national independence, the legislative power is incapable of annihilation, it may well be considered in our case as having returned to the people at large for its exercise; and whatever difficulties we may meet with, we ought not, we cannot, as freemen, consent to be governed exclusively by men appointed by a power in the exercise of which we do not participate and with which we have so little influence.

WILL CONGRESS MAKE AN ADDITIONAL APPROPRIATION FOR THE COMING SESSION OF OUR TERRITORIAL LEGISLATURE

[December 2, 1845]

This is a question frequently proposed by the citizens of the territory, and it is expected that our delegate, Mr. Martin, will make a strenuous effort to accomplish this object early in the session in order that we may be apprised of it in season for our legislature to continue its session until they can dispose of some of the most important business that may come before them; and we cannot but believe that if the members of our national legislature but properly understood our circumstances and wants, they would immediately grant us that relief which we need.

The expenses of the approaching session were estimated by the Governor of the territory and [the] Secretary of the Treasury at something over $22,000. As we believe, from an entire misapprehension of our peculiar circumstances, the committee of ways and means reduced the estimate to $13,700. The appropriation for the last session was $17,250. With an active session of only fifty days the legislature found, on making up their appropriation bill, that they had exceeded the appropriation made by Congress about $2,000 and there was no alternative but to authorize the Secretary of the territory to pay the deficit out of the next appropriation. In addition to this, the printing of the laws and journals of the session was not provided for, which will amount to—say $2,000 more—and must also come out of the present appropriation, leaving not to exceed $9,700 of available funds to meet the expenses of the session to commence on the fifth of next month. It would be gross injustice to charge the members with idling away their time or indulging in extravagant expenses. It is not so. We do not believe that there was last winter a legislative body in the

whole Union that labored with greater assiduity by day and by night, or that practiced more rigid economy in regard to their expenses than did the legislature of Wisconsin; and yet with all their diligence they left much important business unfinished. What, then, can they be expected to accomplish with only $9,000 to meet the expenses of the session? This does not exceed the amount which was usually appropriated to defray the expenses of the territorial legislature of Michigan which consisted of but one house of only thirteen members—but one-third of the number which constitutes the legislative assembly of Wisconsin.

Congress has, indeed, given us a liberal government, but it is none too liberal for a republican people, and if it is, it is not our fault. The United States have established over us such a government as they pleased and from it we cannot escape without their consent. This government they have promised to support. If they have established it on a more liberal scale than they can support it would seem more reasonable that they should remodel it and give us a form of government which they *can* support efficiently, rather than deprive us of the benefits of government altogether. The machinery of our government is somewhat extensive, it is true, but it must all move together or not move at all. Members of Congress who have not examined attentively the relations subsisting between us and the United States may suppose that if we want legislation beyond the means provided by Congress we should procure it at our own expense. But by reference to the acts of Congress it will be seen that we are wholly debarred even from this privilege. The act of Congress of the twenty-ninth of August, 1842 provides that no session of the legislature of a territory shall be held until the appropriation to defray its expenses shall have been made. Another act provides that the legislature of a territory shall in no case, and under no pretext whatever, exceed the amount appropriated by Congress to defray its expenses. These laws are regarded by our legislators as of supreme authority and they do not intentionally violate them. They

consider themselves to be absolutely prohibited from taxing the people for this object.

Members of Congress are liable to imbibe the impression that to legislate for a handful of people in a territory need occupy but a few days in a year, and that a session of twenty or thirty days is all-sufficient. But they do not understand our peculiar circumstances. Our population, though small, is scattered over a larger extent of country than that of any state in the Union; the country is new and thinly settled; the extreme settlements are separated by several hundred miles of comparative wilderness; their wants and interests are greatly diversified; they cannot communicate with each other or with their representatives with that dispatch which is attained in older states, where means of communication and mail facilities have been perfected, and consequently our legislature must work entirely in the dark and wholly independent of the popular will, or they must take time to ascertain it. In a small state which has settled down upon a fixed sysem it may be very different; but even under the most favorable circumstances, as everyone at all acquainted with legislative proceedings must know, it is a rare thing for a legislative body to accomplish more than barely to mark out its work during the first twenty days of a session.

In our case a session of twenty or twenty-five days (which is all the appropriation will admit of) will be of little or no service to the country. There will be propositions to divide counties and to establish new ones and to set off new towns. The laws relating to justices' courts need a thorough revision. They have been amended in a hurry till they have become perfectly unintelligible. Our school laws are in a similar condition, and to endure them through a two or three years' campaign in getting into the Union will be intolerable. Measures will also be proposed preparatory to forming a state government, but there will scarcely be time for this one measure to receive that consideration which it demands. We have been informed that many members of Congress are under the impression that if the United States

continues to support their government over us we will never come into the Union. This is an entire mistake, and what reason they can have for such an opinion we cannot conceive.

The first settlement of the country otherwise than for the purposes of Indian trade dates back but ten years. Can it be expected by intelligent members of Congress, even in this age of lightning and steam, that a country larger than all New England can be reclaimed from a savage wilderness and arrive at the wealth and dignity of a sovereign state in a shorter period than ten years?

The people of the territory are and have been disposed to adopt a state government so soon as it could be done without imposing upon themselves intolerable burdens and endangering the future prosperity of the state; but they have not been disposed to be hurried into this measure prematurely and involved in the same difficulties and embarrassments which have ruined the prospects of other states, merely to please the would-be senators, judges, etc., who are wistfully looking towards these posts of honor, and it is not strange that members of Congress should have been influenced by the misrepresentations of such men. The expense of sustaining a state government, though it would be onerous even now, has not, we believe, been the greatest objection in the minds of the people to hasty measures for a state organization, nor the cause which has prostrated the new states. The people are strangers to each other. They have not found out their men. They know not whom to trust with the important powers of a state government, and those who think they do know cannot depend upon securing their services. Such we believe has been, if it is not now, the general sentiment. A stranger in the territory is about as likely as anyone else to be elected to the legislature, for half his neighbors are strangers also. He has come, probably, from an old and wealthy state where a public debt of four or five millions is considered as a trifling affair. He thinks a state is a state anyhow, and in his new sphere he overlooks entirely the great disparity in point of wealth between

an old state and a new one. A few such men in a legislature, especially if they are men of commanding abilities, will influence others of more experience and draw them into some project of internal improvement which the state is illy able to undertake, and one scheme begets another and that another until, without any dishonest intention, perhaps, the new state is hopelessly involved in bankruptcy. These are the very causes which have ruined most of the new states.

Now is it wise, politic, or honorable for Congress, by a course of oppressive treatment, to force the people of Wisconsin into responsibilities the premature assumption of which has ruined all our neighbors, sooner than their sober, unprovoked judgment would dictate? The motives between state sovereignty and territorial dependence are well balanced by the constitutional relations which subsist between the United States and their territories, without adding oppression to the other inducements to escape from our present condition. Why, then, should Congress deprive us of legislation? Why virtually repeal the legislative powers which they have once guaranteed to us? Why deprive us of the right to make our own laws? "A right inestimable to us, and formidable to tyrants only." Wherein have we offended our great Uncle, that we should be put on short allowance of bread and water? Have we not grown finely? Have we not paid him millions for his lands? Has he, as in the case of Florida, expended thirty millions in defending us from a savage foe, or rather in supporting an army amongst us to wait on the princely estate of their commanders? Not at all. When we were involved in the same difficulties one of our own citizens mounted his horse, rallied his fellow citizens, and in a few weeks put an end to a war which under the guidance of major generals and the auspices of Congress would have cost the country more money than it would to support our territorial government efficiently for one thousand years! And yet when this same citizen of Wisconsin, as the representative of the people of the territory, stood up in the last Congress and asked for a reasonable appropriation to defray

the expenses of the government which *they* had established over the very country which *he* and his constituents had bravely defended, his demand was regarded as unreasonable and extravagant and he was voted down without a division!

We can only account for the singular treatment we have received at the hands of Congress by supposing that, in the multitude of business, our wants have not been duly considered and that they have lost sight of the relations which subsist between the United States and their territorial dependencies. We cannot believe that the United States will deliberately and knowingly adopt and pursue the same course of policy which the Continental Congress charged upon George the Third, and appealed to Heaven in support of their right to resist it unto blood. Though we are subjected to similar wrongs, yet we cannot resort to similar means for redress. We can only remonstrate, and then quietly suffer whatever cannot thus be remedied.

STATE GOVERNMENT—No. 2

[December 9, 1845]

The expediency—indeed the necessity—of Wisconsin's adopting a state form of government is beginning not only to be seen, but [to be] felt by the people (the Democratic portion of them at least) of this part of the territory. The question has assumed a new aspect since the vote was taken a year or two ago; and were the matter to be submitted to the people again, we think we hazard nothing in saying that southern Wisconsin would cast an unequivocal majority in favor of state government. With the Democratic party the sentiment is every day becoming more generally diffused that the time has arrived when there should be renewed action on this important question; and we believe the members in both branches of the legislative assembly from this county fully participate of that sentiment, and will feel it incumbent on them to endeavor to procure such legislative action on the subject at the next session as will bring the question tangibly before the people at the general election in September of next year. Should the vote then be, as we confidently anticipate that it will, *for* state government, the succeeding legislature could authorize

the calling of a convention of the people to form a constitution in the summer of 1847; which would enable Wisconsin to obtain admission into the Union as a state early in 1848—in good time to vote for a Democratic president of the United States, who will have to be elected in November of that year. We ought not to precipitate this question—it is a grave matter, and should be calmly discussed and deliberately determined on; and the spring of 1848 is early enough for us to come into the full sisterhood of the Union. Racine *Advocate*.

The above is, in our opinion, a very sensible and dispassionate view of the subject. The measures suggested may be regarded by some as over cautious and tardy, but we are inclined to think they will meet with general approbation. The formation of a state government is, indeed, as the editor of the *Advocate* well remarks, a grave matter and should not be precipitated. While we are, under all the circumstances, in favor of taking preparatory steps of some sort, we do not wish to produce the impression upon the minds of our readers that there is nothing but sunshine and fields of roses ahead, that their taxes will not be materially increased, or that there is no danger to be apprehended from our new and unsettled state as a community should we now assume the prerogatives and responsibilities of state sovereignty! Nor would we wish to persuade them out of their own convictions on the subject.

We would rather say to them, "There are dangers to be apprehended, difficulties to be overcome, and burdens to be borne; ponder the matter well, make up your minds deliberately, and be prepared to hold yourselves responsible for the conclusion at which you may arrive."

ELIGIBILITY OF MINISTERS

[December 9, 1845]

A few weeks ago we copied a paragraph from the Southport *Telegraph* disapproving of that provision in the constitution of Texas which declares ministers of the gospel ineligible to seats in the state legislature. As many among us are in favor of embodying a similar restriction in our constitution it would seem to be a proper subject for discussion. Many whose opinions we highly respect are in favor of instituting such a disqualification, while others are strenuously opposed to it. For our own part, we agree entirely with the *Telegraph* so far as it goes; and we are happy to say that we agree with those on the opposite side also in respect to the religious impropriety of a minister neglecting the duties of his sacred calling and encumbering his mind with the affairs of the state. We would never wish to see a minister of the gospel occupying a seat in a legislative body, and nothing short of a great scarcity of suitable timber would ever induce us to vote for one who might be a candidate. But this is only our individual sentiment, and it is strictly a religious one, and consequently we have no right to force it upon others, either theoretically or practically. Our neighbor may think differently, and so may the clergyman himself; or, if he should agree with us in the religious impropriety of his becoming a member of the legislature and voluntarily avoid it, as most clergymen in the United States do, still he might justly charge us with an invasion of his rights as a citizen the moment we should attempt to say that he should not be eligible to that or any other office on account of his profession.

We are aware that this restriction has been adopted not only by Texas but by the state of New York and perhaps by some other states. But we care not who or how many may have adopted it; we are satisfied that the principle is a

wrong and dangerous one and that it has been adopted without due reflection upon its antirepublican nature and tendencies and its possible, nay probable, consequences to the liberties of the country, unless speedily arrested in its progress.

The doctrine that clergymen must not enjoy all and singular the rights and immunities of other citizens is at war with the genius of our government and institutions, and opposed to every correct principle of civil as well as religious liberty, and we are amazed that it should ever have found its way into the constitution of a republican state, especially under the broad light of the declaration of American independence and of the federal constitution, and we can only account for this manifest retrogression from the great principles laid down in those charts of human liberty by attributing it to a most unreasonable prejudice against the ministers of religion.

Our government is founded upon the broad principle that all men are born free, and, in respect to their civil and political rights, on a perfect equality. Why, then, deprive clergymen of any one of those rights which we recognize and respect in other men? Says our federal constitution, "No religious test shall ever be required as a qualification to any office of public trust under the United States." Why then institute such a test in respect to office under a state government? We may be told that it is not a religious test. If it is not a religious test we beg to know what kind of a test it is. If it is answered that it is a mere test of occupation, we would ask with all seriousness whether it would not be well for the American people to pause and consider before they engraft any such principle into their republican system? Is it best to adopt the doctrine that a man's occupation or calling, whatever it may be, if it is an honest one, shall work a forfeiture of any of his rights as a citizen? Shall we promulgate the doctrine that men have no natural and inalienable rights—that our most sacred and heaven-derived rights are entirely at the discretion of a chance majority, and that

the doctrine of self-government is a humbug—an illusion? If we can properly exclude a particular class on account of their occupation, we may, by the same rule, and must, if we honestly adhere to it, exclude them from the right of suffrage and make them the mere passive subjects of a government in the powers of which they do not at all participate.

If the rule will apply to one calling, it will equally to another (in a civil point of view) and to another and still another, until, peradventure, there is but one class or profession left which is entitled to any voice whatever in the direction of public affairs. The adoption of this negative rule in respect to one class is but the first step in a roundabout way of setting up the exclusive right of some other class to rule the nation. We do not say nor believe that this is the object of those who advocate the principle; but we do say that this is the legitimate tendency of the principle and precisely where it would end, if faithfully carried out, unless the last class should be swept away by the same rule and society become reduced to anarchy.

If the clerical profession should by constitutional provisions be excluded from office, why not the legal profession also? But what would be thought of us if we should gravely talk of adopting a clause in our constitution that no lawyer should be eligible to a seat in our legislature? Yet this would be just as consistent and, we believe, quite as important to the safety of the state as to exclude clergymen; for lawyers are notorious monopolists of the honors and emoluments of office, and do not always forget to legislate for themselves; while clergymen, considering their education, talents, and the influence they exert in society, are quite modest in their political aspirations. But we would not subject even lawyers to such a degrading restriction. We might frequently wish to vote for one, as we frequently have done, and others might wish to do the same. We would sooner adopt the good old rule and have the offices accessible to every class of citizens, and trust to the good sense of the

people to fill them with faithful and responsible men, without respect to classes, occupations, or professions. But if the work of decapitation is to be commenced we would say by all means begin with the lawyers and end where you please.

But the question is a grave one and merits a serious consideration and we cannot think of disposing of it in one short article. We shall, therefore, consider the subject further as we may have opportunity, and in the meantime we would like to hear from the press or from correspondents whatever may be said in favor of the restriction.

STATE GOVERNMENT—No. 3

[December 30, 1845]

On the subject of forming a state government, pardon me for differing with you on these two important points, viz: First, as to the time when a state government ought to be formed; and second, as to the power of "the people" to form a state government without applying to or obtaining an act from Congress to enable them to form a state government. I believe I am not mistaken when I affirm it as a fact that the democracy of Milwaukee are almost to a man in favor of our admission into the Union at as early a day as practicable, and that a law ought to be passed by our legislature, this winter, submitting the question to the people and providing for taking the census of the territory. And I hope you will see the propriety of using your influence with the legislature to carry these measures. As to the second point, you must be well acquainted with my views from our conversation on the subject while you were last in Milwaukee. These views I believe democratic, and I have not yet seen any cause to change them. I am well acquainted with the views of Senators Ewing of Ohio and Clayton of Delaware, as well as those of Clay of Kentucky, on this point; but are their views and votes to be quoted by a Democrat as authority,

in the face of the solemn adjudication of the Senate in the case of Michigan and in preference to the views of such men as Benton, Buchanan, Wright, and, in short, every Democrat in the United States Senate in 1836? I am and have been quite surprised that you should through your paper promulgate on this point the opinions of such bitter Whigs and party men as Clayton and Ewing as authority for Democrats, and omit entirely the opposite opinions on the same point of Benton, Buchanan, Wright, Morris, Niles, certainly not the least distinguished Democrats in the United States Senate in 1836. These two classes of men thought and voted differently as to the power of Michigan to form a state government without a preliminary act from Congress. And so long as I am a member of the Democratic party I certainly shall follow and adhere to the dictates of Benton, Wright, etc., in preference to the dictates of Ewing, Clayton, etc. So, I am satisfied, you will. I will therefore now, in affirmation of what I have written on this point, make a few brief quotations from the speeches of some of the Democrats in the Senate in 1836 on the admission of Michigan.

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TERRITORIAL RIGHTS

[December 30, 1845]

We publish today an article upon this subject from a respected and intelligent correspondent. It affords us pleasure to give an opportunity to those who differ somewhat from us upon matters connected with state government to express their sentiments through our columns. Probably there is not so much difference between us and our correspondent as he supposes.

We have no disposition to discourage immediate action in regard to state government, nor do we like to press the subject beyond the spontaneous wishes of the people.

The right of the people to hold a convention, form and adopt a constitution, and submit it to Congress for approval, considered simply as a proposition and going no further, we have never doubted. But that the constitution can be of any binding force, or that the state government can be legally organized and put in operation without a previous act of Congress, we do deny. We presume it will not be questioned that an act of Congress is necessary to admit a state into the Union. A state cannot admit itself into the Union. The constitution says that "new states may be admitted by the Congress into the Union," but it does not say they shall be admitted. If a state cannot get into the Union without an act of Congress, then one of two things will be necessary to establish the absolute legal right of a territory to state sovereignty—either Congress can be compelled to pass the act, or a territory can become an independent sovereignty out of the Union. Are there any means whereby Congress can be compelled to pass an act of any kind?

If so, we would like to know where the authority is to be found and in whom it is vested. Can a territory become a state out of the Union? If a territory can form a state government and put it in operation for one purpose, before entering the Union, it can for every purpose—if it can for one day, it can for a thousand years—if it can at all, it can dismember the Union, and if one territory can dismember the Union, so can another, and so can a state, and our boasted Union, so far as the authority of the federal government is concerned, is all afloat. We are a friend to popular freedom, but we do not think it is to be secured and perpetuated by promulgating the doctrine that any state or territory may set up for herself whenever Congress refuses to legislate to suit her.

As to the application of the numerical condition contained in the ordinance to the two additional states which Congress might or might not form, according to their discretion, we must differ from our correspondent and from all his authorities.

If we can understand a plain sentence of English the condition has no application to us and had none to Michigan, and the contrary opinions of Messrs. Buchanan, Benton, and Wright must have been expressed in the heat of debate (as in fact we know they were, for we were present and heard the debate) and probably without a very careful examination of the question. The contrary and unanimous opinions of four different judiciary committees of Congress, composed of both Whigs and Democrats, matured by a careful investigation of the question and presented in the form of reports, are, in our opinion, entitled to more weight, although some of them were Whigs, than mere off-hand opinions expressed in debate by men however wise and learned.

We think it unneccessary to talk about Whig or Democratic authority upon this question when the same opinions on both sides were held in common by members of both parties. Mr. Thomas, chairman of the judiciary committee of the House, was a Democrat, and Mr. Clayton of the judiciary committee of the Senate was a Whig, and their reports coincide exactly. But we would not take either of them as authority without some good reason. It cannot be denied that the Ordinance of '87 places the whole question of forming the Northwest Territory into more than three states entirely at the discretion of Congress; but if the numerical condition of admission was intended to apply to the two states which Congress might form in addition to the three which Congress did form by the ordinance, then Congress had no discretion about it; the discretionary power to form the two additional states or not, as Congress should "hereafter find it expedient," was both given and taken away by the same article of the ordinance. It tells Congress that they shall have authority to form one or two more states in the Northwest Territory "if they shall hereafter find it expedient," but that they shall admit them into the Union whether they find it expedient to form them or not! We entertain a high respect for the opinions of such men as Messrs. Buchanan, Benton, and Wright, but we cannot con-

sent, for the saving of their carelessly expressed opinions, to convict the Continental Congress of enacting such a palpable absurdity.

Besides, these same senators who expressed this opinion sustained the bill to admit Michigan, and by which the right of Congress to extend the state of Ohio north at pleasure was both recognized and exercised. The great bone of contention was whether Congress had a right to extend the northern boundary of Ohio north of an east and west line drawn through the southerly bend of Lake Michigan. This involved the whole question of Michigan's title to state sovereignty; for if Congress could extend the boundary of Ohio north of this line at all, it could extend it over the whole of Michigan to the Canada line, and it was so admitted on all hands. Congress did extend Ohio north of this line, and thus, in the most authoritative manner, denied the right of Michigan to a single foot of territory, independent of the will of Congress; and Messrs. Buchanan, Wright, and Benton voted for the bill. We need only add that the right of Michigan to state sovereignty could have been no better than her right to territory, and that a state without territory would be decidedly worse off than a king without subjects.

STATE GOVERNMENT—No. 4

[February 17, 1846]

Through the politeness of our delegate, Mr. Martin, we have been favored with a copy of a bill introduced by him on the thirteenth ult. Its provisions being matters of immediate interest to the people, we publish it this week with the law of the territory on the same subject.

Section one grants authority to the inhabitants of the territory to form a constitution and state government and guarantees the admission of the state into the Union when formed. To obtain the previous consent of Congress to the

formation of a state government we have always contended was the most wise and politic course. Indeed, although we may form a constitution and submit it to Congress as a mere proposition, yet we cannot form a government in any absolute or effective sense without such permission. Suppose, for example, we proceed without such permission to form not only a constitution but a government—elect a state legislature, a state governor, and United States senators—and some question of boundary or constitutional principle should supervene and prevent, for a time, our admission into the Union. We should in that case find ourselves under two distinct governments, the state and territorial, and each maintaining a hostile attitude towards the other, and utter confusion and anarchy would be the possible if not the probable result.

We should be sorry, moreover, to see our first senators, like those of Michigan, placed in the awkward position of claiming seats as *United States* senators from a *nonunited state.* Whether we proceed under the act of the territory or this proposed act of Congress, or both, we hope to see nothing more done previous to our actual admission into the Union than the bare adoption of a constitution. It is not essential to the maintenance of our dignity that we should make ourselves ridiculous and pretend to be ignorant of the first principles of the government under which we live, and we are happy to observe that the action of our legislature thus far has not exceeded the bounds of propriety.

Section two defines our boundaries, embracing the whole of the territory. This is an important question, which, if there can be any doubt about it, ought to be definitely settled by Congress previous to the formation of the constitution—otherwise we must run the risk of a nonconcurrence on the part of Congress in the boundaries we might claim, and the delay and expense of a second convention to reconsider the question of boundary. The case of Iowa, though somewhat different, will serve as an example upon this point. Should Congress amend the bill so as to divide the territory, we

do not think that either law, equity, or good faith would be compromised to any serious extent, especially if it should meet the views of the people of the territory, as we are inclined to believe that it would. A division of the territory—say by the Chippewa River—would make two states of ample size. A state 1,000 miles in length cannot subsist harmoniously for any great length of time, and should it all be formed into one state in the first instance we may confidently expect a division of the state at no distant period.

It is true that when Wisconsin becomes a state the number of states provided for by the Ordinance of 1787 will be complete; but it is the opinion of many intelligent men that the provisions of the ordinance are merged in the constitution of the United States, which gives to Congress absolute sovereignty and unlimited control over the territories. However this may be, it is evident that these arbitrary enactments concerning a country, the geography of which was, at the time, scarcely better understood than that of the planet Jupiter, must ultimately yield to the convenience of the multitudes of freemen who are to inhabit it.

We hope this bill will pass, not only because the expenses of the convention are provided for, as in justice they should be, but that we may come into the Union in a regular and orderly manner and with the least difficulty and delay. The negligence of Congress in making these necessary preliminary provisions for the formation of new states has driven the territories into the adoption of measures unwarranted by the Constitution and the relations they sustain to the United States, and Congress in its turn has been compelled to leap over these enormous irregularities as an apology for its own negligence. We are not of the number who regard the *modus operandi* of forming new states as a matter of indifference. We have yet immense territories in reserve—the Republic is as yet scarcely more than half formed, and the relations subsisting between the United States and their territories, the rights and obligations of the parties, and the proper mode of transition from a territorial to a state or-

ganization ought to be clearly defined, understood, and practiced upon in a manner consistent with the national sovereignty and the provisions of the constitution—otherwise, we know not what oppressions may betide the future territories, or what difficulties we may encounter in governing them.

We hope, therefore, regardless of the crazy examples that have been set us, Wisconsin will sail into the Union and cast anchor gallantly, and scientifically, and not be boosted in stern foremost and on her beam's end, by the waves of popular excitement.

TO PERSONS OF FOREIGN BIRTH

[February 24, 1846]

It should be borne in mind by every friend of free suffrage, and especially by our friends of foreign birth who are directly and personally interested, that every foreigner who shall have been in the territory six months previous to the day of election, in April next, and shall have filed his declaration to become a citizen of the United States will be entitled to vote for or against state government, and that the same qualification entitles him to vote in Sepember for delegates to form a constitution. All such persons who are now in the territory, will, if they remain here, have acquired the necessary residence to entitle them to vote in September, and should not fail to file their declarations before that time. If they have been long enough in the territory to entitle them to vote in April and have not yet filed their declaration, they should do so before the April election.

We have always regarded this requirement as superfluous, as, in our humble judgment, it requires men to declare their intentions of becoming what they must and will become whether they intend it or not. But in the passage of the law the best of Democrats considered it necessary to indulge to some extent the prejudices of their opponents in order to

secure substantially the right. The qualification is easily obtained, and it being required by the best authority which the nature of the case admits of, its attainment is indispensable.

Careful attention to this matter is of the highest importance, not only as respects the simple privilege of voting for delegates to form a constitution, but this privilege affords a lever of power by which this inestimable right to choose their own rulers and share in the blessings of self-government may be secured to them and those who may follow them to this "land of the free," for all time to come. Upon the election of a strongly Democratic convention will depend the liberal extension of the right of suffrage under the state constitution. The Democratic party has always taken the lead in contending for this right. It is, indeed, the fundamental principle of democracy that every man has a natural right to participate in the powers of the government.

But it is not upon mere party grounds that we urge this class of persons to prepare themselves to exercise this important right. We are in favor of the utmost freedom upon this point, and wish to see it secured by our constitution because it is right both in theory and [in] practice; for if we predicate the right of any man to participate in the political power upon anything but the fact that he is a *man,* there is no rational limit to restriction until it terminates in absolute monarchy. It is very probable that a majority of our adopted countrymen will attach themselves to the Democratic party; but we cannot prevent that, and to be frank about it we do not wish to. It is very natural that those who have come to this country for liberty's sake should attach themselves to that party which is most ready to welcome them to all the rights and privileges of freemen.

It is, moreover, a fact quite perceptible to foreigners that the policy of the Whig party is, in many important respects, identical with that which they have seen in the land of their

nativity, carried out to its ultimate results—the prostration and ruin of the mass of the people. They are, therefore, the natural allies of the Democratic party in its opposition to every species of monopoly.

BIENNIAL SESSIONS

[April 28, 1846]

A late number of the Iowa *Capital Reporter* contains an able article from a correspondent, showing the impolicy and bad economy of biennial sessions of the state legislature. It seems that the rejected constitution of Iowa contained this objectionable provision, and whether that was one of the grounds of the rejection or not there appears now to be a strong disposition to discard the principle and provide for annual sessions in the new constitution about to be formed in that territory.

We have always believed this to be a penny-wise and pound-foolish policy, and have intended to take up and investigate this principle in the course of our articles upon the constitution to be formed for Wisconsin. Although not prepared at present to bestow that attention to it which we had intended, we cannot refrain from alluding to it at this time and presenting the views of the writer alluded to. He has glanced at some of the most substantial reasons which should operate against biennial and in favor of annual sessions.

It will not be denied that there has been a strong disposition manifested and a growing tendency in our country since the adoption of our federal constitution, under one specious pretext or another, to transfer the political power from the many, and to consolidate it in the hands of the few. The new doctrine of biennial sessions, under the plausible garb of economy and a check upon excessive legislation, if not directly intended to aid in this transfer of power is preëmi-

nently favorable to such a result. It is, to say the very least, an *encroachment* upon the most popular—perhaps it should be termed by way of preëminence—*the* popular branch of our republican form of government. With the executive and judicial powers constantly armed and in the field of action, is not two years entirely too long a period for a free people to withdraw their immediate agency from their own government? We are fully persuaded that it is.

As respects the economy of the measure, the history of Illinois speaks volumes. Our mouth is full of arguments and we could write columns upon this topic; but we must forbear for the present and be content with presenting some of the views of the *Reporter's* correspondent, which we here subjoin:

> One of the features to which I have alluded, as being radically wrong, is that fixing the intervals for the assembling of the state legislature, wherein I am convinced that the convention committed a great error. This provision more immediately affects the citizens of the entire state than any other, and involves considerations of the weightiest import. From some cause or another—perhaps owing to impressions left upon [the] community by the sessions of our territorial legislature—all parties seem to have regarded the frequent recurrence of legislative sessions as the greatest evil with which the people could be cursed; whereas it is, in fact, the main bulwark of their liberties. This view of the subject is so apparent to my mind that I cannot but regard with surprise the fact that it was overlooked by the Democratic portion of the former convention.
>
> The legislature is the immediate representative of the people, and is presumed to speak, more emphatically than any other branch of the government, their wishes and feelings. It is, as Blackstone would express it, "the supreme authority of the state," to which all other departments or coördinate branches are amenable, and is especially charged with keeping them within proper bounds, and, therefore, cannot but exert a healthful influence over all the various channels through which the government is administered. Is it not greatly to be feared that these channels would become polluted, in consequence of the absence of this essential influence, and the torpidity, for so long a period as two years, of this supreme power, emanating directly from the people? It is obvious that the danger would be imminent. Indeed, it is rather a novel spectacle in free gov-

ernments to see the people jealous of a too frequent assembling of their immediate representatives, to watch over and guard their interests and to resist and repel the encroachments of the other departments of the government, over which, in fact, they have no immediate control, but through the legislature.

For one, I cannot but believe that, in this particular, the members of the former convention mistook the wishes of the people; for it is a libel upon their intelligence and patriotism to suppose that while they have abundantly manfested their willingness to supply the means, by a tax, for the support of a plain, simple, and economical government, yet they are entirely unwilling to extend that tax so far as to defray the expense of sending an agent from the several legislative districts to the seat of government, in the shape of a representative to the legislature, to investigate and report upon the manner in which the laws are administered, to point out abuses, provide remedies, and to enact new laws or amend old ones, so as to make them at all times subservient to the wants and interests of community. Were it not for intruding too much upon your room and the patience of your readers, I would proceed to show how ridiculous this policy is in point of economy, and that instead of economy it can only be characterized as the most ruinous parsimony. I will merely add that, supposing the legislature to sit fifty days in each year, to which period their two dollars per diem pay was limited, the expense over that of biennial sessions would be but about $4,000 per annum, or about two cents on each eighty acre lot or hundred dollars of the probable amount of taxable property at the time of our becoming a state.

I have yet to learn, sir, that true constitutional reform or progression in political economy extends to lengthening the intervals of the legislative sessions beyond the period of one year, to circumscribing the action and comparatively paralyzing this most essential arm of the government. Neither Missouri, Louisiana, Texas, nor Florida have adopted this policy in their new constitutions; and in Illinois, where their sessions are now biennial, I have no doubt they will repudiate it when her constitution is revised (which is to be done before long); for I am informed that, notwithstanding their constitutional provision on the subject, they generally hold either a called or adjourned session in each interim between the regular ones. I have also to learn of the explosion of that time-honored democratic principle by which delegated power is required to revert, at short intervals, to the hands of the people—for the policy under consideration doubles the term of office of their representatives. I am a progressive Democrat, but do not believe in retrograde progression.

I think, sir, it is the duty of the territorial press to take this subject in hand, and express their views freely upon it; and if any of them unfortunately (for myself, or for them, or for the community) should dissent from the views above expressed, they have my glove.

VOX POPULI.

INDIVIDUAL BANKING

[May 5, 1846]

The Racine *Advocate* (which, by the way, is ably conducted by its new proprietors) at the close of a well-written article in opposition to the present banking system makes an exception in favor of individual banking, which we were sorry to see. The paragraph reads thus:

The people have no longer any confidence in banks, and legislators know it. They still continue in most states to prescribe remedies for evils, while they see that not in any one case can they ever effect a cure. That they must all go down in the end we firmly believe, and if banking ever succeeds it must be individual banking, where the confidence placed is as much in the honesty of the individual banker as in his capital. We have seen all other modes prove failures, and while we would not encourage even this, we would not prohibit it.

With due deference to our esteemed cotemporary we must say that we would prohibit, absolutely, individual banking, and for precisely the same reasons that we would prohibit corporate banking. There is no more safety to the bill holder under this system than any other, or, at any rate, than under a corporate system with individual responsibility. We would as soon be shaved by a corporation as by an individual—on a bank note as on a shinplaster; we can see no difference.

The failure of the banker is but one in a thousand of the evils incident to the banking system in any form. Paper money, while it is almost utterly useless, is infinitely mischievous, even supposing there could be no such thing as a bank failure. Political economy and the experience of man-

kind have abundantly demonstrated that gold and silver constitute the best possible material for money, and why should we weary our brains and be fooled out of our substance in a fruitless search after something better? We cannot enlarge upon this topic in this place without breaking in upon the arrangement of topics which we have made upon the general subject, and which we intend to consider at large in their proper order as fast as the weeks roll round.

We hope our friends of the *Advocate* will not consider us over ultra. We are happy to observe that they are not disposed to encourage even this mode of banking, which leads us to hope that we shall agree, substantially, upon this important question.

MODE OF SELECTING JUDGES—No. 1

[June 14, 1846]

Having shown, as we think, that whatever mode is adopted, so far as the choice of men is concerned, the selections must be made, not by the people in their primary capacity, but by agents chosen by them either directly or indirectly, the only question seems to be as to what system of agency is calculated to secure the best selections.

The system of agency under the elective mode of filling offices of any kind is loose and irresponsible. In the selection of anything higher than a corporation, or, at the highest, a town officer, we must resort to the principle of representation. The rate of representation must be fixed by an irresponsible committee, constituted oftentimes by anything but a fair expression of the popular will, regulated by no law, and usually based upon no reliable data. The rate of representation for the different counties being thus fixed by a central or state committee, the representation for towns is fixed by county committees, constituted and acting in a similar manner.

The rate of representation being thus fixed, not by the people, but by agents chosen in the loosest manner imaginable, the people, at the convenience of those agents, are called upon to act in the selection, not of officers, but [of] agents to choose other agents to act for them. And how are these primary meetings conducted? We need not apprise the reader that the business is often, if not usually, done up in the most summary manner, and in accordance with the preconcerted plan of a few managers. As an illustration we will here relate an anecdote which was never before put upon paper: In the early history of the territory we attended a mass meeting for the nomination of officers. The meeting being organized, a nominating committee was moved and appointed, and being about to retire, the chairman of the committee rose, and with all the gravity of a pick-axe suggested to the chair that the committee should be furnished with "that list of candidates." We had been appointed one of the committee, and notwithstanding this curious incident concluded to serve just for mischief, and found, sure enough, that the candidates had all been selected ready to our hands, and, although we went against the whole "list," yet so thoroughly had the committee been packed that the most of the candidates, in their proper order, were reported back to the meeting.

This is the way in which agents to select the higher officers, or to select other agents to do it for them, are chosen. A few individuals in a town may, by concert of action, assemble at an early hour and secure their chairman, and by snap nominations secure their delegates, and the people really have but very little to do about it. Balloting is not usually resorted to, and when it is it is not kept open to all who may come during the day, but is confined to those who are present at the moment.

The inferior convention being thus constituted, they assemble and act with more fairness and deliberation, but still liable to similar abuses, in the selection of local officers or of delegates to a higher convention. A state convention being

thus constituted, it assembles, we will suppose, to select a judge. Their proceedings will be characterized, no doubt, by greater regularity and order than those of the lower convention, but what opportunity have they to act *deliberately* or *understandingly?* The courts are the final safeguards of our property, our liberties, and our lives. A judge should not only possess a strong mind and legal ability, but sterling integrity and immovable firmness, and be able to control his passions and prejudices. These qualifications are rarely found combined in the same individual. The members of the convention come together from every part of the state, and not one in five of them know anything of the fitness or unfitness of any one candidate for nomination. They have no time to consult, inquire [into] or investigate objections which may be made. They have left their business, are on expense, and must do up their work today and go home tomorrow. The nomination once made, it is next to impossible to change it, and so far as the selection of a man and the party selecting him are concerned the choice might as well be perfected at this stage of the proceedings as any other.

This system of agency for the selection of officers, defective as we all must admit it to be, is still the only practicable system with respect to the legislative and executive departments, because there is no previously constituted agency of the people to select them, and the authority, by whatever system of agency it is exerted, must emanate from the people.

The selections for the legislative and executive departments having been thus made, they are as really the agents of the people, and nothing more, as were the agents who selected them. They have power to enact laws which bear upon the interests of all classes in the community; yet no one deems it necessary, as a general rule, to submit these laws to a popular vote, or that the power which enacts them is an independent and irresponsible power, or that these laws are anything else than the will and power of the people expressed and exerted through their agents.

What objection, then, can there be to entrusting these same agents with the selection of judges? The selection must be made by agents at any rate, and these agents are certainly chosen with as much care, deliberation, and fairness as any agents can be. They are originally selected, it is true, by the same imperfect system of agency that judges would be under the elective mode, but they must pass the ordeal of a popular vote before they can act; and if the popular vote has as much to do with the selection of men as the sticklers of an elective judiciary seem to imagine, legislative agency must be vastly preferable on this ground alone to an irresponsible convention, and if judges are to be elected, the legislature should by all means be constituted the nominating agency. We contend that the popular vote has little or nothing to do with the choice of men, but to those who maintain that it has we might return one of their own questions—are not the people qualified to select their own agents?

But the chief ground of preference for legislative agency in the selection of judges is that they are held to a more strict accountability and have better opportunities to act deliberately and cautiously. All the important doings of a legislature are matters of public record, and these records can be referred to at any time as conclusive evidence of the doings of any individual member. We could name instances in our territorial history in which members have recorded their votes in favor of executive nominations to their sore regret and everlasting discredit, when, had they done the same thing in a convention, nobody would have known who they were. These instances are indeed rare, and rare because of the impossibility of escaping the responsibility. The journals of the Council will show a multitude of bad nominations made by a really irresponsible executive and rejected by a responsible council, and which would never have been made had the executive been equally responsible to the people.

If the two houses of the legislature are constituted this agency they have not one day merely, but the period of a whole legislative session during which they can consult with each other and with their constituents if necessary, and canvass the merits of different candidates and bestow upon the selection all the care and deliberation which its importance and the difficulty of making good selections demand. In this respect executive nominations, with the final action of one or both houses of the legislature, are preferable to mere legislative elections. By the latter mode nothing can be definitely known publicly as to who is likely to be chosen until the choice is made. If the executive be required to nominate, he has time and opportunity to counsel with the representatives of the people in making a selection, and when the nomination is announced, final action upon it may be suspended for any reasonable period and in the meantime public scrutiny is directed to the individual, and if the humblest citizen in the state knows aught against his integrity he can make it known and secure an impartial investigation of the facts, and if the nominee be found unworthy, he can still be rejected, and a dozen nominees may thus be successively rejected if necessary.

Is not such an agency for so important a purpose preferable to one more loosely constituted and which must necessarily act with greater precipitation? The question is *not* whether the people have the right or the capacity to select their own rulers, and to pretend that any such question is involved is a mistake bordering upon disingenuousness. In either case the selections are made by the authority of the people, but in neither case are they made by the people directly. The people have the unquestionable right to select their own rulers in all the departments of government, but inasmuch as they cannot do it directly they have another right which is entitled to respect, and that is to establish such a system of agency in a given case as in their judgment is best calculated to secure the desired result.

MODE OF SELECTING JUDGES—No. 2

[June 16, 1846]

As it is the practice in forming state constitutions not only to establish a judicial system and create judicial offices but to prescribe the mode by which those offices shall be filled the question as to what mode should be adopted by the people of Wisconsin has been raised and agitated to some extent.

This is a question which has as little to do with party measures, perhaps, as any one which could well be imagined. It is not the province of courts, as it is of legislatures, to originate public measures or decide upon a course of public policy which affects the interests and prosperity of the state, but simply to administer justice between man and man in accordance with existing law and existing facts.

As we have before intimated, we do not regard the particular mode of selecting judicial officers to be of so much consequence as some are disposed to attach to it. Still, as it is one of some importance and considered by many as of great importance, it may be expected that we should also show our opinion; and in doing so we shall endeavor by a course of impartial inquiry to arrive at just conclusions rather than to establish an assumption.

Three modes of accomplishing this object present themselves: First, appointment by the executive, with the advice and consent of the senate; second, by joint ballot, or the concurrent vote of the two houses of the legislature; third, by nominations through extra legal conventions, and a popular vote.

It may be well in the first place to inquire what has been the prevailing sentiment of the people of older states in regard to these several modes.

First, appointment by the executive under the supervision and control of the senate is the mode which was adopted by

the framers of the federal constitution and sanctioned by the almost unanimous voice of the nation. The character of the statesmen and people of those times and the circumstances in which they were placed were such as to justify the conclusion that they did not, in prescribing this mode of filling judicial offices, depart from the mode which they provided for the other departments of government without some reason which was satisfactory to very able statesmen and intelligent and honest minds, who could appreciate the evils of despotism and the advantages of a free government, equally with ourselves, to say the least.

Second. How is it with the twenty-eight republican governments which exist under the confederacy? So far as our information extends (and we are definitely informed in regard to all but three or four) not one of them has resorted to popular elections for the choice of their principal judicial officers.

In New Hampshire, New York, New Jersey, Alabama, Louisiana, Michigan, Indiana, Missouri, and we believe also in Massachusetts, Pennsylvania, Virginia, and Georgia the judges are appointed by the executive and senate. In Vermont, Rhode Island, Connecticut, North Carolina, Arkansas, Tennessee, Ohio, and Illinois the judges are elected by the two houses of the legislature. In Georgia the judges of the inferior court and in Missouri the judges of the county court are elected by the people.

We think it will not be denied that the uniform judgment of the states of the Union, as expressed in favor of appointments or legislative elections in preference to popular elections, raises a strong presumption that there must be some good reason for it, or the preference would not be so uniform and decided. We think it should at least inspire politicians of moderate caliber with a degree of modesty in advocating the adoption of a different mode. Some other mode may be better than any heretofore devised, but to say that no good Democrat can doubt the superiority of another

mode which all parties throughout the Union have uniformly rejected is preposterous enough.

It is true that the fact that a particular mode of doing a thing has always been pursued is not conclusive evidence that it is the best mode, and it is equally true that the fact that another mode is new is not conclusive evidence that it is a better one, unless the old one is absolutely intolerable. Have any evils grown out of the old method which would be likely to be remedied by the proposed change? If so, what are they? We have seen none alleged. The Supreme Court of the United States is not inferior to any tribunal in the world. It has stood uncorrupted and incorruptible for nearly sixty years. Its decisions command the respect of the civilized world. Has it not been, in point of ability and integrity, all that it could have been, and much more than it might have been, under a different mode of selection?

But, says the objector, the mode of their appointment is old and unsuited to the progressive spirit of the times. Well, suppose it is a little old, if it has operated well, if much good and no evil has resulted from it, its age is the best testimonial in its favor. If a system has worked well for sixty years and showed no signs of defect we contend that wise men should be at liberty to doubt the propriety of changing it.

The same in substance may be said of state courts. They are generally conducted with ability and their integrity is above suspicion. Can as much be said of the executive and legislative departments, either of the general or state governments? Are not the instances of favoritism and corruption a hundred to one in the executive and legislative departments that they are in the judicial departments of the several states? Everyone who has paid any attention to public affairs must know that the judicial department, in point of ability and integrity, stands decidedly above either of the other departments, throughout the Union. Ability and integrity are the all-important considerations in selecting officers of any kind, and that mode of selecting them which is

most successful in securing men possessing these qualifications is assuredly the best mode. We do not say that this difference between the judicial and other departments of our state governments is owing exclusively to the different methods by which the offices are filled. But it is a fact that this difference coexists with the different modes of selection, and furnishes, as we think, presumptive evidence that we cannot better ourselves by departing, in the selection of our judges, from the usual method pursued by other states.

FREE BANKING

[June 23, 1846]

The Racine *Advocate* rejoins to our objections against free banking,[17] in a very sensible article, from which it is manifest that we agree in the undesirableness of free banking in an unrestricted sense; and the Southport *Telegraph* holds with the Racine *Advocate* that restrictions should not be imposed upon this method of banking, first, because they are of opinion that if corporate banking were abolished, individual notes, in whatever form issued, would not enter into circulation as money to any serious extent; and secondly, if they should, to prohibit their circulation would be an unjustifiable interference with private rights and personal freedom.

In our remarks upon this subject a few weeks since we had no reference to the issue of ordinary notes of hand or bills of exchange, founded upon business transactions. These cannot be prohibited, and should not if they could. And we agree with the *Advocate* that it is immaterial what form these paper values assume, provided the form, texture, denomination and design be not such as to fit them for and promote their circulation as money; and it appears to us that these different kinds of paper issues are quite susceptible

[17] For this article see *ante*, 444.

of a legal distinction, and it is only to this species of private banking that we object.

If free banking would not furnish currency, then restriction is of course unnecessary. But here is the rub. In alluding to the banking system of the United States and its effects upon the interests of the people, the *Advocate* remarks:

> They were obliged, not by law, but by the effect of law, to receive bank notes as coin; and although they had little confidence in them, still the very legislation that made them a currency made them hard to be come at by the very poor it was pretended they were to assist.

We think that people are reduced to a sort of necessity for taking bank notes, not by the effect of legislative acts, except in a very remote and indirect sense. All that legislation can do or the most it can do in the premises is to permit the issue of bank paper, while the natural laws which regulate trade and currency force it into circulation and keep it there. It operates something in this wise:

A. goes to a bank and loans [borrows] a thousand dollars to buy wheat with. The bank does not loan him its own notes, but the notes of another bank located five hundred or one thousand miles distant, with which it exchanges notes to put in circulation. B., the farmer, takes a load of wheat to market. A. offers to take the wheat and pay in these notes. B. says he wants the specie for his wheat. A. tells him he has not got it, and that the bank is too far off to procure it on the notes, and every wheat dealer in the place tells him the same story. B. wants money and must sell his wheat and get it. He is assured that the notes are perfectly good and that anybody will take them. With these influences pressing upon him he will, rather than not have any money, sell his wheat for such money as he can get, if there is a reasonable prospect that he can pass it to the next man before the bank breaks. The farmer owes a bill to the blacksmith, the shoemaker, and the laborer. They want the specie, but the farmer cannot pay it, and the same necessity will compel

them to receive the notes from the farmer which compelled him to receive them from the wheat merchant. By the same influences their circulation is kept up—not by law, or the effect of law—but by those natural principles and influences which render money that which every man wants and must have, and which compel him to receive such as he can get, when, by the very existence of an inferior kind, he cannot get such as he wants. This necessity is not, indeed, absolute. A whole community, by acting in concert, may, by an obstinate refusal of paper money, soon drive it from their circulation and have its place supplied with specie; but it is vain for an individual to undertake it single-handed, even in his own individual case; for the buyers of the surplus products of the country can better afford to lose two or three customers than to pay better money; but they cannot afford to lose them all. The following remark of the *Advocate* is a good illustration of the practical operation of the principles above alluded to:

> At the present time there is a mixed currency here: and people touch the paper part of it as if it was remarkably hot. Your most inveterate bankite will pocket the silver and hand over the note to pay his bill.

Here is the whole secret in a nutshell—people receive the paper not because they prefer it, but because that eagerness for money which gives it all its power and efficiency as a medium of exchange renders it hard to refuse anything which will answer the purpose, even temporarily; and while governments permit the issue of paper money and the community submits to that natural constraint which induces them to tolerate it, nothing but the final conviction of its utter worthlessness can arrest its circulation.

As legislative charters only *permit* the issue of corporate bank paper, and as the absence of all law on the subject would amount to the same thing in respect to individual and private companies we do not see why the same natural laws and influences which give currency to corporate bank notes and force them into circulation against the free choice and

better judgment of the people would not have the same effect upon the notes of individuals and private companies. Indeed, we know that such notes do circulate as freely and from the same influences as other bank notes. We might witness the case of Oliver Lee's bank, Stephen Girard's bank, Billy Gray's bank, and a host of others both living and dead, in support of our position.

The question, then, is, Ought such issues to be suppressed by law? Upon this point the *Advocate* remarks thus:

> It may be that men will be enabled to make a currency, and we can only say so be it. We hate banks in any shape with a tolerably bitter hatred; but if a man can make his own notes so good that his neighbors choose to take them as money, why we cannot object to it. If their confidence rests in his property, very well, if in his honesty, better yet; if in nothing at all, it is their lookout. They will not be obliged to take his paper, because when there are no incorporations there will be enough specie for circulation.

Two years ago, we entertained the same opinions as are here expressed; but a more careful examination of the subject of currency has led us to abandon them. Individual rights should indeed be held sacred. Still, as we all know, these rights have their limits. All civilized governments assume the exclusive right to coin money, and all agree that this is necessary and proper in order to insure uniformity and confidence in respect to the weight and purity of the coins, and so to guard the public against imposition and fraud. An individual has no right, and should not have, to coin money, even if he makes that which is just as good as that produced at the public mint; because, if individuals are allowed to engage in coining at all, it opens a door to fraud and imposition, and in order to close it effectually the citizen must surrender an otherwise natural right to work a piece of metal belonging to himself into any shape and give it any stamp he might choose, and to sell it to whoever might choose to buy it.

If the citizen should not be allowed to manufacture and put in circulation good coin, much less should he be allowed

to manufacture and put in circulation bogus coin; and if he should not be allowed to do either of these, we do not see why he should be allowed to manufacture and put in circulation *paper* coin, if we may be allowed the expression. The paper certainly partakes more of the nature of the bogus than of the good coin; for while he may manufacture paper dollars which are a good deal worse than bogus, he cannot manufacture those which are any better than the genuine coin.

The currency is a public medium or vehicle of exchange, and is, in an important sense, public property, and for this reason we believe that public authority has an absolute right to determine, not only how and by whom it shall be constructed, but what material shall and what shall not enter into its composition.

We think the *Advocate* is mistaken in supposing that, if free banking were to take the place of the corporate system. * * * specie would be more plenty and relieve the people from the necessity which now, in a measure, compels them to take paper money instead of specie. No community can long retain more than its due proportion of the currency, whatever it is, and when the nominal quantity is increased by a paper emission, from whatever source it may come, the value of a given quantity declines and the surplus will flow off to where it is more valuable until the equilibrium is restored. The kind which will flow off will be the specie and not the paper, for the simple reason that the specie will pass everywhere and the paper will not. Consequently, a paper dollar issued by a private banker is just as sure to displace and drive from the region and sphere of its circulation a specie dollar as if it had been issued by an incorporated bank, and the same necessity will induce the reluctant circulation of the paper dollar in the one case as in the other.

Now we would ask whether a private individual should be allowed, any more than a corporation should be authorized, in order that he may draw interest on his credit or what he owes, to manufacture paper money and thrust it into cir-

culation, and thereby displace and drive beyond the reach of the community an equal amount of the legal currency created by public authority and for the common use and benefit of all? We do not ask whether he should be deprived of this right, but whether he does or can possess any such right. We contend that he has no such right and cannot have, any more than he can have a right to go to his neighbor's barn, without his consent, and take away a good horse and leave a poor one in its stead.

The fluctuations in the nominal quantity of money produced by paper issues, and the consequent fluctuations in the prices of other commodities is [are] an exhaustless source of revenue to the bankers and of disappointment, disaster, and ruin to multitudes; and we ask again, have individuals, any more than chartered companies, a right to thrust their notes into circulation, expand and contract the currency at pleasure, produce any fluctuations in the market which they please, and fill their vaults and storehouses from the fortunes they have wrecked? To alter a note of hand or to forge a check would be snowy innocence compared with it.

The currency, as before remarked, is a public medium of exchange, and so vitally is every class and interest in society affected by every change, either in its quantity or quality, that in our judgment public authority should frown with penal sanctions upon all private or corporate intermeddling with it, either to dilute or corrupt it.

If our esteemed cotemporaries at Racine and Southport still believe us to be in error we hope they will review our arguments with the utmost freedom, for it is truth, and nothing but the truth, which we are after. Those who are laboring for rational reform should compare notes and counsel each other. Some may be too slow and need encouragement, while others may be too fast and need holding in.

MODE OF SELECTING JUDGES—No. 3

[June 23, 1846]

In the discussion of political questions it is too commonly the case that the advocates of opposite opinions appropriate every plausible ground of argument in support of their respective opinions, with an unscrupulousness which betrays either a want of good, sound, practical common sense, or a greater desire to maintain an assumed position than to arrive at ultimate truth; and it would not be strange if both the advocates and opponents of an elective judiciary should be found faulty in this respect.

Upon the subject now in hand it is assumed, on the one side, with but little show of reason or argument, as appears to us, that to make our judiciary elective would tend to poison the fountains of justice and render the bench little better than a throne of corruption from which favors would be dispensed to political friends, and retribution meted out to political enemies; and on the other side it is contended, with as little strength of reason or argument, that the other modes of selecting judges are antidemocratic, antirepublican, a practical denial of the capacity of the people to govern themselves, and wholly inconsistent with the theory of our government.

Let us examine for a moment the weight of the first-named objection. It is true that a judge elected for a district or county would occasionally have an opportunity in the exercise of his official duties to discriminate between political friends and opponents. But while it is usually the duty of a judge to decide, to a certain extent, between individuals who always belong to one political party or another, it by no means follows that in every case which comes before him he must decide between individuals of opposite political sentiments. The parties in court may both be Whigs, or both Democrats, or they may be attached to opposite par-

ties, and they as often stand in one of these political relations as in either of the others. There are, therefore, at least two chances to one that the suitors will be of the same political faith, and whether they had been for or against the judge in the election it could make no difference with the judge nor present any inducement to use partiality.

In popular conventions for the selection of party candidates there is usually as fierce a strife between different candidates for nomination and their respective friends of the same party as there is between opposite parties and their candidates after the nominations are made; and if we know anything of human nature, the successful candidate would be quite as likely to administer judicial vengeance to his opponents in his own party, whose objections to him he must suppose to have been of a personal nature, as to those in the opposite party, from whom he had no reason to expect anything but opposition, and from whose opposition he could infer no personal hostility to himself. Here we may fairly reduce the chances for a motive to favoritism from political considerations one-half, or to one chance in six. Only one chance in six, even supposing the judge to be as corrupt as Lucifer, for so much as a motive to favoritism on political grounds to squeeze into the fight.

Again, the judge does not possess absolute authority over the rights of the parties. He is only the judge of the law, while the facts belong to the jury; and law without facts is about as harmless as facts without law. If, therefore, a secret purpose of political revenge should in one case out of six creep into the breast of the judge, and the vagueness or uncertainty of the law should favor its execution, it would be quite as likely to be frustrated as seconded by the sovereignty of the jury over the facts.

Courts are, moreover, firmly bound in their decisions by existing statutes, rules, and precedents, and these, for the most part, are so plain and well defined that if this motive to injustice should chance to exist in the mind of the judge there would be scarcely one chance in ten for him to indulge

it without exposing himself to common contempt, as being destitute either of competency or of integrity.

Judges of the lower courts with local jurisdiction would, of course, be elected by the votes of their respective districts alone, while the judges of the supreme court would be elected by the general voice of the people and be beyond the influences and out of the reach of the motives which may possibly have beset an inferior court, and should the judge of the inferior court at any time be tempted to make a decision contrary to law he must know that that decision would be liable to be reviewed by the court above, with that severity of criticism which is common to such tribunals, and the evidence of his weakness or perfidy placed on enduring record in the common law reports. There is perhaps nothing upon which a judge prides himself more, or about which he feels greater solicitude, than to have his decisions pass the ordeal of a higher tribunal.

It would seem, then, as if in the few cases in which such a motive to injustice could be supposed to present itself to the mind of a judge, however corruptly disposed he might be, it would instantly be overborne and banished by considerations of paramount importance to himself.

But whether the very best selections of judges could be effected by the elective mode or not, it is not fair to suppose that it would result necessarily in the choice of corrupt men. On the contrary, it is no more than fair to presume that in most cases men could be selected who, whatever might be their other defects, would be above the influence of partisan feelings in the administration of justice. Justices of the peace are now elected among us, and also in many of the states, and although they are frequently quite deficient in other qualifications yet who ever suspected one of deciding against a political opponent from political considerations? Is it reasonable to suppose that, by the same process, the higher judicial tribunals would be any more exposed to the contaminating influence of party prejudice and strife? No man who has the least sense of honor will respect his neigh-

bor any the less, or be any the less disposed to do him justice, either in the capacity of a neighbor or of a magistrate, on account of his consistent adherence to his own political faith, but, on the contrary, it is regarded as a virtue and honored and respected by all men in all parties. How preposterous is it, then, to suppose that a man invested with the sacred office of a judge and bound by every consideration of honor and interest to discharge his trust faithfully would deliberately pervert justice to punish a man for that which cannot but command his respect!

We might turn round and inquire, if it were necessary, whether any other mode of selecting a judiciary is not quite as likely to bring political influences to bear upon the decisions of the courts as the elective mode; but having shown, as we think, that under this mode the chances for the entrance of political motives in the administration of justice are, at the first glance, but few, and that when closely analyzed they dwindle down to a minus quantity, comparison with any other mode becomes unnecessary.

A SCHEME OF GOVERNMENT

[June 30, 1846]

Territory of Wisconsin,
18th June, 1846.

Mr. Smith: I had expected that some discussion would have been introduced ere this upon the principles upon which our new constitution should be based, and as no person has entered the field with any general views, I submit to you the following synopsis of some of the features that I would like to see incorporated into that instrument:

1. Limits of state to conform to Mr. Martin's second bill.
2. Governor and lieutenant governor to be elected for two years.

LEGISLATURE

1. Single senate districts except where a county may be entitled to more than one; senate to be elected for three years, to be classed, and one to three elected every year.

2. House to be elected annually, in separate districts when practicable.

3. To hold yearly sessions.

4. 21 senators and 52 representatives.

5. To be increased periodically until the senate shall number 40 and the house 100 members.

6. Their compensation to be $2 per day.

7. The governor to have a veto power, subject to a two-thirds vote of both houses.

1. Legislature to be restricted from passing any bank law except a state bank and branches, and that either to be submitted to the people or to be reënacted by the succeeding legislature, and in either case the state to be responsible for its liabilities.

2. No loan or debt to be contracted against the state for any purposes except for the current expenses of the civil government of the state, or in time of war or insurrection for expenses on that account, unless the law for such loan or debt be approved by a majority of the voters of the state, and a sinking fund be created by a direct tax or application of other available revenues to pay interest and reimburse principal; and if such law be adopted by the people it shall become a constitutional obligation until discharged.

3. No law shall be passed to raise revenue from any particular branch or occupation in business that other trades, occupations, or branches of business shall be exempt from.

4. Taxes shall be [levied] upon all property equally (except that $200 worth of personal property shall be exempt from taxes to every taxable inhabitant having the same).

5. No religious test shall ever be required of persons to hold office under the state government.

6. No priest or minister of the gospel shall hold any civil office under the state government (except county or town offices).

7. The criminal code shall be humane and corrective, and the punishment of death shall be for murder, treason, or rape in the first degree, of which the trial jury shall be the judges.

8. The state officers, other than governor and lieutenant governor, shall be chosen by joint ballot of the two houses for two years, unless removed for cause by like joint ballot.

9. Four circuit judges to be chosen in like manner for a term of years, say six or eight or ten, and removable for cause as above.

10. Three supreme judges, to be nominated by governor and confirmed by senate, for life, good behavior, or sixty-five years of age; removable for cause.

11. No legislature shall pass any law whereby a person can be effectually released from his just liabilities.

12. No imprisonment for debt in this state.

13. Every resident inhabitant head of a family, male or female, who shall be the owner of forty acres of land upon which they reside may hold the same exempt from any debt or execution.

14. The school sections donated by Congress to the several townships in this state shall not be sold or alienated from the perpetual ownership of the citizens of such township, and shall not be rented for a term over thirty-three years, and shall be subject only to the control and management of the townships in which they are situated in such manner as may be provided by law.

15. All property acquired by females, either by inheritance, gift, or otherwise, shall not be liable for the debts of her husband, nor subject to his control without her approbation.

1. No chartered company to be incorporated not subject to repeal or alteration by the legislature.

2. All stockholders to be holden for the debts of the company for two years after they have ceased to be such stockholders.

3. A yearly publication of the names of all stockholders to be made in the state paper.

1. No note, bank note, or bill shall ever be made a lawful tender for a debt.

2. Any person passing a bank note for a valuable consideration shall be holden to any subsequent possessor of such note for the genuineness of the same and for the solvency of the bank, for three months after such paying or passing.

1. Any private banker, bank, bank agent, or broker who shall put in circulation in this state any bank bills, notes, checks, or certificates of deposit, shall be held personally liable for their payment if the bank fail, or refuse to redeem the same in specie. And in default of such redemption and payment the said private banker, bank officer, bank agent, or broker shall be liable and subject to the pains and penalties fixed by law for the crime of swindling.

For citizenship, either to be first, native born in United States; second, or naturalized; third, or declared intentions under United States laws; fourth, or file oath with clerk of a court of record to support Constitution of United States and of this state, and abjure allegiance to any foreign power, and actual residence in the state.

All white male citizens of twenty-one years and upwards, having either of the above qualifications and a residence in the territory of six months, shall have a right to vote at all state, county, and town elections, and none but those having a right to vote shall be eligible to an office.

Yours, etc.,

ROUGH HEWER.

"ROUGH HEWER'S" SCHEME OF GOVERNMENT CRITICIZED

[June 30, 1846]

We invite attention to the communication of our correspondent, "Rough Hewer." He has furnished a complete skeleton of a constitution, and many of his suggestions are highly important. But we do not, of course, agree with him upon all of them. The exception in favor of chartering a state bank and branches is, in our judgment, entirely out of the handle.

The war between the Democratic party and the banks is one which we are of opinion admits of no compromise, and can end in nothing short of the utter extermination of one or the other.

The suggestion that "no religious test shall ever be required of persons to hold office under the state government" will meet with universal approbation; but we cannot reconcile this with the suggestion which immediately follows—that we should establish an *irreligious* test, or a religious *disqualification* for holding office. We are firmly persuaded that, when the civil authority attempts to establish either, it is stepping beyond its legitimate sphere and entering upon a path which in one direction terminates in intolerance and persecution, and in the opposite direction in ghostly spiritual despotism, and that, when we have once entered upon it, we are as likely to bring up at one end of the route as the other, and no matter whether we begin with religious tests or religious disqualifications.

We question, also, whether the constitution is the proper place for an exemption law of any kind, and especially one of as doubtful expediency as the exemption of a definite quantity of real estate comprising an indefinite value.

We are glad, however, that our correspondent has laid these suggestions before the public. He states in a private

note that his object is merely to bring these points before the public mind that they may be received or rejected, and good-naturedly remarks that "you and your Democratic editors and the Whig editors and the Abolition editors and the bankites and ultras may fire your grape and canister and hot shot at any of the views put forth"; from which we infer that he would not mourn if some of his suggestions should meet with a decided negative.

We hope to hear from him again on some of the provisions suggested.

LEGAL ABSURDITIES—PLEADINGS

[July 7, 1846]

One of the greatest absurdities in courts of law is the present practice of pleading. To be well skilled in drawing a declaration requires great ingenuity in the telling of falsehoods. The written declaration of a plaintiff in an action seldom or never states a fact, and, to save the trouble of writing over a sheet of foolscap, printed blank forms are generally used; these printed forms answer for any state of facts within a certain class of actions, by merely filling up names and dates. A simple statement of facts in a declaration precisely as they occurred is not deemed good and sufficient in our fiction-loving courts; a great number of misrepresentations and perversions of the truth must be inserted in order to gain the favorable ear of the court. Why is it necessary to employ fiction in our courts more than in any other department of business, in order to elicit truth and to promote justice? Does the physician resort to chicanery to cure disease, or the minister to calumny to promote a healthful state of morals? Suppose a doctor were called to see a patient having a fractured limb; he tells the patient his limb is considerably fractured, but in order to effect a cure the patient must consider himself afflicted with a great number of maladies—there must be medical appliances for gout,

spasm, cough, dropsy, colic and blood spitting, to heal the aforesaid fracture.

A declaration to recover on a simple promissory note, drawn up according to the approved form, contains about as many words as the Declaration of American Independence by our forefathers asserting our severance from Great Britain. Such a declaration usually contains a half dozen or more counts, not one of which states the fact at issue distinctly and correctly. The plaintiff avers the making of a half dozen promises which were never made, and which he knows to be false. So, too, in an action of trover, the plaintiff in the statement of his claim, or rather his lawyer for him, must tell deliberate untruths: he must aver that he casually lost the article he seeks to recover the value of, and that it came to the possession of the defendant by finding. The forms of pleading in this case, however, permit the defendant to speak the truth—that he is not guilty of the meanness of refusing to give up a piece of property which he came in possession of by finding. As a general thing neither the court, lawyers, parties, nor jurors can ascertain from the pleadings what the particular controversy is, or what either party claims, denies, or intends to prove, but the pleadings are chiefly made up of statements in solemn verbosity—mere legal fictions, fancies, inferences, and abstractions. As they state things that never transpired or had any real existence, they certainly can furnish no useful information, and are necessarily dark, obscure, unintelligible—fit instruments of injustice.

Again we say, why is it necessary to mystify, to falsify, to establish justice? Is it not contrary to every code of morals throughout the civilized world to employ falsehood and misrepresentation for the purpose of advancing the true interests of society? Why should untruths be permitted in our courts with impunity while they are repudiated everywhere else where regard is had to decency and respectability. We have heard many attempts to explain the necessity for using the present forms of pleadings, but they all amount

to about as much as the assumption that a witness cannot tell the truth, however intelligent or honest he may be, without the help of a member of the legal profession to pump the truth out of him. Some suppose that because fictitious pleadings have been in use so long and date back to so remote a period that they cannot now be dispensed with. A thousand fooleries and absurdities were once in high repute which are now discarded. We have received all our forms of law proceedings from England, without ever having made scarcely any changes. An able writer in the *Democratic Review* justly remarks:

> It is to be regretted that the wise men who engaged in the glorious task of severing the political ties that subsisted between the colonies of this country and Great Britain had not carried their notions of emancipation to a bolder height. They should have declared their independence not only of the government, but of the *laws* of the mother country.

Wisconsin will soon throw off her territorial form and assume the form of state government; this act of the people will be regarded to be the formation of a *new* government. But, as preposterous as it may appear, after the people of Wisconsin have formed a new government, they will still have entailed upon them the laws, forms of proceeding, rules of practice, and decisions of the monarchial courts of Great Britain, as contained in a thousand volumes! All this mass of mingled wisdom and folly will doubtless be recognized by our courts as good authority and fit to be observed in the administration of justice. The rights of our citizens will be subjected to legal rules which they never have had any agency in establishing, or have ever understandingly assented to. Now let us for a moment look at its consistency.

"Law," says Blackstone, "is a rule of action prescribed by the superior, which the inferior is bound to obey." This definition involves a manifest absurdity, since according to this principle we have no laws in this country, because we acknowledge no superiors in a land of equal privileges. The most common sense definition of law as applicable to our

form of government is that given in the Livingston Code: "Law is an expression of the legislative will"—that is, an embodiment of the people's wishes, expressed by delegated authority. Now, by what act of legislative power have the people consented to recognize the arbitrary rules and maxims of law as binding, which were enacted by the Roman emperors fourteen centuries ago? Nowhere have our statutes which contain the legitimate law of the country expressed an adoption of the codes of the Dark or Middle Ages, yet these codes are regarded by our courts as authoritative and the rights of persons and of property are subjected to their provisions. Is it not an exercise of arbitrary power to subject the people to rules of action which they do not understand, and to laws which they nor any representatives of a free government ever had an agency in creating? One of the most able American expounders of law says: "As laws cannot be obligatory without being known, they must be promulgated by the state." Will we recognize the truthfulness of this principle in theory and repudiate it in practice? Chancellor Kent enumerates 648 volumes of British reports, digests, and commentaries, besides some four hundred volumes of other British and Irish law works, which are proper for an American law library. Now has this ponderous mass ever been promulgated by the state? Do the people know anything of the rules and decisions contained in this vast pile of legal confusion, by which their rights are to be adjudged in our courts?

As no possible good can be derived from the use of pleadings as now practiced in the courts, but, on the other hand, as they are a prolific source of mischief, we hope to see the courts of Wisconsin Americanized and republicanized under our new constitution. Pleadings should be made brief, clear, and distinct, and understood by all. It should be considered as disgraceful to express a falsehood in court as anywhere else. The practicability of adhering to truth rather than fiction in matters before the court is clearly court demonstrable. The opening counsel usually in a short

space of time makes the court, jury, and bystanders fully understand the claims of his client, and the facts and proofs by which he intends to sustain them—he then quits the fictions, fancies, inferences, and abstractions of the law and states the real facts in a common-sense way like an honest man. But suppose instead of this verbal statement the written pleading should be read for the information of the court and jury. As well might the learned counsel read a chapter from the *Koran* or from the voyages of Sinbad the Sailor to enlighten the triers of the cause, as to the particular matter at issue. The written pleadings should in all cases be strictly in conformity with facts as near as possible, and intelligible to the court, jury, and parties. This portion of law proceeding, so vitally essential to securing the ends of justice, should not be permitted to remain in its voluminous, inaccessible, and incomprehensible condition; it should not be suffered to mystify and swell the expenses of litigation, while it affords no useful information to the court or parties.

One prominent object which the friends of judicial reform are now everywhere seeking to obtain is the simplification of law, and rendering it plain and intelligible to all classes of the people. But how is it possible that this desirable object can ever be accomplished while the present unintelligible jargon of pleading is retained by the courts and forms a part of the judiciary system? The people never can become familiar and acquainted with it, and why should they be bound by it? Hon. Michael Hoffman, a prominent member of the present convention in the state of New York, remarks: "The evils growing out of the present written pleadings are great—too numerous to be detailed. They strike at the very justice and merit of the cause, create great expense and delays, and authorize and invite imposture, trick, and chicane. The books that teach this part of law, including the forms of pleading and notes on them, are very voluminous, and for their illustration require the study of many thousands of adjudged cases. To master them in any tolerable degree is the business of a whole life, and they are

utter obscurity to all except the professional adept." Again we ask, How is it possible to render law intelligible and its forms accessible to the people, if such be a true description? Hon. A. Loomis, also a member of the present New York convention, on the subject of pleadings holds the following language: "Let the party bring his action by a simple statement of facts which give him a right to demand redress before a tribunal of justice, whether it comes within class of cases in equity or at common law; no matter whether it be to recover damage for a trespass, or to collect a debt. When the defendant has made his answer and the evidence has been taken, the court can render judgment as the law applicable to the case requires. In order that the usefulness of the law may be extended and its benefits realized by all classes of men, let it be brought down from the clouds—disperse the awful mystery which surrounds it, and let men behold in it, not a dreaded tyrant, but a friend and protector, whose course is open and exposed to their observation and scrutiny."

Pleadings are the instruments of injustice as is continually being demonstrated in the courts; the plaintiff's rights are frequently made to depend upon a mere form of words and phrases. How often by oversight or accidental omission of a word in a declaration is a party thrown out of a just claim; sometimes the omission of a falsehood in a plea quashes the proceeding, leaving the unfortunate plaintiff to pay the costs and mourn the want of depravity in himself or his counsel, in that he was too scrupulous to tell a bigger falsehood. How common is it for criminals to escape merited punishment because of some flaw in the indictment. This strict adherence to technical forms benefits nobody but mischief-makers; but it does great harm by making bills of expense, protracting justice, and enabling scoundrels to run at large. It is astonishing with what pertinacity our judicial officers cling to technicalities; we recollect to have seen a statement in the *Law Reporter* not long since of an appeal brought before the superior court on the ground that the

court below had decided a certain indictment to be sufficient in which the word "malicious" had been omitted, and another equivalent word used in its place. The court above, after grave consideration, affirmed the decision of the court below, that the omission of the word "malicious" in the form did not vitiate the proceeding, inasmuch as other words having the same meaning had been used. This was regarded by some as a most wonderful stretch of power by the court! Such superlative fooling is scarcely credible, but it is only one of numberless instances of slavish adherence to technicalities, despite of reason and common sense.

MODE OF SELECTING JUDGES—No. 4

[July 7, 1846]

In our last article upon this subject we endeavored to show that the fears of many of the opponents of the elective mode that the election of judges would induce party favoritism in the administration of justice were groundless. We now propose to examine some of the arguments relied upon by the advocates of the elective mode.

They contend that the people have a right to select their own rulers in all the departments of government, are qualified to exercise that right, and that a resort to executive appointments or legislative elections for the choice of any portion of them is a denial of both. Now the truth is, and if we will take the trouble to analyze these different modes we shall find it so, that so far as the selection of men is concerned there is no great difference between them—the people, in their primary capacity having just as much to do with the selection under one mode as under another. We need not remind our readers that our government is not a democracy. It is throughout a republican system, barely set in motion by the operation of the democratic principle. The advocates of the elective mode sometimes ask, with an air of triumph which would seem to put an end to all cavil or

argument, Have not the *people* the right to select their own rulers, and are they not capable of doing it? We answer, Most assuredly they *have* both the right and the capacity, but at the same time the exercise of that right is, for the most part, impracticable. The *people* in their primary capacity do not select any of their rulers, except occasionally those possessing the most limited authority and local jurisdiction.

The people of a town may possibly assemble en masse and select their town officers, but even this is not always the mode of selection; at the very next step in the ascending scale the democratic mode becomes wholly impracticable. The people of a whole county cannot assemble for the selection of county officers, but must assemble by towns or the still smaller subdivisions of election precincts and select agents to do for them that which they have an unquestionable right to do, but which they cannot conveniently do for themselves—to select candidates and determine whom they will have for officers.

As we ascend upon the scale of civil government to districts, states, and confederacies, the operation of the democratic principle in the selection of officers becomes more and more impracticable. If the *people* cannot assemble by counties, still less can they assemble by districts, and still less by states and confederacies. From the circumstances in which they are placed all that the people can do towards the selection of their higher officers is to assemble by towns or precincts and select agents to act for them in a county or district convention, and these agents must select agents to act for them in the state convention, and the state convention must select agents to act for them in the federal convention; so that our highest officers are selected, not by the people nor by a single intermediate agency, but by a succession of agencies, or agents chosen by agents who were themselves chosen by agents.

The nomination of officers for any department of the government being once made, so far as the selection of *men* is

concerned the choice is as complete as it ever can be. It then becomes a question of choice not between men but between principles—not who shall be the instruments of carrying out a certain course of public policy, but what that policy shall be. In our conventions our agents vote for *men*—the principles which are to govern them being understood; while at the polls we vote for *principles*—the men who are to carry them out having been previously selected by our agents. This is the exact philosophy of our system and of the motives which govern our elections, at least so far as respects the legislative and executive departments. The election of town and county officers upon party principles may seem to be an exception to the rule, but even here we vote for men on party grounds for the sake of party organization and discipline, with an ultimate view of securing more important ends through the legislative and executive departments of the state or of the general government.

We see, then, that so far as the choice of men is concerned, the people have no more voice in the selection of legislative and executive officers than they have in the selection of judges appointed by the executive or elected by the legislature. The selections in the one case are made by agents chosen more or less directly by the people, for that purpose mainly or exclusively, in the form of a political convention, and in the other by agents chosen by a little different process, for that and for other purposes, in the form of a legislature. The difference amounts to about this: In the one case a farmer sends a hireling to the woods to split rails and tells him to keep an eye out for a sled crook and cut one in the course of the day; and in the other he sends one man to split rails, and another to cut a sled crook.

The nominations for legislative and executive officers having been made by opposite parties through their agents, it becomes necessary to refer them again to the people, because they are to be invested with power to enact laws and originate public measures; and they come before the people

not upon their own personal merits but upon the merits of their principles and the measures of their respective parties. If this party is the strongest, A. is the man—if that party is the strongest, B. is the man. There is no chance at the polls for the selection of men, or at the utmost the choice is between two, and a man must vote with his party and abide the selection which has been made or he must throw away either his principles or his vote, or both.

The selection of a judge having been made, not by the people in their primary capacity, but by their authorized agents, is there any similar necessity for submitting this selection to a popular vote for confirmation? It appears to us that there cannot be, for the reasons before alluded to—that the courts have no power to enact laws or originate public measures, and that these are really the only questions at issue at the polls. A judge is selected, or should be, simply with reference to his personal fitness to perform certain duties in accordance with existing law.

When we vote for a legislative or executive officer we intend that our votes shall tell upon the official doings of that officer. Can we have any such motive in wishing to vote for a judge? Do we wish to have our votes influence the decisions of a court? If these questions are answered affirmatively, an important point is conceded to those opponents of the elective mode who object to it on this very ground, and which objection is generally admitted to be valid, if well founded. If we do not intend that our votes shall bear upon the official acts of the judge, we beg to know what effect we expect our votes [to] have? They have nothing to do with the selection of the man, for the selection must be made before we can have an opportunity to vote upon it at the ballot box. We may elect a party man, but this will not affect party measures because party measures are entirely out of the sphere of his official duties. If there is no question to be decided at the ballot box but the personal fitness of the candidate, and that question is and must be effectually set-

tled before it can get there, we cannot see what use there can be in sending it there at all.

There is, therefore, no important difference in these modes of selection. The people never select their officers in person, except those of the very lowest grade. In either case and in all cases the higher officers must be selected by agents chosen more or less directly by the people, according to the nature of the offices and the area over which their jurisdiction extends. The only difference consists in the different modes by which the agents who make the selections are chosen, and the only remaining question (as appears to us) is, what system of agency is calculated to secure the best selection of judges.

"ROUGH HEWER'S" VIEWS

[July 21, 1846]

Mr. Smith: I perceive you have laid before the public the crude suggestions I threw together as some of the points that might come under discussion in the formation of the constitution and (as I expected) you have commenced demolishing some of the plans as relates to the bank project. I believe with you that it is decidedly advisable not to have any at all, provided the issues of the banks of other states can be kept out of circulation; and I did not consider the provision suggested as likely ever to be made available, as it would have to be ratified by the people (or a subsequent legislature, which is the same thing) who would thereby assume the responsibility of the creature, which I take it for granted they would never do, and if banks are entirely excluded I shall be quite content.

In reference to the exemption of a home for every householder, I do not think forty acres too much when used for cultivation. Proper guards should be thrown in to prevent an abuse of so humane and desirable a provision. I con-

sider the constitution the proper place to provide for it in order to give it stability and permanence. Our public domain embraces many hundred million of acres of land, and I consider no injurious results will accrue from a salutary provision of something of the kind. I am not pertinacious as to *how* or *what* it should be, but if I were in the convention I should go for forty acres—anyhow.

With respect to the religious (or as you call it, irreligious) test for office, I will join issue with you on that subject, and would contend obstinately for the provision proposed. I respect true religion and revere the author of it, whose kingdom is not of this world, and with a view to protect and perpetuate its purity and give our state and nation and posterity the benefit of its salutary influences, as the safest guard and shield to our free institutions, I would not open the door to tempt those who are set apart to minister at the altar and break to the people the bread of life down into the muddy waters of political strife. Let them keep their place, and attend to their appropriate duties with all men (not as partisans). Let the fountain be kept pure and the stream will run clear and full and even. We want no political priests or ministers, and if any of them prefer to become such, and prefer to occupy the bench or the senate hall, or to deal in political patronage, make them lay off their robes and become laymen. We will have no religious dictation in the civil government; no alliance of church and state. Let each be a separate organization, as each is dependent upon the other for the permanency of their establishments. There is no intolerance in connection with the provisions as you speak of. This system has worked well in the New York constitution, and I hope to see it in ours. More anon, as you proceed to dissect the several items of my first communication.

Yours, etc.,

Rough Hewer.

ELECTIVE JUDICIARY

[July 21, 1846]

The Racine *Advocate* expresses a preference for an elective judiciary, but admits that it is a grave subject, upon which the wisest of men may differ, and should not be adopted without careful consideration. The *Advocate* says:

> To our minds the great desideratum is to get judges who will hold themselves above politics, whether they be appointed or selected, and if anyone will show us how that object can be secured, we will give up all our own favorite ideas and adopt his. We want to see the best men among us on the bench, and we want to see those wen so well paid that they may feel willing to remain there.

This is the right spirit, and the one which we hope will generally prevail on both sides of the question. In what we have written upon this subject one important object we had in view was to counteract a false issue which seemed to be making up, to wit: Whether or no the *people* should be *trusted* to select their own rulers, by showing that the people have just as much to do with the choice of men under one of the proposed systems as another. We hear men talk about entrusting and not entrusting the people with power. We have had all the while a lurking surmise that such men did not know exactly what they were talking about.

Who are these men who, it is assumed, have all power buttoned up in their own breasts, and which they are to trust out to the people? We would like to see them and ask them where they got that same power. The truth is that under our federal and all of our state governments the people have now and always have had all power residing in themselves, and it is ridiculous enough for a politician to talk about the power which he proposes to confer upon the people, *if* they will only let him.

The people are the supreme authority in all cases, but somehow they have taken it into their heads that it is not worth while for them to attempt to exercise all authority in person.

The judge who is chosen by the governor and legislature is an agent and derives all his power and authority from the people no less than any other officer. He issues a process directed to the sheriff, commanding him, not in his own name nor in the name of the judge, but in the name and by the authority of the people, to arrest a man, and thus by the aid of a scrap of paper he is able single-handed to bring a dozen men into court at a time. The promptitude with which the commands of a court are executed is nothing else than a recognition of the power and authority of the people vested in their agents. The people might all turn out to catch a rogue and try him, too, but they do not think it is the best way. They apply no more physical force than is necessary to enforce their will. So they need not and should not apply any more of their time and money in the selection of officers than is necessary to secure the faithful execution of the public will. Having by one system of agency chosen the principal officers of their government, if they can with safety constitute *them* agents to choose others, instead of a constant recurrence to the more troublesome, expensive, and unwieldy system which must necessarily be adopted in the first place, it is better to do so, on the same principle that it is better to send the sheriff to apprehend a man than for all the people to drop their business and run after him.

It is claimed on one side of this question that the appointment of judges has always worked well, and on the other that the elective mode of selecting them ought to work well and that it actually has so far as it has been tried, and neither seems able to deny what the other says. This would appear to indicate that either mode will work well enough—a thing which would not be at all strange, if true, for in either

case and in all cases our officers are chosen substantially by the same authority, and are amenable alike to the people.

We hope, therefore, that Democrats will not wax warm upon this question beyond its due merits. Let it be discussed freely and candidly, and delegates to the convention will doubtless know what is the prevailing wish of their constituents and should be ready to follow their instructions. We do not see how it can be made a party or a test question in the election without endangering principles of vastly more consequence.

"ROUGH HEWER'S" VIEWS CRITICIZED

[July 21, 1846]

We are pleased that our correspondent, "Rough Hewer," has favored us with another line. It will be perceived that we are distinctly at issue in regard to the propriety of establishing a religious disqualification for office.

But let us not misunderstand each other. We agree with "Rough Hewer" in the objects he has in view, but differ with him widely as to the means of their attainment. To deprive a citizen of any one of his civil rights on account of his religion is to inflict a penalty on that account, and, as appears to us, is nothing less than persecution. To deprive a citizen of any one of his civil rights or privileges on account of his calling or profession is palpably antirepublican and aristocratic. If we may exclude one class of citizens from a participation in the government we may another and another, until we have but one privileged class left, and if we exclude but one class, all the rest become privileged classes. If we deprive one class of their civil rights on account of their religious professions, we deprive all other classes of their religious rights by attaching the penalty of civil death to their exercise. To say that a preacher shall not be a senator, is, in effect, to say that a senator shall not preach. Is the civil

authority competent to decide who shall preach and who shall not? If it is, it is equally competent to decide what shall and what shall not be preached, and if it attempts either it sets itself up as a religious teacher, and upon its own principle turns itself out of doors with the clergy.

We agree perfectly that a clergyman should not be an office seeker nor burden himself with secular affairs of any kind, further than is unavoidable; and this, we believe, is the common sentiment of the people of the United States, including the clergy, but this is purely a religious sentiment which the civil authority has no right to meddle with.

We would wish by all means to see the Christian religion perpetuated in its purity. But the civil authority can never improve or perpetuate its purity by dabbling in its streams. They are most pure when left to flow most freely from the fountain head. Christianity can receive no protection from the state, and it asks none. The state cannot touch it but to pollute and corrupt it, and all it asks of the civil authority is to let it alone, and thrice happier would it have been for the world had this reasonable request always been complied with.

We would not open the door of office to clergymen, nor would we shut it, but just let it swing for them as it does for other men and *advise* them not to enter. We do not wish to see them descend "to the muddy waters of political strife," nor do we wish to see politicians cast their muddy water upon Christianity or its ministers. We attribute no such motive to our correspondent, but there is a singular inconsistency in the arguments usually put forth in support of this measure. It is said that the clergy will corrupt politics and that politics will corrupt the clergy. This is as much as to say that the political arena is too dirty a place for clergymen, and that clergymen are too dirty a set of men to be in it. If the political arena is a dirty place it is because dirty men occupy it, and the politician pays no very flattering compliment either to the church or [to the] state, when he says to the clergyman, "Stand by thyself, I am dirt-

ier than thou." Civil government is clearly sanctioned by divine authority and there is nothing necessarily contaminating about it.

We want "no religious dictation *in* our government," nor do we want any *from* it. Let clergymen "keep their place and attend to their appropriate duties," but let not politicians attempt to decide what their place is, or what are their appropriate duties, for the moment they do so they set themselves up as religious dictators, claim dominion over the consciences of men, and usurp one of the prerogatives of the Most High. Religion is an individual concern. The state is a body politic, and a body politic has no soul and cannot be a religious being. To judge in a matter of conscience, it has no more capacity than a horse.

We want "no alliance of church and state," but we do want a close and enduring alliance between the state and every citizen of it. Why, then, should the state, by depriving them of their civil rights and treating them with suspicion and distrust, array against herself a class of her citizens from whose influence she can by no means escape?

Our friend, "Rough Hewer," will perhaps think that we are not making his work much the smoother by going over it, but this proposition presented such a remarkable protuberance that our broad-axe would have leaped from its handle had we not indulged it in a whack or two.

"ROUGH HEWER'S" VIEWS CRITICIZED

[August 4, 1846]

We have neglected to notice one important suggestion of our correspondent, "Rough Hewer," contained in his first communication.

It is that some restriction should be imposed upon the circulation of bank paper. He proposes that the vendor of a bank note shall be held responsible for the amount for three

months after passing it, in case the bank should fail within that time.

This, as a check upon their circulation, might be a wholesome provision; but as a means of redressing the wrong consequent upon bank failures it would prove a fallacy. Suppose A. borrows money of a bank for the purpose of speculating in wheat. The ordinary scarcity of money, which in our cogitations on the currency we have shown to be one of the natural and necessary attributes of money, will impose upon the farmer a degree of constraint to receive for his wheat such money as is offered him, lest he might not get a better offer. The farmer pays it to the blacksmith and the blacksmith pays it to the shoemaker and the shoemaker pays it to the tailor and before the tailor pays it out the bank breaks and leaves the shoemaker responsible to the tailor for the amount. But the shoemaker has no such redress upon the blacksmith, for the three months has transpired since he received it.

But compelling the shoemaker to lose the amount instead of the tailor, or the blacksmith instead of the shoemaker, cannot obviate the wrong. If it were "Pray cow give me milk—I give cat milk—cat give me my long tail again," it would be just the thing. But the bank has disappeared with the long purse and somebody must lost it.

Still, a regulation of this kind would doubtless tend to discourage the circulation of paper money, for it is quite as much as the most inveterate bankite is willing to do to take the risk of the solvency of the bank while he is obliged to keep its bills in his own pocket; and if, in addition to this, he were obliged to endorse the bills for three months longer, he would be careful how he received them.

But after all we would rather see bank paper outlawed entirely. Let it be declared that a bank note shall not be regarded in law as a valuable consideration, and that all receipts and obligations founded upon bank paper shall be utterly null and void, and we will be bound it will wind up the paper circulation among us directly.

We know that some of our best and most radical Democrats are for the let alone system in regard to currency, but we think they sometimes fail to recognize a very obvious distinction between things which should be let alone and those which should not. Whatever is proper to be done by private citizens, the government should leave them to do in their own way, but whatever is not proper to be done by them, the government is competent to prohibit.

It is not proper that a private citizen should coin money, and the government prohibits it. It is not proper that persons should pass counterfeit money, and why? Because it is an aggravated fraud, and the government prohibits it. The law regards a payment made in counterfeit money not only as void, but as highly criminal on the part of him who makes it.

Well, the whole banking system is a fraud "fra end to end." Bank paper is but a mock currency—a species of counterfeit money, and public authority is as competent to inhibit its circulation as it is that of American half dollars made of pewter and zinc. There is really no important difference that we can see.

But whether any such provision should be inserted in the constitution is another question. Our object in framing this instrument should be to establish governmental principles rather than to enact a code of laws, and we should admit nothing into our constitution which has not, in the public estimation, become reduced to a fixed principle, the permanent operation of which we are willing to risk.

On the whole, we think "Rough Hewer's" proposition in this instance somewhat objectionable on account of its doubtful efficiency in debarring paper money from the state, and the litigation which it might induce. If any provision of the kind is inserted in our constitution we think it should be the total outlawing of all bank paper, for such a provision we are confident we should never have occasion to repeal or amend.

THE STATE GOVERNMENT LAND

[September 29, 1846]

The merits of the late act of Congress to enable the people of Wisconsin to form a state government have for the most part been passed over in silence by the territorial press.

This act interests us as a people more than any other which has ever been passed by that body, inasmuch as it not only fixes our state boundaries, but requires us to surrender important rights for a definite consideration.

In the first place, we are bounded north by Lake Superior, the St. Louis and St. Croix rivers, which assigns to the state less than half the present territory of Wisconsin. This we should regard as no great hardship were the provisions of the bill in other respects as liberal as we had a right to expect. Other new states have received large grants of land, some of them as high as 500,000 acres, in addition to the ordinary grants for educational purposes; and one of the strongest arguments in favor of a state organization has been that we would be entitled to 500,000 acres of land on our admission into the Union.

This consideration has entirely failed. No such grant nor any allusion to it is to be found in the act under consideration. The following propositions are submitted to the convention for its acceptance or rejection.

First. Section 16 in every township is granted to the state for the support of schools.

Second. The grant already made of seventy-two sections for the support of a university is confirmed to the state.

Third. Ten sections of land are granted to the state to finish the public buildings.

Fourth. All salt springs within the state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, are granted for the use of the state, making seventy-two sections of land, provided we can

find the springs within one year, which we should not fail to do, even if we have to salt a few on purpose to meet the emergency.

Fifth. Five per centum of the net proceeds of the sales of the public lands within the state are granted for purposes of internal improvement.

Instead of our 500,000 acres, we have a grant of 92,160 acres; and in consideration of this magnanimous grant they require the constitutional convention to bind the state, either by a clause in the constitution or an ordinance irrevocable without the consent of the United States, to give up half our territory, not to interfere with the primary disposal of the soil, nor tax the lands belonging to the United States.

Congress admits our right to all the lands within our state limits by requiring us to relinquish that right; and if we will relinquish all, they will give us back a very small portion of them. Indeed, if we are admitted into the Union "on an equal footing with the original states in all respects whatever," as the Ordinance of 1787 declares we shall be, if admitted at all, we must be admitted with a full title to all the vacant lands within our limits at the time of our admission, for this was a condition of the original compact.

Whether the Ordinance of 1787 imposes any legal obligation upon the present government of the United States under the constitution or not, it certainly does, in our opinion, impose as strong a moral obligation upon it in respect to our rights and interests as would have rested upon the Continental Congress under the confederation, had it continued to this day.

But supposing the right of soil to be conceded to the United States, still Congress admits our right to tax those lands by asking us again to relinquish that right. Indeed, we do not see how the United States can evade this our right, but by arbitrarily keeping us out of the Union and confining us as a territory. This we believe the constitution gives them power to do. But there is one thing which they have not the power to do. They have not the power to force us

into the Union contrary to our sense of honor and justice. They can keep us out as long as they will, in spite of us, and we can stay out as long as we will, in spite of them. But in either case they must either support their own government over us, or allow us to have and maintain our own; so that if they refuse to do us justice, we can, on a pinch, stand it as long as they can.

Many believe that we have been dismembered of territory which fairly belongs to us on our southern and northeastern borders; and now they have not only split us plumb in two, but require us to relinquish most important and admitted rights for a most paltry consideration.

For one, we should be sorry to see anything intervene unnecessarily to prevent our speedy admission into the Union; but whether or no these terms should be acceded to, will, we apprehend, engage the serious consideration of the convention, and of the people of the territory generally.

LET IT BE TOLD!

[October 6, 1846]

We have been credibly informed that, shortly previous to the late election, a Whig candidate for the convention in this county went to an influential Norwegian who was supposed to be a Democrat and offered him fifteen dollars if he would go round among his people and electioneer for the Whig ticket. The man promptly declined, and the candidate raised his bid, which was again declined. Again and again was the bid raised, and again and again declined, until it reached the nice little sum of two hundred dollars, when, Ole standing out still as firm as his native mountain, the candidate gave him up as a tough stick and sloped for softer timber.

Now we would ask the *Sentinel and Gazette* if this Whig did not misrepresent his own party as to the means which

should be used in elections, and whether this misrepresentation may not have thickened the defeat of his party?

This incident, whatever may be said of the moral on one side, suggests an important one on the other, viz: that foreign immigrants, however "ignorant of our laws and language," possess a degree of political virtue which may astonish many of the natives, even in high places.

AN ACCOUNT OF WHIG INIQUITIES

[October 6, 1846]

The Milwaukee *Sentinel and Gazette,* in alluding to the late election, remarks:

> In almost every county the whole aim and effort of the Loco Foco leaders and presses was to induce the emigrants to band together as Germans, Irishmen, or Englishmen and vote in mass for what they were told was the Democratic ticket. Of course, in order to effect such a result it became necessary for the leaders to misrepresent the principles and malign the motives of the Whig party; but as this necessity involved no unusual, or unaccustomed breach of truth, it neither troubled the consciences, nor taxed the invention of those with whom deception has become habitual and whose creed teaches that "all is fair in politics."

Such a paragraph from a Whig paper will not read very well in this region.

Instead of our misrepresenting Whig principles to gain the votes of adopted citizens, the Whigs misrepresented their own principles, were caught at it, and so were defeated worse than they would have been if they had been honest and tried to put the best face upon their own principles.

For instance, they pretended that the Whigs were the free suffrage party, in favor of the most liberal extension of the elective franchise to foreign immigrants.

Well, it was only necessary to refer to the journals of the legislature to prove that this was purely a catch-vote humbug, every Whig in the legislature having voted against the

existing free suffrage law; and these immigrants wisely concluded that what Whigs had done they might do again.

Again, they represented that their party was the anti-bank, specie currency party. This was proven with equal ease to be a humbug of the same character by the whole course of the Whig party for the last half century, and it was frankly acknowledged by individual Whigs and the Whig organ at this place that their party was and always had been in favor of banks, and deprecated a specie currency as one of the greatest evils that could befall the country; and the *Sentinel and Gazette* abounds with articles condemning the Democratic policy of withdrawing the government funds from the safe keeping of these indispensable conveniences called banks. The hypocrisy of these pretensions being thus easily exposed, and foreign immigrants being disgusted with our miserable ragged currency, they naturally fell into the Democratic ranks on this question also, and *so* the Whigs were beaten.

In exposing in our paper a short time before the election these two prominent humbugs, we remarked at the close of the article that we expected in about four years more the Whig party would claim to be the free trade party, and that they always had been. A day or two after, we visited the English settlement on Black Earth Creek, when we found that our remark was history rather than prophecy—that we were actually four years and some days behind the times. Some of the Whig candidates for the convention had been through the settlement proclaiming that the Whigs of the United States were the free trade party, and that the Locos were the tariff party, answering to the Tory party of England; and many who had but recently come among us and paid but little attention to American politics had been made to believe the story. While in the settlement we attended a meeting of the voters of Gorstville, in Dane, and Reevesville, in Iowa, and being well provided with extracts from Whig papers, which we had taken along for the purpose of

showing the difference between Whigs and Democrats, it was an easy task to satisfy every man present which was the free trade party. After the meeting, some of the voters of Reevesville remarked that they could do nothing for us in Dane, as they were out of our county, but that they would do their best for the Democratic ticket in Iowa. They were as good as their word, every vote cast in that precinct being Democratic.

We mention this incident merely to assure the *Sentinel and Gazette* that the foreign vote, so called, was not carried by the Democrats in this region by a misrepresentation of Whig principles, but by a true exposure of their real sentiments, supported by the most satisfactory proof—their own leading and well accredited journals, the *Sentinel and Gazette* for one, and their actual doings when in power. In this quarter at least, all the misrepresentation was on the other side. Is it not gross misrepresentation to pretend that the Whig party is favorable to free suffrage, free trade, and a metallic currency? As well might the autocrat of Russia pretend to be in favor of establishing republican institutions in his own dominions. There are individual exceptions we know, but these are only Democrats who have blundered into the wrong box and do not know how to get out.

The truth is that the Whig policy is in the main identical with that against which the foreign immigrant has long done battle in his native land, and it needs no misrepresenting to secure his unqualified disapprobation. Whigs may marvel at this truth, but truth it is, and they may charge corruption and misrepresentation upon their opponents till doomsday, —they can never *themselves* cook up their own real sentiments so that they will not, to an European immigrant, savor strongly of aristocracy. Poor fellows! Their policy is radically wrong and they cannot see it themselves as "ithers" see it. This is the real difficulty with you, boys—it is, upon our word.

SELECTIONS FROM THE SOUTHPORT *AMERICAN*

ADVICE TO THE LEGISLATURE

[December 6, 1845]

* * *

But by far the most important question upon which the action of the legislature this winter is anticipated is that of state government. We believe that we rightly interpret the opinions on this subject of the great majority of the people of the territory, and we are confident that we express an almost unanimous public sentiment in this immediate section when we say that such action on the part of the legislature as will bring about our admission to the Union as speedily as is consistent with perfecting the forms of admission is both expected and demanded by their constituents. The people of this territory are now, as we believe, fully convinced that they are old enough, and rich enough, and strong enough to take care of themselves, and this position attained, what earthly reason can there be for our remaining longer in a state of vassalage—beggars at the national treasury for the poor pittance of appropriation for the expenses of the government, so grudgingly bestowed—and forgoing, for the sake of it, the right and all the advantages of electing our executive officers, framing our own judiciary, and being really *represented,* and by the number of votes to which we are entitled, in the national councils.

STATE GOVERNMENT—No. 1

[December 6, 1845]

Pursuant to a call published in the Southport *Telegraph* of December 2, a meeting of citizens, friendly to the speedy formation of a state government for the territory of Wisconsin, was convened at the White Schoolhouse in the village of Southport on Wednesday evening, December 4. On motion, R. H. Deming, Esq., was called to the chair, and L. P. Harvey chosen secretary. At the call of the chairman, Col. M. Frank presented to the consideration of the meeting the subject upon which they had been called together and, in a brief and impressive manner, urged the prominent considerations which should at this time induce the *action* of the people, by petition to the legislature and through their popular assemblies, in favor of the erection of a state government at the earliest practicable period.

On motion, Messrs. Davis, Newell, and Deming were appointed a committee to draft resolutions expressive of the sense of the meeting.

The meeting was ably addressed by the chairman, F. S. Lovell, Esq., and others.

Committee on Resolutions reported the following:

First. *Resolved,* That in our judgment the time has arrived when the territory of Wisconsin ought to take immediate steps for the organization of a state government.

Second. *Resolved,* That, for the purpose of impressing upon the legislature the importance of *immediate* action, measures ought to be taken to secure a full and fair expression of the people on this subject.

Third. *Resolved,* That a committee of five be appointed, by nomination, to prepare a memorial to the legislature in accordance with the views entertained by this meeting, and to prepare a circular to be addressed to the friends of state government in the different counties of the territory, urging

their effort and coöperation in securing a strong and united expression of public opinion in favor of the measure, at the approaching session.

Michael Frank, F. S. Lovell, L. P. Harvey, Charles Durkee, and C. Latham Sholes were chosen [the] committee under the third resolution.

Voted that the proceedings of this meeting be published in the papers of the village. Adjourned, *sine die.*

R. H. Deming, *Chairman.*
L. P. Harvey, *Secretary.*

ACTION OF THE WISCONSIN LIBERTY ASSOCIATION

[March 14, 1846]

The Wisconsin Liberty Association held its annual meeting at Beloit on the twenty-fifth of February. From their published proceedings it appears that there were 123 delegates present—viz: 17 from Racine County; 19 from Walworth; 43 from Rock; 35 from Milwaukee; 6 from Jefferson, and 3 from Green—besides 10 from the state of Illinois and elsewhere, who were admitted as corresponding members. Resolutions declarative of the sentiments of the party were presented, discussed, and passed. Forty-three unsold or unpaid shares of stock in the *Freeman* office, were disposed of, Rev. A. Gaston, of Delavan, elected assistant editor of that paper, and a standing committee appointed to raise the sum of $300, as his salary. Charles Durkee Esq., of this place, was chosen president for the ensuing year, Rev. A. Gaston corresponding secretary, and S. S. Barlow, of Delavan, recording secretary.

In reference to the approaching crisis of the organization of state government for Wisconsin, the Association resolved that they would vote against the adoption of any constitution, which should hereafter be submitted to the people, which did not secure equal suffrage, and, in all respects, equal rights to colored as to other persons; but, as

to the course that liberty men are advised to take to secure the framing of a just constitution, our readers will find the wisdom of the convention embodied in the following resolution:

We advise all the friends of liberty in Wisconsin, in the contingency of a convention to frame a constitution being determined on by the people, to stand wholly aloof from the Whig and Democratic parties, and to put up and support for delegates to that convention men of tried and well-known character in favor of the rights of man; and if we then fail of success, it will be for want of power and not of will.

STATE GOVERNMENT—No. 2

[March 21, 1846]

A correspondent, who writes himself "a Whig, but not a strict party man," informs us that he shall vote *against* a state government at the ensuing April election. His reasons for so doing are in brief:

First. He deems it a matter of the most deep and abiding importance that, when we adopt a constitution for the state of Wisconsin, it should be a safe, judicious, and practical instrument, and he thinks we have not the men now in the territory to whom we could with confidence entrust the work of framing such a one.

Second. State government is not a measure of the people but of the office seekers.

Third. If a majority of the people vote *for* a state government, we are of course to be precipitated at once upon an election for delegates, in which party appliances, fictitious representations of party gain, and pride of party victory will be made use of to push men into the convention in whose fitness not even a majority of their political friends have confidence, by which means it will turn out that a dozen little whippersnappers who manage the party wires will, in fact, choose such delegates as may seem to them most likely

to advance their own selfish ends even at the expense of interests vital to the prosperity of the territory.

And fourth and finally, our correspondent fears that we shall at once, on becoming a state, plunge into a career of extravagance which will load the government with debt and tarnish the honor and fetter the young energies of the state for years.

These are the points of our friend's objections, which he has drawn out to a much greater length. We believe we have put them fairly. To reply as briefly, if possible, as we have stated them:

First. We deem the character of our constitution, in respect to safety, soundness, and practicability, and more—*equality*—of as high importance, and the matter of choosing delegates to frame it, as wholly aloof from mere party differences and the interests of politicians, as our correspondent possibly can. As to our ability to get up the right kind of a constitution *now*—if the people will look out men for the work merely on the recommendation of qualifications for the discharge of the duty, we have enough already in our midst; if the responsibility of delegate is to be considered of the rewards to be distributed by party on the ground of party service rendered or expected, it would not avail us a whit to colonize into the territory all the talent, wisdom, and experience of the Union.

We deem the present a most opportune time to set about the task of framing our organic law, especially, as we have the discussions which are going on in New York pending the revisal of the constitution of that state, which discussions are employing the attention and wisdom of many of the clearest intellects and purest statesmen of the Empire State to light us on our way.

Second. We submit that there are political and pecuniary considerations depending on the decision of the state government question of sufficient importance to win for the measure a warm popular favor. As to the interests or wishes of office seekers, that class are not certainly to grow

less clamorous or less dangerous as their number increases, which is doing every day.

Third. We do not see why the common sense of the people may not be as confidently relied upon to make an independent selection of delegates to a constitutional convention *now* as at any future time. Party lines are being drawn more and more tight every year in the territory, and we cannot see how the influence of "party appliances" is to be weakened by a longer drilling to party discipline.

Fifth. In our humble opinion the people of Wisconsin are fully competent to assume the responsibilities of *governing themselves*—to deny their competency is, essentially, to deny the foundation principle of republicanism. We, moreover, deem the present a more favorable time for procuring some check on the facility of contracting debts inserted in our constitution than a future period of wild speculation and reckless extravagance, to which we think the signs of the present time but too truly point.

To conclude: There seems to be a class of men who have great faith in the corrective power of *delay;* but, unfortunately, while they constantly put off action on every subject to a more opportune season, the very mischief which they are waiting to see die out keeps growing and strengthening.

COLLECTION LAWS

[March 28, 1846]

We have no disposition to bandy gibes with our neighbor of the *Telegraph* over the abolition of laws for the collection of debts. The subject is one of grave importance, and demands careful examination, if not from its intrinsic claims, certainly when "numbers, ability, and goodness" can be claimed to the party who believe such laws "entirely unnecessary," and are laboring to convince the people that the present system imposes upon them "intolerable burdens."

We believe compelling the performance of pecuniary obligations to be a part of that protection to the rights of property which society should afford to its individual members. So in a certain sense, we presume, do the anti-collection-law "reformers"; but the substitutes which they propose to make for the imposition of *law* (i. e., the convenience and benefits of doing right, and the coercive influence of public sentiment) would, it seems to us, be just as effectual as substitutes for any or for all laws. For were public sentiment unerringly acute in detecting, and prompt to reprobate all wrong doing, there would be little need of legislation. And were every individual far-sighted enough to discern his true interest in dealing honestly and justly by his fellow men, the penalties of law or the restraints of public opinion would never be called into exercise. But, as the world goes, a common sense of necessity has shown mankind need enough of law for the protection of individual rights. To talk more pertinently to the matter in hand, were all laws compelling the fulfillment of pecuniary obligations abrogated, there would be found those whose integrity would show no necessity of law to make them honest (such feel no "intolerable burden" from the present system)—but others, also, who would obtain confidence only to abuse and betray it, and between these extremes would be seen those practicing every degree of delay, evasion, excuse, and fraud. It is vain to say that the value of a reputation for honesty, or the advantage of a character for promptness, or the power of a sensitive public opinion (all of which it is claimed will result from the abolition of all legal coercion) would afford a sufficient basis for confidence or an effective correction for abuses of credit. It is an easy matter even for a knave to practice honesty for a time, if the reputation thus obtained will afford him the very facilities requisite to accomplish a grand and gainful scheme of fraud. And in the absence of all law to compel him to perform the promises by which he gets hold of the property of his creditors, when once resolved to exchange his character for the profits of fraud, the operator

upon public credulity has nothing to do but brave public opinion, and he may rattle his ill-gotten gains in his pocket and talk as "boldly" as a Mississippi repudiator of "what he will do and what he *will not do*." There would then be no remedy in society but mob redress, and that is surely more fearful than the most stringent of collection laws. Even this, moreover, he has small reason to fear, for observation teaches that the possessor of money, little matter how obtained, can find countenance and support. There are sycophants enough who can be brought to call dishonesty by a softer name, and to invent excuses and even feel admiration for successful fraud, as easily as party sympathies make our neighbor an apologist and an admirer of the bold dishonesty of a *state* that borrows money and then refuses to pay.

It may be our error, as the *Telegraph* man insinuates, that we have "too mean an opinion of mankind"; but, as it is a habit of ours to deduce our opinions from *facts,* we naturally place more confidence in them than in the crude notions of those with whom fancy appears to answer all the uses of judgment. That the mere reputation of honesty is not sufficient to make men honest, we have convincing example in the instances of those who were exempted from all legal liability for their debts, by the operation of the late general bankrupt law. No one will deny but that, in the case of thousands, the moral or the *honorable* duty to pay as fast as he could obtain the means was as binding upon the debtor as before he was released from the legal obligation. Yet how few are the instances in which such obligations have weighed a feather. Here and there we hear of an example, like that of Mr. Read of Boston, where native integrity prompted the payment of the creditors to the uttermost farthing of their just dues; but, while that man is presented with a service of a plate as a token of admiration for his remarkable virtue and his praise is sounded through the length and breadth of the land, how few are found ambitious of his

reputation at the expense of even less sacrifices than it cost him to win it.

But, insist our opponents, character will become so valuable, when we have it so that a man is trusted only on his honor and his reputation for punctuality, [that] that alone will make all men honorable and punctual. Hold a moment! Such men as are honest and punctual *only* because it is *profitable* to be so will surely turn *dishonest* the very moment the latter course promises an immediate advantage greater than the more remote gains of upright dealing.

In fine, we believe that the abolition of collection laws would operate hardly against the laborer and all men of limited means to whom credit is often an almost necessary assistance (for the misfortunes or disappointments of such are generally pronounced upon with harshness by those who hold the keys of credit), but would render all classes of society more completely the prey of that class of wholesale swindlers technically termed "financiers." In other words, we believe that the era of no-collection laws would witness all the curses of credit without any of its benefits.

The measure of exempting a certain quantity of land or the home and tools of the mechanic from attachment or sale on execution for debts, which is countenanced by many of the opponents of collection laws as an advance toward their darling reform, we regard as promising quite different results. With our present light on this subject, we are inclined to favor such an exemption, with suitable restrictions; but then we want stringent laws for compelling the payment of debts to the extent of all means beyond the property protected. Of this subject, however, at another time.

THE QUESTION OF STATE GOVERNMENT

[April 4, 1846]

Will be decided on Tuesday next. All who believe that the people of this territory are equal to the duties, cost, and responsibilities of governing themselves—all who believe that more is to be hoped from the *present action* of the people, than from any plan of *masterly inactivity* in procuring a safe, judicious, and practical constitution—all who rightly appreciate the pecuniary profits of "admission," the blessings of independence, and the political advantages of state sovereignty and equal representation in the national councils, will rally at the polls and vote

"FOR"

a convention, and a state constitution.

All who believe that the people of Wisconsin are *too poor* to support the expenses of a state government, and deem the yearly diminishing pittance which Congress doles out for our territorial expenses, of greater value than the liberal patrimony which we are to inherit on assuming our majority—all who would rather wait for the whole race of demagogues to die out, and for errors to ripen and decay, than appeal to the common sense of the people to disown the former, and to correct the latter—all who believe colonial vassalage preferable to state independence, and would rather have a delegate to *beg,* than a representative and senators to *demand* attention and justice from the national legislature, will either stay at home, or go to the polls and vote

"AGAINST"

a state government but *for* a continuance of territorial dependence and political imbecility.

THE JUDICIARY

[June 27, 1846]

Unjust laws, so that they are understood, can be avoided in their penalties by circumspection and prudent foresight; but from the weakness or corruption of the judiciary, the citizen is daily at peril in his every interest, without the possibility of foreseeing or avoiding the danger. Hence we regard the adoption of the best system of judiciary, and the mode of selecting judges the least liable to abuse or corruption, as of the first importance in forming our state constitution. In the lengthy arguments which have appeared in several of our territorial exchanges in favor of having judges elected by the people, we have not been able to detect any well-founded objection to the mode of appointment by the executive with confirmation by the senate, or of election by the legislature on joint ballot, one or the other of which methods has been almost uniformly adopted by the other states of the Union.

With the disposition which seems, fortunately, prevalent, to restrict the appointing power of the executive to a very limited number of officers, the first method can scarcely become a part in a system of favoritism, and in the absence of such objection, we humbly conceive that we shall thus be most likely to obtain ability, learning, and integrity upon the bench.

Qualification for the intelligent discharge of the duties of a judge is only attainable at the price of years of patient study and rigid thought. These must beget habits which preclude that familiar acquaintance and general intercourse with the people which might enable them to judge of the fitness of the candidate, or which would acquire for him popularity. With an elective judiciary, then, the duty of selecting candidates for judicial station must devolve more peculiarly than for any other offices upon irresponsible conven-

tions. Will not the people be rather losers than gainers in their influence in the choice of this class of officers, by devolving their selection upon delegates of caucuses, instead of upon officers whom they select for the discharge of this among other duties? And, as the best men for ability and integrity may not, from the circumstances that we have mentioned above, be the most "available," that is secure the greatest amount of *popularity* for the ticket on which they are nominated, will not such be the least likely to be selected in a convention nomination?

We must confess that we fear a wider exposure to corruption than the administration of justice has hitherto known, from making its functionaries directly dependent upon political leaders and party machinery for their continuance in office.

But, as we have not leisure to pursue this subject further, the present week, we subjoin the following extract from an editorial on the mode of selecting judges in the last *Wisconsin Argus,* a paper frequently endorsed by our neighbor of the *Telegraph* as good democratic authority.[18]

AN ELECTIVE JUDICIARY

[July 4, 1846]

We are sorry if the advocates of the mode of electing judges by popular vote can find no better reason in favor of their system than the hope that it will prove a plan for elevating to the bench men eminently *ignorant* of law, of precedent, and of all that men of strong minds and patient investigation have said, written, and thought in reference to the rights of persons and property. Mediocrity is the highest ability, study is folly, mental cultivation an idle waste of time, and all the maxims of wisdom, wrought out by human

[18] The citation omitted here is the last half of the *Argus* editorial of June 16, 1846 on the "Mode of Selecting Judges," for which see page 450.

experience or left as the fruits of giant intellect, so much contemptible nonsense, if "common sense," without the aid of culture or discipline, is equal to threading all the labyrinths of wrong, and discriminating justice in all cases between man and man.

We are sorry, too, that such beautiful theorists have no brighter example of the practical workings of their theory than the judiciary system of poor, misgoverned, demagogue-ridden Mississippi. Is the judiciary of that state at all to be compared in point of ability, dignity, or integrity with that of a score of other states which select judges by other methods? We think not. Then what is the example worth? The celebrated S. S. Prentiss gave, as the experience of several years of successful practice in the courts of Mississippi, that, he cared not how much *law* opposing counsel might cite against him, if he could get the court to laughing he was sure of his case. This showed his estimate of its dignity.

We implicitly believe that the people are the sole legitimate *source* of power, and we are ever ready to confide in their integrity of purpose; but there are powers which are better exercised by agents of their appointment, than directly by themselves. Else we have no occasion for elections or officers. Among those powers we reckon the selection of judges—and we shall certainly never be convinced that it were better to have them elected by popular vote, by arguments based upon the alleged corruption, or incompetency to this duty, of the executive and legislature, who *are* chosen by the people. Yet this is precisely the point most frequently and positively insisted upon by our neighbor of the *Telegraph*.

Through all the multiplication of words which the *Telegraph* has produced in favor of his mode of choosing judges, we have looked in vain for any solid objection to the practical workings of the system sanctioned by general use in the different states of the Union with but one or two exceptions, and approved by long experiment, or any "show" of important gain to be secured by substituting one more

novel, and less tested by experience. We notice, also, that our friend attempts no reply to our objection to his plan, that it would operate only to transfer a power usually entrusted to the executive and senate or to the legislature, to irresponsible caucuses, and party conventions—which is the precise avenue through which we think incompetent partisans will be most likely to reach judicial station, and party corruption to attain the administration of justice.

EXECUTIVE PATRONAGE

[July 25, 1846]

While we have advocated the policy of the appointment of judicial officers by the governor with the confirmation by the senate, as a preferable method to nomination by caucus with confirmation by the people, we have done so with the firm conviction that our constitution will be so framed as to limit the patronage of the executive of the state, in the matter of appointments, entirely or nearly so, to the officers of the judiciary. If the appointment of these officers is to form a part of an extended system of patronage entrusted to the executive, we have no hope, with all the temptations which such a system presents for distributing its favors to reward unscrupulous partisans or personal adherents, that this department of the government will thus be preserved from corruption. We should much prefer that the people do not delegate this trust, than that with it they confer upon the executive administration the power to strengthen itself against a withdrawal of their favor by the purchase of a numerous and widely distributed horde of mercenary apologists and defenders, through the conferring of official patronage.

By a report prepared by the secretary of state of the state of New York, at the requisition of the constitutional convention now in session, it appears that there have arisen, under the present constitution, 289 civil officers whose appointments emanate directly and solely from the governor, and

2,238 who are appointed by the governor with the consent of the senate. The compensation of that portion of these officers whose salaries are fixed by law amounts to no mean part of the public expenditures; but by far the larger proportion of the incumbents are paid by certain fees and perquisites pertaining to their respective offices, and their compensation cannot be ascertained short of requiring a return, from each, of the fees and emoluments he receives from his office. What a host of retainers, all looking to the same source for their appointments, and all bound by the strong tie of interest to perpetuate the same *men* in power as a means of retaining the favors they enjoy! What a fearful, though unknown, amount of money placed, mediately under the control of a few official dignitaries, and more directly in the hands of one man, which may be used as a fund for purchasing defenders and apologists for any infraction of the constitution or neglect of duty, or for the corruption of the patriotism of the people.

It was, in a great measure, by a politic use of this immense power of patronage, through their own partisans in the executive chair, that the famous Albany Regency were enabled to control the politics of that state for so many years—making and unmaking governors, revolutionizing different sections, and building such stately fortunes for the few who had the distribution of favors and controlled the operations of the party. Twenty-five hundred office-holders scattered among the people and each surrounded by a circle of personal friends and dependents all interested to *talk* and *write* for the powers at Albany that controlled the party—and to these added greedy multitudes of expectants who well understood that they could only hope to attain the object of their desires by blindly adhering to, and actively furthering the objects of, those who had the dispensation of benefits—forms a political force all too effective for safety among a people devoted to the daily pursuits of industry and no further interested in political affairs than becomes their duty as citizens.

The state convention now in session in New York will, doubtless, break up this system of corruption, and revert to the people the choice of most of the officers now selected by appointment. This will work a great reform—removing the probability of any personal interest in the election of a particular candidate from the patronage his election may now place at his disposal, and leaving no motive of like character for undue subserviency to the incumbents of office. And we greatly mistake if a constitution for the state of Wisconsin, in order to be acceptable to the people, will not have to be modeled by a kindred spirit of enlightened democracy.

PARTYISM AND THE CONSTITUTION

[August 1, 1846]

A convention of Locofoco delegates met at Hall & Pratt's on Saturday last and put the following ticket in nomination for delegates to the convention to form a constitution for the state of Wisconsin, viz: F. S. Lovell and Elijah Steele, of Southport; M. M. Strong and Edward G. Ryan, of Racine; Daniel Harkins, of Pleasant Prairie; Haynes French, of Pike; Stephen O. Bennett, of Raymond; Thomas Stockwell, of Salem; James B. Carter, of Wheatland; Nathaniel Dickerson, of Burlington; Victor M. Willard, of Rochester; James H. Hall, of Paris; Chatfield S. Parsons, of Caledonia; and Chauncey Kellogg, of Mount Pleasant.

Of the individuals thus brought forward as candidates for election to assist in executing the most important trust that the people will, probably, be called to delegate for the next quarter of a century, we have nothing to say that will not occur to the mind of everyone who reads over the list. Some of them are capable and worthy men—others appear to have been nominated solely on the principle of throwing something, since the convention election gives *the party* an extra number of offices to dispose of to those who have by their continued importunities for office, heretofore, *wearied* the party

leaders. We are told that the nominees are, *with one exception,* democrats of the right stamp, by which are meant those that fear the party, reverence its nominations and love the two dollars a day (with most fervent wishes for more). But what their views are touching any principle to be established in the constitution, we can know nothing except by report. To carry out the "spoils" principle of choosing delegates, it became necessary to degrade the constitutional election, the most important one to the people that the citizens of this territory were ever called upon to decide, below the dignity of an ordinary election for county officers. A convention called to nominate candidates for the latter would have sent forth a declaration of principles, reasserted with pompous formality for the thousandth time; but, as on all matters that have anything to do with making a constitution, *the party* comprises almost every shade of difference in opinion, it, doubtless, appeared not advisable to look for accordant sentiments among the nominees, or to be in the least particular about what a candidate would go for in reference to the constitution.

We had hoped that men would be brought forward for delegates to the convention in such a manner that the question would not be whether the candidate was a free-trade man or a protectionist, "a *bad* Democrat, or a *good* Whig," one who always votes a strict party ticket, or one independent of political associations—but is he sound on the principles on which the people wish to base their social compact? Is he such a man as we can trust with the difficult task of forming a constitution under which the present and perhaps succeeding generations are to live? In such a contest a discussion of principles, not of men or parties, would be evolved, by which the opinions of the people would become established and defined, and delegates would be chosen who could fully and faithfully represent the wishes of the people. The creation of a state government supposes society to be in its disorganized condition, and the work before them the formation of a new social compact. Each individual is a partner, con-

tributing a certain portion of his natural liberty for the maintenance and improvement of civil liberty. The wishes of the people rather than the behests and interests of parties are the proper subjects of consideration.

These views we have held and advocated from the first, and, accordingly, we have urged the bringing forward of candidates by the people in their primary capacity without the intervention of caucuses, or party committees. Although the action of both the Loco and Liberty parties may seem now in a measure to compel the Whigs to make a party nomination, yet we think that their course should never drive our party from a right position.

Such are the views of the Whig county committee, and accordingly they have not called a Whig convention for the nomination of delegates to the convention (and will not do so unless the action of the committee is not approved of by the party generally) resting party efforts for organization upon the contest for county officers.

The call of the committee for a convention to present candidates for legislative and county officers will be found in another column—and we trust it will meet the prompt attention of every Whig in the county.

THE DELEGATE ELECTION

[August 15, 1846]

The Whig convention on Wednesday adjourned without taking any action in reference to a nomination for delegates to form a state constitution. This, we presume, is decisive of the fact that the Whigs, as a party, will not present a ticket for that object at the election—and, in default of any nomination of their own, members of the party will be left to select between candidates already before the people or hereafter to be brought forward. If the Whigs have refrained from making a nomination from conviction of the impropriety of party action in a matter of common and vital

interest, and to which the ordinary questions of party difference have little or no relevancy—a conviction we know to be entertained by many individuals of the party—the exclusive party nominations already in the field present but small claim to their favor. A popular movement, then, which might bring directly before the people the questions *really* to be decided by the election, and present candidates solely on the ground of fitness to the discharge of the momentous duty of framing a constitution would be the most likely to receive the countenance and coöperation of intelligent and conscientious Whigs.

The following is a copy of an invitation to a mass meeting for the nomination of candidates for delegates to the constitutional convention which has been somewhat generally circulated in different parts of the county; and which has, as we are informed, received the signatures of many influential men of all parties:

To The Electors of Racine County

You are hereby invited, without distinction of party, to meet in mass convention at the schoolhouse, at Sylvania, on Wednesday the twenty-sixth day of August inst., at 11 o'clock A. M., for mutual discussion and comparison of views, and, if deemed advisable, of nominating a

People's Ticket

of candidates to be supported at the ensuing election, on the seventh day of September next, as delegates to the convention for the formation of a state constitution.

The framing of a constitution is a duty of so serious and important a character, a work of so general and enduring a nature, that the people cannot deliberate too maturely or act too cautiously in delegating this sacred trust. With twenty-eight models of state constitutions before us for our imitation, with all the improvements which experience of their operation has directed or practical wisdom has suggested, and with all the attainments of progressive intelligence in theoretical and practical knowledge of free governments for our guidance, Wisconsin is privileged to enter the confederacy of sovereign and independent states with the very best constitution which human wisdom has ever devised. By faltering in our duty

to ourselves and to posterity, through indifference to the momentous interests we are called upon to decide in the approaching election, or by entrusting the work to incompetent hands or to men prejudiced by education or blinded by selfish and mercenary interests from perceiving the beauty and justice of those judicious reforms which lie near to the hearts of the people, our state may be *cursed* with the worst constitution of any of the states of the Union—with an impracticable instrument, wild with vagaries of senseless theorists, or hedging about and protecting time-honored abuses, perpetuating principles at variance with true social equality, and restricting privileges to a portion of society which it is the common right of all to enjoy.

We invite you, then, to lay aside all those questions of mere party difference which have no relation whatever to the work of forming a state constitution, and to unite with us, not in a convention of caucus-appointed delegates, or to listen to the dictation or to serve the interests of party leaders, but in an assemblage to which every voter is requested to consider himself a delegate—and let us deliberate wisely; and if common interests and common sentiments of patriotism can beget unity of action, let us select a set of men as our candidates for delegates to the convention to form a state constitution, prudent in counsel, and who shall commend themselves to the suffrages of the freemen of Racine County by competency, sound judgment, and fidelity to the great principles of equality and of universal liberty, on which we desire to base the framework of our social compact.

Racine County, August 5, 1846.

This call seems to have been indited in a just appreciation of the importance of the work of framing a state constitution as affecting the present and future prosperity of Wisconsin—and it points at precisely the action which we believe to be *right,* whatever faction may set itself against it. A convention of the people, assembled for the sole purpose of selecting the most capable and honest men for the discharge of a duty of common interest and of vital moment—such men as can be relied upon to advocate those principles which the great mass of the people desire to incorporate in their constitution—is precisely what we should like to see, and their nominations we could confide in. If this mass-convention movement be what it purports to be, contemplating,

as it professes to, the spontaneous action of the people, independent of party interests or the dictation of party leaders, the project enlists our warmest sympathies for its complete success. We should prefer to support its nominations, if made in fidelity to the professions set forth in the above call, to supporting a party nomination of the Whigs for delegates to the convention, even with the most flattering promise of success. And this for the reasons that the issues made in their election would be upon such questions, and such only, as relate to the formation of a constitution, and that a constitution framed by men thus selected would be more likely to embody that just compromise of party views and prejudices so desirable in an instrument which is to be, and that permanently, a common blessing or a common curse to all.

To secure to this movement precisely the character desired, it is only necessary that those who approve the objects avowed in the call should attend and take the conduct of its proceedings into their own hands. If this mass convention should not prove to be a meeting of the *people,* and its proceedings evidence of their honest purposes and wishes in reference to a constitution, it will be solely through the neglect of the people to attend and take the direction of it.

GREAT GATHERING OF FREEMEN IN COUNCIL

[August 29, 1846]

The people's convention on Wednesday was by far the most fully attended, dignified, and respectable political convention we have ever witnessed in Racine County. We have heard the numbers in attendance variously estimated from two to three hundred. It certainly exceeded the former number, but did not, probably, reach the latter. It was an assemblage of independent, honest-hearted men—and was really "without distinction of party," as all parties were well represented in the convention, and party distinctions lost sight

of, perhaps with one or two individual exceptions, in the remarks and proceedings on the occasion. All present evidently came together with a firm conviction of the separate interests of the people, distinct from all party or sectional matters, in the constitutional election—that the trust of delegate to the convention was one too sacred to be made a price in the barter trades of selfish politicians—that the crisis demanded the services in that capacity of the men most distinguished for liberal sentiments, sound judgment, and patriotic intentions—and that a council of the people was more safely to be trusted to select such, than the maneuvering of caucuses and interested delegates.

The resolutions adopted by the convention are a manly declaration of sound and truly liberal sentiments. The ticket selected, as far as propriety will allow us to speak in its praise, is an excellent one—one that should command the confidence and suffrages of the electors of the county—and if the exertions of its friends are worthy of the crisis—worthy of the interests they have at stake—it will be elected.

THE MASS CONVENTION OF ELECTORS OF RACINE COUNTY

[August 29, 1846]

Forenoon Session. This convention met, pursuant to call at the meetinghouse, at Sylvania, on Wednesday the twenty-sixth inst., at eleven o'clock A. M.

Convention was permanently organized by the appointment of Gen. John Bullen, of Southport, president; Theodore Newell and Eldad Smith, vice presidents, and R. H. Deming and Henry O. Willson secretaries.

A committee consisting of L. P. Harvey, of Southport, C. Marsh, of Pike, S. E. Chapman, of Rochester, Levi Grant, of Bristol, W. H. Waterman, of Racine, S. S. Derbyshire, of Pt. Prairie, Origin Perkins, of Burlington, Nathan Joy, of Mt. Pleasant, Newman Peck, of Caledonia, W. Wheaton, of

Yorkville, A. P. Foster, of Raymond, and —— ——, of Paris, were appointed to report resolutions expressive of the sentiments of the meeting.

Convention adjourned to two o'clock P. M.

Afternoon Session. Committee on resolutions reported the following resolves, which were taken up singly, discussed, and adopted.

Resolved, That in the formation of a constitution for the state of Wisconsin, the convention should enter upon the important work with a spirit of enlightened liberality suited to the progress and advancement of the age; and that the elevation of the mass and the distribution of equal justice to every class, profession, or condition, should be the great object sought to be obtained.

Resolved, That the right of suffrage should be guaranteed to *every* male citizen of twenty-one years of age or over, unless forfeited as the prescribed penalty of crime—and that freedom of speech, equal political rights, and equal taxation should be guarded by constitutional provisions, without invidious distinctions on account of religion, birth, or color.

Resolved, That *universal education* is the proper accompaniment and safe-guard of *universal suffrage,* and that, therefore, the cause of common schools should be among the first objects to claim the attention of the convention, by liberal provisions encouraging their establishment and improvement throughout the state.

Resolved, That the misfortunes of many of the younger members of the confederacy should warn us to adopt a constitutional inhibition to the contraction of a state debt by the legislature, unless authorized by a direct vote of the people—except it be to repel invasion, suppress insurrection, or to meet other extraordinary emergencies.

Resolved, That an extensive patronage in the appointing power by the executive is subversive of freedom, and, therefore, that all offices, as far as practicable, should be made elective by the people.

Resolved, That representatives of the people should be so selected that they may be individually responsible to, and immediately represent, their constituencies; and therefore that members of the legislature should be chosen by single districts.

Resolved, That in the organization of our courts, the attainment of justice should be made expeditious and accessible to the poor as well as the rich; the administration of law should be plain, divested as much as possible of useless forms and technicalities, and adapted to the understanding of the people.

Resolved, That all exclusive privileges and monopolies, whereby the few may be enabled to amass wealth at the expense of the many, are contrary to the spirit of a government of true equality, and that all enterprises, pursuits, or objects, requiring the legal association of individuals, should be regulated by general laws from the privileges of which none can be excluded who comply with their provisions.

After the adoption of the resolutions, on motion of R. H. Spencer, the electors present from the different towns divided and selected a committee of three from each town to nominate fourteen candidates to the meeting, to be selected as the nominees of the convention.

The committee, after consultation, reported the following names:

Otis Caldwell, Thomas Wright, Elias Smith, M. M. Strong, R. H. Deming, L. P. Harvey, E. G. Dyer, Canfield Marsh, Samuel E. Chapman, Jesse D. Searls, Levi Grant, Newman Peck, Theodore Newell, Daniel C. Burgess, Ira Pierce.

After the acceptance of the report, the names reported were taken up, individually, and their nomination confirmed by acclamation. Mr. Levi Grant, declining, the nomination of Ira Pierce was substituted in his place.

On motion, Geo. S. Wright, Harmon Marsh, and Origin Perkins were appointed to confer with the nominees and

ascertain from them their sentiments in reference to the principles declared in the resolutions of the convention.

On motion of H. Johnson, Esq., it was resolved that we hereby individually pledge our support to the candidates we have this day nominated, and that we will use all honorable exertions to procure their election.

Convention adjourned, *sine die*.

JOHN BULLEN,
President.
THEODORE NEWELL,
ELDAD SMITH,
Vice Presidents.
HENRY O. WILLSON,
R. H. DEMING,
Secretaries.

CONSIDERATIONS WORTHY OF REGARD IN THE PRESENT CRISIS

[September 3, 1846]

We publish, on our first page, an exposé signed by individuals of the Independent Democracy, who have resolved, like true freemen, that, at whatever hazard of personal interest, they will not submit to having the sacred trust of delegate to the convention to frame our constitution made the football of demagogues, or traded about among little politicians whose only hope of preferment is by swapping influence or promising immediate or remote preferment to their fellows of the same caliber in different sections of the county. We submit to the consideration of candid, honest, and reflecting men, of whatever party, whether the statements made in the exposé referred to, do not consist [*sic*] with the actual facts—whether these facts are not substantiated by proof from the lips of the most bitter and unscrupulous supporters of the party delegate ticket—and whether this letter of the "Independent Democrats" to their

political friends does not lay open a well-planned and thoroughly executed system of fraud practiced upon the unsuspecting confidence of the Democratic voters of the county?

If such questions meet an affirmative response, the people owe it to themselves to right the wrong. It does seem to us that if a case could be supposed to happen when the right-purposing, patriot-hearted electors, to whom we are told to look for the correction of party corruptions, are called upon to interpose independent and firm rebuke and resistance to the aggressions of their leaders, they have such a case now before them. The crisis will not permit submission to party abuses *now,* with the design of applying *future* correction. Action at the coming election will prove, in all probability, decisive—its effects enduring. The interests of the population now resident in the territory, and of the hundreds of thousands yet to come—of present and of future generations—both as pertaining to the protection of private rights and the promotion of public prosperity, *hang trembling upon the ballot about to be cast.* The success of the right will be permanent and fruitful of good—the triumph of the wrong will be perpetuated in the prolific generation of political evils.

Indifference or inaction at such a time is criminal; but the humblest contribution by vote or effort to the glorious result of securing for our state a sound, liberal, and practical constitution goes to accomplish a greater benefit and merits truer honor than a participation in the mere party triumphs, on questions of ordinary political moment, of twenty years.

We trust that such reflections are matters of general consideration among the people, and that the death-like earnestness which the assumed party leaders are using to "whip in" voters cannot stifle honest conviction of the right, or keep back popular rebuke of deep and dangerous wrong. But two working days intervene between this and the election; but let them be days of earnest, faithful labor for the cause. We know that business presses urgently at this sea-

son—that this is the seedtime of the year and that every moment is precious to the farmer which withdraws him from his furrowed fields; but the interests which three or four days will decide cannot be measured in value by the harvests of a single year. Let the efforts of every individual, then, be worthy of the crisis, and the result will be a noble vindication of popular patriotism.

TO THE DEMOCRATIC ELECTORS OF RACINE COUNTY

[September 3, 1846]

Having identified ourselves with the people's convention in the selection of candidates presented to the electors of this county, as delegates for a state constitution, and inasmuch as the propriety of our participating in this movement is questioned by some of the Democratic party to which we profess to belong, we deem it proper to state briefly the reasons for our course of action. All we ask is an impartial hearing and we have a right to expect that no honorable man will cast any imputation upon us without first disproving the premises which we offer in justification.

That according to the prevailing sentiment we, as Democrats, are bound to regard the decisions of our conventions when fairly expressed, we do not pretend to deny; but on the other hand, no intelligent man will presume to say that we are bound by the expression of a convention of our party when that expression is obtained by fraudulent and dishonorable means. The Democratic convention held at Paris on the twenty-fifth of July last for the nomination of delegates was neither fairly called nor was its action marked with Democratic consistency. That the convention was got up in a clandestine manner, hurried to its consummation, and held at a season when the great body of the people of the county were in the midst of their harvest fields is a fact too generally known and admitted by the candid of the

party to need any proof at our hands. That the persons who were chiefly engaged in this underhanded movement have not now, nor ever have had the confidence of the party is a fact too notorious to need any further expositions. The Southport *Telegraph* of July 28, speaking of the convention, says: "The meeting was called too early; people had not yet thought of the matter, nor had they turned their minds at all to the selection of men they desired for candidates. It gave an opportunity for factions and cliques, in the absence of any consultation on the part of the people, to secure their ends, *and such we doubt not was the purpose of those who urged the committee to make the call.*"

In many of the towns the affair was so secretly and adroitly managed that scarce half a dozen ever heard of the call of the town caucus, thus defrauding the people of a voice in the selection of their delegates. But this is not all. The convention when assembled did not regard democratic principles in its action; it put in nomination those who for years have not been Democrats in practice, or even in profession. The *Telegraph,* remarking in relation to one of the nominees, says: "We might about as well have gone into the Whig or Abolition ranks and taken one of their number fresh and reeking." Others who were put in nomination by the convention have but little if any better claims to the suffrage of the Democratic party than the one described by the *Telegraph.* Yet with all these facts, which scarcely no one pretends to deny, we are told that the doings of the convention are binding upon every Democrat [and] who [ever] is unwilling to submit to such dictation is recreant to the party! Indeed, if the doctrine of some of our professed Democratic leaders be correct, any man, however immoral, unprincipled, or profligate, who can obtain an indorsement from a Democratic convention (no matter whether the convention was got up fraudulently or not) is henceforth to be considered good and true, and no one is allowed to speak of his vices or faults without incurring the charge of treason to the party. And so, too, if a Democratic convention

chooses to nominate a candidate who comes "reeking" from the ranks of another party, every member of the party is bound to pronounce him a Democrat, good and true, and never call his political consistency in question. We cannot subscribe to such slavish doctrines, nor recognize the principle that the party can do no wrong.

But we are told, if conventions are unfairly managed, the people are alone to blame, because it [is] to their business to attend the primary meeting and prevent unfair management. As well might it be said that the people are responsible for every theft that is committed by those who prowl about in the dark to do mischief. The truth is, the great body of the people have other employments than standing sentinels to watch the movements of those whose only business is political intrigue and chicanery. But we shall be asked, What do we gain by refusing to recognize as binding the doings of the Democratic convention, and by uniting with the other political creeds? We answer, in the first place, we deem it the duty of every honest man never to sanction a wrong, because by sanctioning a wrong we are guilty with the wrongdoers. The intrigue of getting up the convention of the twenty-fifth ult. was a gross wrong, and the action of the convention itself was a wrong, and if Democrats continue to countenance such wrongs then will such wrongs continue to multiply.

Will it be said the ticket nominated at the people's convention is comprised of opposite political creeds? The same may be said of the ticket nominated at the Democratic convention, if the authority which we have referred to may be relied upon.

We are frequently told by our Democratic friends that it is of vital importance to have a Democratic majority in the convention to form a state constitution, in order that our state constitution may have the full benefits of Democratic principles. However important it may be to have Democratic majorities in bodies elevated to power by the political votes of the people, we cannot see that it has any particular

application to the business of forming a state constitution. The convention is not expected to form a constitution for any political party, but for the whole people. Besides, who can tell what the views of the Democratic party are, in relation to the fundamental points which are to be embodied in the constitution? So far as we can judge from the sentiments put forth in the public prints by members of the party, there are almost every sort of opinions entertained. Some Democrats are for an elective judiciary, others are opposed. Some want the constitution should prohibit the legislature from granting bank charters; others want no such thing. Some want biennial legislative sessions; others oppose it. Some want the common law thrown away; others want to retain it. Some go for exempting a portion of real estate from seizure from debt; others go against it. Some want the lawyers should be a privileged profession; others want no exclusive privileges. Some want the state prohibited from contracting debts except for extraordinary emergencies; others want no such prohibition. Some want persons of color to be voters; others sneer at giving them such a privilege. And so of every question which enters into the formation of a state constitution; there is the same diversity of opinions among Democrats. Who, then, as we said before, will undertake to speak for the party, and say what are its doctrines in relation to the constitution? The Democrats of this county have put forth no sentiments; the candidates may be in favor of certain great measures which the people desire, or they may not; nobody can tell; every voter is in the dark. Such is not the case with the people's convention; that body put forth some essential principles which the candidates will be expected to carry out if elected.

But we ask again, Is the formation of a state constitution a party measure? Let us appeal to facts. The delegates now assembled to form a new constitution in the state of New York were, with few exceptions, elected on strict party grounds. That convention has now been in session three months; the only question in that convention which assumed

a party character was the election of its officers. It is an undeniable fact that, among the vast number of propositions that have been discussed and voted upon in that body, not one was discussed or voted upon on party grounds. Democrats have been arrayed against Democrats and Whigs against Whigs upon every important question pertaining to the constitution, which has for twelve years past been agitated in that body. In both of the conventions to form a constitution for Iowa scarcely a single question divided the convention on party grounds. The same is true of the late convention in Missouri, assembled to form a new constitution for that state. We say, then, there are no facts in the history of past conventions to form state constitutions which justify the assumption that it is so very important that there should be a political majority of our party in order to obtain a good constitution. The truth is, the most important matters in a constitution are not such as divide the great political parties of the day; the organization of the judiciary department of the government is by far the most important to the people. Yet who can tell what is the Democratic doctrine, or what the Whig doctrine, or what that of any other party, in relation to the arrangement or organization of the judiciary department? If the people have any particular wishes they desire to have carried out and incorporated into the constitution, their only safety is to ascertain the views of the candidates for whom they vote. To vote for a Whig or Democrat simply because he is a Whig or Democrat secures no definite feature in the constitution. None of the exciting questions which enter into national politics have anything to do with the formation of a state constitution. The subject of the tariff, the public lands, the sub-treasury, the Texas question, the Oregon question, the Mexican War, the army, the navy, etc., etc., are all entirely foreign to the business of framing a constitution for the state of Wisconsin.

To the facts and views which we have here presented we ask the unprejudiced attention of our Democratic friends.

If our statements are untrue and our positions unfairly taken, all we ask is that they be met and disproved by *facts* and *arguments*. Those who treat the positions we have taken only with denunciation or ridicule show the weakness of their cause, for if we are wrong the wrong should be shown by fair reasoning.

The constitution about to be framed for the state of Wisconsin is of vital interest to every citizen; the benefits it will confer or the evils it will inflict will probably last for many years to come. We entreat every voter for once to rise above the consideration of mere party names, especially as we have shown that *party* has nothing to do in the work. Let us for once hold the interests of our country dearer to ourselves and to our children than a mere political triumph. We are about to adopt a government for the whole people, where those of every party, sect, condition, or birth may enjoy its general blessings. Let us then discharge our duty as becomes freemen—unshackled by the mandates of political demagogues and party cliques, let us act independently, fearlessly, and honestly.

T. Newell,
J. R. Phelps,
B. M'Laughlin,
A. D. Loomis.

N. B. The above exposition of sentiments was written at the suggestion of Democrats in different parts of the county, and intended for their signatures; but, in consequence of the want of time to submit it to their approval before the paper publishing it goes to press, we are compelled to let it go abroad without being signed as intended. Under these circumstances, no one will be held responsible for the statements and sentiments put forth but ourselves.

TERRITORIAL CONVENTION

[September 26, 1846]

On Monday the fifth of October the convention will assemble at the capitol for the purpose of forming a constitution for the state of Wisconsin. The transactions of the convention will be of far greater moment to the people than any representative body which has ever been convened in the territory, or any which will probably be assembled for a number of years to come. The future destiny of Wisconsin, as relates to its political existence, and the character of its governmental institutions will be essentially controlled by the instrument which shall be framed and adopted as the charter of the people's rights. However imperfect or impolitic may have been our legislation since our territorial existence, it could not be productive of any lasting inconvenience for the reason that it was only temporary. The law-making power was exercised to subserve present wants and necessities; it was like attempts to patch and mend a garment of little value, and make it do until an entire new one should be obtained—until we should throw off our territorial habilaments, and pass from our minority to state independence. But the convention is to frame for us an instrument of a permanent and lasting character—an instrument which cannot be changed every year, as the convenience or good of the body politic may require. It is probable that nearly a quarter of a century will pass away before another convention will assemble to revise or make a new constitution.

The result of the convention, therefore, is one of surpassing importance, and we confess ourselves rather surprised that so little real interest appears to be manifested. Every taxpayer, every friend of good government, of morality and law has an interest of no small magnitude at stake. Previous to the meeting of the constitutional convention in the

state of New York, in some portions of the state a deep interest was awakened among the people; public meetings were held; the outlines of constitutional reform were discussed, and the people embodied their wishes by resolutions and other means; and it is noticeable that in those counties in New York, where the most free and frequent discussions were had, the delegates elected to the convention have exhibited the most strict adherence to the will of the people, and have thus far shown an unwavering determination to carry out those great measures of reform, which the people of that state seem to desire. That there are men in the New York convention who are misrepresenting the wishes of their constituents we most fully believe; if, however, their constituents had at the proper time taken measures to have expressed more fully and unequivocally their wishes, doubtless those members of the convention who falsely represent the people would have pursued a course more compatible with the trust confided to them.

In this territory but little discussion has been had, and no public meetings have been called for the express purpose of arriving at public sentiment in regard to the leading and essential features of the constitution. The views of not one in twenty of the delegates are known to their immediate constituents; and we doubt not but that a very considerable proportion of the delegates are unable to tell what their views are, relative to the prominent points in the constitution, for the substantial reason that they have none. Under these circumstances, it is impossible to predict a single feature of our prospective constitution. A few leading men will most likely have the fashioning of our organic structure, and upon their will, judgment, or caprice depends the result for good or evil. We hope for the best, yet we cannot avoid misgivings.

The convention of New York will doubtless have some influence upon the convention of Wisconsin; a large proportion of our own population, especially in the eastern counties, came from the Empire State; hence it is natural that

they should regard with partiality its institutions. We have seen much of the proceedings in the New York convention that we admire; many excellent things have been suggested in that body, as proper to be engrafted in the new constitution. But if we mistake not, among the good, we have discovered much that is bad. There are many high-minded men in that convention above reproach, but we believe that no impartial reader can have failed to discover much of the demagogue among some of its members. There are wire workers, who evidently design to fashion office and their emoluments to suit the convenience of political aspirants, whom the knowing ones have already designated to posts of favor. We know that such conduct seems almost incredible, but who that has observed the vacillating course pursued—the much talking to please the people, the adoption one day, and rejection the next, the making of flaming speeches in favor of reform, and yet voting quite the reverse—does not arrive at the opinion we have expressed?

Should influences of the kind we have named find their way into the convention of Wisconsin sufficiently to control its action, we believe the constitution framed will be promptly rejected, unless there is greater imbecility in the public mind than we have ever yet believed, or even suspected. Indeed, we cannot believe that the great body of the people will go for the adoption of the constitution as it may come from the hands of the convention, for better or for worse, if it contains radical defects; if it bears the impress of being fashioned more to suit the convenience of prospective officeholders than the people, let it never be riveted upon this young Republic. It is true the people can but ill afford the expense of another trial, but, rather than entail a radical mischief or a gross wrong upon the people for a whole generation, it would be far better to make a half dozen trials, regardless of the expense. It will perhaps be said that to anticipate or discuss events of this kind, and at this period, is entirely uncalled for; we think otherwise—it is always wise to prepare for evil, although it may

appear remote, so as to be well enabled to meet the emergency.

That the interests of the people will be greatly promoted by going into the Union cannot be questioned by anyone; and had Wisconsin become an independent state two years ago, our pecuniary condition would have been much better than it now is. That our expenses will be increased for a time, upon our taking on ourselves the responsibilities of government, must of course be expected; and such would be the result were we to defer the matter of state government for a dozen years to come. Give us a good constitution—a constitution that contemplates an economical government—prompt and impartial justice—no useless officers to be supported by the people—and the sooner we assume the attitude of a sovereign and independent state, the better.

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