THE GOVERNMENT OF THE AMERICAN PEOPLE

STRONG AND SCHAFER

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THE GOVERNMENT
OF THE
AMERICAN PEOPLE

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PREFACE

This book is a story of the development of government in America. The writers believe from experience and observation that there are four main reasons why books on Civil Government, for both the grammar grades and the high school, have proved unprofitable, and why there is such widespread complaint about the study of civil government in the schools. (1) The books used, with some exceptions, are too elementary in treatment, and so at once offend the sense of boys and girls; or, (2) they are made up of isolated topics which have no continuity and give no idea of government even in its simplest forms, and therefore fail to leave any impression as a whole upon the mind of the pupil; or, (3) they are practically mere analyses of the Constitution; or, (4) they are written in a style which makes necessary a large amount of interpretation in order that the pupil may understand the many unfamiliar terms and expressions. This book is written with the belief that pupils have the ability (which we often underrate) to understand and appropriate ideas of government if expressed mainly in terms to which they are accustomed and in a style that does not require interpreting. Especially is this true if the explanation of government is progressive and moves from the simpler to the more complex forms.

There are two things, therefore, that seem to the

writers most desirable, and even absolutely necessary. They are (1) that the story itself should have a decided continuity; (2) that the facts and forms of government should be connected in an unbroken narrative with those historical events upon which they depend, and without which it is impossible that they be rightly understood. These two requirements seem necessary for clearness and interest, and can be conformed to without subordinating the matters of government to the historical part of the narrative.

The book may be used for three classes of pupils: first, for those of the seventh and eighth grades in the grammar school, whose preparation requires mainly a reading book on government, to be supplemented by oral instruction; second, for pupils of the eighth or ninth grade, whose preparation calls for a study book, with the questions confined mainly to the text; and third, for those more advanced students whose preparation calls for a more philosophical study of the text, with the aid of references and a large use of the suggestive questions. According to the class he has to deal with, the teacher may make much or little of the opportunities in the book for study and outside reading. He may use one chapter merely for reading, and another for both reading and study, and another for more difficult and advanced work. This will be possible and profitable, because the continuity of the book is fairly complete and the progression of the story natural and easy.

Suggestive questions have been placed at the end of each series of chapters. They are for such classes and schools as use the book in grades where the pupils are advanced enough to do some independent thinking.

Teachers should observe caution in the use of these questions, and should be certain that their pupils are mature enough to warrant such use. Outlines of present forms of government will also be found at the end of each Part for the benefit of less advanced pupils. The use of the book as a mere reading exercise will be of great value. It will supplement the knowledge of American history already gained, and will attractively connect the growth of our government with historical facts already well understood by the student.

Those using the book for reading only may, if they find it best, dispense with the questions entirely, taking care to see that the pupils read intelligently and get some correct and lasting impressions as to the growth and character of our government. When used as a reading book it should be supplemented by oral instruction, which, when rightly used, will bring out the details of present government as far as pupils of the last years of the grammar schools are able to observe them.

Many of the details of present government which are often included in a book of this kind we have left to teachers and pupils to work out for themselves. As aids to this we have put in the questions and outlines as noted above. These details are the very things pupils can and ought to get for themselves, and we think it of great importance that they have this opportunity for independent thought and research.

Extended notes, bibliographies, and suggestions for teachers will be printed separately as a Teachers' Manual.

We are under many obligations to Dr. Joseph R. Wilson, principal of the Portland Academy, Portland,

Oregon; Professor H. B. Buckham, State Normal School, Monmouth, Oregon; and Mr. Walter H. Cushing, principal of the High School, Medford, Mass., for criticisms that have greatly aided in the revision of the manuscript. Dr. Henry D. Sheldon, assistant professor of philosophy and education in the University of Oregon, Superintendent Edward D. Ressler, of the public schools of Eugene, Oregon, and other Oregon teachers have given valuable suggestions. The suggestions and criticisms of the publishers of the book, and especially of Mr. M. W. Richardson, have been invaluable.

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THE GOVERNMENT OF THE AMERICAN PEOPLE

INTRODUCTION

Government a Growth. Governments, in their manner of growth, are much like plants. As the giant oak was once a tiny shoot with a few twigs and leaves, always in danger of being destroyed by some browsing animal, so the greatest nations had their small and uncertain beginnings. The growth of the tree is indicated year by year by a larger output of leaves and by the regular addition of new rings to its trunk; that of the nation, by the gradual enlargment of its boundaries and the constant increase in the things done to develop its resources.

Not only is there a similarity in the growth of trees and of nations from small beginnings to great results, but there is still another resemblance. We now know that in the course of long periods of time plants go through great changes in their general appearance, their form and structure. Thus in ages far remote, of which we have no records except those which the strata of the earth furnish us, the oak was not an oak, but an altogether different kind of plant. Very slowly, century by century, its form changed, its appearance and structure changed, until it became the tree which everybody recognizes as the oak.

Just so with the ideas, the customs and habits, which taken together form a political system. They have not been "struck off" by the skillful hand of man, nor have they been invented in their complete form by some cunning brain. They have simply grown by changing from one shape to another, little by little, until they appear at last in the form in which we know them.

This growth is somewhat like that of the language we speak or read, and in which all of our ideas on politics are expressed. We have some difficulty in understanding the writings of our ancestors of early colonial times. In studying the English writers of five hundred years ago we keep a special dictionary at hand to explain words used then which are not used now, or are used in a different way. When we get back a thousand years, to the time of King Alfred, the English language is not our English language at all. It is then Anglo-Saxon, which has to be learned from grammar and dictionary just as we learn German, French, or Latin. The differences between this language and our own are as great as those between modern English and modern Dutch or Swedish. In fact, the language used by the early Anglo-Saxons is just as closely related to modern Swedish or Dutch as it is to modern English, for the people who became Swedes and Dutchmen were, as we know, of the same race as the Angles and Saxons who were the ancestors of the English. And not only were they of the same race, but their original home was in the same place, that is, the country now occupied by the German Empire. In all of these forms of language, therefore, we find common elements, or, as the grammarians call them, "roots," from which the languages have grown by very slow changes.

The Germans. Taking our political system as a

whole, we may say that it has been inherited from the Englishmen who colonized America nearly three hundred years ago. To be sure, many others besides Englishmen have settled in this country since that time, but they have had only a very slight influence on the way in which the government has been carried on. Our plan of governing by towns and counties, especially, is directly connected with the plan of governing by towns and counties in England at the time when Englishmen first began to come to America.

But when we have traced our ideas of government thus far back we are not yet at the point of beginning, nor even as far as we can safely go. For we know that the English themselves inherited many of their ideas from the Angles and Saxons, who came into the Island of Britain (later England) more than a thousand years before. As we have seen, the early home of these people was in what is now Germany. Therefore we must go back to the gloomy forests of the Rhine and the Elbe to get a glimpse of the political life from which our system of government has grown.

By good fortune we are enabled to do this; for, a little more than eighteen hundred years ago, Tacitus, a Roman historian, wrote an account of these people of the woods and the marshes, to whom such great interest attaches to-day.

At that time nearly all the civilized people of the world were embraced within the boundaries of the great Roman Empire. It took in all the territory around the Mediterranean Sea and extended northward as far as the river Danube and the river Rhine. These two streams, rising near one another and flowing, one eastward and southward, the other northward and westward, made a nearly unbroken line extending from the Black Sea to the North Sea.

On one side of this line were cultivated fields, good dwellings, admirable roads, and large cities. In short, here was the home of the most advanced people of that time, who had a civilization not very different from our own. But on the other side of the line all was different. The country was wild, dark, cold, and forbidding. It was a land where the forests were as yet almost unbroken, except for occasional spots which were under a rude system of cultivation. There were no roads, no bridges across the streams, and no cities. The people who lived there were not civilized, but barbarous, somewhat as were the Indians of the Six Nations in what is now Central New York.

And yet these people, the early Germans, were our ancestors. Even in their barbarous state they had some of the personal and political traits for which their descendants have become justly famed. Among these were, especially, courage in war and the love of personal freedom. The German warriors were the terror of all their foes. Gathered round some chosen leader they often attacked the Romans for the sake of the plunder which Roman lands and cities afforded. The Roman soldiers noted the huge size of these barbarians and had good reason to dread the fierceness of their onset, because the Germans always fought for victory. Even Cæsar had a good deal of trouble with them fifty years before Christ. As time went on and the German tribes became more united, the difficulties of the Romans increased. It became harder and harder to keep the Germans from breaking into the Empire to rob and plunder, or to settle down upon the well tilled lands which were so much more fruitful than their own. At last they actually conquered the Roman Empire, which up to that time had ruled the world.

The Political System of the Germans. We have said that we get our ideas of government from the early Germans. What are these ideas?[1] At first sight this barbarous people hardly seems to have had a political system, and yet the beginnings were there. Every German, like every American Indian, belonged to some tribe.[2] As the Indians were Sioux, Mohawks, or Cherokees, so the Germans were Goths, Lombards, or Vandals. A tribe was simply a number of people speaking the same dialect and having some idea of blood relationship. They did not live all together in a compact territory, but were scattered over a large tract of country, just as the Indians were. Like them, too, they lived in groups. Those who were very closely related by blood formed a village, and this broke the tribe up into a number of somewhat separate parts. Looked at in another way, therefore, the tribe may be said to have been made up of a considerable number of villages whose inhabitants were closely related by blood. These villages were really more important in some ways than the tribe itself, for here the people lived close together and had to make exact rules to govern their relations to one another. The German village was probably a row or two of rudely built huts, each hut having a small plot of ground about it. This land belonged to the household itself, to be used as the members saw fit. Outside of the village was a large field, which, unlike the house lots, was used by the villagers *in common.* That is to say, no individual man owned any part of it absolutely, but each head of a family received a strip or several

[1] See Stubbs, *Constitutional History of England*, i., chapter ii.

[2] On the political arrangements of the barbarous Indians, which closely resemble those of the Germans, see Fiske's *History of the United States*, pp. 4–7.

strips each spring to cultivate during the summer. The next year another distribution would be made by lot, no man perhaps securing the same strips of field two years in succession. This is the kind of primitive farming arrangements which has received the name of "the common field system." It remained in use in some form for a very long period. Even now, in some parts of England and of Germany, there are traces of it in the ridges which at one time made the boundaries between these strips in the common fields.

The early Germans, however, were much more interested in raising cattle and sheep than they were in tilling the soil. Therefore each village had a large tract of waste land or woodland, which was used as a common pasture by all of the villagers. Here some one of their number herded the cows and sheep belonging to them all, doubtless receiving food from them in payment for the work. Thus there were three kinds of land, so far as the rights of an individual in it were concerned: the house lot which was his own, the common field in which he drew his strips each year, and the waste or pasture into which he turned his cattle with those of his neighbors and kinsmen. This was a rather complex system, requiring a good deal of regulation, and therefore some kind of government was absolutely necessary. It was also needed to settle disputes between individuals, to punish offenders, and in general to keep the affairs of the village from falling into disorder.

For these purposes the villagers made their own government. We do not know the details of it, but it is supposed that the freemen came together each spring, perhaps under a sacred tree, and there allotted to each man his strips of field, made rules about the number of cattle and sheep each family could turn into the wood-

land and pasture, punished the less serious crimes, admitted new members to the village, etc. In fact, this village gathering of our Germanic ancestors was a good deal like a New England town meeting, with which it is often compared. Thus the villagers lived together and attended to their own local needs.

But we have not forgotten that they were also members of a tribe. Matters of common interest to all the villages, such as wars with neighboring people, had to be settled by a government which could act for the whole tribe. Here again the Germans showed their love for self-government by each man taking a personal part in the tribal assembly. At an appointed time, new moon or full moon, all who were old enough to bear arms would get together at some central place. They always came armed with the regular weapons of warfare, the spear and the shield. In the assembly one man had just as good a right to speak as another, and when any one spoke in such a way as to please his hearers they applauded by striking their shields with their spears.

In these assemblies some tribes elected kings, and all chose officers called princes, to govern over a smaller division called the *canton*, which was a sort of halfway house between the village and the tribe. The assemblies also acted as courts of justice, and issued orders for the hanging of traitors and the smothering of cowards in the mire. Each canton had also a court in which the freemen took part. Hence the Germanic system of government was made up of three parts, the village, the canton, and the tribe. The village was much like our township, because all had a part in the government; the canton a little like our county, and the tribe in some ways like our state, or like a small independent nation.

The Political System of the Germans as modified

by the Settlers in Britain. As we already know, the Island of Britain, now England, was conquered by certain German tribes (Angles, Saxons, and Jutes) in 449 A. D. That is to say, in that year a band of German warriors, crossing over in ships, landed near London and began to conquer the country. As time went on, more and more Germans came, each band with its leader, and continued the warfare until the Celts, as the natives were called, had been either slaughtered or driven into the fastnesses of the mountains. This was accomplished by about the year 600 A. D.

Now these warlike bands, coming over usually with their wives and children, and sometimes bringing their cattle too, naturally wished to settle upon the land they conquered. In doing so, what plan would they follow? There can be but one answer. They would do as people always do, — follow the plan they were used to. The closely related families grouped together and got permission to settle in some spot which they liked. Here appeared the village,[1] with its rows of huts and its house lots, the common field near by, and the meadow, pasture, and woodland at a distance. Here too was reproduced the Germanic village government by all the freemen uniting together. In like manner the tribal assembly and the court of the canton appeared in England. There was, however, a change of names. The village was now called the *township* (tunscipe),[2] and the canton was known as the *hundred.* This name may have been derived from the fact that the district called the hundred furnished a hundred armed men when the tribe engaged in war.

[1] For the reproduction of the Germanic village in England see Green, *Short History of the English People*, pp. 1–4.

[2] So called from the "tun," or hedge surrounding the village.

The tribal assembly became the *shire court*, and this change requires a word of explanation. In the course of the fighting against the Celts, the tribes had seen the need of having a single ruler, who should hold office steadily during a number of years. Therefore they chose kings, and allowed them to become life rulers. In this manner the conquering tribes became small local kingdoms, each independent of all the others. When, about 600 A. D., the tribes or kingdoms got through fighting the Celts, they naturally fell to fighting one another. Of course they were not all of equal strength, and the result was that the weaker ones lost their independence and became parts of the stronger kingdoms which had overpowered them. Finally these larger kingdoms warred among themselves until but one was left, and that now included all the rest.

What then became of the earlier kingdoms? Were they entirely destroyed? Not at all. They were allowed to remain as subordinate parts of the larger kingdom, with local governments of their own, but with certain officers who were responsible to the king of the whole country, the ruler of England. The name *shire*, meaning "share" of the larger kingdom, was given to such divisions. Afterwards they were often called counties. By this name we shall speak of them henceforth.

The Rise of Representative Government. We have said that the old Germanic system of government by three divisions, village, canton, and tribe, reappeared in England in the form of township, hundred, and county. But a difference in the method of carrying on the government of the last two gradually came in. All the freemen met in the town meeting, just as they did in the village meeting in Germany; but they did not all attend the hundred court or the county court. Instead,

each township sent its representatives, consisting of the reeve, or head officer, the parish priest, and four "best men," which probably means leading men of the township. These attended both the hundred court and the county court. Other freemen had a right to attend the county court if they chose to do so.

We see, therefore, that in England, as among the early Germans, there was local self-government, but it was in some measure representative. We see, also, that another part has been added to the system. The Germans had three parts, beginning with the village and ending with the tribe; the English had four, beginning with the township and ending with the government of the nation. This national government was made up of the king and a body of men who at first helped the king to make laws. It was called the Witan, or council of "wise men," and included usually the king's great officers, the head men of the church, such as bishops and archbishops, and the head men or aldermen of the county. The common freemen did not get as far as the national government. They were represented in the county court, and might attend it in person if they chose. But they got no higher than the county court. Here was a great danger and difficulty. How could men preserve their rights as freemen if they had no influence in the national government which made the laws and managed the most important affairs?

Extension of the Representative Idea. The way in which this question was settled by the English people has been a great lesson to all nations. They simply extended the idea of representation, with which they were familiar in their local governments, so as to give them a part in national affairs as well. Men chosen by these local governments at last made up one house in

the Parliament, and that house (the House of Commons) had most to do with matters of taxation. The people then had hold of the purse-strings of the nation, and by managing them wisely they could keep the king pretty completely under their control. For no nation can get along without money to pay its expenses, and those who control the supply of money will, in the long run, control the government. This result was not reached at once. It took centuries of time and a constant and determined effort to enable the freemen to win the right to control taxation. The story of that struggle makes up a considerable part of the political history of England, and we can only give a few hints to show how the process was carried on.

In the first place we have to remember that, following the custom of the early Germans, the people of the English townships and counties had the right to lay taxes upon themselves. When the king wanted money he would have the sheriff of the county make arrangements for it with the representatives of the people, who got together in the county court. Sometimes he sent a special officer to make such arrangements. The important point in this whole matter is that the property of Englishmen could not be taken from them, even by the king, without their having something to say about it themselves. As time went on and the needs of the king grew greater, there was a strong effort to tax the people in new and burdensome ways. A part of the people were lords or barons, who, as individuals, had the right to consent to taxes levied upon them. But kings violated this right whenever they could do so with safety. Finally, in 1215 the barons made war upon King John and compelled him to sign the Great Charter,[1]

[1] See Green, *Short History*, chapter iii.

by which he definitely gave up the right to tax them (except for three special purposes) without their consent.

For the purpose of giving this consent the king was to call all the barons, including the heads of the church, to a common council of the kingdom. This body, which was not new, but was now definitely established, became the House of Lords in the English Parliament. Before the end of the century (1295) the House of Commons, of which we have already spoken, was added. It was made up of two classes, members elected to represent the counties, and other members chosen from the boroughs or towns.

One reason why King Edward the First (in 1295) called these classes to the common council or Parliament was that this was the most convenient way of laying taxes upon the people. Instead of sending a justice or other officer to the county court to bargain with the people of the county and the towns as to how much money they were willing to raise for the king, he now had them send men to London to talk with him personally about the matter. In this way the king could probably make a better bargain, and at any rate the method was a much more convenient one. King Edward the First did not suspect that this body of men would finally control the government through their right to consent to taxation, but that is exactly what happened.

Other Forms of Representation. These men, the knights of the shires and burgesses of the towns, represented the entire population of the county or the town which elected them. This shows how the representative idea worked up through the entire system. Other forms of it grew up in England, some of which are of

the greatest interest to Americans. One of these is the jury.[1] It arose during the twelfth and thirteenth centuries, in some such way as this: the local townships and hundreds were held responsible for all crimes committed within their boundaries. In 1166, the king[2] ordered that four men of each township and twelve men of each hundred should hunt out all law-breakers in their townships and hundreds, and bring them before the judge to be tried for their crimes. This was the beginning of the grand jury, which hears charges against a man, and if the charges are thought to be true *presents* him for trial, or "indicts" him. The trial now takes place before another body of men, always twelve in number, called the trial jury or petit jury. This jury system, which is considered one of the greatest safeguards of personal liberty, grew up in England long before the colonists began to come to America. Since the juries were supposed to act in place of the communities which chose them, we see that this is simply another form of representation.

Local Governments about 1600. We are now ready to take a glance at the English system of local government as it was about the time that America began to be settled by Englishmen. Many changes had occurred in the thousand years since the Saxons brought in the Germanic township, hundred, and county; and yet to a surprising extent the old principles of government remained.[3]

The old township had generally been succeeded by

[1] On the jury as a form of representation, see Taylor, *Origin and Growth of the English Constitution*, i. 202–207.

[2] Henry II. (1135–1189). His reign is notable for the great political reforms brought about by him.

[3] Taylor, ii. 183–194.

the parish,[1] which was originally the district of a priest, and had a meeting for the management of church affairs only. But as time passed the old free townships came more and more under the control of the lords, and lost their right of managing their own affairs. Afterwards the parish, which occupied the same territory as the older township, gradually acquired the right, and was given the duty, of attending to many of the public matters that the township had once looked after.

The hundred had long since dropped out or had become merely the name of a geographical division of the county. There remained the towns or boroughs and the counties. The boroughs grew up mainly after the Saxon conquest, often on the lands of some great lord, of the king, or of the church. After a while, as trade grew, they became wealthy, and then they bought off the lord's right of governing them and had self-government. Sometimes the kings granted them charters giving certain specified rights. But self-government in the towns did not mean that all the townsmen had a right to take part in the management of public affairs. In fact, power came to be confined to a very few who made up what was called "the corporation." It usually contained a mayor, recorder, aldermen, and common councilmen. These men had the right to govern the town, and usually to choose the representatives to Parliament.

The county government had changed very greatly.

[1] When the Roman church was organized in England, during the seventh century, the lowest church officer, the priest, was placed over a district which usually had the same boundaries as the Anglo-Saxon township. The men of the township, then, were members of the parish church. By and by the political townships were generally changed to manors; but these men still made up the parish church, and they managed its affairs by means of a parish meeting, *i. e.*, popular assembly.

Instead of the old county court, in which representatives of the townships and hundreds managed the business affairs of the county and made up a court of justice, there was now a court of "quarter sessions." It was made up of a number of "justices of the peace," who were appointed by the king. This court managed the affairs of the county, and tried a large class of cases and minor offenses. It was a legislature, an executive, and a judiciary all in one. The sheriff was under the orders of the justices and carried out their decrees. The justices were usually wealthy landholders, and had great social and political importance. Their public duties were so varied that they have been called the "statesmen of all work." About the only remaining reason for the meeting of the old county court was the election of members of Parliament, and in such cases the sheriff presided over the meeting.

We see, therefore, that county government in England, when the colonists began to come to America, was far from being democratic. There was only one popular assembly in the entire system, and that was the vestry or meeting of the parish.[1] It elected church wardens, who were a kind of board of supervisors; it also chose overseers of the poor, a constable, and several waymen, or road overseers. It discussed local affairs and levied taxes for the support of the church, the repair of roads, and the care of the poor.

SUMMARY

Governments grow as naturally as do plants. They also change in form and character in much the same way. The change is very slow and gradual, like that which takes place in a language.

[1] Sometimes this also was in the hands of a few men.

American ideas of government came directly from the English colonists; but the English people had derived them in part from the early Germans. The Germans, as described by Tacitus, had a political system which embraced three parts: (*a*) the village, (*b*) the canton, (*c*) the tribe. The idea of self-government was strongly developed among them.

When certain of these German tribes conquered Britain, 449 to 600 A. D., they set up a similar political system there. The German village became the early English township, the canton became the hundred, and the tribe became the shire or county. The people still managed their local affairs in the town-meeting, the hundred court, and the shire or county court. But they did this partly by means of *representation*. Townships sent representatives to the hundred court and the county court. The jury was another form of representation, used in judicial matters.

In time the idea of representation was extended to the national government, the counties and boroughs sending men to Parliament to look after their interests. These men, who made up the House of Commons, gained great power in the government because they had the right to determine what taxes should be paid by the people for the support of the king and the government.

England therefore had a liberal form of government, in which the people had many rights and privileges. These ideas of government were carried to the American colonies by the English settlers. They also brought over the forms of local government to which they were accustomed. These were: (*a*) the county, with its court of appointed justices; (*b*) the borough, governed by a corporation; (*c*) the parish, which had a popular assembly for both church and local political matters.

CHAPTER I

LOCAL GOVERNMENT IN VIRGINIA AND MASSACHUSETTS

The First English Colonies.[1] In the year 1607 a company of Englishmen settled at Jamestown in Virginia. For a few years there was a struggle to keep the settlement alive, but after that the colony began to prosper, and many people came from England to cast in their lot with the Virginians. New settlements were planted further up the James River and on the neighboring streams; tobacco raising soon began, and every one was hopeful.

By 1620 another group of Englishmen were establishing themselves at Plymouth on Cape Cod. They were the "Pilgrims," who, finding life hard and the outlook for themselves and their children very dark in Holland, were seeking homes on the shores of America. Ten years later, 1630, a large body of English Puritans arrived at Massachusetts Bay. With their coming began the rapid settlement of New England. From Massachusetts as a centre, colonists went to Connecticut, Rhode Island, and New Hampshire. Thus we have the beginnings of American colonization in the South and in the North.

The Colonists bring English Institutions. We know that men cannot break suddenly with their past. As they are accustomed to think and act, so they will con-

[1] On the planting of the Virginia colony, see Fiske, *History of the United States*, pp. 67–70; on New England, *Ib.* pp. 88–97.

tinue to think and act, unless some unusual conditions force them into new paths. So it came about that the English ideas of local government were transplanted to the James River and Massachusetts Bay.

We have seen what these ideas were, and what were the parts of the local system. There was first the county, with its justices of the peace, its sheriff, its court of quarter sessions, and a "county court" for choosing members of Parliament. Below the county was the parish, which had church wardens, overseers of the poor, a constable, and waymen to care for the roads. It had the only democratic assembly of the time in its parish meeting or vestry, where the people imposed taxes upon themselves, chose officers by vote, and discussed local affairs. These, with the borough or town government, were the elements which entered into the American system.

A Colony resembles a County. When men from England settled in Virginia or in Massachusetts, they still thought of themselves as Englishmen, and looked upon their colony as a part of England, although it was a little hard to tell just what kind of a part it made. The local division which the colony most nearly resembled was the county. Therefore, while they were small in extent, each colony looked upon itself as a sort of transplanted English county, an American Yorkshire, Suffolk, or Middlesex. In fact, Captain John Mason, the proprietor of New Hampshire, called his territory, "My county of New Hampshire in New England."

The government of the colony was most like the English county government. It had its general court, which in several colonies was at first attended by all the freemen ; it also had justices appointed by the governor. The court held by them was sometimes called the "quar-

ter sessions." But when the people became numerous and extended over a large area, it was inconvenient for them to attend the general court, and then the colony was divided into several parts. A court was now held in each of these divisions, which, following the English custom, were called counties. By and by the counties bore some such relation to the colonial government as the English county bore to the government of the kingdom.

In both Massachusetts and Virginia there were local divisions smaller than the county, which went by various names, such as plantations, townships, or towns in Massachusetts; boroughs, plantations, or cities in Virginia. When in 1619 a general assembly was held in Virginia, the members were chosen from "boroughs," and the assembly itself took the name, "House of Burgesses." It seems, therefore, that the Virginia people expected to have real towns in their colony.

Virginia a Planting Colony.[1] In spite of the expectations of the early colonists, who planted what they called a "city" in every great bend of James River, towns refused to grow on Virginia soil. It grew tobacco magnificently, but tobacco culture drew the people apart on large plantations, thus spreading the population thinly over a large territory. At one time, we are told, the tobacco-planting craze went so far that the streets of Williamsburg, the colonial capital, were set with rows of the precious weed. People did not care to live in towns. The soil was rich, the climate mild, and every one tried to get plenty of land and make money.

The Virginia planters had the same kind of church

[1] On the beginnings and effects of tobacco culture in Virginia, see Fiske, *Old Virginia and Her Neighbours*, i. 174–177; also 230, 231.

organization that they were used to in England, but on account of this scattering of the population it was impossible to have the kind of parish meetings that the people of the English villages had. There the parish was very small in area; in Virginia, where a tract of a thousand acres often had but a single family upon it, the parishes were necessarily very large. They were often of the same extent as the counties, and for this reason a general meeting of the parishioners could not be held. In place of such a democratic assembly for the management of parish affairs, the Virginia parish chose its vestrymen once for all, and placed practically complete power in their hands. The vestrymen taxed the people for the support of the church, kept the building in repair, provided for the rector, and filled vacancies in their own number. Some minor political matters, such as overseeing the poor, were also cared for by the parish officers. This was, of course, the very opposite of democracy, for the vestrymen held office for life, and their successors even then were not chosen by the people, but by the remaining members of the vestry. In this respect the Virginia parishes resembled many of the English boroughs.

The Virginia County Government. The county was governed in the early time by a court of eight justices appointed by the governor. A sheriff and a county lieutenant, afterwards called colonel, were also appointed by the governor. The county court met once a month. It tried all ordinary suits and all criminal cases not of the most serious character. Patrick Henry's famous speech in the "Parson's cause" was made before the county court of Hanover County. His father was at the time one of the justices and had previously been the colonel of the county militia. This court also

levied taxes, provided for roads and bridges, appointed surveyors or overseers of highways and marked off their districts, appointed constables, made ferry rates, voted bounty on wolf scalps, granted licenses, admitted attorneys to practice, etc. It was the governing power of the county.

In all these respects the county court was almost exactly like the English court of quarter sessions, except that it met oftener. There was, however, a meeting of the freemen of the county once a year for the election of burgesses. This was like the English county court in which the voters met for the purpose of electing members of Parliament. In Virginia, as in England, such meetings were presided over by the sheriff.

Conditions in Massachusetts. We must now return to the northern colony, where a very different system grew up. Conditions in Massachusetts were as favorable to the growth of towns as those in Virginia were unfavorable. In the first place the settlers came as church congregations.[1] They wished to settle close together in order to attend the same church. So they bought or took land, not as individuals, but as organized companies. Then, too, the soil and the climate were both against extensive farming. Each family was satisfied with a few acres, and therefore the entire congregation was able to group itself compactly around the church as a centre. As time went on a considerable number of such groups was to be found in Massachusetts and the other northern colonies. This was the origin of the New England townships. We see at once that they were very much like the parishes in England. Like them they took care of church matters; like them

[1] See on this topic Bryce, *American Commonwealth*, edition of 1894, i. 590, 591.

they also had a number of things to do which did not strictly pertain to the church, but were political in their nature.

Township Government. Since these little communities were separated from others of the same kind, and since the general court was far away and the quarter sessions court likewise, it came about naturally that they managed their political affairs almost as completely as their church affairs. For this purpose they held an "annual town meeting,"[1] in March, which was attended by the freemen. In this meeting all matters relating to the welfare of the townsmen were discussed and determined upon. Taxes were levied for almost every imaginable purpose, from the payment of the minister and schoolmaster to a bounty for killing a wolf. Selectmen were chosen, three, five, or seven[2] in number, who had general charge of town affairs during the year and could call special meetings. Among their duties were the care of the poor, the oversight of schools, and the laying out and care of roads. In the numerous cases where the town became a populous place, like Boston, the selectmen actually performed the duties of a city government.

Next in importance to the selectmen was the town clerk. He kept a record of all town meetings, and also of such important matters as births, deaths, and marriages. These town records have often been preserved without a break for nearly three hundred years. Many New England towns have recently published them, to the great advantage of historical study. In their pages the student can see the tract of wild land become the home of industrious farmers; the farms divide up into village lots; the village become an important town, and

[1] See Bryce, i. 594-598. [2] Boston had nine.

the town grow into a great modern city, like Boston, Worcester, or Springfield.

Some of the other officers of the town were the treasurer, who collected and paid out all town moneys; the assessor, who made lists of the property for purposes of taxation; the surveyors of highways, or road supervisors; the clerk of the market, who enforced all market regulations; the fence-viewer, who saw to it that all fences were of the required height and strength to keep out stock; and the pound-keeper, whose business it was to take up stray animals.

Antiquity of the Town Meeting. The early New England township was usually a village. Its inhabitants were related, not by blood, but by church fellowship. Therefore it was very much like the groups of families which dwelt in the villages of the early Germans and of the Anglo-Saxons in England. The similarity does not stop here. Some of the earliest New England towns actually had common fields, and many of them had a common pasture and woodland. In these "commons," some of which remain to this day as city parks, the villagers pastured their cows and fattened[1] their pigs, as did our ancestors of two thousand years ago.

The Massachusetts County. It is clear from what has been said of the importance of the townships that comparatively little work remained for the county government in Massachusetts. Counties were mainly useful as districts of convenient size for the management of the courts and the militia, something like the hundreds in early England and the cantons among the Germans. It was to bring the court nearer to the people that the counties were formed in the first place. In early times the county had its quarter sessions, which

[1] On the "mast" or fall of acorns, etc.

had judicial powers similar to those of the Virginia county court. It also performed certain other duties, such as licensing ferries and houses of entertainment, regulating tolls, and laying out county roads. The county government of Massachusetts was therefore not far different in origin from that of Virginia. But a difference grew up with the great activity of the towns, which drew to themselves an increasing share of the local business. Notwithstanding their similarity in origin, the systems of Virginia and Massachusetts, as finally fixed by custom and use, were radically different. This fact has become prominent in the course of the last century. With the westward march of American institutions there is a constant reappearance of these two types of local government.

SUMMARY

England planted her first American colony at Jamestown in 1607. Another colony was begun at Plymouth in 1620, and one at Massachusetts Bay about 1630. Other colonies followed. The colonists came with English ideas of government in mind; and they established the English system of local government by counties and parishes (or townships) in each colony, so far as local conditions would permit. But conditions differed in the different colonies. In Virginia, on account of tobacco culture, the people were very much scattered, and it was difficult to have parish meetings. So the business of local government was mainly in the hands of the county court, which was made up of justices appointed by the governor of the colony.

In Massachusetts the people settled as church congregations and formed villages or townships. These townships had almost complete self-government, but were grouped into counties mainly for judicial and military reasons.

CHAPTER II

EXPANSION OF AMERICAN INSTITUTIONS

Influence of Virginia and New England on the Other Colonies. We have seen that the form of local government adopted by the people of New England was the township form, while that of Virginia was the county form. It was only natural that as the other colonies were planted and grew up in the neighborhood of New England or of Virginia they should be more or less influenced by these systems. We know that Virginians, for example, had much to do with the early history of the Carolinas, for many Virginia people had settled in that country even before the Carolina colonies were legally formed. Virginia also had a good deal of influence on the growth of Maryland.

Likewise New England people removed early to New York, New Jersey, and Pennsylvania, and it is certain that many of the ideas on local government which are found in these states were derived from the "Yankees."

As a result the southern states of the Atlantic group all have something like the Virginia system of county government, while the northern states have a system which is generally much more like that of New England. Thus when the great westward movement began, there were two distinct forms of local government which the settlers carried with them into the wilderness. Those from the South took with them the Virginia county, and its government by a few officers; those

from the North carried the New England township and the town meeting.

These facts might not have had so much importance if there had been a general mingling of people of the two sections in the new states. But as a matter of fact, American expansion has taken place, not from the eastern states as a whole, but from the South as a section and the North as a section.

Expansion of the South Westward. During colonial times the people of Virginia and the South pushed gradually up the rivers which have their sources in the Blue Ridge Mountains. Then they took possession of the great valley between the Blue Ridge and the Alleghanies. George Washington as a young man spent much of his time surveying lands in this region, which was then the "far West." Finally, just before the Revolution Daniel Boone and other pioneers from Virginia and North Carolina crossed over to Kentucky.[1] These were the first real settlers west of the Alleghany Mountains. They were attracted by the beauty of the country, the abundance of wild game, and the fertility of the soil. These causes continued to draw the restless American on and on, till the Great River was reached and crossed, the prairies were left behind, the mountains conquered, and the rich valleys of the Pacific won for the Union and for civilization.

Kentucky became a state in 1792, and Tennessee in 1796. The more southerly territory was found to be the best kind of cotton land, and the raising of cotton now became almost as much of a craze as tobacco planting was in early Virginia. Alabama, Mississippi, and Louisiana therefore soon filled up with settlers, and were added to the list of states. In 1821 Missouri, away

[1] See Roosevelt, *The Winning of the West*, i. 26, 27; also ch. xi.

out upon the Indian frontier, was added, and yet the demand for good cotton land was not supplied. Off to the southwest lay Texas, which was originally a colony of Mexico. It was known to have a great area of excellent land. So the southern planters sold or abandoned their wornout fields in the older states, and with caravans of wagons, droves of cattle, and bands of negro slaves emigrated to Texas. Soon there was a rebellion, in which Texas secured its independence of Mexico, and in 1845 this great state was admitted into the Union.

From the frontiers of Missouri went forth the trains of emigrants who between 1830 and 1850 settled Oregon and California.

Expansion of the North Westward. After the close of the Revolutionary War many New England people were anxious to find new homes on the free lands of the West. They organized companies, bought from Congress large tracts in the Ohio country, and started a general emigration. Ohio soon became a state. After the war of 1812 the number of emigrants increased very rapidly, so that Indiana and Illinois, settled partly from the South but principally from the North, were both admitted to the Union before 1820. Then the New Englanders pushed northward into Michigan and Wisconsin, and crossed the Mississippi into Iowa and Minnesota. All of these states in turn had a part in the settlement of the great prairie region of Nebraska, Kansas, and the Dakotas. The northern movement, like the southern, crossed the continent, leaving its trace in the names of places planted in its course.

Westward Extension of Northern and Southern Institutions. These two movements, from the South and from the North, were essentially the same in character. They were genuine expansions of society. But

the institutions of these two expanding societies differed greatly, and these differences reappeared in the new states. Especially is this true with respect to the forms of local government. In Kentucky, Tennessee, and the other southwestern states we find the county form; in Ohio, Illinois, Michigan, and Wisconsin the township form prevails.

SUMMARY

The system of local government planted in Virginia influenced the other southern colonies, which generally developed the county form. The Massachusetts system influenced the other northern colonies, so that they developed the township form.

As population increased, people from the old South moved westward and settled the new southern states; and in like manner people from the old North settled the new northern states. These two movements continued until the continent had been crossed.

The new states settled from the South developed the county form of local government; the new states settled from the North generally developed the township form.

CHAPTER III

THE COUNTY SYSTEM IN THE WEST

An Oregon County. The way in which the emigrating people carried their institutions with them is well illustrated in the case of Oregon. Her pioneers were mainly from the southwestern states. They came from Missouri, and from Kentucky and Tennessee. At home they were used to some form of the Virginia county government. So when they established themselves in the Willamette Valley they set up that system there, three thousand miles from the place of its birth.

These points can be made clear by an example. The first term of the commissioners' court for Lane County began September 6, 1852, but no work was done till the 8th. There were two commissioners at first, and afterwards three. Their first act was to determine which of them should have the three years and which the two years' term, and apparently they drew lots for this purpose.

Next they "Ordered, . . . that all courts of record in and for said county be held at Eugene City in said county." Now the regular business of the court began. A petition of twelve householders was received, "praying for the location of a county road" from a certain place to a certain place. "Court ordered a road according to the prayer of said petition, and appointed the following named persons commissioners to locate said road." "Ordered a license to be granted to —— to

keep a grocery in Lane County for one year." "Ordered the issuing of orders on the treasury for the payment of the court and its officers." Attested by ——, Clerk.

At the next session "viewers" were appointed to inspect a road which had been petitioned for; election precincts were established; justices of the peace were appointed, and their precincts determined. The court "laid off the township in the Forks of the Willamette into three road districts." They were numbered 1, 2, and 3, and a road supervisor was appointed for each. A grand jury of twenty-three men was appointed for the next term of the district court, and two petit juries of twelve men were named for the same occasion. It will be remembered that the grand jury had the duty of presenting persons for trial, and the other jury tried them and brought in verdicts of "guilty" or "not guilty."

We will simply indicate some of the kinds of business that came before this court at its sessions during the next eight or ten years. In number of pages the road business is far in the lead. At every session numerous petitions were received for making new roads or changing old ones; viewers were appointed, and the reports of those previously appointed were received. Ferries required much attention. Licenses were granted to individuals to run ferries at various points on the Willamette. Sometimes the petition of one man was met by a protest from a ferryman whose business was threatened by the new venture, and the court had to decide between the two. Ferry tolls were adopted; so much for a team and wagon, so much for a horse, a cow, a pig, a sheep, etc.

The court created the first school districts; it appointed the county superintendent, at least in the

numerous cases of vacancy, and voted money for the support of common schools. It levied all taxes; it required bonds of the treasurer and other officers; it took care of the property of widows and orphans. It provided asylums for the insane and support for the paupers of the county, received grants of land for a town site, ordered the town platted, sold lots, laid out a court-house square, and built a court house.

The principal officer of the court was the county clerk, who kept its records and issued all papers required by its orders. He also recorded all deeds, mortgages, and other instruments.

Examination of the court records convinces one that the actual government of the county at this early time was in the hands of the three men who composed the commissioners' court.

The Present County Government in Oregon.[1] **Commissioners' Court.** The system is nearly the same now as it was in the earlier years referred to. There is first the commissioners' court, composed of two commissioners, chosen at large by the voters of the county, and the county judge chosen in the same way. This court has all the legislative power exercised by the county, a power greater in amount than that exercised by the county boards in states like Wisconsin, Iowa, and Nebraska, because there are no townships in Oregon.

The County Judge. Besides being the presiding officer of the commissioners' court when in session, the county judge holds separate judicial sessions. His business is of two kinds, ordinary civil business and probate business.

[1] This description also has reference to Lane County. There are slight local differences, owing to differences in population, etc.

As probate judge he has special charge of the estates of deceased persons, proving wills, appointing administrators in cases where persons dying leave no will, settling the claims of creditors, and caring for the interests of widows and orphans.

In civil matters the county judge has power to try cases involving not more than $500. Very few cases of any importance come before him, for parties to a suit prefer to wait for the session of the circuit court, to which the case is always likely to be taken on appeal if first brought before the county court. Much expense may be saved by bringing the case into the circuit court at once. However, many minor cases are finally disposed of by the county court, greatly to the convenience of the parties concerned. The county judge has no jurisdiction in criminal cases, but may issue warrants for the arrest of suspected persons and bind them over to appear before the grand jury. Aside from these he has various other duties, in part as the representative of the commissioners' court and in part as the chief permanent judicial officer of the county.

The Sheriff is the highest police officer and sees that the "majesty of the law" is upheld throughout the county. He commands men to keep the peace, arrests disturbers and criminals, or suspected persons, takes care of prisoners, and executes the sentence of the court upon convicts. He must put down riots, and has the power to call upon all able-bodied men of the county (except members of the militia) for that purpose. If this force is insufficient he may call upon the governor of the state for military aid.

The sheriff also executes the decrees of the county and circuit courts respecting attachments for debt, sale

of the property of bankrupts, etc. He is also the collector of taxes.[1]

The County Treasurer receives the moneys belonging to the county and cares for them, paying claims against the county on warrants issued by the county clerk. He has no part in the collection of taxes, as he has in most of the states.

The first thing to be done when a tax is to be raised is to get a complete list of the property upon which it is to be levied, with the value of each item. This list is made by the county assessor. Since he cannot visit all the property owners of the county within the time he has to make his return, he appoints a deputy for each election precinct, to do this part of the work. The assessor then makes up his completed list from the separate returns.

The School Superintendent. One of the most important of the county officers is the school superintendent, who has general oversight of the common schools. He has the duty of examining and issuing certificates to teachers, visiting the schools and making suggestions for their improvement, advising directors and teachers in school matters, issuing completion certificates to common school graduates, etc.

The Coroner. The office of coroner, once of very considerable importance in England, has never been of much consequence in any American state. In Oregon the coroner has the customary duty of holding inquests over the bodies of those dying under suspicious circumstances, and of serving the process of the court in cases in which the sheriff has a personal interest.

[1] This is not true in other states at present, but in colonial Virginia the sheriff collected the tobacco paid in as taxes, and the English sheriff had been the king's collector many centuries before the colonists came to America.

The County Surveyors' duties are to establish lines and corners, to supervise the construction of the more important bridges, to survey roads laid out by the county, etc. In the growing interest in good roads the county surveyor bids fair to become an officer of great importance to the county.

The County Clerk. Last, but to the historian by no means the least, of the county officers is the county clerk. He keeps in his vaults the accumulated records of the county, so that his office is the place to study county history. He really has the duties of several officers, being the auditor of accounts, recorder of deeds and other instruments, and clerk of the commissioners' court, the county court, and the circuit court. In fact, nearly all the business of the county leaves some trace in the extensive records of the county clerk's office.

Three Classes of Work. In the above we have indicated three distinct classes of work done by county officers. The first class is legislative, performed by the commissioners' court; the second is judicial; and the third is executive or administrative. There is some mingling of these duties, but on the whole such a classification will hold. We shall see a similar division of duties in Wisconsin, where the county board legislates, the county judge judges, and the other county officers execute or administer. A little reflection will show that this division runs through all governmental forms.

SUMMARY

The county system of local government, originating in Virginia, was carried to Oregon by the pioneers, who were largely from the southwestern states settled from Virginia and the old South. Lane County, Oregon, was in the early time

governed by a commissioners' court, which was very much like the county court in Virginia, so far as its powers were concerned. Its members, however, were chosen by the people. Other county officers were in general appointed by the commissioners' court.

At present the commissioners' court still legislates for the county, but the county judge holds separate judicial sessions. The people also elect nearly all of the administrative or executive officers of the county.

There are thus three kinds of work done in the county government, legislative, judicial, and executive.

CHAPTER IV

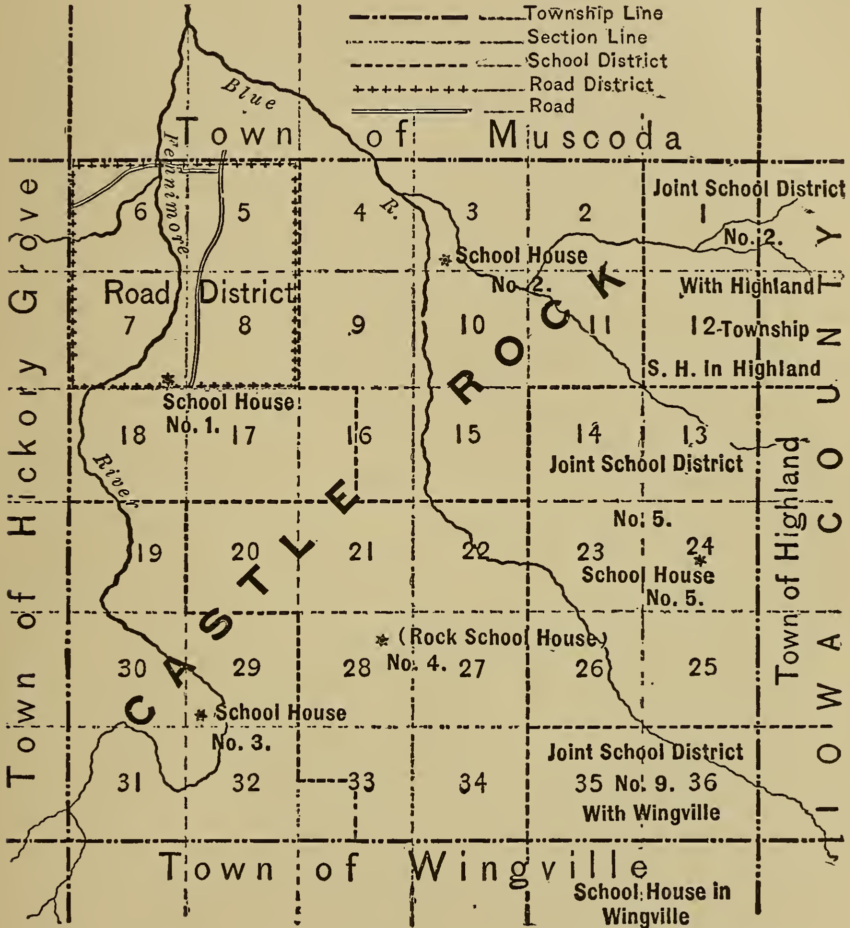
THE TOWNSHIP SYSTEM IN THE WEST

A Wisconsin[1] Township. As the Virginia county appeared on the Pacific Coast about the middle of the century, so the Massachusetts township was found in the Mississippi Valley about the same time. The early settlement of Wisconsin was made by people from New England and states having a New England parentage. Its local institutions were therefore of the Massachusetts type. In fact, with very slight changes, the following description of the township system and the town meeting would apply as well to Massachusetts as to Wisconsin. It would also apply to the other states having township government. Let us see from an actual example what the Wisconsin township was.

In Grant County, which borders on the Mississippi and Wisconsin rivers, there is a township known as Castle Rock. Its territory is a regular *surveyor's township*, six miles square, and there is no town whatever in the ordinary sense of the term. It is simply an area in the hill country occupied by a farming population. The farms are small, ranging from forty to about five hundred acres. There are two river valleys, each about a mile wide, extending through the town from south to north, but the rest of the country is rough and difficult of access. A towering mass of rock about sixty feet high gives rise to the name Castle Rock.

[1] For accounts of the township system in Illinois, see Bryce, i. 601–605; and for Michigan, 605, 606.

The town is divided into school districts, each of which has its school, and there are also road districts, usually ten or twelve in number. These features are partially shown on the accompanying map.



Map of Castle Rock, showing Sections, School Districts, and Specimen Road District.

Each school district has its meeting in July, at which the officers for the year are chosen, a tax is levied for the support of the school or for building purposes, and the

length of term agreed upon. Sometimes the teacher is selected in these meetings, and it is usually determined whether to employ a man or a woman as teacher. The general affairs of the district are always discussed.[1]

The Town Meeting. The annual town meeting is held on the first Tuesday in April. The place is the "Rock School House," standing near the centre of the town. Roads are always bad at that season of the year, just at the breaking up of winter, and there is much difficulty in reaching the place. Yet almost every voter within six miles square is in attendance. It is safe to say the spring meeting is fully as well attended as the general election for the choice of state and county officers, and even a presidential election does not usually bring out a fuller vote. Farmers, their sons, and their hired hands are all there, and are all active in one way or another. The business of legislation involves much bargaining, and this is a legislature. One end of the town wants a new bridge across Blue River, the other wants votes for its candidate for chairman. Here is a chance for "log rolling."[2]

The candidates are usually on the spot early in the day. They lie in wait to greet the farmers as they approach by team, on foot, or on horseback. Most conspicuous, of course, are the various candidates for the office of chairman of the board of supervisors, who is always spoken of as chairman or town chairman. *His* campaign is arranged in advance. The men seeking this office usually go about the town some days or weeks before the day of meeting, and "fix up" the tickets which their names are to head.

The ticket is a list of names of those who are candi-

[1] At the school meeting women may vote as well as men; they may also hold school offices.

[2] This is the term applied to such "trading" in politics.

dates of this faction or that faction of the voters. Sometimes the national party names are used, the ticket being headed Republican Ticket, or Democratic Ticket. More often no name is affixed, but it goes by the name of the would-be chairman, as the "Gore" ticket or the "Sylvester" ticket. The names are arranged in the order of the supposed importance of the offices, thus:

Board of Supervisors [1]	H—— G—— (*Chairman*)	
	M—— S——	
	F—— E——	
Treasurer [2]	J—— S——	
Town Clerk [3]	N—— O——	
Assessor [4]	I—— B——	
Justices of the Peace [5]	H—— D——	
	J—— V——	
	O—— J——	
Constables [6]	A—— O——	
	F—— S——	
	J—— F——	

[1] The board of supervisors corresponds to the "selectmen" in many eastern states. These three men (and especially the chairman) have general oversight of the affairs of the town and represent the town in its corporate capacity. If the town is sued, the process is served on the board.

[2] The treasurer collects, cares for, and pays out the moneys of the town.

[3] The clerk keeps the town records, and makes out the tax roll.

[4] The assessor visits each resident property owner and makes a list of his real and personal property, with the value of each item. On this "assessor's list" the taxes for each person are computed by the clerk.

[5] The justices of the peace are petty judicial officers. They may try civil suits of minor importance, and also petty criminal offenses, such as "assault and battery." They may also administer oaths, issue warrants for the arrest of suspected persons, bind men to keep the peace, hold preliminary investigations, perform the ceremony of civil marriage, etc.

[6] The constables are the police officers of the town. It is their

Usually the tickets are written out on narrow strips of paper, which are handed about by the candidates and their supporters. Voters may either "vote the ticket straight," or "scratch" it, as they prefer. When it is arranged to suit them, they are ready to vote.

The voter passes his ticket folded to the chairman, who calls out the name of the person offering it, and then drops it through a slot into the ballot-box. The name is recorded by two clerks. The other members of the town board act as judges of election. At sunset the voting ceases and the count begins.[1]

As the voting proceeds, the business also proceeds. The chairman is seated on a high box or stool, in order that he may be easily seen in the dense crowd, and at the same time be able to insert tickets in the ballot-box.

The report of the town treasurer is of greatest interest, because it shows how much money was raised at the last meeting and how it has been expended.

The tax levy is the most important business. It is customary to divide it into items. Some one moves that the town raise $150 for bridges. The motion is adopted. Another $100 is set aside for the care of the town poor. The sum of $250 is voted for roads. This the property owners are allowed to *work out*.[2] A motion to raise $200 for town expenses, which means the pay of the officers, brings on a debate, but is finally carried. Several of

duty to prevent lawlessness and violence, to arrest disturbers of the peace, if found in the act, or, in case of suspected criminals, on a warrant issued by a justice of the peace. They serve judicial and other notices, and in general are at the service of the justices and the board of supervisors.

[1] Since the Australian ballot law has been applied to towns, many changes have been made in the manner of voting.

[2] That is, they are allowed to pay the tax in work of men or teams instead of paying in money. The rule is to allow $1.50 per day for a man, and the same for a team.

the officers, the clerk, treasurer, and assessor, receive $50 each for their services as a matter of custom. The remaining $50 goes to the supervisors, $20 to the chairman, and $15 to each of the other two. Justices and constables are paid entirely in *fees*.

The business began with the reading of the reports of officers. It ends with the election of road supervisors. There are no candidates, for no one wants the office. Some one names a man for District Number 1. The nomination is seconded, the vote follows, and he is elected as a matter of course. The process is repeated until all the districts are provided for. This vote is not by ballot, but by "majority of voices." It is simply accident if a man of the proper qualifications is chosen in any district.

The Importance of the Town Meeting. This meeting of citizens has nevertheless a deep significance. It is the one meeting of a political nature in which every grown man of the town takes a direct part, and every one feels on returning home that he has personally exercised some influence on public affairs. Moreover, what he sees and hears there gives him a better insight into public affairs of a larger nature. He is better prepared to understand the county government because of his part in the town government. The affairs of the state and even of the nation seem plainer to one who has seen and heard the doings of the town meeting. It is a great school of practical politics.

Relations with the County. In Wisconsin, as in New York and several other states, the general affairs of the county are cared for by a *county board*. This body is made up of the chairmen, or, as they are called in New York where the system originated, the *super-*

visors of the several towns. The county government is therefore based directly on the towns.

The county board is a sort of legislature. It levies the taxes for the support of the county; it undertakes public improvements, such as erecting county buildings; it has charge of the county poor-farm and poor-house; and it lays out the more important highways. In short, the county board in Wisconsin does many of the things which are done by the commissioners' court in Oregon. It does not do all, however, because part are attended to by the town meeting.

The County Officers. In Wisconsin, as in Oregon, each county has certain county officers chosen every two years at the general election in November. They include a sheriff, a clerk of the circuit court, a treasurer, a registrar of deeds, a county clerk, a superintendent of schools, a coroner, and a surveyor. Their duties are similar to those described for the Oregon county officers. There is also a county judge, who attends to the probate business, and is chosen at the election in April for a term of four years.

SUMMARY.

The township system was planted in the West by the early settlers, who came from New England and the other northern states. All the voters, as a rule, attend the annual town meeting and take a part in the management of town affairs. They also elect the town officers. In this way the common people gain a good deal of valuable political education.

In Wisconsin the county board is composed of the chairmen of the several town boards. All legislative work required by the county is performed by this county board. There is also a county judge, whose work is judicial; and there are several administrative or executive officers.

CHAPTER V

PRESENT TENDENCIES IN LOCAL GOVERNMENT

Tendency toward the Township Form. A very interesting fact of recent American history is the tendency, in many states which began with the county system, toward the township form of local self-government. The county system has great advantages under such conditions as existed in colonial Virginia. It is admirably adapted to the needs of a state in which population is sparse. That was the main reason for its adoption there. For the same reason, and on account of its greater cheapness, it has been adopted by nearly all the prairie states. But as population increases there appears a disposition to want town government.[1] The change has been encouraged by two facts, the township method of surveying public lands, and the development of the public school system.

[1] Illinois furnishes an instructive example of the way in which the county form of local government has had to give way to the township form. This State was settled first from the south, and when the first State Constitution was framed in 1818, provision was made for the county system only. In the Constitution of 1848 counties were permitted to vote, if they chose to do so, on the question of adopting the township system. By that time a large number of New England people, moving westward by way of the Erie Canal and the Great Lakes, had settled in the northern part of the State. Therefore, most of the northern counties adopted the township system. Since that time many of the counties at first organized under the county system have changed to the township system, so that, practically, Illinois now has the township system.

Land Surveys. The present system of land surveys was adopted in 1785. By it the whole country settled since that time has been laid off into uniform blocks of six miles square.[1] This was the size and shape of the townships often granted by the colonial governments in New England to companies of men who wished to settle on wild land. For this reason these later tracts were called *townships*. By way of distinction they are usually spoken of as *congressional townships*, because they have been laid off under the surveys ordered by Congress. It was not unnatural to expect that local governments would grow up in these township areas, and this has actually been the case in most of the northern states.[2] In those which started with the county system the law sometimes provides that the people of any congressional township may form a *civil township*. In North Dakota, while the county as a whole has the commissioner system, some of the squares of which it is made up are independent of the commissioners as far as local matters are concerned. In these the townships are said to be "organized," which means that the people have adopted the township government. The number of these organized townships is constantly increasing.

[1] Texas, secured by annexation after being partly settled under a different system of surveying, is an exception to this statement. Titles to property are not disturbed, as a rule, by annexation or conquest.

[2] Of course there are many variations from the regular surveyor's township area in the civil townships of the northern states, and these variations constantly tend to increase; but the surveyor's township has always been looked upon as the natural area for the civil township, and in a very large proportion of cases, especially in the newer states, the civil townships are actually contained in the surveyor's squares.

Public School Reservations. In the townships granted by the colonial governments of Massachusetts, Connecticut, New Hampshire, and Vermont, it was customary to make *reservations.* That is to say, these tracts were granted to a company of proprietors for their own benefit, but on the condition that certain *shares* of the land be set aside by them for public uses. The entire grant was usually cut up into sixty-three shares, and it was common to reserve three shares. One of these was "for the first settled minister," and another for the ministry, which means that whoever might be the minister of the town church, he should always have the use of this land. But there was also one share for "the school or schools." This custom began at least as early as 1704, and was regularly followed from that time. Now when, in 1787, the Continental Congress sold several million acres of land in Ohio to companies of New Englanders who wished to settle there, it agreed to set aside one section out of the thirty-six making up each township, to be reserved for the use of schools forever. The famous document called the "Ordinance of 1787," which was drawn up for the purpose of forming a government in the Ohio country, declares that "religion, morality, and knowledge being necessary to good government, schools and the means of education shall forever be encouraged." After that, whenever Congress admitted a new state into the Union, it gave to it one section in every township of land, to be held in trust for the benefit of the common schools in that state. Later it became customary to reserve two sections in each township.[1]

These lands have usually been sold and the money

[1] Oregon, admitted to the Union in 1859, was the first state that received two sections.

invested in a permanent fund. Of this the interest is divided among the schools in proportion to the number of pupils. Other moneys have been added to the school fund in many states, making it often a very large sum. It is known as the state school fund. Such funds have helped greatly in developing the school systems of new states, and there has been a remarkable growth.

The Common Schools. In general there is now a school within reach of every home in the land. These schools belong to the people of the neighborhood, although some part of their support comes from the state fund. The people are expected to tax themselves for any needed sums; they must keep up the building and provide appliances; and some sort of organization is necessary for this work.

In the management of school matters the principle of self-government is applied. Commonly the towns or counties are divided into districts of such a size that a central school will accommodate all the children. But in a few states the schools are grouped into *school townships.* When that is done, either the old civil township or the congressional township is made the basis. But whether there are school districts or school townships, all voters may attend and take part in the school meeting. This affords many of the advantages of the town meeting in the way of political education.

A most interesting effect of such local gatherings is the tendency they have to become more than mere school meetings. In North Dakota, for example, the congressional townships are school townships. This gives the people an annual meeting. As a result, they come to want self-government in other matters. Soon they petition to be allowed a town government, and having this they hold their spring meeting, elect officers, and tax themselves for local purposes.

Self-Government on the Increase. Americans have a strong disposition toward self-government. Wherever self-government seems to suit the conditions best, the people are constantly finding ways to do more of the work of governing directly, instead of committing it to a few of their number as representatives. Thus in Virginia, where in colonial times the people hardly had any voice in local affairs, they now have at least three divisions in each county, in which they choose, every two years, "a supervisor, a constable, an overseer of the poor, and three justices of the peace." [1] These divisions are further subdivided into school districts.

In Oregon, also, the government, in the fifties, was in the hands of three commissioners, who appointed constables, justices of the peace, and road supervisors. At present there are fifty precincts in Lane County, each of which elects a constable, a justice of the peace, and one or more road supervisors. The county is also divided into school districts which have self-government.

SUMMARY

At present there is a tendency, especially in the newer states which began with the county system, to change to the township system of local government. This is due to the strong desire of Americans to take a personal part in political affairs.

The change to the township form is made easier by two things: (*a*) by the method of surveying government lands, in "townships" six miles square, which are convenient areas for political townships; (*b*) by the development of the common school system, which gives the people of districts or school townships a democratic meeting.

[1] Howard, *Local Constitutional History*, page 232.

CHAPTER VI

THE MANAGEMENT OF SCHOOLS AND ROADS[1]

The Necessity of a Good Common School System. All Americans understand that in a government like our own general education is of the first importance. Since all citizens have a part in the government, the character of the people necessarily determines the character of the government. With a highly intelligent and moral body of citizens, the government, in all its branches, will be well managed. Laws will be wisely framed and carefully executed; life and property will be secure; the rights of private citizens in all respects will be faithfully guarded, and the money paid by the people in the form of taxes will be honestly and wisely used.

Under such conditions only can the highest prosperity of the people be attained, and to secure these conditions we have established the system of free public schools. It is right that all should pay taxes for their support. But the people have a right to demand that the schools maintained by their money be as good as it is possible to make them. This has not always been the case. Often the schools of entire states have been grossly mismanaged. Much depends on the plan under which they are carried on. The most common way, as we have seen, has been to divide the towns or the counties into districts, each of which has its school, managed by a local board.

Origin of the School District. As early as 1647 the

[1] This chapter deals more fully with two important features of local government, but since it is not essential to the general understanding of the subject, it may be studied or not, at the discretion of the teacher.

towns in Massachusetts were required to maintain schools. Let us see how this was done in a particular case. In a certain town the control of school matters was at first in the hands of the selectmen. There were no districts, and a single school served for the whole town. After a while dissatisfaction arose on account of the distance some had to go to reach it, and to equalize matters the school was kept at four different places during the year. Since the term was twelve months, this gave to each quarter of the town a three-months term. Persons from all parts of the town were equally entitled to attend, no matter in what quarter the school happened to be. But naturally enough people soon thought it impossible to attend when it was at a considerable distance. So the school practically became four schools, each of which accommodated a particular section of the township. When there came to be a demand for a longer term than three months, the different sections had different teachers. Then they built a schoolhouse in each quarter. At last a wholly distinct organization arose for the management of the schools. The selectmen of the town were no longer in control, but in their place was a board of directors chosen in each division of the town. This case illustrates the way in which the independent school district originated.

Defects of the Independent District System. About the year 1830 a great educational movement began. The common schools had become very defective, lifeless, and unprofitable. Great reformers arose, like Horace Mann, who insisted that something must be done. First, it was necessary to find out what was wrong. When the schools were examined with that point in view, one of the weak spots in the system was found to be in the independent district.

Many reasons led to this conclusion. First, the school officers were chosen from too small an area. There are pretty sure to be some able, careful, public-spirited men in a whole township; but it may well happen that in a small district there are too few of that class to fill the places on the board. Secondly, the smallness of the district belittles the

importance of the office. A town officer who cares for large interests is looked up to with a good deal of respect; but a school director receives little or no honor. A third and more important point is that the independent schools are apart by themselves, and have little connection with the educational world. They therefore get into ruts, and lose all spirit and enterprise. The semi-annual visit of the county superintendent can do little to arouse a whole school community. The district gets into the habit of voting just money enough to pay for running the school on the cheapest possible basis for the shortest time allowed by the law, and the children are the sufferers. Then, too, when districts are once formed, it is hard to change them. Population often decreases, leaving the district with an insufficient number of pupils to make a live school, and in like proportion the means of support falls off. There are many such dying schools all over the country.

The Township System of School Management. As a partial remedy the educational reformers proposed that the townships be made the unit in school matters, as they once were. It was thought that such a change would help the schools in several ways. It would place all the schools of the township under a single board, selected from the whole town. This would give uniformity, unity, and efficiency to the management. The schools of the township could be so located that each would have a sufficient number of pupils, and not too many. All would of course have an equal part of the town fund for schools. Moreover, it would make possible more perfect supervision. The county superintendent cannot possibly visit the schools often enough to greatly affect their work. His territory is too large for effective supervision. Some leading teacher, or a special officer employed for that purpose, could be made superintendent of the schools of the town. This would make the schools better acquainted with one another and give to each the benefit of new ideas arising in any of them. Finally, there would most likely grow up in each township one school of higher grade than the rest. Older children could be taught here, leaving the time and

energy of the other teachers to be devoted to the younger classes. This advanced school would finally become a real high school, with perhaps a principal and several assistant teachers. There would now be at least one person of higher culture and training in each town, whose presence would be an inspiration to higher effort all along the line. Then, too, a library of good books would gradually be collected at the high school, which in itself would be an important means of mental development.

Progress of the Township Idea. These were some of the results which educational enthusiasts hoped might follow such a change of system. Their ideas made way very slowly, for the habits of the people were against them. Little by little the change was made in a few states, and the movement now is well under way. Wherever the township system has gone into effect, it is doing what was expected of it. The idea is now in the air, and we may look to see it make great progress in the course of the next few years.

Those states which have no townships to serve as the basis of the system are making provision for joint or union districts.[1] The whole point is to enlarge the unit for school management.

The Importance of Good Roads. Lord Bacon makes "easy transportation from place to place" one of the three

[1] In several states there has recently been a strong movement for the consolidation of the small districts into larger ones. To make this feasible in country places it has been proposed to have the district furnish vehicles and teams for transporting all the children to the central school. This plan has been tried in some places with excellent results. It has been found that the expense of schooling the children under the new system is much less than under the old, because fewer teachers are needed and there is a great saving in buildings, apparatus, heating, etc. In addition, the schools are very much better under the new system, because (*a*) better teachers are usually employed, (*b*) there is a better chance for effective supervision, and (*c*) there is the stimulus of numbers and of the rivalry of several departments working side by side.

things "that make a nation great and prosperous." Of all means of communication the most common by all odds are the country roads. These, too, are the special care of the local governments we have been studying. If the country roads are good, that is, if they are dry, hard, smooth, and level, communication is easy, transportation is cheap, and a great benefit accrues to the community. If they are poor, that is, if they are wet, soft, uneven, and hilly, communication is difficult and transportation enormously expensive.

It is said that on the scientifically built roads of France, Germany, and Great Britain, a single horse can draw a load of three or four tons as easily as a pair of horses can draw one ton on the dirt roads of America. We rarely stop to consider such comparisons. We have come to realize the importance of good railway connections, and cheap freight rates between the local trading point and the seaport where our products are marketed; but the cost of hauling from the farm to the railway is not taken into account.

The first condition of improvement in this matter, as in every other, is a favorable public sentiment. When the people really *want* good roads they can have them. But they are not likely to want a thing whose benefits they do not understand. For this reason there are now organizations which make it their business to try to educate the people on the subject of roads. They hold Good Roads Conventions, send out pamphlet literature, and sustain newspapers and magazines devoted to the cause. The result has been numerous measures before recent legislatures and some helpful legislation.

The Problem of Roads. The problem of roads involves three things. Or, rather, we may say that the problem as a whole divides itself into three problems. These are (*a*) the problem of *location;* (*b*) the problem of *construction;* (*c*) the problem of *repair.*

In location are involved all questions relating to the roadway. Grades, drainage, liability to floods and gullying, accessibility of construction materials; these are some of the

things to be considered in determining where a proposed road is to be laid.

The question of proper grades is exceedingly important. Every one knows what a single steep grade, or *hard hill*, in a stretch of road means. One ton with such a hill becomes a full load, when otherwise two tons could be easily drawn. So the single hill adds fifty or one hundred per cent. to the cost of transporting heavy products to market. Steep grades should therefore be avoided, even if the distance is greater and right-of-way more expensive. So should low, undrainable spots be avoided, or stretches where the soil will not support a firm road-bed. If the road is properly located, it can be made a good road; but if not, it can never become a good road. Most roads are spoiled in the locating.

Skill required to Locate Roads. When a railway company wants a new road located, it sends out skilled engineers to find a good route. They consider all the available courses, accurately determine the grades, map the line they find best, and make their report. Then the company sends a man to purchase the right-of-way for the road from those whose land is crossed by the line surveyed. If an owner refuses to accept a fair offer from the company, the land may be taken through the right of *eminent domain.*[1]

In locating highways a very different programme is commonly followed. The town board, or a committee appointed by the county board, comes into the neighborhood and tries to find out first of all where the property owners are willing to have a road laid. The men doing the work have not the training or the skill necessary to select the best roadway. They are bound by local political interests, and they hesitate to exercise the right of eminent domain. The consequence is that roads everywhere run over hills instead of passing by a level course around their bases; they pass through swamps, sand stretches, or along rocky side-hills. This must all be remedied before we can have good roads.

[1] In such a case the price of the right-of-way is fixed by a jury of the neighborhood.

Construction of Roads. But suppose the road to have been properly located. It has yet to be constructed. Here is a second opportunity to spoil it, if the first has failed. In order to meet the requirement of dryness, the road-bed must be well drained. This is of fundamental importance. Usually it is not attended to, and all work expended on the road-bed may be worse than lost.

The next point is to provide a hard smooth surface. The approved way to do this is to cover the soil to the depth of several inches with some durable material like crushed rock, which is then rolled with a heavy roller until perfectly firm and smooth. Instead of doing this, the common practice is to scrape in loose dirt, which simply deepens the mud in wet seasons.

Why do men continue to follow such ruinous methods in road-making? Simply because of the lack of scientific knowledge on a subject where such knowledge is essential, and because of a false idea of economy. Farmers and merchants are skilled in their own professions, and are the best judges of matters relating to their work; but they are not necessarily competent to do work which belongs to the trained civil engineer.

When roads are properly located and constructed, the problem of repair is a simple one. A very little attention each year is sufficient. Under conditions as they are in many states, the repairing of roads is the important thing. Every year the tax-payers of the country furnish enormous sums for the repair of dirt-roads, with no permanent benefit.

Working out the Road Tax. One great evil is connected with the methods of applying the tax. Often the polls[1] and property owners are allowed to work it out. This is utterly pernicious in practice, for several reasons. In the first place, on account of their political or other control over the supervisor, many tax-payers escape the tax in whole or

[1] Polls are those persons who are subject to the poll-tax. Usually all males over twenty-one, unless they are exempted for some reason, are required to pay a poll-tax.

in part. Secondly, the supervisor, being chosen by his neighbors and equals, has no control over such a body of men as come out in response to his summons to work on the road. Thirdly, no one so employed for only a few days in the year can do his most effective work. The result is, "road working" is another name for a holiday. The time and money of conscientious citizens are squandered, and the roads are as bad as ever.

The Remedy for Bad Roads. The remedy, as in the case of poor schools, is to be found in *larger units for road management* and greater centralization. In order to secure the blessing of good roads, the people must give up some of their cherished power to make bad ones. They must delegate to some one having the required scientific knowledge the power to locate new roads, and relocate old ones. They must also place their construction under such supervision. When this is done, repair is a minor point. It might be left to local care, but there ought to be skilled supervision even here.

The experience of American states proves that the county is the best unit for road management. When we compare the results in Ohio with those in Wisconsin, no doubt remains on this head. Ohio county governments have long exercised the power of locating and controlling the construction of the important highways. The result is a network of fine, well-built turnpikes, on which it is pleasant to travel and economical to transport products. In Wisconsin, where the county board lays out roads, but where their construction and repair are wholly under local control, primitive road conditions still prevail.

In the important matter of roads, the states having the county system have a distinct advantage. A few modifications of present laws will usually be all that is necessary to give them excellent road administration. For example, the appointment of a county engineer, as the agent of the commissioners' court in locating and supervising the construction of new roads, and the collection of the road tax in money,

would be a promising way to begin the reform. Some states have recently passed laws to this end.[1] The results remain to be seen.

A Hopeful Outlook. In the two matters of the improvement of schools and roads, the present is a time of great activity. The minds of the best citizens everywhere are set in the right direction. All that is necessary now is persistence and the exercise of wise policy in making the changes needed.

SUMMARY

In a government by the people, good common schools are absolutely necessary. We recognize this fact, and our states tax all the people having property for the support of the schools. Thus vast sums of money are expended upon the schools, and yet they are often very inefficient. Men have seen that this is due partly to a wrong system of school management. An important reform is to change from the "district" system to the "township" system, or the "union school district" system, so as to enlarge the unit for school management.

A similar reform is being urged in the matter of roads. In this case the county seems to be the best unit. In order to have good roads, they must be properly located and constructed. This requires the services of skilled engineers, whom the county could employ for the purpose.

[1] Oregon passed a road law of this nature in 1901.

OUTLINE

FOR STUDYING THE PRESENT COUNTY SYSTEM

(*Intended for use in states having the county system.*)

1. COUNTY COMMISSIONERS (legislative officers).

a. What is their number; are they chosen on a general ticket, or by districts; what is their term, and what salary do they receive?

b. Does the county judge act as one of the commissioners?

c. For what purposes may the commissioners tax the people of the county? Make a written outline of the process of raising money, from the laying of the tax to its collection. Describe the part taken in the process by each officer or group of officers having anything to do with it.

d. Describe the powers of the commissioners in the matters of locating and constructing roads, building bridges, managing ferries. Do they supervise the repair of roads?

e. What control, if any, do they have over the schools?

f. What kinds of property does the county own? Who controls it?

g. What power do the commissioners have to appoint men to do work for the county? Define the duties of such appointees.

h. In what ways may the commissioners control the elected officers of the county? (Do they audit accounts?)

2. COUNTY JUDGE AND JUSTICES OF THE PEACE (judicial officers).

a. What is the term of office of the county judge, and his salary? Need he be "learned in the law"?

b. What kinds of business come before his court? (Is it all probate business, or does he have jurisdiction in civil and criminal matters, and if so, to what extent?)

c. Are the justices chosen on a general ticket, or by precincts? What is their term, and how are they paid?

d. What powers do they have in criminal matters; in civil cases?

3. The Executive or Administrative Officers.

a. Make a list of them: find out the principal duties of each.

b. For what terms are they chosen, and what salary do they get?

4. Divisions of the County (smaller local units).

Name all the smaller divisions within the county; describe the purpose of each, and state who has the power to make or to change them.

5. Relations with the State Government.

a. Is there a state court which holds sessions in the county? If so, what is it called, and how extensive is its jurisdiction?

b. What power created the county, and made the laws according to which the county officers are chosen and all county business carried on? Would it be proper to call the county a mere subordinate division of the state, created for convenience in governing?

OUTLINE

FOR STUDYING THE TOWNSHIP SYSTEM

(*Intended for use in states having the township system.*)

1. The Town Meeting.

a. When is it held, and who have the right to attend?

b. What power does the meeting have in matters of taxation?

c. What things can the township do for which money is needed?

d. How are the paupers of the town supported? What powers does the township exercise over schools? over roads and bridges?

e. What township property is there, and how is it used?

2. The Township Officers.

a. Make a list of all township officers.

b. What is the title of the head officer; what are his duties, and how is he assisted?

c. Make a written outline of the process of raising money for township uses, beginning with the levying of the tax and ending with the collection of the money by the treasurer. Describe the part taken in the process by the assessor, the board of equalization, the town clerk, and the treasurer. Suppose a property owner refuses or neglects to pay his share of the tax, by what means is it collected? What other officers have a part in the process in such a case?

SUGGESTIONS AND QUESTIONS

1. Procure the names of the present county officers in your county. What fees, if any, are paid for particular services? Are the fees kept by the officer, or turned over to the county? Try to find out, by a personal visit if possible, what sort of office they work in, what books they keep, whether these are kept in a vault or not, how far back the records run, and whether they have ever been destroyed by fire. What county offices are most sought after by citizens?

2. Select the things for which taxes are levied by the Wisconsin town meeting and also by the Oregon commissioners' court.

3. In Wisconsin the county maintains a poor-house and a poor-farm, but the towns which send paupers there are obliged to pay for their individual support. Is this a good system? Why should one town be obliged to pay for the support of five paupers, while the rest of the county may have but four to provide for?

4. Select from the ticket on page 39 the executive and judicial officers of the town. Are there any legislative officers chosen? Why not?

5. Show how the county system is more economical than the township system.

6. What is meant by "reservation for the ministry," page 44? Look up the meaning of "glebe." Is the church in your state supported by funds derived from public lands? How is it supported?

7. Distinguish between congressional township, civil township, and school township. May the three names apply to the same area at the same time?

8. Castle Rock township is described as "township number seven, range one west." What is the meaning of this?

9. The sixteenth section is the one reserved for schools in each township when but one is reserved. Sixteen and thirty-six are the numbers reserved when two are set aside. Find the value of the school section in Castle Rock at $10 per acre. Do the school sections in your state sell for more or less than this sum? Is that an average price for land?

10. What are the benefits of a uniform system of land surveys? How was land surveyed before our present system was adopted, and what were its effects? See Roosevelt's "Winning of the West," iii. 7–10; also Gillan's "Lessons in Mathematical Geography."

11. Learn to describe fully some piece of land with which you are familiar, as, for example, "the northwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 32, township No. 6, range *one* west."

12. What is meant by a *Poll?* (see page 54.) Who pay and who are exempt from poll-tax in your state? Is the poll-tax a just tax? Would it be well to raise all taxes in this way?

13. Show how it is that when men escape the payment of any portion of the taxes properly falling upon them, they add to the burden of every honest tax-payer.

14. What are the arguments in favor of *working out* the road tax? Show how public and private interests apparently conflict in the matter of road work.

15. Assume a fair price per day for the time of a man and a team. Now figure out the cost of transporting the products of some farm of your acquaintance to the nearest railway. Assuming that the best kind of road would allow the hauling of double the weight now drawn at a load, what sum of money would the farmer in question be justified in paying for road improvement?

16. What is meant by log-rolling in politics? Can it be avoided? What are its evils?

17. Describe all the different ways of voting.

18. What evils are connected with the fee system, and how can they be lessened or abolished? To what extent is it justifiable?

19. Who are voters at the annual school meeting in your town or district? Who are voters at the town meeting for the election for county officers? Why is the difference made, if there is one?

20. Obtain a copy of the school report of your district. Find from it how much money was raised by tax, how much was obtained from the school fund, and how much came from other sources.

21. Is your school well or ill supported? If ill, is it on account of the small size of the district, or for some other cause? Are there more pupils in attendance now than formerly, or the contrary?

CHAPTER VII

THE DEVELOPMENT OF CITY LIFE IN THE UNITED STATES

Townships and Counties precede Cities. When settlers came to Virginia and Massachusetts, they found a wilderness. The first thing to do was to make the soil, the forests, and the streams yield them a living. Woods were prepared for shipment, furs collected either by the white men or by the Indians for them, and fish and game captured for immediate use as food. The next thing was to prepare ground for crops. The extent of the country was almost limitless. The process of development would take a long time, and for that reason cities could not grow rapidly. The colonists were destined to be hunters, trappers, Indian traders, cattle grazers, and farmers for many generations. Not until population became comparatively large did it begin to mass greatly in special places.

Towns needed to supply Foreign Goods. Towns were useful as centres for the supply of the foreign goods which the colonists needed. But even for this purpose they were not of equal necessity everywhere. In Virginia, for example, the plantations were mostly on navigable rivers, and each planter had his private wharf. So, when traders visited the country, they did not discharge and take cargoes at seaport places, but passed up the rivers, stopping at the plantations. Here they exchanged their manufactured goods for tobacco and other products of the soil. This state of things made towns impossible.

The Virginia house of burgesses tried at first to encourage them, but without effect. They could not be created by law.

In New England there was an earlier development of towns. Some of the settlements were originally made as trading stations. Then, too, people settled in compact villages on account of their church relations, and these villages easily changed into towns. Advantages of trade, either with the interior or with the coast settlements at a distance, were pretty certain to bring about the change. So there were always, from the earliest times, places which were looked upon as centres of supply. But they remained very small for a long time. Not until well into the eighteenth century, when commerce began to grow rapidly, did towns become of considerable importance.

Shipbuilding and the Fisheries promote Commerce and the Growth of Towns. Two things helped greatly to promote a commercial spirit in the northern colonies, and thereby to prepare the way for a more rapid growth of towns. The forests of New England furnished the best kind of ship timber, and the many rivers made it easy to get this to the coast. From the first, boats and ships were constructed for local uses. After a time shipbuilding [1] became an important industry, and vessels were built, not only to supply the home demand, but for foreign markets as well. New Englanders now engaged largely in the carrying trade, taking American products to the markets of the old world and bringing back, for North and South alike, the articles of necessity and of luxury required by the people.

Much of the demand for ships came from men who were engaged in the fisheries along the east coast and in the northern waters. Fish, too, were an important article

[1] See Hart, *Formation of the Union*, p. 19.

of export. Some kinds were sold chiefly in the West Indies, and a large trade grew up between the New England seaports and some of these islands.[1] It has been estimated that at the middle of the eighteenth century American commerce was carried on with between two and three hundred ships. This was the cause of the first noteworthy growth of towns. But even this growth was exceedingly small in comparison with the results of a single decade now. In 1790 there were but six towns or cities with a population of more than eight thousand.[2] No great change occurred during the next twenty years. But after 1810 many causes worked together to give city life a development theretofore unknown. The chief of these causes were, (*a*) the growth of manufactures, and (*b*) the rapid increase of trade with the interior of the country.

The Growth of Manufactures promotes the Growth of Cities. Until after the Revolutionary War the Americans continued to depend on Europe for manufactured goods. Articles which could not be obtained readily from abroad, but which it was necessary for the people to have, were made at home. There was no factory system such as England had. For many years after the Revolution "agriculture, commerce, and the necessary mechanic arts continued to form the main occupation of the people."[3]

But during the first fifteen years of the new century a number of things combined to bring about a rapid development of manufactures. England and France were at war, and were trying to injure each other by cutting off trade with the Americans. Congress passed the

[1] See Hart, *Formation of the Union*, p. 46.

[2] For an interesting account of city life about 1800, see Fiske's *History of the United States*, pp. 262–264.

[3] Taussig, *Tariff History of the United States*, p. 10.

Embargo Act,[1] which nearly destroyed our shipping. Goods which had to be imported became scarce and high, while the products of our farms rotted in the barns and granaries. Great distress fell upon the country, and people soon saw that it was a bad thing to depend upon a foreign market for necessaries. Then came the war of 1812, during which, of course, Americans could not trade freely with England. But these necessaries had to be supplied in some way, and the result was a remarkable growth of manufactures in the United States during these years. In 1803 there were only three cotton-mills in the whole country; in 1812 there were fifty within thirty miles of Providence. In 1800 we used altogether five hundred bales of cotton, in 1810 the amount was ten thousand bales, and in 1815 ninety thousand bales.

This shows that we were entering on a new stage of development as a nation. Up to that time, the Americans had been mainly an agricultural and commercial people; now they were coming to be a manufacturing people as well, and this meant that a larger and larger proportion of the population would live in cities, where manufacturing was carried on.

Trade with the Interior promotes the Growth of Cities. The era beginning with the war of 1812 is the era of "going west." We have already seen that a great movement westward took place at this time. Thousands of people from the northern states went to Ohio, Indiana, and Illinois, while in the south, Mississippi, Alabama, Louisiana, and Missouri were settled in an equally short space of time. In five years five new states were added to the Union.

[1] The Embargo Act cut off all foreign commerce, by providing that no American ship should leave a port of the United States bound for any foreign port.

This movement had been helped along greatly by the invention of the steamboat and also by the opening of the National Road from Cumberland, Maryland, to Wheeling on the Ohio River. But a much more powerful impulse was given by the Erie Canal, completed in 1825, which connected the Great Lakes with the Hudson River.[1] The entire Northwest Territory was now brought into connection with the seaboard. Michigan and Wisconsin began to be settled. The trade which had been flowing down the Mississippi was turned eastward to the lakes and the canal. The result was, as had been anticipated, an almost magical growth of the city of New York. It soon outstripped all rivals and became the metropolis of the country. In 1840 it had more than a quarter of a million people, more than half a million in 1850, and by 1880 it had passed the million mark.[2]

The prosperity of New York caused other cities to try to secure a portion of the growing interior trade. This led to more canal building, and later to the construction of the great lines of railroad from the Atlantic coast to the Mississippi Valley.[3]

During all this time the population of the interior was growing at a surprising rate, partly by natural increase, partly on account of the thousands who each year went west from the seaboard states, and partly on account of the great influx of people from Europe.[4] The wealth of

[1] For an account of the Erie Canal, see McMaster, *School History*, pp. 282–285.

[2] In 1900 it had three and a half millions. This increase was in large part due to the recent annexation of a number of suburbs together with the great city of Brooklyn.

[3] Finally some of these lines were extended to the Pacific Coast.

[4] Many of these men remained in the eastern cities to work in the factories, others supplied the great demand for labor caused

the country increased even more rapidly than the population, so that the demand for goods, supplied by the commercial and manufacturing cities, was multiplied many times.

The Unexampled Growth of American Cities. These facts help to explain the marvelous growth of American cities during the nineteenth century. Nothing like it had ever been known before. The larger seaport towns doubled, tripled, and even quadrupled their population and wealth in the course of a single decade, while hundreds of villages on the coast streams became populous and flourishing manufacturing towns. In the interior the story was the same. On the bogs at the south end of Lake Michigan rose Chicago, passing from the condition of a village to that of a city of more than a million people in the space of sixty years. In 1790 there were six towns of more than eight thousand population;[1] in 1900 there were five hundred and seventeen such towns.

In 1790 only one city, Philadelphia, had over forty thousand people; in 1890 there were seventy-three cities in that class, three of which had each over a million, seven between two hundred and fifty and five hundred thousand, fourteen between one hundred and twenty-five and two hundred and fifty thousand, and fifteen between seventy-five and one hundred and twenty-five thousand. In

by the opening of new lines of railway, while the remainder went west to take up land and make homes.

[1] In 1820 there were thirteen; twenty years later forty-four; in 1850 there were eighty-five, and in 1860 one hundred and forty-one. By 1870 the number had grown to two hundred and twenty-six; by 1880 to two hundred and eighty-six; the census of 1890 showed four hundred and forty-eight, and that of 1900 five hundred and seventeen.

1800 there were three cities with a population of more than twenty-five thousand each; in 1900 there were one hundred and fifty-nine.[1] Nineteen of these had over two hundred thousand, nineteen over one hundred thousand, forty over fifty and under one hundred thousand, and eighty-one over twenty-five and under fifty thousand. The percentage of the city population to the total population of the country at different periods is still more startling. In 1790 it was 3.35; in 1850, 12.49; in 1870, 20.93; and in 1890, 29.20.

The Problem of Cities. This mighty transformation has brought with it the most serious governmental problems that we have as yet had to meet. The government of rural townships, or of counties, is a simple matter. Our states are usually easy to govern. Even the national organization gives thoughtful people less concern than do the stupendous problems connected with the government of cities. In 1800 there was no problem of cities; in 1900 that problem overshadowed all others. It is necessary, then, for American citizens to make a special effort to discover the best methods of city government, and to insist on putting good methods in the place of bad ones.

SUMMARY

Towns grew slowly in the colonies, because there was little need for them except to supply the people with foreign goods. They grew faster in the North than in the South because, (*a*) New England people settled in compact villages while the southern people were mostly planters; (*b*) shipbuilding and the fisheries promoted commerce in the North, and this led to the growth of towns. Yet the towns were few and small in 1800.

[1] The total population of these one hundred and fifty-nine cities in 1880 was 9,933,927. In 1890 it was 14,855,489. By 1900 the total had grown to 19,694,625.

After 1800 the growth was rapid and became unparalleled. The main causes were, (*a*) the development of manufacturing; and (*b*) the opening up of the vast interior of the country. This growth of towns has given American citizens new problems of government to solve.

CHAPTER VIII

BOSTON, PHILADELPHIA, AND CHICAGO

The Government of the Town of Boston. During colonial times there were few places that could be called cities. New England had only one city, New York one, and Pennsylvania one, — the largest and most important of all. The last two had the city form of government, but the first did not. In Boston the people began with the township form. Year after year they chose their selectmen and other officers in town meeting, and managed the affairs of the town by means of this popular assembly. As the place grew in population, the number of voters became so great that sometimes Faneuil Hall was too small to hold them, and the Old South Church was used for the meetings. At last this too was outgrown, but the people still clung to their cherished right of self-government. Finally, in 1822, almost two hundred years after the planting of the town, the old system was given up.

By this time the population of Boston had reached forty-five thousand, and there were over seven thousand voters. The change had been simply forced upon the people by growth of numbers. There was no hall large enough to contain all the voters, and if there had been, a body of seven thousand men could not legislate. The town meetings were no longer popular assemblies. Those who had some special interest to look after were always on hand; the rest stayed away. "The select-

men, the town officers, and thirty or forty inhabitants "[1] made up the town meeting under ordinary circumstances. A few men practically controlled the affairs of the town.

It is interesting to see how intricate the town business had become. A small army of officers was required to carry on the government. There were "nine selectmen, whose chairman generally had charge of the police; twelve overseers of the poor; thirty fire-wards; twelve school committeemen; twelve members of a board of health, — one chosen by each ward; twenty surveyors of boards; six fence-viewers; six cullers of hoops and staves; nine cullers of dry fish; four field-drivers; three inspectors of lime; two surveyors of hemp; two surveyors of wheat; two assay masters; a town treasurer, and a town clerk."[2]

It is no wonder, considering this multitude of officers, and the variety of interests to be served, that "the want of a responsible head to take the lead in the affairs of the town was extensively felt."[3]

The Government of the City of Boston. The last act of the Boston town meeting was to accept the new charter creating the city of Boston. This it did March 4, 1822, at Faneuil Hall. The vote stood 2797 in favor, and 1881 against. This shows what a powerful hold the township system had gained over the minds of the citizens. "Not a few of the old residents who had fought under the eyes of Washington in the field, and under the eyes of Samuel Adams in the town meetings, looked upon the act which divided their great folk-mote

[1] James M. Bugbee, *The City Government of Boston*, Johns Hopkins University Studies, Fifth Series, iii., p. 20.

[2] *Ibid.*, p. 21.

[3] *Ibid.*, p. 21.

into twelve separate and silent gatherings, where men delegated their rights to others, as the beginning of the end of democratic government."[1]

The charter divided the city into twelve wards. Each was to be an election precinct, with a warden, clerk, and five inspectors, all chosen by the voters. At the annual election there was to be chosen "one able and discreet person, being an inhabitant of the city, to be mayor for the term of one year." He was the executive officer. There was also to be a board of aldermen, eight in number, to be chosen at large; and a common council composed of forty-eight men, four from each ward. The wards also chose one school committeeman, one overseer of the poor, and three fire-wards each.[2]

The mayor and aldermen formed an upper house, and the forty-eight members of the common council a lower house, of the city legislature, called the city council. The mayor presided over the first branch, and a member of the common council, elected by that body, over the other. Every measure had to pass both houses in order to become a law. This city council had the general powers of the former town meeting. The right of legislation had simply been transferred from *all* the people to a *chosen part* of the people. Many of the city officers also, such as the "auditor of accounts, the assessors of taxes, the engineers of the fire department, the superintendent of streets,"[3] and others less important, were chosen by the city council.

Such in outline was the new government which took the place of the Boston town meeting. The charter remained in force until 1854, when it was completely

[1] James M. Bugbee, *Ibid.*, p. 23.

[2] *Ibid.*, p. 24.

[3] *Ibid.*, p. 26.

revised. With the changes made since then the power of the mayor has been greatly increased, while that of the council is restricted in various ways.[1] At present the office of mayor of Boston is one of great dignity and importance. His term is two years, his salary $10,000 per year. He has the power to appoint and remove all the principal officers and boards, and has a veto on all measures passed by the council. It requires a two thirds' vote to pass a measure over the mayor's veto. No contract, no conveyance of city property, no financial act of the school board, is valid without his approval.

Thus it appears that in this distinctively American community, which began with the purest kind of democracy, the tendency has been toward a sort of qualified monarchy, — a monarchy limited to a two years' term. It has not reached the extreme of one-man power, for the city council always limits the action of the mayor, but the tendency has been to increase his power at the expense of that of the legislative branch. This, we shall find, is a tendency which can be seen in the history of other cities as well as Boston.

Philadelphia: Early Government; Charter of 1701. The city of Philadelphia illustrates a widely different origin of city government from that of Boston. When William Penn received his charter from Charles II. one of its provisions gave him the right to "divide the country into towns, hundreds, and counties, and to erect and incorporate towns into boroughs and boroughs into cities, and to make and constitute fairs and markets therein." [2]

[1] For a convenient outline of city government in Boston under the charter of 1854, see Bryce, *American Commonwealth*, i. 600–603.

[2] Allinson and Penrose, *The City Government of Philadelphia*, Johns Hopkins University Studies, Fifth Series, i., ii., p. 10.

Philadelphia was laid out in the peninsula between the Delaware and Schuylkill rivers soon after the planting of the colony. It was governed during the early period, probably, by the county court. But in 1701 Penn granted the city a charter which to Americans of to-day seems a very peculiar instrument. In a historical way, however, it is of very great interest, because it connects American city government directly with the form of government which prevailed in the boroughs and cities of England[1] at that time. In fact, Philadelphia was intended to be an English borough, planted in the forests of America.

City government in England was usually in the hands of a small body of men who held the offices independently of the people, and ruled, not for the benefit of the city and its entire population, but first of all for their own benefit. There was a mayor, a body of aldermen, and a council. The whole number was very small. The aldermen chose the mayor, and filled all vacancies that occurred, by death or otherwise, in their own number. The people really had nothing to do with the government. These boroughs had the right to choose members of Parliament, and this important privilege usually rested in the ruling oligarchy.[2]

When Philadelphia was chartered in 1701, the condition of English borough government was even worse than it had been before. Penn, however, did not try to invent a new scheme of government, but simply tried to put in operation the ideas with which he was familiar.

[1] There was no difference between the government of the English *city* and the government of the *borough*. Some places were called cities because they were the seats of archbishops and had cathedrals ; this distinguished them from the boroughs.

[2] The few men who formed the governing body.

So he established a close corporation[1] to govern his new city. It was called "the mayor and commonalty of the city of Philadelphia,"[2] and consisted of a mayor, a recorder, eight aldermen, and twelve common councilmen. The mayor was chosen each year by the aldermen and councilmen. The recorder, councilmen, and aldermen were appointed in the charter and held office for life. The corporation had the right to fill vacancies.

Philadelphia under the Charter of 1789. This was the scheme under which the largest city in the colonies was governed until 1789. Then there was a change. Under the close corporation the government had been wholly distinct from the people. The new charter changed this. Fifteen aldermen were to be elected every seven years by the freeholders, and thirty common councilmen every three years by the freemen.[3] The mayor was elected by the aldermen from their own number. There was a recorder chosen by the mayor and aldermen. The entire body, consisting of mayor, recorder, aldermen, and common councilmen, sat in common council for the purpose of legislating for the city. So the old oligarchy was overthrown and the city government was at last representative. With a few amendments this charter remained in force till 1854.

The government thus made up did, or tried to do, the numerous things that a city requires to have done. It had a survey department for the care of the highways;

[1] A close corporation is one in which the members have the power to fill vacancies in their own number. This makes the body self-perpetuating.

[2] Allinson and Penrose, *ibid.*, p. 15.

[3] Freemen of a city are fully qualified citizens; freeholders are those who absolutely own, in "fee simple" as we say, some property like lots and buildings.

there was a department to look after city trusts, like the fund which Benjamin Franklin left to assist young mechanics to set up in housekeeping; there was a department of city property, a water department, a gas department, a fire department; departments for the care of the poor, for education, for police, for finance, debt, and revenue. Aside from these regular departments there were several commissions, like that for the care of the public health. It will be seen, from this account, that city government in Philadelphia was a very complex thing, even when the city was much smaller than it is at present.

In the police department very primitive methods were in use. The first watchman had been appointed in 1700. "It was his duty to go through the city at night ringing a bell, to cry out the time of the night and the state of the weather."[1] Later the city was divided into wards, with a constable placed over each, and the citizens were required to perform watch duty. It was hard to get them to do it, and much laxness existed. Under the new charter there was a high constable who had general charge of police affairs, and control over the constables and the watch, who were now paid for their services. In 1833 the city was divided into four police districts. In each there was a captain and a lieutenant, twenty-four policemen, and a hundred and twenty watchmen. The police served by day, while the watch served at night. The force was still inefficient, and as late as 1844 a mob controlled the city. In 1838 a mob had burned Pennsylvania Hall while the mayor and the police stood by.

Philadelphia under the Charter of 1854 and later Charters. In 1854 Philadelphia received a new charter.

[1] Allinson and Penrose, *ibid.*, p. 26.

The old one had failed to give good results. The reason was, as men thought, that responsibility was not sufficiently centralized. The mayor had too little power. He had no veto, and nearly all executive work was done by committees of the council. In this manner responsibility was divided and effective government made impossible. There was a great deal of complaint, especially about the way in which police and financial affairs were managed. The new charter gave the mayor the veto power, and made him the personal head of the police department. The council appointed the heads of all other departments, and prescribed their salaries.

As the charter of 1789 had failed because it divided responsibility, so that of 1854, although in some ways an improvement over the earlier one, at last failed for the same reason. With thirty-two different and separate departments, which had no real head, there was room for all kinds of frauds. The councils which had the right of appointment became corrupt; the finances were mismanaged; bribery was common; in short, the "ring" ruled Philadelphia with a rod of iron. But in 1880 a reform agitation began. The better citizens organized a league which fought the ring at every point, and finally, in 1887, secured the new charter under which the city is still governed. The main difference between this and the preceding charter lies in the increase of power now given to the mayor.

The Government of Chicago: Charter of 1833. Having traced the history of two cities giving us the types of municipal government which prevailed in colonial times, let us now turn to one whose history lies wholly within the past century. The city of Chicago has sprung up so recently that many are still living who observed its beginnings. The first charter was a gen-

eral one, made for the government of villages or townships. Chicago was incorporated in the year 1833. There was a board of five men, chosen from among the freeholders of the village. They elected one of their number president. Thus organized, the government had the usual powers of village boards. It could prevent gambling, license shows, establish and regulate markets, construct and repair highways, etc.

The president had no independent powers. He was simply a presiding officer. But it was natural that many things should be looked after by him without consulting the board. He might, in fact, have become a real administrative head, had this village government remained in force longer. The president of the village board was in germ the mayor of Chicago. We have seen that there are some governmental duties which are executive and others which are legislative. In the village of Chicago these groups of duties were not clearly distinguished. The real power resided in the board. It chose the president, had the power of appointing to all executive offices, and had full power of legislation.

The Charter of 1837. In 1837 Chicago was incorporated under a new charter. The village organization was given up, and a city government was established. The members of the board of trustees had helped to secure the new charter, and they of course took pains to maintain their own power in it. Some changes, however, were made in the direction of increasing the power of the mayor. The board of trustees became the council of aldermen, were chosen by wards, and had full legislative and appointing power. They also had the judicial power of justices of the peace in their respective wards. But the mayor was no longer de-

pendent on the council for his office; he was chosen by the voters. Otherwise his position remained about as it was under the village charter. He had no veto, and no power of appointment. "The charter of 1837 was the government of the council."[1]

The Charters of 1851 and 1875. A new charter was secured in 1851. The position of the mayor now became vastly more dignified and important. He was made personally responsible for the proper execution of all laws and ordinances; he was required to recommend measures to the council in an annual message; and he had the power to veto the council's acts. He also had the power to appoint committees of the council, and in this way exercised a great influence over legislation. This charter was amended in 1857 by giving the mayor power to appoint and remove certain important officers, thus for the first time giving him control over a portion of the executive departments.

The charter under which the city of Chicago is now governed was adopted in 1875. The mayor is the executive head in the true sense of the word, while the council is the legislature. In general, all executive officers not elected by the people are appointed by the mayor and are responsible to him. The mayor also has a veto over acts of the council. The judiciary is an independent body.

SUMMARY

The study of these three examples, Boston, Philadelphia, and Chicago, brings out clearly the following principles of city government: (*a*) The legislature of a large city must be a representative body. Boston began with a democratic

[1] S. E. Sparling, *Municipal History of Chicago*, Bulletin of the University of Wisconsin, No. 23, p. 39.

town meeting, but had to give it up when the population became considerable, because it was impossible for so large a body of citizens to legislate. Philadelphia began with a close corporation; this had to be abandoned because the people refused to be governed by a body of men who did not represent them and were not bound to them in interest. (*b*) There must be a single executive, who has independent powers. In early Boston there were nine selectmen, none of whom was definitely responsible for the running of the municipal machine. In early Philadelphia the mayor was dependent on the council for his position, and had not sufficient independent power. In Chicago village the president was chosen by the board and was not independent. (*c*) While the legislative and executive departments should be given clearly distinct powers, both must be held responsible to the people by means of frequent elections. (*d*) Lastly, we see from the examples above discussed, that the division of powers between the legislature and the executive is one of the most important questions connected with city government.

CHAPTER IX

THE PROBLEM OF CITIES

Review of City Organization. Before taking up the special problems to which cities give rise, let us briefly review the common features of their government. In the first place we find in all cities the division into three departments, legislative, executive, and judicial. The legislative department is called the *city council.* It has a single chamber in most small cities and two chambers in a number of large ones. The members of the city council are almost always chosen by wards, and hold office for one, two, or three years.

This council usually has power:

(1) To pass ordinances (city laws), either unrestrained or subject to the mayor's veto, which, however, a two thirds' vote can overcome.[1]

(2) To appoint some of the administrative officers, and to confirm those appointed by the mayor.[2]

(3) To control taxation and expenditure by determining the amount of money to be raised, and making all appropriations.

[1] Such local laws may have reference to a great variety of subjects not covered by the general laws made by the state legislature. For example, the city council may require all bicyclists to carry lanterns after dark, or may prevent the erection of wooden houses on the main business streets. It may require sidewalks to be built of asphalt, or fix a fine for fast driving on the streets.

[2] Sometimes one of the two chambers of the city legislature has the power to confirm the appointments made by the mayor.

(4) To decide on city improvements, such as the grading and paving of streets, the construction of public buildings, the extension of sewer systems, the establishment and improvement of parks, and the establishment of water and lighting plants.

(5) To grant privileges to individuals or corporations, as, for example, to give a street railway company the right to occupy certain streets for definite periods of time. In such cases the city council determines how much shall be paid to the city for the privilege, which is called a *franchise*.

(6) To appoint committees of its members to look after the several features of the city administration: a committee on streets, another on public buildings, a third on water supply, a fourth on sewerage, a fifth on transportation, etc.

The executive department consists of the mayor and other administrative officers and boards. The mayor is the executive head. He is chosen by the direct vote of the people for a term which varies from one to five years. He generally has power:

(1) To veto all acts of the city council. This veto can usually be overcome by a two thirds' vote.

(2) To propose subjects of legislation by sending a message to the council or by addressing it in person.

(3) To appoint some of the heads of the administrative departments, such as the chief of police, the street commissioner, and the superintendent of charities, and to remove them for cause.

(4) To call for reports from the heads of departments, or even to call them together for consultation, as is the case in Boston.

In general, it may be said that the mayor has a good deal of influence over the legislature by virtue of his

power to execute or leave unexecuted the acts of the council.

The judicial department of the city consists of the city or police justices, and sometimes of superior judges as well. The police justices usually try minor offences, only important cases being tried before the superior judges, or in the state courts. The justices are sometimes appointed, but more often are elected by the people.

Other officers generally elected are the treasurer, the recorder or controller, and the city assessors. There are also some elective boards, such as the board of education, which are largely independent of both the mayor and the council, but are directly responsible to the people.

Why Cities are hard to govern. It will be seen at once that the city organization, as described above, is not essentially different from that of a county or township. In each of these three local governments we have the division into legislative, executive, and judicial departments; and the general duties of the departments are very similar. The county board or commissioners' court passes laws upon all matters of general interest not covered by the state laws. In the township the whole body of voters makes up the legislature and passes local laws. The town board, as the executive department, looks to their execution, and has general oversight of township affairs, much as the mayor has in the city. The justices of the peace in townships and counties fill the same place as the police justices in cities.

In spite of the similarities between city and town or county governments, the difficulties of the former are enormously greater than those of the latter. This is due to the massing of a great population within a small

area. We think of a township as a district containing about thirty-six square miles, and inhabited by people who manage their own local affairs in a town meeting.[1] But there are districts of thirty-six square miles which contain more people than some of our American states. For example, Paris, with nearly three millions of people, covers an area a little smaller than a surveyor's township.

The mere statement of this fact is enough to show that Paris cannot be governed by the methods employed in the Wisconsin township. We govern *people*, not *territory*. Some one has suggested that men, like corn, in order to do well, must be set at certain distances apart. This is not necessarily true, but it is true that when men live scattered over a wide area they require much less looking after than when they jostle one another roughly in the crowded streets and tenements of a great city.

If we think of the conditions of life in a farming community, and compare them with those of a great city, this fact becomes plain. In the country men are peaceful, or if some are disposed to be violent they rarely have a chance to do mischief, because they seldom come in contact with men like themselves. Crimes are rare, and usually occur only when men gather in crowds, — a rare occurrence in the country. In the city there are always crowds, and there are also constantly recurring outbreaks of the violent and vicious traits of human nature. For this reason the work of protecting people from evil-doers becomes, in the city,

[1] In many cases, however, such districts have not enough inhabitants to fill the offices required by the township organization, and therefore some other means of government must be adopted for them.

a business of great magnitude. The police department sometimes contains thousands of men, organized on military principles, for the sole purpose of protection.

A fire on a farm may destroy the home of a family, or at most the house and the farm buildings; but a fire in a city, unless it is promptly extinguished, may destroy property to the amount of millions of dollars, and very many lives may be lost in addition. Therefore, protection against fire, which is hardly thought of in the country except as a purely private matter, becomes in the city an important part of the business of government. A fire department must be maintained, with a body of trained men, horses, hose carts, engines, etc., to carry out this duty of the city government.

Again, the matter of health gives little concern to the government of a rural township where people live so much scattered that there is little danger of the spread of disease from one family to another. But when a case of smallpox or scarlet fever occurs in a city, thousands and tens of thousands of people immediately take alarm; for they know that if the infected persons are not rigidly quarantined the disease is likely to sweep over the entire city, causing great suffering and expense, and perhaps carrying off hundreds of victims. So there must be a department of public health, which looks after the removal of such things as are likely to breed disease; inspects the water and milk supply, and also the staple foods sold in the city; makes regulations about the disposal of the dead; prescribes rules for the lighting of school-houses and for the vaccination of school-children, etc.

In the country the supply of water is wholly a private question. Every man gets his supply as best he can, by means of wells, springs, or cisterns. In the

city, health, protection against fire, and the needs of the sewer system would make a city supply of water absolutely necessary even without considering the economy of such a supply for private uses. Therefore all cities of considerable size have a separate department to look after the water supply.

We might mention, in addition to the above cases, transportation, lighting, street cleaning and sprinkling, and many other matters, which in the country give little or no concern to the local government, but which are of such vital importance in every city that they cannot be safely left to private arrangements.

The Evils of City Government. The city government, therefore, becomes, in comparison with town and country governments, intensely active, extremely intricate, and at the same time enormously expensive. A great city spends its millions where a rural district spends its hundreds of dollars. The men who handle these vast sums of money are subject to very strong temptations, and especially so since it is easy to conceal frauds on account of the complexity of city affairs. The paving of streets offers a good example. Contracts involving many thousands of dollars are advertised by the council. The business is so profitable that many men compete for it. The dishonest bidders are sure to find the dishonest members of the city council, and by their aid often succeed in securing the contracts. Then, by doing the work poorly or by supplying cheaper materials than those agreed upon, the contractor makes an exorbitant profit, out of which the dishonest aldermen claim their reward. The work is of so technical a character that frauds are not easy to discover, especially if the committee in charge chooses to hide them.

It must not be supposed that these frauds are confined to the department of streets. Such opportunities occur in every department of the city government.[1] Police officers take bribes for neglecting to enforce the laws against gamblers or liquor dealers; the committee on lighting allows frauds in the supplying of gas to private consumers; the committee on public buildings makes contracts which cost the city much more than the work is worth; the school board is liable to temptation in the contracts for the supply of schoolbooks. It is so easy, where large sums are involved, to divert a few thousands to the pockets of those having the work in charge, that even men who are disposed to be honest in their private business are liable to become dishonest when they take a part in the management of city affairs. To such an extent have these evils in city government grown that men have come to look upon the cities as the very breeding places of political corruption of all kinds.

The Remedy for the Evils of City Government. Is there any remedy for this state of things, or must all that has been gained in the course of many centuries of progress be lost on account of our failure to govern the great and growing city populations? Men will not believe that good government in cities is an impossibility; therefore they have been trying to devise plans which should give better results than those in use heretofore. During the past twenty years many new ideas have been put in operation, and some of these offer at least a partial and temporary solution of the problem of city government.

The proposed remedy, we may say in general, is to

[1] There is a case on record in which a contractor actually placed wooden barrels in the ground instead of stone sewer pipes, thus robbing the city of thousands of dollars.

concentrate power and responsibility in the hands of the mayor. It is said with good reason that a large part of all the frauds, bargains, "boodling" schemes, and so on, are due to the fact that so much of the city business has been done by committees and boards. As long as this continues, responsibility cannot easily be fixed upon any one in particular. In fact, a committee is a device for shifting and avoiding responsibility; but when a single individual is directed to do a piece of work, men know whom to blame if the work is not done, or is done badly. All great business concerns understand the value of definitely placing responsibility; they could not succeed without it. The government of a city resembles, in many respects, the management of a great business, and therefore there should be some *one* upon whom the responsibility for its proper management rests.

The gradual development of this idea explains the growing importance of the mayor in the cities whose history we have been studying. From a position of complete dependence upon the council, the mayor has come into a position of real headship in the city government. This is shown best in the latest charters. In Greater New York the mayor is elected for the term of four years, and is given a salary of $15,000 per year. He is the absolute head of the city administration, and has practically a controlling influence in legislation as well. If anything goes wrong in the government of the city an attack is at once made upon the mayor, for the people very properly feel that, having the power to bring the heads of all departments to account, the mayor is the one to blame if he allows wrong doing in any branch of the service. Other cities approach or equal the centralization noticed in Greater New York. It is felt to be

easier and safer, in the present condition of the public mind, for the people to try to elect an honest and efficient mayor, than to try to keep direct watch over the numerous departments of a city government. Therefore, it is urged, the mayor should be given very full powers and should be held rigidly responsible for the results.

The Prospect for Improvement in City Government. It cannot be supposed, however, that any mere device, important though it be, will give good government in cities, unless the citizens themselves take a serious and active interest in local affairs. This is, after all, the only permanent remedy for the evils which now appall us. The people of the cities are extremely busy with their own interests. Most of the time and attention left over for politics they give to the affairs of the state or of the nation, to the neglect of the city in which they live, carry on business, raise their families, and pay taxes. It is little wonder, therefore, that corrupt officials find it easy to hide their misdeeds, or that they continue to rob and steal. Our citizens must learn that each one of them has a responsible part to play in local as well as in national affairs. They must come to feel that they ought not to expect better government than they insist on having. So long as local politics is looked upon as something to be avoided by "respectable" men, just so long will the non-respectable classes remain in control. If we object to being governed by men of selfish, corrupt characters, we have it partly in our power, as individuals, to secure the rule of men of right ideals, who, while following their own ambitions, never lose sight of the interest and the welfare of the people whom they serve. Men must learn, in short, that while the right to take part in a "govern-

ment by the people" is indeed a *privilege*, it carries with it, at the same time, heavy responsibilities.

In order to arouse public interest and to instruct the people in the mysteries of city administration, there has recently been a great movement toward the formation of good government clubs, municipal leagues, etc. It is too early to make predictions, but it seems as though all this agitation ought to bring about a new era for the cities of America.[1] At any rate, thousands of people are now thinking very seriously about the great problems which affect our cities, where an increasing proportion of the people are yearly finding homes. It is to be hoped that the outcome will be the final solution of many of these problems, and the placing of city government upon a plane where it will no longer be a threat and a reproach to a civilized nation.

SUMMARY

The government of the city is not essentially different in form from that of the township or the county. There is in each of these local units the division into three departments; there is also much similarity in the work of corresponding departments in the city, the township, and the county. But on account of the massing of population, cities are incomparably more difficult to govern than rural townships or counties. Cities have to do many more things for their inhabitants, and these things are enormously expensive. City officers, therefore, have the handling of vast sums of money, and this is spent in so many and such hidden ways that it is not easy to keep watch of expenditures. There is in consequence a great temptation to dishonesty on the part of all who have to do with city administration. As a remedy it is

[1] The cities of Europe are admirably governed, for the most part, and corruption is rare in them. On conditions which explain the difference, see Bryce, i. 620–624.

proposed to place much power in the hands of the mayor, who is also to be held strictly responsible for the management of city affairs; but the active interest of the citizens themselves is the only permanent remedy, and this is now being aroused.

OUTLINE

FOR STUDYING THE GOVERNMENT OF A CITY

1. THE CITY LEGISLATURE.

a. If it has two chambers, learn the official name of each; also learn the name of the legislature as a whole.

b. The members; how are they chosen, for how long, what qualifications must they have, and what salary do they receive?

c. On what subjects may it pass ordinances, and for what purposes may it levy taxes?

d. What power does it have to make contracts for city improvements, or to grant franchises to corporations?

e. What powers of appointment or confirmation of appointments does it possess? Compare its powers in this respect with those of the mayor.

f. What other means of control does the legislature have over the administrative departments, such as the department of streets or public buildings, and how does it exercise such control?

g. Describe any means of control that the legislature has over the mayor.

2. THE CITY EXECUTIVE.

a. What is the mayor's term of office; what qualifications must he have, and what salary does he receive?

b. What are his general duties as head of the city government?

c. Describe all the ways in which the mayor may influence or control city legislation.

d. Make a list of all the officers and boards appointed by the mayor alone; all who are appointed by the mayor with the consent of the council; and all who are independent of both mayor and council in their appointment.

e. In connection with the above list, note the main duties of each head of a department, whether an individual or a board.

3. Classify the judicial officers of the city according to the manner of their appointment, and indicate the classes of cases over which each class of judges has jurisdiction.

SUGGESTIONS AND QUESTIONS

1. Was there any connection between the colonial commerce with the West Indies and the development of the slave trade? See Hart, *Formation of the Union*, p. 39.

2. Name the inventions, English and American, which had most influence on manufactures. What was the relation between the cotton gin and westward expansion?

3. What special influence has the large foreign immigration had upon the government of cities?

4. Compare the Boston town meeting of 1820 with the town meeting in Castle Rock town, described on pages 38–41, and point out any differences you may notice.

5. By what authority are city charters granted? May they be changed at any time by the same authority, or not? Describe the usual method of securing a city charter in your state.

6. Some cities have a council of a single chamber, while some have a two-chambered council. What advantages and disadvantages are connected with each of these systems?

7. Point out the benefits and the evils of the ward system of choosing aldermen. Would the general ticket plan be better, and if so why?

8. What reasons can you give for the fact that state legislatures are very rarely charged with corruption, while city councils are often charged with it?

9. Is a city charter an advantage or a disadvantage to a small town of say 2000 people? Write out all the arguments in favor of and against direct government for such towns. How would a town meeting work in these small towns?

10. What is the effect of divided responsibility in the management of a school, a store, or other business enterprise? Give illustrations coming under your own observation.

CHAPTER X

THE DEVELOPMENT OF THE COLONY INTO THE STATE

The Early Colonies. The colonies began in a very small way. Only one hundred passengers started with the Mayflower for America, and not all of these reached their destination. John Winthrop brought a larger number with him, but still they seem a small nucleus for a great state. The same was true of the other colonies. Each started as a single small town, or at most a few small towns; so that the word "colony" does not have quite the same meaning when used in connection with the first years of Massachusetts or Virginia that it has for later years. The English called these early settlements "plantations." The word "colony" in time lost its original meaning. When we read or use it in connection with the Revolution, it means to us a large collection of towns and counties bound together as a unit, and not differing in the least material way from the same collection of towns and counties that became a state by separation from Great Britain. This development in the meaning of the word "colony" illustrates clearly the development of the colony itself.

Character of the New England Colonies. Shortly before the age of colonization in England, the Puritan movement began, aiming to purify the Church of England. Many of those who took part in this movement were not content merely to purify the Church of England of practices that all felt to be wrong, but wanted

to do away with the ritual of the church and its form of government, with bishops, archbishops, and clergy. They thought that if men were equal before God, then no one ought to have more power than another in the church. They therefore separated themselves and formed churches where all had an equal voice in the government. These were the people who founded New England.

Before they left England persecution had driven from the Puritan churches the time-serving and weaker spirits. When they concluded to emigrate, they went practically in a body, and it was a removal, not of colonies, but of churches or congregations with the minister at the head. Each congregation settled by itself and made its own town, and it was natural that this should receive an old English name. When they found a place to suit them in the wilderness, some local government was necessary. What kind of government should they take up? The kind they were using all the time in the church, to be sure; and that was as pure a democracy as was ever known. It was the democratic form of church government that gave democratic form to political government in the New England towns. The same body of men who voted in the church meeting voted also in the town meeting, and the two methods of government were the same. We must not be deceived by the fact that the people who came with John Winthrop to Boston were not separatists in England. When they reached America, circumstances led them to take up the democratic form of church government, and with it went the democratic town meeting.

Increase in the Number of Towns.[1] As the people in these town republics increased in number they

[1] See Fiske, *History of the United States*, pp. 91, 93, 95, 100, 102, 105.

swarmed, as it were, and "almost every town became the prolific mother of towns."[1] Plymouth began with one town in 1620, and by 1670 it had twenty towns with eight thousand people. In Virginia, by 1619, there were eleven boroughs with four thousand people; and in Rhode Island and other places the building of separate towns went on. Soon the towns situated somewhat near together began to unite for greater protection. The union was at first a very loose one, hardly more than a league of towns. In New Haven, in 1641, several towns formed, with the town of New Haven, a sort of federal union sometimes called The Republic of New Haven. The latter was finally incorporated in Connecticut as was Plymouth in Massachusetts. Portsmouth, Providence, and Newport became Rhode Island, and so the process of union went on.

Development of Southern Colonies. The case of Virginia and the South was very different. The causes of settlement there were not the same as in New England. The soil was very different; so was the climate. The abundance of deep navigable streams leading into the interior had a marked effect. These and other causes noted elsewhere led to a great spreading of population, although Virginia people expected to build towns. The plantation style of settlement made each plantation a sort of town in itself. The spreading of population did not lead to the founding of separate and independent local units as in New England. The small population in any one locality and the lack of towns made a town meeting unnecessary. The idea of the colony as a whole was emphasized, and this emphasis increased with the growth of the colony into a state, and partly, at least, accounts for the strong state feel-

[1] Woodrow Wilson, *The State*, p. 440.

ing in Virginia and the South in later years. In some such way as this the small isolated towns grew by degrees into the colonies of the revolutionary period.

Government of Colonies.[1] In the matter of government, the early colonies were to a large degree experiments. There was no form of colonial government that all agreed to be wisest and best. Each colony tried its own way according to the ideas of the colonists themselves, or of the company or the proprietor who founded the colony. Some colonies combined parts of two methods of government, and as time went by nearly all the colonies came to have the kind in which the king, or some proprietor to whom the king granted the territory, had a large share of power. This illustrates again the fact that government cannot be made beforehand, as the great philosopher, John Locke, found in connection with the Carolinas.[2] Roughly speaking, three ways of carrying on the business and government of the colonies were tried. These ways were not always very distinct from one another, and when we begin to study them we may be a little confused at first on this account.

The three methods were first, royal; second, proprietary; and third, charter government.

Royal Colonies. Many of those that afterwards practically became royal colonies were at first colonies of a different kind. Thus, New Hampshire, New York, New Jersey, the Carolinas, and Georgia, which at the time of

[1] See, on this topic, Hart, *Formation of the Union*, pp. 13–16; and Thwaite, *The Colonies*, pp. 58–63.

[2] Locke's constitution, the "Grand Model," provided for an aristocracy with hereditary titles; and the colony was to be divided up into estates of greater or less extent to suit the rank of the classes of nobles.

the Revolution were royal colonies, were at first proprietary colonies. The thing that made one kind of government differ from another was in the main the extent to which the people of the colonies could govern themselves. Nowadays we take it for granted that we should elect our own governors. Not every colony, however, had that power. In the royal colonies the governor was appointed by the crown, and thus was the agent of the king to look after his interests. The king could easily use the governor in trying to control the people of the colony. Then the governor had a council to assist him, which was often appointed by the crown, and was generally in sympathy with the governor. The council was of great assistance to him, because in most colonies it had a part in the making of laws. It might have gone hard with the liberties of the colonies if there had been no check upon the power of the governor and his council.

Power of the Governor limited by a Representative Assembly.[1] Even in the royal colonies there was a representative assembly elected by the people to make laws and to represent them in the government. These assemblies claimed and exercised power over taxation and all public expenditures, and therefore the governor was dependent upon them for the payment of his salary. Nor could he begin any undertaking of importance or carry on the government unless they would furnish him the necessary means by taxation. He was at their mercy, and if he took away any of their rights and liberties, even by the express orders of the king, they could compel him to redress their grievances by withholding his very living expenses. Where did they get this idea of controlling taxation? Was it anything new?

[1] See Fisher, *The Colonial Era*, pp. 208, 209; also pp. 233, 234.

By no means; it had been handed down from generation to generation through many a century of toil and conflict, and for it many a good man had lost his life. It is one of those precious legacies of liberty which we owe to the sturdy independence of our ancestors. It has more than once saved to the English people those powers of self-government and political activity that have made them in our time the dominant race in the world.

Proprietary Colonies. The English kings, after the Cabots discovered the coast of North America, claimed that the territory belonged to the king and not to England. Therefore after the two great companies formed to colonize the new world had given up their charters, the crown began to give its favorites large and valuable tracts of land. With the grants went powers of government and control that made the proprietors largely independent. Such were the grants of Maryland to Lord Baltimore by Charles I., Pennsylvania to William Penn by Charles II., and the Carolinas to a considerable number of favorites, also by Charles II. When New Netherland was taken from the Dutch in 1664, Charles II. gave it to his brother the Duke of York; it remained a proprietary colony, called New York, till the duke was made king, when it became a royal colony.

In a proprietary colony the governor was appointed by the proprietor and acted as his agent and naturally cared for his interests. He also had a council, which in most cases became the upper house of the colonial legislature, a body resembling our Senate. The most interesting of the proprietary colonies was Maryland, because it was fashioned after the model of the counties palatine in England. England, as well as the United States, had its frontier. Several counties had the duty of defending

the border country in the north and west of England, and the coast in the south. The earls of Chester and the bishops of Durham among others were given almost royal power on this account. The name itself, "palace counties," gives the idea of royalty. In the time of Charles I. the county palatine of Durham still remained, and the government of Maryland was fashioned after it. Lord Baltimore was a sort of feudal king, and was absolute lord of the land and water within his boundaries.

When Charles II. granted Pennsylvania to William Penn as proprietor, he was not so lavish as his father in the powers bestowed. In both Maryland and Pennsylvania the proprietorship was to be hereditary, in the Calvert and Penn families respectively. In Pennsylvania the council did not take part in legislation, and the legislature had but one house. However, the people were represented in the government by choosing the legislature, and they gradually absorbed nearly all the power into their own hands. The proprietary government was not a success. In the Carolinas the elaborate, ready-made government was worse than useless, and in Maryland it was impossible to implant the wornout feudal system[1] in virgin soil. In Pennsylvania there was an unending quarrel between the proprietors and the people. The people found it more to their advantage to deal with the crown and its governors, and only three proprietary colonies remained when the Revolution broke out, — Pennsylvania, Delaware, and Maryland.

Charter Colonies. We have seen in the first chapter of this book that long before the first American colony

[1] A system of landholding in mediæval times, by which the tenant received the use of land from the lord in return for helping the lord as a soldier in war. There grew up also a system of government and society suited to the land system.

L. of C.

was settled, the king began to grant charters to various towns in England. The charter was merely a writing telling how many and what things the town could do in the way of governing itself. The towns practically bought the privileges named in the charter, and paid for them by voting the king money of which he was in need. The king got in the habit of putting down in writing (charters) the privileges and powers that he granted to companies or individuals as well as towns. When the two great companies, London and Plymouth, were formed to found settlements in America (1606) they received charters from the king. Lord Baltimore also received a charter; so did Penn. So did Massachusetts Bay, Rhode Island, and Connecticut. So, in substance, did the Carolinas, Georgia, and New Hampshire. Therefore, in one sense, nearly all the colonies started with charters. But when we speak of "charter or republican colonies," only those are meant which were republican in form of government; that is, those which had practically complete self-government. These are often given as Massachusetts, Rhode Island, and Connecticut. But Massachusetts lost its republican form when it lost its power of electing its own governor, in 1684. It is therefore called by some a "semi-royal" colony. Rhode Island and Connecticut kept their charters. So well adapted were the charters to the needs of the people that even after there ceased to be any king in America these colonies made use of their charters, Connecticut until 1818, Rhode Island until 1842.

Government of Colonies like and unlike that of England. It is important that we get clearly in our minds the fact that the colonists followed the model of the form of government they were accustomed to. When they settled separate towns and began self-government in the

democratic town meeting, they still counted themselves Englishmen. They still thought of James I. or Charles I. as their king, but they thought of the General Court, or the Assembly, or the House of Burgesses, as their Parliament. They were familiar with a king and with a Parliament made up of two bodies. It naturally followed that in the new world the same thing in substance grew up. The governor stood in the place of the king. His council formed one house of the colonial parliament and the Assembly the other.

Supremacy of Parliament. The colonies did not recognize the supremacy of the English Parliament, except in matters of commerce. The king, as long as he was practically independent of Parliament, did not care to have them do so. He desired to control them as his own personal property. But after James II. was expelled from the English throne (1688), Parliament was supreme in England, and began to claim supremacy over the colonies too. So the feeling about the relation of the colonies changed in England. But it did not change in America. We find Thomas Jefferson, just before the Revolution, vigorously denying, in his "Summary View of the Rights of the Colonies," that Parliament had any authority even in matters of commerce. The idea was strengthened by the fact that before 1707 England and Scotland had the same king, but separate Parliaments. The colonies, therefore, looked upon England and Scotland, Massachusetts and Virginia and the rest, as fifteen divisions of an empire having the same king, but independent parliaments.

Colonial Ideas about Taxation. It followed, of course, that the parliament of Massachusetts could not tax the people of England, nor could the Parliament of England tax the people of Massachusetts. This belief

emphasized in men's minds the separateness of the colonies, and greatly increased the difficulty of union. It grew stronger and stronger as the crisis of the war drew near, because it was the theory upon which was based their resistance to the acts of Parliament. Even after independence was acknowledged, the same idea of the necessary separateness of the states nearly wrecked the new government, and it bade fair to throw away the results of the war.

Temporary War Governments.[1] At the outbreak of the war, the royal governors either were driven out or fled of their own accord. There was no difficulty in the case of Rhode Island and Connecticut, which elected their own governors. They went on as before. But the royal colonies were left without any chief executive head, and the machinery of government stood still. There was no change, however, in any of the colonies as to their attitude toward the mother country. They still counted themselves Englishmen. They still looked upon George III. as their king. They still looked upon the colonial legislatures as their parliaments. But they could not ignore the fact that new arrangements for a government were necessary in most of the colonies. The assembly of Massachusetts took matters into its own hands early. While Gage was still governor, it met and organized itself into a provincial congress, with John Hancock as president. In New York, the colonial committee of correspondence urged upon the county committees a provincial congress in much the same fashion, and gave to committees of safety the powers of government. But all these arrangements were merely temporary, and the people were very uneasy on account of the unsettled state of their governments. In this

[1] See Hart, *Formation of the Union*, pp. 80–82.

crisis they turned for advice to the second Continental Congress, which represented the greatest dignity and authority then in the colonies. Massachusetts was advised to go back to its charter and proceed under it without a governor till the trouble was settled. There was no charter in New Hampshire, and the provincial congress was advised to call a "Free Representative" (convention of representatives) to establish such form of government as would best secure the peace and happiness of the people. This government, also, was to last only until the trouble was settled. Similar advice was given to South Carolina and Virginia. The New Hampshire convention was elected, and assumed the authority of the lower house of the legislature. It, in turn, elected a council which became the upper house, and was to be, thereafter, elected by the people. Part of the time the legislature exercised the power belonging before to the governor, and part of the time the committee of safety exercised it. Still, New Hampshire and most of the other colonies had no constitution.

Permanent State Constitutions. The lack of written constitutions kept the people restless in the uncertain condition of affairs. Thomas Paine had written his pamphlet called "Common Sense,"[1] in which he set forth plainly the absurdity of the existing relation of

[1] Published in January, 1776, at Philadelphia. Its closing paragraph is famous: —

"Freedom hath been hunted round the globe. Asia and Africa have long expelled her. Europe regards her like a stranger; and England hath given her warning to depart. O, receive the fugitive; and prepare in time an asylum for mankind."

Paine also wrote, while a private soldier in Washington's camp, a pamphlet called "The Crisis." Its opening passage is still more famous than the above: —

"These are the times that try men's souls."

the colonies to England, and showed the necessity of independence. July 4, 1776, independence was proclaimed. Meantime, in May, 1776, Congress advised the states to form permanent governments. With the exception of Rhode Island and Connecticut, they complied, and drew up constitutions. Virginia was one of the first to act, and adopted its state constitution in June, 1776; Massachusetts dropped its charter and adopted a constitution in 1780; and other states followed their example.

The colonies of the early days had thus developed into states whose aggregate population in 1776 was two million five hundred thousand. These states, by 1783, were able to wrest their independence from Great Britain.

Colonies and States.[1] In granting territory to individuals and companies, the crown also granted powers of government over each colony. If the king had not granted this land and these powers of government, no colony could legally have been planted in America. The colonies, therefore, were bound to the mother country as the source of all their political powers. They were *dependent* political organizations. When we see the word "colony" in print, we at once ask, "Whose colony; the colony of what nation?" A colony is a body of people belonging to some nation, but distant from the mother country. There is physical separation, but so long as a group of people remains a colony, it remains politically connected with the mother country.

When the political connection ceases, the group of persons becomes something else than a colony. So, when on July 4, 1776, Jefferson, Franklin, and the other

[1] See Bryce, i. 15–18.

American patriots declared that "all political connection between the colonies and the state of Great Britain" had come to an end, they had to declare what the former colonies had now become. This they did in the words, "These united colonies are, and of right ought to be, free and independent *states*."

A *state* is naturally "free and independent." Just as the word "colony" means a *dependent* body of people, so the word "state" means a body of people politically *independent*. It is hard for Americans of to-day to grasp the meaning usually given to the word "state," because with us it has come to mean something else. In the Declaration of Independence, Great Britain is spoken of as a *state* — "the state of Great Britain." So she is to-day. So is France a *state;* so are Holland, Prussia, Sweden, Spain, Italy, and Austria. All of these are *states* in the sense in which Jefferson understood the word in 1776, and in which all Europeans understand it to-day. "The state of Great Britain," "the British Nation," "the British Government," are all used as synonymous terms. They indicate a body of people which politically does not receive orders from any other body of people anywhere in the world. It is a sovereign[1] state. It can make such a form of government as it chooses; it can make all laws needed to secure peace and quiet within; or to develop the resources of the country. It may keep an army and a navy, and may use both against any other state. It may and does enjoy all rights which states have under the so-called "international law."

Thus when Congress declared the colonies to be

[1] This word is used to indicate that the state has full power to do all things. But in America the so-called "sovereign states" cannot do all things.

"free and independent *states*" it would naturally mean that Virginia was to be considered from that time forth as the political equal of France or Sweden; that Massachusetts, Connecticut, and Rhode Island were each as fully sovereign as was England herself, or Spain, or Holland. This is the theory of statehood. Had this theory been fully carried out, the state in which we live might to-day be carrying on a war with its neighbor in the north, or on the east, west, or south, as the states of Europe all stand ready to do at a moment's notice. But this is not the idea of the American "state." The American "state" lacks some of the powers belonging to states like France, Russia, or Great Britain. It has never fully exercised power over external affairs, making war and peace, entering into alliances and so on, — power which a sovereign state must have.

The body that declared the colonies to be states, the Continental Congress, held the power of doing some of these things for all of them. In other words, with respect to the outside world, the thirteen states from the first acted as a single state. So that as an historical fact, there has never been a completely independent Virginia, or Massachusetts, or New York. On the other hand, the nation has become so great, so powerful and important, that we think of it as having all power and as giving the states whatever powers they possess. But historically the states came first. They have always exercised the internal powers possessed by sovereign states, and they created the nation by giving to it a portion of the powers which they as free states possessed.

SUMMARY

The original American states developed from the condition of colonies. These colonies were begun in a very small way, with a few hundred people, making more or less compact settlements. Gradually the number of settlements increased, and thus the colony became a collection of towns and counties bound together under a single government; the divisions, however (the towns and counties), had their own local governments, those of the towns being purely democratic.

The colonial governments varied in form, some being *royal colonies*, some *proprietary colonies*, and some *charter colonies*. The main difference was that in the first the governor was appointed by the crown, in the second by the proprietor, and in the third by the people themselves. Some colonies had mixed forms, and before the Revolution most of them had royal governors. But in all of them the power of the governor was limited by a representative assembly which had the right to levy taxes.

When the Revolution came, the royal governors were forced to flee, and then the colonies set up temporary war governments. Later, by the advice of the Continental Congress, they adopted regular state constitutions. The resulting states differed from the colonies in that they were *independent*, while the colonies had been *dependent* political organizations.

CHAPTER XI

THE STATE GOVERNMENTS[1]

The Constitution of Virginia, 1776. Let us now see what was the form of government actually adopted by the states. It was stated above that the Continental Congress, in May, 1776, advised the colonies to set up permanent governments; and that Virginia, acting on this advice, adopted a state constitution in June of the same year, before the Declaration of Independence was made. This Virginia constitution is very important, because it served as a sort of pattern to the states which adopted constitutions later.

It was made while civil war was raging in Virginia. The royal governor, Lord Dunmore, with as many loyalists as he could get to assist him, was harrying the coasts and rivers of the state. Early in the summer he burned the city of Norfolk. Excitement ran high when the convention, consisting of members of the former House of Burgesses, met in Williamsburg, May 6. It contained men of the noblest stamp. Among them was James Madison, then only twenty-five years of age. The great leader and orator, Patrick Henry, was also a member of the body.

Bill of Rights. On the 12th of June the convention adopted a "Bill of Rights," which came to be regarded as an essential part of the constitution of the state. It

[1] For an excellent account of the development of the state constitutions, see Bryce, i. 450–462.

contains sixteen clauses dealing with the great principles of liberty which English people had won for themselves in the course of many centuries. Among other things it declares: —

(*a*) "That men are by nature equally free and independent, and have certain inherent rights, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and attaining happiness and safety."

(*b*) "That all powers are vested in and consequently derived from the people; that magistrates are their trustees and servants, and at all times amenable to them."

(*c*) "That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community."

(*a*) That public offices ought not to be hereditary.

(*e*) "That the legislative and executive powers of the state should be separate and distinct from the judiciary," and that the officers ought to be chosen at "frequent, certain, and regular elections."

(*f*) "That all elections ought to be free, and that all men having sufficient evidence of common interest with and attachment to the community have the right of suffrage."

(*g*) "*That in all capital or criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by a jury of twelve men of his vicinage,*[1] *without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no*

[1] Vicinage = neighborhood. For judicial purposes a county is a neighborhood.

man be deprived of his liberty except by the law of the land or the judgment of his peers."[1]

(*h*) "That general warrants . . . are grievous and oppressive, and ought not to be granted."[2]

(*i*) "That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments."

(*j*) "That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free state." That in all cases "the military should be in strict subordination to, and governed by, the civil power."

(*k*) "That religion, or the duty we owe to our creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and therefore all men are equally entitled to the free exercise of religion according to the dictates of conscience; and that it is the duty of all to practise Christian forbearance, love, and charity towards each other."

Adoption of the Constitution. On the 29th of June the same convention adopted the constitution, or form of government, of which the foregoing bill of rights may be regarded as the introduction. Counting it as one part of the complete constitution, the entire document may be summarized under the following heads: (*a*) the enacting clause; (*b*) the bill of rights; (*c*) the frame or form of government.

The Enacting Clause and Form of Government.

[1] The italics are ours.

[2] That is, warrants for the arrest of any person except such as there is evidence against, which evidence is given under oath by some one named in the warrant; or for the search of a place except such as is particularly described and specified by some one making a sworn statement.

The enacting clause simply states what is done and who does it, as follows: "We, the delegates and representatives of the good people of Virginia, do declare the future government of Virginia to be as followeth."

The form of government was essentially like the state governments of to-day, with some differences which will be noted as we proceed. The first clause states that "the legislative, executive, and judiciary departments should be separate and distinct, so that neither exercise the powers properly belonging to the other."

We have here the familiar division into three departments with which we have become acquainted in the governments of the township, the county, and the city. We are next shown how each of these departments was to be organized.

The Legislative Department. The legislative, as being in some respects the most important, is treated first. "The legislature shall be formed of two distinct branches, who together shall be a complete legislature. They shall meet once or oftener every year, and shall be called the General Assembly of Virginia. One of these shall be called the House of Delegates, . . . the other shall be called the Senate."

The House of Delegates was to be made up of two men from each county, elected by the freeeholders, and one from each of two boroughs.[1] The Senate was to consist of twenty-four persons, chosen from twenty-four districts into which the state was divided for that purpose.

The Executive Department. Having disposed of the legislative, the constitution next takes up the executive department. On this point it provides that "a governor, or chief magistrate, shall be chosen annually by joint ballot of both houses." This is very different from our

[1] The two boroughs were Williamsburg and Norfolk.

present system. We are accustomed to choosing our governors, as we choose the members of our legislative department, by direct vote of the people. But one hundred and twenty-five years ago people were not accustomed to voting for their chief magistrates. In most of the colonies the governors had been appointed by the crown; but the people had been in the habit of choosing at least one house of the legislature. So the Virginians provided for an elective legislature of two branches, and allowed it, instead of the people, to choose the governor.

Jealousy of the Executive. In other respects the treatment of the executive in this early constitution is very different from what we are used to. People at that time naturally distrusted governors. Those they had had were the agents of the king, and as we have seen tried to carry out the king's will in the colonies. In doing so they had come to be generally hated by the people. At the very time this constitution was being made, the royal governor, Dunmore, was carrying on a harassing war against the Virginians. Now, however, that they were providing for a governor of their own, instead of a king's governor, it might be supposed they would look upon him in a different way. And yet, as we all know, prejudice clings to names and offices even after their character has been wholly changed. So the Virginians gave their governor just as little power as they safely could. We are accustomed to a governor who has the right to veto all laws passed by the legislature. But the Virginia governor had no veto power at all. Our governors to-day generally have the right to suggest legislation by a message sent to the two houses; but the Virginia governor had no such right.

Not only did the General Assembly appoint the gov-

ernor, but it also appointed a body of eight men to control the governor. This body was called the council of state. It chose its own president, who performed the duties of governor in case of the death or disability of the elected governor, as our lieutenant-governor does. This council of state advised the governor in all executive matters. He could not call special sessions of the General Assembly without their advice or the request of a majority of the members of the House of Delegates; he could not grant a pardon without their consent; he was commander-in-chief of the militia of the state, but he could not call them out without the advice of the council of state. Thus was the governor hedged in and limited in the exercise of his power.

Growth in Power of the Executive. We shall find, by reading a number of the revolutionary constitutions, that this distrust of governors was very general, and the powers granted to them were usually of the most meagre character. As time passed the feeling against governors disappeared, and in the later constitutions of the original states, as well as in those of the newer states, the governor becomes a much more important officer. Under the constitution of Virginia adopted in 1850, the governor is elected by the qualified voters for a term of four years; and is given power to recommend legislation by message to the two houses; call sessions of the General Assembly at his will; call out the militia when in his opinion the public safety requires it; appoint many civil officers temporarily; grant pardons, reprieves, etc.; demand reports of state officers; and communicate with other states and foreign powers. The right of veto was not given him in the constitution of 1850, nor in that of 1864. But in 1870 a new constitution was adopted in which it was granted.

Thus we see that the powers of the Virginia governor, at first exceedingly limited, have come to be very great. This illustrates what has gone on throughout the country. The movement has been something like that which has given the mayors of our cities so much power, but it has not been so marked.

The Judicial Department. The Virginia constitution of 1776 placed the appointment of justices of the peace in the hands of the governor and council of state. These justices, in the sessions of the county court, tried all minor offences. There were higher courts in which more important cases were tried, and to which cases could be appealed from the county court. The two most important were called the General Court and the Supreme Court of Appeals. Their judges were appointed by the General Assembly and held office during good behavior, which means, practically, for life.

Summary of the Virginia Constitution of 1776. Such, in outline, was the constitution adopted by the Virginia convention in June, 1776. It may be helpful to review its general features before passing from it. It contained the bill of rights, sixteen clauses, as described above; and the frame of government, providing for three departments, legislative, executive, and judicial.

The legislative department, or General Assembly, contained two houses, the House of Delegates and the Senate. The House of Delegates was composed of two members from each county and one from each of two boroughs, chosen by the freeholders for the term of one year; the Senate had twenty-four members, chosen from twenty-four districts every four years.

The executive department was made up of the governor, chosen by the General Assembly; and a council of state, also chosen by the General Assembly.

The judicial department contained two elements: first, the justices in the counties, appointed by the governor and council; second, higher courts, whose judges were appointed by the General Assembly.

Separation into Three Departments. The idea of having three departments, each distinct from the others and independent of them, was strongly held by Americans at the time of the Revolution. It is one of the things that guarantee liberty. Legislative, executive, and judicial power in the hands of one man means tyranny if the man who holds this power chooses to play the tyrant. This was the condition in France before the French revolution (1789). Louis XIV. could say, "I am the state," because he, as king, not only made the laws, but also controlled the execution of them and their interpretation by the courts.

When one body of men make the laws, and an entirely distinct and independent body act as judges in cases arising under them, it is easy to see that tyranny is less likely to creep into the government. Bodies of men are not so likely to become despotic as an individual man is. Therefore it is especially important to keep the law-making and judging powers from getting into the hands of the executive. Under the Virginia constitution the judges of the higher courts were appointed by the General Assembly. This would seem to make them dependent on the legislative branch. But they were appointed for life, or during good behavior, and so were actually independent. The judges had no fear of the legislature if they decided cases contrary to its wishes. The governor, however, was chosen annually and was under the control of the legislative department which chose him. This defect was remedied by giving the people the right to elect the governor. We

have seen that the Virginia constitution is made up of a bill of rights and a frame of government. Both together make a document which would cover not over eight pages in this book. It will be profitable for several reasons to compare it with the constitution of one of the new states.

Constitution of North Dakota. The constitution of North Dakota covers fifty pages in a book as large as this, or more than six times as much space as does that of Virginia. Other new constitutions are fully as elaborate as that of North Dakota, while several of the early ones are even briefer than that of Virginia.

In the North Dakota constitution about eighteen pages, a little over one third of the whole number, are taken up by the first four articles, on Declaration of Rights, Legislative, Executive, and Judicial Departments. These, we see at once, embrace the topics treated in the Virginia bill of rights and frame of government; but they fill a little more than twice as much space as the entire Virginia constitution occupies. In addition to this there are thirty-two pages of matter, most of which is on topics not treated at all in the Virginia and other early constitutions.[1]

Reasons for the Greater Length of New Constitutions.[2] There are several reasons for the tendency of

[1] The fifth article is on the elective franchise, the sixth on municipal corporations, the seventh on corporations other than municipal; then follow articles on education, school and public lands, county and township organization, revenue and taxation, public debt and public works, militia, impeachment and removal from office, future amendments, compact with the United States, and miscellaneous. There are, lastly, articles on congressional and legislative apportionment, public institutions, and prohibition. Twenty separate articles are numbered. The schedule, so-called, covering seven pages, concludes this voluminous constitution.

[2] See Bryce, i. 436.

state constitutions to become long and complex. In the first place, everything relating to the form of government is more carefully defined now than formerly, because experience has shown the need of it.

Secondly, some of the early constitutions were defective in that they provided no regular way in which they could be amended. The later ones correct this by giving a detailed plan of procedure for securing amendments.

Thirdly, the relations between the new states and the national government have made necessary certain explanatory articles.

Fourthly, some matters, which during earlier times were left wholly to the legislatures, are now considered of so much importance that it seems well for the people, in making their constitutions, to regulate them as far as possible. This accounts for a large share of the space occupied by the newer constitutions. Such things as education, municipal and other corporations, public debt, school and public lands, might be left to the legislatures to deal with as they see fit. But the people now generally prefer to set limits to the power of the legislatures in dealing with them.

This illustrates the disposition of modern states to be jealous of the legislatures. When Virginia made her first constitution, there was great jealousy of the governor. Now the governors are given far more power than formerly, while the legislatures are hedged about.

General Features of Present State Governments. In their general features the governments of our states are at present nearly uniform. There are always the three departments, — legislative, executive, and judicial, — and these are organized in very much the same way in all of the states.

The legislature is made up of two houses, an upper and a lower.[1] The upper house is always called the *senate*, while the lower has various names, such as *house of representatives*, *house of delegates*, or *assembly*. The senate is the smaller body, and its members are often chosen for longer terms than are the members of the lower house.

In the making of laws the two houses of the legislature have a veto on each other; that is to say, if a bill originates in one house and receives a majority vote there, it must receive a majority vote in the other house, also, before going to the governor for his signature. If it fails to secure this majority, it is killed.[2]

The legislature has the power of levying taxes upon the people of the state, and of appropriating state funds for such objects as it chooses. But in these matters, as in the passage of ordinary laws, the governor's signature is always required, and in some states his power over appropriations is very great.

The executive department consists of the governor and a number of executive or administrative officers who are necessary to the proper management of the governmental machinery.[3] These include a secretary of state, a treasurer, and an attorney-general; usually there is also a superintendent of public instruction, and very often there are other officers, such as an auditor, one or

[1] See Bryce, i. 477–493. On the executive, see pp. 494–500; and on the judiciary, pp. 501–511.

[2] A bill fails to become a law, even after passing both houses by a majority vote, if the governor refuses to sign it and the two houses cannot pass it over his "veto." To pass a bill over the governor's veto usually requires a two thirds' vote of both houses.

[3] The lieutenant-governor is usually made president of the senate. He is therefore rather a legislative than an executive officer.

more railroad commissioners, a dairy and food commissioner, an insurance commissioner, a labor commissioner, a commissioner of statistics, as well as numerous boards. Their duties are, in part, indicated by their titles, but considerable variations exist, due to differences in the number of departments and the amount of business to be performed.

These state officers are almost always elected by the people for the same term as the governor, and they are generally looked upon as the governor's helpers in carrying on the administration. Yet they are quite independent so far as the management of their departments is concerned, and they do not necessarily belong to the governor's political party.[1]

The judicial department always contains a *supreme court*, which, as the name implies, is at the head of the judicial system of the state. It has general oversight over the other courts, and receives cases from them on appeal. Below the supreme court is the district or circuit court. The state is divided into a number of districts, each, as a rule, containing several counties. A judge is chosen for each district, and he holds sessions of court in each county of his district in turn, thus passing round the "circuit." For this reason the courts held by these judges are often called "circuit courts" rather than "district courts," which is their name in some states. These courts have general jurisdiction in both civil and criminal matters, and they actually take care of the greater part of the judicial business.

[1] In states in which the two political parties are evenly matched in strength, it often happens that the governor belongs to one party, while some or all of the other state officers belong to the opposing party. Here is a difference between the state and national governments: the heads of departments in the latter are always appointed by the president, and always belong to the same party.

Other courts within the state are those of county, city, and township, as already indicated.

The Success of our State Governments. In general, we may say that our states, as compared especially with the great cities, are very well governed. There are cases of "boss" rule and "ring" rule, some of which are so bad as to cause all good citizens the deepest concern, but these have been exceptional, and will become more rare as our people learn the lesson of responsibility better.

There are many cases of extravagance in making appropriations, and there is much lack of wisdom in the way the people's money is distributed by state legislatures. But better business and economic training will gradually lessen these evils.

Our state officials, especially those in the leading offices, have usually been men belonging to the best class of American citizens, and their patriotic labors have done much to maintain the high standard of efficiency and honesty found in most of the states. When we consider that our states are completely self-governing so far as internal affairs are concerned; that the legislatures make laws on all possible subjects relating to the welfare of the people; and that the state judiciary is a complete system, from the justice of the peace to the supreme court, almost wholly independent of the United States courts, we not only have great respect for the states as political organizations, but have reason to be proud of the success of their governments.

SUMMARY

The constitutions adopted by the states in 1776, and afterward, provided generally for (*a*) a bill of rights, (*b*) a

frame of government embracing a legislative, an executive, and a judicial department. The legislative department was very strong, while the executive was weak. An effort was made to keep the three departments independent of one another, but in practice the legislative controlled the executive. In later constitutions the power of the executive has shown a tendency to grow at the expense of the legislature. The new constitutions embrace many more subjects, and are much larger documents than the early ones. There is great uniformity in the general organization of state governments at present, and on the whole our states are well governed.

OUTLINE

FOR STUDYING THE STATE CONSTITUTION

1. THE DOCUMENT ITSELF.

a. Who made it, when, and under what circumstances?
b. Its length, division into articles, etc.
c. Its main subdivisions as to subject matter.

2. ITS ESSENTIAL PARTS.

a. The enacting clause.
b. The Bill of Rights.
c. The Frame of Government.
d. The provision for amendments.

3. OTHER MATTERS IN THE CONSTITUTION.

a. Do these limit the legislative, the executive, or the judicial department?

b. Are they temporary, or of permanent importance?

c. Do they explain the relations between the state and the national government?

d. Has it been an advantage or a disadvantage to have them in the constitution?

4. THE ENACTING CLAUSE OR PREAMBLE.

a. Its form.

b. Its contents. Does it contain more than a statement of what is done and who does it? If so, why?

5. THE BILL OF RIGHTS.

a. Does it cover more points than the Virginia Bill of Rights?

b. Make a list of the additional points.

c. Look for them in the Declaration of Independence and the Constitution of the United States. If not found there, try to find the explanation of their presence in special local conditions.

d. Is this Bill of Rights your only guaranty of the peaceable possession of the rights there guaranteed? If not, where else are they guaranteed?

6. The Frame of Government.

a. The Legislative Department.

(1) What is its official name?

(2) What is each house called?

(3) How many members has each, what are their qualifications, how are they chosen, by whom, and for what term?

(4) What special privileges do the members of the legislature have?

(5) How often do the sessions occur, and how long may they continue?

(6) What is the prescribed method of passing laws?

(7) What appointing power has the legislature, or either house?

(8) What things can it do without the consent of the governor?

b. The Executive Department.

(1) Who may be governor; is he chosen by majority or plurality vote; what is his term of office?

(2) What power does he have over the legislature by veto or otherwise?

(3) What officers may he appoint independently of, and what ones with the consent of, one or both houses of the legislature?

(4) What control does he have over the other state officers?

(5) What power of a judicial nature does he have?

(6) What military powers has the governor?

(7) Are there any special limitations upon him?

(8) What provision is made against his death, disability, or absence during the term?

c. The Judicial Department.

(1) What is the lowest court?

(2) What is the highest court?

(3) What intermediate courts are there?

(4) What classes of cases are tried in each?

(5) Which court does the largest part of the business?

(6) How are the judges of each chosen, for what term, by whom, and what qualifications are required for the office?

(7) What special provision is made for probate business?

(8) Are the courts independent of both the other departments?

(9) Have the courts any control over either of the other departments?

7. THE WORKING OF THE CONSTITUTION.

a. Do the parts of the Constitution seem to work harmoniously together?

b. Is any part of your state constitution unwritten? think of the way in which candidates are nominated for office. Is there any written regulation of party conventions for nominating state, county, and city officers?

c. What would be the advantages of a primary election law which would give the voters of each party the chance to nominate their candidates for all offices by ballot? What disadvantages would such a plan have?

d. How does the state government work in the matter of education, taxation, and roads?

8. What state officers, aside from the governor, are chosen by the people? What are the duties of each? Do these officers limit the power of the governor?

9. What does the Constitution say about cities, counties, and townships?

SUGGESTIONS AND QUESTIONS

1. What parts making up the state were created by the Fundamental Orders of Connecticut? Is there any similarity in the way Connecticut was made and the way England was created by the union of small kingdoms? What difference was there in the process of making the union in the two cases?

2. Are there, in your county or state, any bodies of people who came in as church congregations? If so, is there any tendency for those congregations to become political units like the New England township? If not, can you explain why not?

3. What does Magna Charta say about the way in which taxes should be levied? See pages 11, 12. Read the Petition of Right, *Old South Leaflets, No. 23*, and see what it says about taxation, especially as to who has the power to impose taxes. Read also on the

same subject, the English Bill of Rights, *Old South Leaflets, No. 19.*

4. Who were Sir John Eliot and John Hampden, and what connection did they have with the question of taxation in England? See Green, *Short History.*

5. Mention two or three of the present colonies of Great Britain. How are they governed and what control has the mother country over them? See article on Canada, by Bourinot, *Forum*, March, 1901.

6. Why did the "Glorious Revolution" of 1688 give Englishmen a new idea of the relations between king and Parliament? See Green, *Short History.*

7. Why does a condition of warfare require a more vigorous government than a condition of peace? Are wars sometimes helpful as a means of developing governments? Look up the case of the new German Empire; also consider the Civil War in America.

8. Were the colonies "free and independent states" in 1774? If not, could they have delegated any powers to the Continental Congress? If they did not delegate power to the Continental Congress, how did it have the power to declare the colonies to be "free and independent states"?

9. Mention as many "free and independent states" of South America as you can think of or find on a recent map. Does "freedom and independence" make them strong and great? Is it possible that union, with loss of some of their independence, would be better for these people?

10. How did the belief originate that newly discovered territory belonged to the crown, not to the nation as a whole?

11. What led the Puritans in Massachusetts Bay to take up the democratic form of church government?

12. In some states the governor has the right to veto any single item in a bill appropriating money. What is to be gained by such a provision, and what danger is there in it?

13. It has been said of the governments of some of our states that they are "almost as absolute as the government of Russia." In what sense is this true, and how may the evil be cured?

14. Compare the officers of your state with those of the smaller governments within the state, such as the county, city, and township. Are the state officers better qualified for their positions, as a rule, or are they not? Try to explain any differences you may notice by

considering the comparative importance and dignity of the offices; the salary attached to them; the conditions under which nominations and elections are conducted, etc.

15. Read the party platforms of the last state campaign. What were the questions at issue between the two principal parties? How many of these were distinctly *state* issues, and how many had reference to national politics?

CHAPTER XII

CONDITIONS THAT MADE UNION BETWEEN THE COLONIES DIFFICULT

Colonies Small and Separate. It is difficult for us to appreciate fully how small and separate were the first English colonies in America. We have become accustomed to thinking of townships, counties, and states as bound together in a nation. Our ancestors had no such ideas to begin with, and no desire to be united to their neighbors. In fact, they were constantly quarreling with neighboring towns or colonies; each colony was determined to protect its own selfish interests. They were planting the seed of a new civilization, and it needed time to grow. Community of interest, desire for union, strong central government, do not grow in a day; the process is a long and difficult one.

Colonies like England in Development. Our forefathers were Englishmen. This process of growth, then, would naturally be English; would very likely be similar to the process of development through which the parent state went after the seed of Saxon civilization was planted on British soil. We ought to expect in America the same local distrust, the same tenacious independence of local units. We ought to expect similar barriers to union, similar difficulties in getting colonies to put aside local prejudices and self-interest for the higher good of all. We should not be surprised that not the best of feeling existed between Rhode Island

and Massachusetts, between New York and Connecticut. We should not be surprised to find ill feeling between Plymouth and Massachusetts Bay, though they afterwards became parts of the same state; and between Connecticut and New Haven, both now parts of Connecticut.

Difference in Religion. This ill feeling was made worse by the religious differences among the colonists. Because Roger Williams did not believe as the Massachusetts Bay people did, it was thought that he should be banished;[1] Virginia thought it necessary to drive out Puritans from her borders; and partly, at least, on account of religious differences, Thomas Hooker, in the summer of 1636, led his people out of Massachusetts Bay Colony to the beautiful valley of the Connecticut, at Hartford.

Then there were the Catholics of Maryland, who differed from all the rest and had suffered many things in England on that account. The founding of a commonwealth in America for their special benefit introduced a disturbing element. This was no fault of theirs, for their attitude toward religious freedom was, with Rhode Island's, the most advanced in the colonies. But in that day politics and religion could not be separated. The introduction of this new religious element led to strife which did not end until Protestants got control of the government of the colony.

There was another strong element of religious differ-

[1] The banishment of Roger Williams, the persecution of the people of his colony, the refusal to allow them a part in the New England Confederation, and the general contempt bestowed upon the colony had their effect. Rhode Island remained a sort of alien among the colonies until after the Constitution of the United States was adopted.

ence. The southern colonies were in the main settled by men who belonged to the Church of England. The northern colonies were settled in the main by men who had separated from the Church of England. We can get now no adequate idea of the bitterness of the struggle over this separation. It was something like the bitterness of the time when Protestants seceded from the Roman Church.

And finally the Quakers were very unlike the rest in their religious belief. They were even more extreme in their desire for simplicity in religious forms than were the Puritans. They refused to take oaths, while the rest of the people considered it a solemn duty to do so; they showed no respect for dignitaries, and kept on their hats in the presence of magistrates; they had no churches, preachers, or service in the ordinary sense of the term, and so incurred the enmity of the clergy, who were powerful and despotic;[1] and they would not go to war, thus drawing upon themselves criticism in times of public danger. In spite of their simple life and hatred of sham, their benevolence and love of freedom, they introduced an element of difference that in early days had to be taken into account, and is not yet entirely forgotten.

Race Differences. The growth of union was retarded by race differences. The colonies were mainly settled by Englishmen, who gave them in great measure their laws and institutions. But there were many settlers of other nationalities. The Dutch in New Netherland had customs and ideas different from those of the English, and the fact that this colony was founded and supported

[1] The movement was intensely democratic in its bearing, and George Fox, the founder of the sect, is said to have been the first Englishman to declare publicly against slavery.

rather as a fur-producing and trading colony than as a home-building colony, like Massachusetts, led to the people's having little part in the government. The introduction of the Patroon System — a system of great landlords and of tenants who could never own their land — brought in an element very different from the self-government of the other colonies, and New York was not free from the evil results of this until after 1840.

In North and South Carolina, the Scotch Irish formed an important part of the population. Many thousands came there in the course of years from the north of Ireland, and also many Scotch Highlanders emigrated to the same parts of America. So that in North Carolina, before the Revolution, "they may be said to have given direction to her history."[1]

Then there were French Huguenots, although their numbers were comparatively few. Pennsylvania had many Germans in the north and east, and many Scotch and Irish in the central and western parts. There were a few Swedes in Delaware, and Scotch, Irish, and Germans in other colonies. We have learned how to deal with and assimilate foreign populations, but in that day it was much harder to combine different race elements.

Puritans and Cavaliers. There was another difference between the settlers of the northern colonies and the southern which we must always bear in mind. It is closely connected with the religious differences mentioned. The South, and particularly Virginia, was dominated by a class of men called in England Cavaliers, who took the side of Charles I. They were aristocrats, and, being accustomed to the estate and manner of life

[1] See *Report of First Congress of Scotch Irish in America*, paper by William Wirt Henry. Quotation from Dr. J. R. Wilson.

of the English squire, kept up a similar kind of life in America.

The northern colonies were settled by a very different class of people. They were called Puritans, or Round Heads, and had sided with Parliament against the king. They did not, in general, belong to the aristocracy, and they were prudent, thrifty people, willing and accustomed to work with their hands. They were inclined toward town life, and developed a genius for invention, commerce, and trading.

No Interchange of Ideas. Union was also hindered by a lack of intercourse between the colonies. Men are apt to take a hostile attitude toward things and people about which they know little or nothing. There was a lack of roads and the other means of communication familiar to us; the newspaper, one of the most powerful agencies ever known for the interchange of ideas and the moulding of public opinion, was not in existence; and the postal system was as yet undeveloped. The first official notice of post offices in the colonies was in Massachusetts, in 1639. The system was of course primitive, but not so much so as that of Virginia in 1657. New York had a post line between New York and Boston that ran as often as once a month, which was a matter of congratulation in those days. Thirty years later, it carried mail only once in two weeks. Franklin, when postmaster-general before the Revolution, made an efficient system, but it fell into a bad state again when he was removed. In 1789 there were only seventy-five post offices where now there are a thousand times that number.

The people of Rhode Island, or Providence Plantations, could know little of the people of New Haven or New York, and the conditions of life in the South were

more unknown to the average citizen of Portsmouth or Dover than the circumstances of people in the interior of China are to us to-day. Such was the case, at least, in the early days of the colonies.

Difference in Political Conditions. The political conditions under which people live, the extent to which they have self-government, have much to do with the possibility of their agreeing and combining together. So do their ideas about liberty and the rights which each individual ought to have. The colonies were not alike in regard to many of these things. One reason why Hooker insisted on taking his flock to the Connecticut Valley was that he believed that all the freemen ought to have a voice in the government. John Winthrop thought that the people in general ought to be satisfied to leave matters in the hands of the best educated and the so-called higher classes. John Winthrop was an aristocrat, Thomas Hooker was a democrat. This line of difference was to be found to some extent in every colony. Nor was that the last of it. It is fundamental. It made the Constitution of the United States wellnigh impossible, and is at the bottom of the difference that divides political parties to-day.

SUMMARY

The colonies to begin with were very small and separate. They were mainly English in their process of growth, and had many differences in religion, race, customs, and ideas. There was little communication between them, and few opportunities for the interchange of ideas.

CHAPTER XIII

GROWTH OF UNION

Union of Slow Growth. It is probably clear, from what has been said, that these colonies would not join together unless compelled by necessity, and that each thought so much of itself that even if thus united for a time they would soon separate again. We can be sure, too, that when they once began to unite, it would be a very long time before they would be satisfied finally to join themselves together.

The Indians, Dutch, and French. During early colonial times there was one ever present danger: the colonies were surrounded by hostile Indian tribes. The attitude of the whites toward the red men was often harsh and unjust. Young Indian boys were sold into slavery, and the tribes dispossessed of their lands. The effect upon a proud and courageous people was inevitable, and they more than once threatened to wipe the colonies out of existence. The colonies were scattered and weak, and were obliged to combine for protection, whether they wanted to or not.

Then, too, the Dutch had settled in New York, and had thus thrust themselves in like a wedge between the northern and southern colonies. They began to encroach on Connecticut, and pushed as far north as Albany, thus cutting into territory which Massachusetts claimed by her charter. Besides the Dutch, there were the French on the north, always hostile, and always a threatening cloud on the horizon of the colonies.

A union might not have seemed necessary if England could have protected the colonies. But Englishmen were dividing into two hostile parties in the civil war between Charles I. and many of his people. These dangers brought it about that in 1643 the New England Confederation was formed "for mutual help and strength in all our future Concernments," as they said.

New England Confederation.[1] Only Massachusetts Bay, Plymouth, New Haven, and Connecticut joined together. Rhode Island was not allowed to join, neither were the towns on the Maine coast. People who differed from the others so widely in religion and other things as did the Rhode Islanders were not worthy of consideration. As for the Maine towns, one of them had actually elected a tailor to the office of mayor, and it seemed to John Winthrop, Governor of Massachusetts, that people so democratic as that would be almost as dangerous as Roger Williams and his Rhode Islanders. This early union, therefore, was a very small one, and did not bring even all of New England together. The confederation was of the loosest description, but it had a constitution called the Articles of Confederation, and it taught the lesson of the benefits of union. It soon ceased to act, and became practically dead; but when King Philip's War broke out, in 1675, the danger that threatened the very life of the colonies drove them together again, and revived the union for a short time.

Other Schemes of Union. From the year 1684, when the last meeting of the Commissioners under the New England Confederation was held, to the Convention of 1787, there were many schemes of union put forward. All of them were interesting, some were curious, and all ought to be read. The attempts at union were from two

[1] See Fiske, *Beginnings of New England*, ch. iv.

standpoints, from without the colonies and from within. While the colonists themselves were at different times putting forward schemes of union, the English government was trying to consolidate them by taking away the charters and making all royal colonies under one governor. This was in substance what the much hated Governor Andros was trying to do, and might have accomplished if the Revolution of 1688 had not prevented.

William Penn took an interest in this question of union and had a plan of his own, which he called "A Briefe and Plaine Scheame how the English Colonies in the North parts of America, Viz: Boston, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia and Carolina may be made more useful to the Crowne and one anothers peace and safety by an universal con-currence."[1] This was in 1697. There were other plans. That of Robert Livingston, of New York, in 1701, and that of Daniel Coxe, of New Jersey, in 1722, although not the only ones, are good examples. These were, however, private expressions of opinion rather than anything else.

Albany Plan of Union. As we have seen, the hostility of the French in the north had something to do with the formation of the New England Confederation. That hostility increased as the years went by, and led to several wars and Indian massacres. It came to a head about 1754 in what is known as the Old French War, or the French and Indian War, in which Washington prominently figured for the first time. In the New World it was a struggle between France and England to see which should have the continent of North America. Naturally, it was a bitter struggle, and one of great concern to the English colonies. Here again the pressure

[1] *American History Leaflets*, No. 14, p. 3.

of necessity brought out plans of union which represented real needs and inclinations. By 1754 Benjamin Franklin, one of the greatest Americans of any time, had become prominent in every good work. It is interesting to find, therefore, that he, most of all, is responsible for the Albany plan of union, adopted by a convention at Albany in July, 1754. Another plan was proposed at the same time by the Rev. Mr. Peters. Both the Peters plan and Franklin's "Short Hints"[1] should be read, as well as the Albany plan itself, which was the outcome of the two. One month later the English government drew up a plan for the general coöperation of the English colonies. It was too late, however, and never came to anything.

The Albany plan, also, came to nothing, being, as has so often been said, too democratic for the English government and too monarchical for the colonies. The Albany convention was, however, a very important step toward final union, because it brought together in some sort of agreement representatives from most of the colonies as far south as Maryland.

Change in England's Attitude. The English Parliament did not make any decided attempts to assert and maintain its authority over the colonies until after the French and Indian War. But the cost of that war was so great, and the burden of taxation in England so heavy, that Parliament determined to assert its authority and tax the colonies. This was directly contrary to the ideas that the colonies had always held. They had not changed in this regard, even if England had. From the beginning, too, they had with good reason claimed all the rights that belonged to Englishmen. One of these was that

[1] For Franklin's plan, with comments by himself, see *Old South Leaflets*, No. 9.

no one could tax them except the representatives they elected for that purpose. They had exercised this power over taxation against royal governors for many years. Now they saw it suddenly denied them. The English people did not understand this feeling at all. They thought the colonies were represented in Parliament; but the English ideas about representation were very different from those that had grown up in America. The English system was representation by classes of people. The clergy were represented, the nobility were represented, so were the counties and boroughs. But the great majority of Englishmen had no vote for a member of the Parliament which taxed them, and they felt that the colonies were as much represented as they were.

There were no classes in the colonies, and the method of representation by classes was impossible. The very manner of settlement in separate small communities had caused representation by population to become the approved method. In this respect as well as in regard to the supremacy of Parliament, England and the colonies had grown steadily farther apart.

The Stamp Act Congress.[1] In 1765 Parliament asserted its right to tax the colonies by passing the Stamp Act, which required a revenue stamp upon legal documents, commercial instruments, newspapers, etc. This produced so great a sense of danger in the colonies that it forced them together again in the Stamp Act Congress. This was held in New York in October of 1765. All of the colonies supported this congress, but four did not send delegates. The repeal of the Stamp Act by Parliament settled the difficulty for a time, and

[1] For an account of the various meetings which prepared the way for the Revolution and for union, see Fiske, *American Revolution*, i. ch. i.

although this congress did nothing but draw up petitions to the king and a declaration of rights, it is evident that the idea of union was gradually spreading, and that the number of colonies uniting was gradually increasing.

Other Methods of Taxation. Parliament had no intention of giving up the struggle. The colonies had never acknowledged the supremacy of Parliament except as to the regulations, taxes, and duties necessary for carrying on the commercial system of Great Britain, the revenues from which went to support the navy that protected colonial as well as British commerce.

Parliament now attempted to increase taxes of this kind, and added other features, not taxes, that were very unwise. But the Americans at once shifted their ground and denied the right of Parliament to lay taxes or duties of any kind whatever. For it was plain to be seen that Parliament was using this as a method of raising general revenue. One thing led to another, and the struggle grew more and more bitter until the battles of Lexington, Concord, and Bunker Hill. We are all familiar with the story of the Boston Massacre, the Boston Tea Party, and the Four Intolerable Acts. But we are less familiar with other occurrences during this troubled period that had much to do with drawing the colonies nearer to a final union.

New Steps toward Union: Circular Letter, and Non-Importation Agreements. Even at this time (1770–75) communication between the colonies was slow and difficult. There was little interchange of ideas between the colonies and little knowledge of one another. Now that the final and greatest peril confronted all the colonies alike, the question was, how to get around this great barrier to a common purpose and to common action. Samuel Adams is the one who in the main solved the

problem. During the winter of 1767–68 the Massachusetts Assembly voted a Circular Letter, drawn up by Samuel Adams, which told plainly the stand of Massachusetts in regard to Parliament's laying any taxes at all. This letter, which suggested that the colonies act together, was sent to the other colonial assemblies. Although forbidden to do so, they took up the cause of Massachusetts and made it their own. This Circular Letter was one step, at least, toward concerted action. Virginia did something like this in connection with her Virginia Resolves in 1769. In the same year, after the Assembly of Virginia had been dissolved, the Burgesses signed an agreement not to use or import any goods upon which Parliament had laid a tax. George Washington and Thomas Jefferson both had a part in this, although it was really a revolutionary proceeding. Virginia persuaded the other colonies to adopt a similar plan, "boycotting" English goods. These Non-Importation Agreements were another step toward union.

Committees of Correspondence.[1] Soon after the Boston Massacre Samuel Adams organized town Committees of Correspondence throughout Massachusetts. By means of these he spread information as to what the acts of the British government really meant. They formed also the best means attainable for concerted action. This method soon spread over the colonies, and after the Boston Tea Party, under the lead of Virginia, all of the colonies formed permanent Colonial Committees of Correspondence, — another and a long step toward union; the machinery for concerted action was now at hand.

First Continental Congress. The First Continental

[1] On the importance of Committees of Correspondence in making the Revolution possible, see Hart, *Formation of the Union*, p. 57.

Congress followed naturally in 1774, after Parliament had suspended the operation of the Massachusetts Charter and passed the Quebec Act. The time was nearing when the colonies would take the final step toward union, and would allow the central congress to make laws for all. The First Continental Congress, however, did not have that power, but it is significant that many of the delegates to it were chosen by the committees of correspondence, or by conventions, or by people of the towns and counties. It is easy to be seen that the people were assuming control. This congress did one thing that had a direct bearing on unity of action. It formed an *American* Association to see that no British goods were imported into or consumed in the colonies. They advised that each town or county appoint a committee for this purpose, to be supervised by the Colonial Committees of Correspondence. The colonies were thus covered with a network of revolutionary organizations, reaching down into every county and township. There was, however, one thing yet lacking, and that was a permanent central congress.

Second Continental Congress. The First Continental Congress adjourned in October, 1774, but before adjourning it provided for a second congress, to meet in May, 1775, if the troubles with the mother country were not settled before that time. The battles of Lexington and Concord were fought in April, 1775, and when the Second Continental Congress met it found itself in a very different position from that of the congresses of 1765 and 1774. The new congress, like the old, had no authority to make war, or pass laws, or carry on government, but something had to be done, and that, too, at once. It therefore *assumed* authority to carry on the government of the colonies as a whole, and proceeded

to take measures necessary to prosecute the war. It performed other acts that only a central government could perform. We have, therefore, the one thing that was lacking to make a unified organization of the colonies, having some sort of permanence. For this Second Continental Congress lasted, practically speaking, until the Constitution of the United States went into effect. Nor did the colonies rebel against a central government which assumed powers that had never been granted it. By common consent they justified this action. Once more peril from without had forced the colonies into a union which was to give way only to one that should prove itself the strongest in history.

Written Constitutions. The Second Continental Congress had hardly begun its sessions before Franklin drew up a systematic plan of a federal government, or, in other words, a written constitution. All of the colonies, too, in changing from colonies into states, seemed to think it necessary to have written constitutions. This drawing up of written constitutions by congress and by conventions or legislatures of eleven different states[1] was one of the most important happenings in the history of government. A written document which says what powers and duties the legislature and officers of the state shall have was a great advance in the science of government. Mr. John Fiske says: "Almost everything else in our fundamental institutions was brought by our forefathers in a more or less highly developed condition from England; but the development of the written constitution, with the consequent relation of the courts to the lawmaking power, has gone on entirely upon American soil."

[1] Connecticut and Rhode Island used their charters as constitutions.

Origin of Written Constitutions. The origin of written constitutions must be sought in the distant past, and the development is too complicated for us to study now. But let us remember that a charter was a kind of contract; so is a constitution. It has been said that the Great Charter (*Magna Charta*) is in a sense a constitution, but colonial charters come much nearer being constitutions. This is easily seen when we remember that the charters of Rhode Island and Connecticut served as constitutions without substantial change for many years after the United States Constitution was adopted.

The Pilgrims in the Mayflower foreshadowed a written constitution, and in Connecticut in 1639 the first *popular* written constitution ever known was adopted.[1] The main mover in this was Thomas Hooker, whose democratic notions in part led to his removal from Massachusetts Bay. This constitution was known as the "Fundamental Orders of Connecticut," and it embodied the ideas of Hooker. "Under it the people of Connecticut lived for nearly two centuries before they deemed it necessary to amend it." The New England Confederation had a kind of constitution, the Albany Plan of Union contained one, and the moment the Second Continental Congress assumed the authority of a law-making and law-executing body, a constitution for its regulation was thought necessary.

Articles of Confederation. The constitution formed by the Second Continental Congress, called the Articles of Confederation, was adopted by Congress in 1777. The articles were not to be binding until ratified by all the states. So jealous were the latter of one another that in

[1] For an account of the written constitution of the Athenian oligarchy at the close of the Peloponnesian War, see Botsford, *History of Greece*, p. 231.

spite of the great need, the new union did not go into effect until the war was almost over.[1] Before the war began they had thought of themselves as separate and independent colonies joined together through the king. In America there was no bond of union between them. Each had its own legislature and courts, and the powers that they believed the king to possess were small. After the war, everything was left as before except the king. Now, the people set Congress in place of the king, and gave it very nearly the same powers. Yet so hostile had they become to all central authority that they were hostile to this one of their own. They therefore failed to give Congress powers absolutely necessary to a working scheme of government. There was no system of courts and no executive except a committee of Congress; there was no adequate means provided for raising revenue by the central government, and no government can be run without revenue. Congress could not enforce its authority upon the states or upon individuals, and therefore states and individuals paid little attention to it. The result was that when the pressure of war was removed the government fell into contempt, and the union seemed about to perish.

It seems strange at first that men of so much ability should have made so weak a government. But we must remember that they had no experience to guide them; "never before had any one even tried to formulate a scheme of government for such a federation."[2] When we compare this attempt at union with those that preceded it, it is clear that an enormous advance was made. The national idea had been born, and the adoption of the Articles of Confederation "was one of

[1] See Fiske, *The Critical Period*, chs. iii. and iv.

[2] Channing, *Students' History of the United States*, p. 240.

the half dozen most important events in the history of the United States."[1] How difficult it was to form even this union becomes clear when we understand that it took nearly four years to get the Articles adopted by all the states.[2]

Decline of the Confederation. It became evident very soon that the new government was not strong enough for the needs of the time. It was a period of singular unrest and fermentation. The war had broken up old ideas and led to the rise of new ones. There was almost universal discontent. Dissatisfaction led to friction and change. The lot of the mechanic and laboring man had been a pitiable one before, and the war had made it worse. The farmers had good crops, but could get nothing for them. The men had been in the army, the women and children had been obliged to care for the farms, and fences were down, houses and buildings out of repair, and fields grown up with underbrush. The stock had been driven off or killed, and the family had run into debt in order to keep alive. There were no manufactures, and the English navy had cut off commerce. There was no demand for labor, as there was nothing to do. The returned soldier, farmer or mechanic, had no money, because his pay, if he got any, was in poor currency. He found debts when he returned home, and nothing to pay them with. His creditors pressed him, and perhaps sent him to a debtor's prison. The prisons were full, and the wretched people in them

[1] Channing, p. 240.

[2] One cause of delay was the claims of states to lands west of the Alleghany Mountains. These lands were finally ceded to the central government to be held by all the states in common, and the Ordinance of 1787 was passed for the government of the territory north of the Ohio River.

underwent a torture that is indescribable. The poverty of the people was great. When the courts tried to collect debts, the debtors resisted, and the courts were intimidated by violence. In Massachusetts, a rebellion broke out, led by Job Shattuck and Daniel Shays, that was not put down until bloodshed ensued. Massachusetts had to raise an army, and even Boston was put in a state of defence.

Congress found it impossible to make the states keep the treaty of peace, especially in regard to the Tories and the payment of British debts. As soon as the war ended, the persecution of Tories began. The bitterest of feeling between them and the Whigs had grown out of the six years of strife. The Tories were hunted like wild beasts. Some fled to Florida and Bermuda, some to Canada and Nova Scotia. Many went to England. Riots were frequent, and Tories were tarred and feathered. "It was noted with no small pleasure that a vessel carrying seven hundred of the fever stricken Tories had gone to pieces off the New England coast, and scarce a soul been saved.[1] In the South, where the feeling was the bitterest, many were shot or hanged. The whole tendency of affairs was dangerous in the extreme, and Congress began secretly to prepare for civil war.

Then, too, the states quarrelled among themselves over the taxes and restrictions laid by each upon commerce. Each state had the control of commerce in its own hands, and selfishly tried to further its own interests by vexatious and unjust restrictions upon its neighbors. Congress attempted to get amendments adopted that would make the Articles of Confederation workable. But when the Articles of Confederation were

[1] McMaster, *History of the People of the United States*, i. 114.

drawn up, amendments were made practically impossible by requiring that every state should ratify before they became valid. In the existing condition of suspicion and discontent this was impossible. Congress fell lower and lower in the esteem of the people, and degenerated into a debating club. Some states would not send delegates, and for a considerable time Delaware and Georgia were not represented. There were seldom twenty-five delegates present, and Congress was obliged to adjourn day after day for want of a quorum. It was insulted and badgered by drunken troops and reviled by the press. It wandered like an Ishmaelite from Philadelphia to Princeton, from Princeton to Annapolis, from Annapolis to Trenton, and from Trenton to New York. No wonder men like Washington, Madison, and Hamilton were in despair. Two courses were open: to drift on into anarchy and civil war, or to throw away the Articles of Confederation and make a new constitution.

SUMMARY

The growth toward union in the colonies was very slow and difficult on account of the facts noted in the preceding chapter. But the need of common action for self-defence caused four of the New England colonies to form a loose confederacy in 1643. It lasted only till 1684. During the one hundred years following, various schemes of union were proposed. The most important steps toward union during this time were, (*a*) the Albany Congress and Plan of Union, 1754; (*b*) the Stamp Act Congress, 1765; (*c*) the First Continental Congress, 1774, and (*d*) the Second Continental Congress, 1775–1788.

When the Articles of Confederation were adopted in 1781, a long step toward union was taken; but the government under it was extremely weak, owing to the refusal of the states to give adequate powers to the national government. Things went from bad to worse, until men saw that the constitution must be changed or anarchy would result.

CHAPTER XIV

GENESIS OF THE CONSTITUTION[1]

Difficulty in Changing a Constitution. If we should become dissatisfied with our Constitution, and should want peaceably to overthrow it, it would be difficult to tell how to do it. If we called a convention for that purpose, we might get into serious trouble. We could not expect Congress to favor such action, nor the President, nor any one in office, because men do not like to give up holding office. This was about the position of the people who in 1786–87 wanted a new Constitution. Congress could not be expected to head such a movement, because it would throw its members out of office. But the men who wanted a change were sincere patriots, and they got at the matter, although it had to be done in a roundabout way.

Trouble over Commerce. If we look on the map, we shall see that the Potomac River and Chesapeake Bay afforded opportunity for large commerce with Maryland and Virginia. The tariffs or taxes levied by these states upon traffic were not uniform, and this led to endless strife. In order to settle the difficulty, a meeting was held by commissioners of Maryland and Virginia in 1785, at Washington's residence. When they got to talking the matter over it became very evident

[1] On the general subject excellent supplementary material will be found in Bryce, *American Commonwealth*, i. 19–31; and Fiske, *Critical Period*, chs. v.–vii.

how much better it would be to have the same commercial regulations for all states having to do with trade coming through the Chesapeake and adjacent waters. If we look on the map again, we shall see that many of the states were situated in regard to one another as Maryland and Virginia were. The upshot of the meeting at Washington's residence was that a meeting of commissioners for all the states was called at Annapolis to consider trade and commerce for the whole country.

Annapolis Convention. There were only a few delegates present at the opening of the conference, and they did not wait to transact business, nor until other delegates already on their way could get there. They called another convention at Philadelphia in 1787. This time it was not to consider trade and commerce, but to *consider the Articles of Confederation* and make them "adequate to the exigencies of the Union." This was the result of the work of Madison and Hamilton, who for a long time had been laboring for a convention to alter the government. It had been proved that amendment to the Articles in the ordinary way was impossible, and Congress must have known that some radical change would result. Could Congress be persuaded to indorse a convention that might greatly alter its powers or take away its right to exist? It would have been doubtful if the convention had been called with the open purpose of throwing over the Articles; but at this time there were only a few who had a settled purpose to make a new government. It would have been doubtful any way, if Madison had not been a member of Congress. With the aid of Hamilton, he persuaded Congress to recommend that the states send delegates to the Philadelphia convention.

The Federal Convention. The convention that met

at Philadelphia in May, 1787, was one of the most remarkable in history. The states realized the gravity of the situation, and chose almost without exception their strongest men. This meant much, for the United States at this time had among its citizens an unusually large number of men of great power. Their work there immortalized them, and the document which they drew up has proved to be beyond doubt the most remarkable of its kind ever known. Rhode Island refused to send delegates, and was not represented. All other states had delegates present at some time during the sitting of the convention. Washington did not at first expect to attend, but Shays's Rebellion and other occurrences frightened him as to the condition of the country, and he was present and became the president of the convention. Benjamin Franklin, although an old man, was there also, for if by any chance Washington could not preside, there was only one other man in the colonies in whom all had absolute confidence, and that was Franklin. Washington and Franklin soothed many a contention, and settled many a difference. Their support of the Constitution was of great weight in the eyes of many who otherwise might have opposed it. The convention held secret meetings, and met daily from May 28, 1787, until September 17 of the same year. Madison, careful and methodical, made copious notes of the proceedings, which were not published, however, until long afterward, and no one will ever know many things that were said and done during the convention.

Different Plans of Government. When the members were ready for serious work, the first thing of vital importance to be settled was whether they should merely revise the Articles of Confederation or make an entirely new Constitution. The Virginia delegates and many

others were in favor of a new Constitution and a strong central government. Madison had been the main mover in drawing up a plan for a new government, which was presented to the convention by one of the Virginia delegates, and called the Virginia Plan.[1] This plan would have given the large states greater influence, and naturally the convention divided into two parties on the question. The representatives of the small states who objected to so strong a central government brought in a plan of their own, which was introduced by Paterson, of New Jersey, and was called the New Jersey Plan. It provided for the continuance of the existing government under the Articles, but gave Congress the power to lay and collect taxes, regulate commerce, and compel the states to obey its command. It was necessary, then, to decide which of these plans to adopt as a basis.

After a heated struggle the Virginia Plan was adopted, and with some changes it determined in great measure the form of our Constitution. Before the Constitution could be made satisfactory to the convention several compromises had to be agreed upon. When these had been made, many of those who had voted for the New Jersey Plan strongly favored the new Constitution, for there had grown up a deep and widespread distrust of the Articles of Confederation. After the substance of the different articles in the Constitution was agreed upon,

[1] It was presented to the convention by Edmund Randolph, who was made the spokesman of the Virginia delegation, because he was at the time the governor of the state. The Virginia Plan is, on this account, sometimes spoken of as the Randolph Plan, but there is no evidence that Randolph was its author. On the other hand, there are many facts which go to show that Madison had thought out most of the points embraced in the Virginia Plan before the convention met. He is, therefore, properly regarded as its principal author.

the whole document was handed over to Gouverneur Morris to put into shape, and the simple language and clear style are in the main due to him.

The Constitution submitted to the States. It was one thing for the convention to make a Constitution, and another thing to get it adopted. The men who drew it up were few in number and had the advantage of a secret session undisturbed by outside influences. The states that had to ratify it were scattered from New Hampshire to Georgia, and every possible influence was brought to bear for and against the Constitution. Rhode Island had not been represented at all, and of course would not like the Constitution. Two of the three New York delegates had left in anger because the convention seemed likely to favor the large states, for New York was then a small state. Hamilton was known to be in favor of a government so centralized as to greatly diminish local self-government. This frightened people as to the Constitution which he supported with such vigor and ability. Many of those who had favored the New Jersey Plan supported the Constitution with reluctance, and in fact no one was really satisfied. Several delegates refused to sign at all. One of the Maryland delegates had left in disgust. In spite of the efforts of Franklin, who made an eloquent and persuasive speech, Gerry of Massachusetts, and Mason and Randolph of Virginia, although present, finally refused to sign. These men, we must remember, were from the two most important states. What chances of adoption had a Constitution under these circumstances? It certainly did look dark, and the friends of the new government felt it; but Washington and Franklin, Madison and Hamilton, were towers of strength. Probably the strongest argument in favor of the new Constitution was that the choice lay

betwen the Constitution and disunion, and anything was better than disunion.

Unauthorized Acts of the Convention. Congress had indorsed the call for a convention at Philadelphia, but had only given the convention authority to propose amendments to the Articles of Confederation. According to the Articles themselves, the consent of every state was necessary for the adoption of amendments, and Congress expected that this consent would be obtained. But occurrences after the convention was called had greatly increased the alarm over the state of the country, and when it met the few who desired a new Constitution had become many. The convention, therefore, proceeded to do two things that were beyond its authority, unconstitutional and revolutionary. (1) It voted at once that "a national government ought to be established." (2) It afterwards proposed a method of ratification entirely opposed to the Articles of Confederation and to the wishes of Congress, namely, that when nine states (instead of thirteen) ratified the Constitution it should be binding upon those ratifying.

Ratification of the Constitution. The whole action illustrates the fact that constitutions become as waste paper when they no longer suit the needs of a people, that the real power resides in the people, and that when they will they can take matters into their own hands. Congress seemed to recognize this, and with true patriotism carried out the wishes of the convention as to ratification. It transmitted the Constitution to the legislature of each state, and called for a convention, elected in each state by the people, to act upon it. By June, 1788, eight states had ratified. The conventions of New Hampshire and Virginia came in June, and it was a time of great suspense. "The period extending from the

publication of the report of the convention to the ratification of New Hampshire and Virginia . . . was one of the most critical and momentous in the history of America."[1] In June New Hampshire and Virginia ratified, but with some difficulty and by a close vote. This made ten states, more than enough to put the Constitution into effect. New York ratified in July. This left only North Carolina and Rhode Island, which were not a part of the Union when Washington was inaugurated and the new government began. North Carolina did not reject the Constitution, but Rhode Island did. Her legislature refused to call a convention to ratify, but submitted the Constitution to the various town meetings. Only two hundred and thirty-two persons voted for it and two thousand seven hundred and eight against it. It was not until May, 1790, that Rhode Island finally entered the Union. Three states voted unanimously in favor of the Constitution, but in several states, notably New York, the result was very doubtful. There ratification was brought about only by the greatest exertions of Hamilton and others, and the vote stood thirty to twenty-seven.

Influences for and against the New Constitution. One great influence in carrying ratification in the states was a series of essays written by Hamilton, Madison, and Jay, on what the Constitution was and what it proposed to accomplish. These essays together are called "The Federalist," and ought to be read by every one who wishes to understand our Constitution thoroughly.

Men like Patrick Henry, who were true patriots, opposed the Constitution, partly, at least, because it did not definitely state the rights belonging to the people. This

[1] Channing's *History*, p. 272.

objection was widespread, and had large influence in the contest over ratification, and many of the states, although ratifying, recommended amendments covering the rights of the people. The first Congress proposed twelve such amendments, and ten of them were promptly ratified and went into effect in 1791. These ten amendments are often called a Bill of Rights, and refer to the separation of church and state, freedom of the press, right of petition, and other safeguards of personal liberty. The original Constitution, then, as framed by the convention, was never practically tried, but it is this Constitution with the ten articles added under which the nation has developed.

The Constitution put into Effect. As soon as Congress knew that nine states had ratified, it passed a resolution setting a day for choosing electors, and finally for putting the new Constitution into effect. The place designated was New York, where Congress was then sitting, and the time the first Wednesday in March, which happened to be the fourth of the month. Therefore the fourth of March has ever since been the day for the beginning of a new administration.[1]

There is an oft-repeated story about Franklin which is worthy of being retold as long as our Constitution is of interest. Upon the back of the chair in which Washington sat when he presided over the convention a rising sun had been painted. As the last members were signing, and Franklin saw his hopes fulfilled, he said to those about him that it was often difficult to distinguish in a picture a rising from a setting sun. "I

[1] Washington did not take the oath of office and begin his administration until April 30, 1789. Procrastination and the uncertainties of travelling in that age prevented the assembly of a quorum of both houses of Congress before that time.

have," said he, "often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting; but now, at length, I have the happiness to know that it is a rising and not a setting sun."[1] The venerable man, whose life had been so full of benefits to his country and mankind, was certainly a true prophet.

SUMMARY

The first step toward a new Constitution was taken in 1785, when commissioners from Virginia and Maryland met at Mount Vernon to consider questions relating to commerce. This meeting led to a convention at Annapolis in 1786, and this in turn to the famous Constitutional Convention at Philadelphia in 1787.

In this convention several different plans of government were proposed, and it was only after a great struggle that the Constitution of the United States was adopted. Even greater difficulties attended its ratification in several of the states; but it was finally adopted by a sufficient number, and put in operation in April, 1789.

SUGGESTIONS AND QUESTIONS

1. What things, according to your observation of local politics, tend to separate people into parties or factions?

2. Are there communities in your state, county, or township which have few dealings with one another and tend to dislike one another? If so, can you account for the condition on religious grounds; on social or racial grounds; on geographical grounds?

3. The town of Castle Rock (see page 37) has two rivers which flow through it and join together in the adjoining town. Years ago the people of the two valleys disliked one another, and had few

[1] Fiske's *Civil Government*, p. 307.

dealings. What reason does the map show for this? Consider especially ease of communication.

4. Give illustrations of the way in which religious, social, and political ill feeling hinder progress by preventing beneficial common action among men of to-day. Is this spirit of separateness wholly bad? If not, what are some of its benefits?

5. We have spoken of religious differences among the colonies as tending to make union difficult. Can you think of religious conditions which would have made union altogether impossible?

6. What is the effect of common language on the question of united action among men? Illustrate your answer.

7. Religion, language, and law have been called the greatest means of securing unity among men. According to this test, were the colonies destined to separation or to union?

8. Classify the reasons for disunion among the colonies under these heads: social; economic; geographical. Which was most fundamental?

9. Suppose that New Netherland had contained 500,000 people in 1664, would that fact have had any bearing on the question of ultimate union among the colonies?

10. The Germans have a motto, "Beyond the mountains there are *also* men." What is its social significance? Can it be applied to the conditions prevailing in the colonies? Is a range of mountains a more effectual barrier to social intercourse than a broad river, an arm of the sea, or a belt of forest land?

11. What is the social importance of road improvement measures?

12. If forests and uninhabited tracts between colonies were a means of keeping them apart, what would have been the effect of a large increase of population?

13. Suppose that the Revolutionary War had not come, would it have been possible for the thirteen American colonies to remain permanently separated?

14. Show how the development of the North differed from that of the South. Consider soil, climate, products, labor, trades, and commerce.

15. Look up the condition of roads, travel upon the water, etc., during colonial times. See McMaster, *History of the American People*, vol. i.

16. Illustrate, from facts connected with your own locality, how a common danger serves to draw people together. Cases of danger from Indians would be in point; possibly others might be given.

17. Show from recent American history that a war has great influence in uniting people. Show from the Civil War that it may have just the opposite result. What conclusions can you draw as to the kind of war that unites, and the kind that creates a feeling of disunion?

18. Read the *Franklin Plan of Union*, with the author's comments, in *Old South Leaflets*, No. 9. What evidence does it contain on the difficulties of communication between the colonies?

19. Is there a stamp act in operation now? If so, is it a state or a national act? Is it effective? Is it just? Is it easy to collect? Why did the stamp act of 1765 have such a peculiar history?

20. Is the method of "boycotting" used at present, and if so, under what circumstances is it resorted to?

21. Samuel Adams has been called "the man of the town meeting." How is the phrase justified? In what way did the township system influence the formation of committees of correspondence? See Hosmer, *Samuel Adams*, American Statesmen series.

22. What significance is there in the name "Continental Congress"?

23. Read the Agreement of the People, *Old South Leaflets*, No. 26. Was this a written constitution? Did it ever go into operation? What ideas does it contain which are familiar to Americans?

24. Read the Fundamental Orders of Connecticut, Fiske's *Civil Government*. Does the document create a confederacy or a centralized government? Compare its provisions with those of the Articles of Confederation.

25. Was the Mayflower compact a constitution? Did it create a government of three departments, or provide any "frame of government" at all?

26. Read the Articles of Confederation in Fiske's *Civil Government*, or the *Old South Leaflets*, No. 2. What division of powers did they make as between the states and the national government? Was there any executive or judiciary separate from the legislature? How were the members apportioned among the states? Was this method of apportionment necessary in a confederation?

27. The representatives in the continental congress have been likened to ambassadors of thirteen nations. What justification is there for this simile? Do ambassadors, when they hold a "congress," legislate for their combined countries, or make agreements?

28. Why did the western lands constitute a bond of union among the confederated states? How did the states as a whole expect to

benefit from them? See Fiske's *Critical Period*, or Hinsdale, *The Old Northwest*.

29. Read the Ordinance of 1787, *Old South Leaflets*, No. 13. What ideas does it contain that are also found in the Constitution of the United States? What important clauses does it contain on the subject of education? How have they influenced popular education? Did the ideas originate with the makers of the Ordinance? See page 45.

30. Suggest such amendments to the Articles of Confederation as you think might have made it an efficient instrument of government without destroying the character of the confederation? See account of the New Jersey Plan, page 150. Did it supply such amendments as would probably have been successful?

31. Why did Maryland refuse to ratify the Articles of Confederation unless the other states would give up claims to western lands?

32. Why did the Stamp Act Congress and the First Continental Congress need no written constitution?

33. Webster in his reply to Hayne (*Riverside Literature Series*, No. 122, page 217) gave expression to the sentiment, "Liberty *and* Union, now and forever, one and inseparable." Does the meaning of this sentiment receive illustration and point from the events of the confederation period? Webster did not seek to "penetrate the veil" which hid disunion from his eyes, but he thought that, could he do so, he should behold "states dissevered, discordant, belligerent; a land rent with civil feuds, or drenched in fraternal blood." Read the entire speech and try to determine what historical and logical justification there is for the great orator's statements. (This is for advanced students only.)

34. Read the Virginia Plan (Madison's *Journal*). What things in it were embraced in the Constitution of the United States?

35. James Madison has often been called "the father of the Constitution." Is the distinction justly conferred? Give reasons.

36. What reasons were there for making all sessions of the convention of 1787 secret?

37. It has been shown that the people who lived on the seaboard were generally in favor of the Constitution, while those living in the interior of the country showed a majority against it. Can you give any reason for this? Think of the rapid growth of the idea that a Constitution was needed to replace the Articles of Confeder-

ation, and also think of the different occupations and interests of the people of the seaboard and the interior.

38. Why was the Constitution submitted to conventions in the states for ratification rather than to the state legislatures?

39. Suppose that Rhode Island had persisted in her refusal to accept the Constitution, what would have been the result upon the Union as a whole?

40. Suppose that New York's vote had stood twenty-seven to thirty instead of thirty to twenty-seven, what effect would that fact have had upon the formation of the Union?

NOTE. — With a copy of Madison's *Journal of the Proceedings of the Constitutional Convention*, and of Eliot's *Debates*, a very profitable series of exercises can be planned for advanced students. They may be asked to find out the opinions of certain men upon any of the subjects discussed; to see how close the vote was on some provisions, or at least how general the sentiment was, for or against; they may study the evolution of any particular article or section of the Constitution.

CHAPTER XV

THE CONSTITUTION

Dual Government[1] in the United States. Most of the people in the United States are subject to two governments, each supreme in its sphere, the national government and the state government. This peculiarity is not a matter of choice, but a result of development. The manner in which the colonies were settled and developed produced thirteen units. When the new Constitution was about to be framed, it was evident to all that no system would be practicable for a moment that did not leave these units, to a great extent, separate and independent. In them had to be left the supreme power over local government. Thus came the part of our dual system which we call the state government.

But experience under the Confederation showed the states that they could not entirely trust their welfare and the preservation of a civilized society to individual state governments, each separate from and independent of the others. The second part of the dual system, a powerful national government, was plainly necessary. To have a union of any strength, each state must give up some of the powers it would exercise if it were independent, as it practically was under the Confederation. What it would have to give up would naturally be those powers that experience had shown would bring the states into conflict with one another, and with the central government. A

[1] See Bryce, i. 15–18, 35, 36.

study of the Constitution will show that such powers are expressly granted to Congress, and in many cases expressly prohibited to the states. The determination of the relations between state and national government was, probably, the most difficult problem before the convention. In solving it the members of the convention solved what is perhaps the most difficult problem in the science and art of government.

This double feature must be thoroughly understood before one can get a clear idea of just what the Constitution aimed to do. There is no such dualism in England. There are English counties, townships, and boroughs, but no combination of them into states with large independent powers. There is no such dualism in France, although it is a republic. Substantially all the powers of government down to the smallest local divisions are exercised by the central government at Paris. This dualism did not seem strange to the makers of the Constitution. They had been used to practically the same thing in their experience as colonists. The central government, with a few definite but limited powers, was in the king and Parliament. There the sovereignty lay. But in matters of local government the colony was nearly, if not quite, independent.

Difficulty in Adjustment. The difficulty which the leaders in the convention of 1787 found was the adjustment of these two systems of government without the destruction of either one. The liberty of the individual citizen depended in large measure upon the right of complete local self-government. The remarkable ability for self-government shown by Americans has depended in large measure upon the constant use of their opportunities in this direction. It was necessary, therefore, to arrange the system so that states should be protected

from decay and secured in their powers over local government. It would have been a calamity if the powers of self-government in the local division from state to township had been in any way impaired. For after all our greatness as a people and a race has come from that power of self-government which our Teutonic forefathers had while they were yet savages in the forests of Germany. Many delegates to the convention saw this in a general way, and felt very anxious on the subject of local independence. On the other hand, it was just as clear to the delegates that their liberty and power of self-government would amount to little while anarchy or civil war stared them in the face. They saw that the safety and dignity of the states and all local units depended upon a central government that should have the authority and ability to compel states and individuals to refrain from those acts that would lead to anarchy or civil war.

Separation into Departments. Experience led the makers of the Constitution to divide the government into three parts, legislative, executive, and judicial. Sometimes all the powers of government are united in one man or one body of men. This gives the best opportunity for injustice and tyranny. As society has developed there has been a strong tendency to separate the powers of government, and to make them more or less independent of one another. One part is thus a check upon another, and any encroachment upon the rights of the people in a government thus organized is more difficult.

In England there were the crown, the Parliament, and the courts of law. In the colonies there was a more or less distinct line between the departments of government. The departments defined in the Constitution are not entirely separate; all get their authority from the Constitution and are equal in that respect; one cannot

rightfully usurp the powers of another, but each acts as a check upon the others, and a given department is not wholly confined in its action to its own sphere. The executive takes part in the law-making; Congress performs certain executive acts and sits as a court; the judiciary has a check upon the law-making body, but is, of all departments, the most nearly distinct and independent.

Delegated and Implied Powers. Two classes of powers are exercised by the central government under the Constitution,— delegated and implied powers. From the time of the first settlements the several colonies exercised many independent powers of government relating to local rights, which the development of the colony made necessary, and which English peoples had always exercised. But the new central government had no powers that had thus grown up with it. Its powers were given or *delegated* to it by the states.[1] These delegated powers are definite; they can be named, counted, and set down in a list; they differ radically from the powers that grew up with the colonies, which are indefinite and include everything not specifically "delegated."

It was impossible, however, to enumerate in the Constitution every act that the national government might

[1] There has been much controversy as to who delegated these powers to the national government. The preamble to the Constitution says, "We the people of the United States." Did this mean the people of the United States as a whole, or the people of each separate, individual one of the United States? The latter meaning seems to be indicated by the enacting clause which follows the instrument and precedes the signatures; this reads: "Done in convention by the unanimous consent of the states present." Whatever it may have meant once, through the inexorable logic of historic events it has come to mean now the people of the United States as a whole.

have the right to do in order to exercise these delegated powers. Many of its powers, therefore, depend upon a reasonable construction of what the makers of the Constitution meant to have the central government do; these are called *implied* powers. The doctrine of implied powers was first established and carried out by Chief Justice Marshall of the Supreme Court of the United States, and one very important work of the Supreme Court has been to determine cases depending upon these implied powers of the central government.

The Constitution a Growth, not a Creation. The men who drew up the Constitution were practical men, and did not rely very much upon theory. In almost everything they relied upon experience in determining what to do. They got their ideas from the history of the colonies, from their experiences under the Confederation, from the Albany Plan of Union, and from the New England Confederation. The Constitution, then, was the result of long evolution. Every attempt at union, every instrument of government from the Connecticut Fundamental Orders down to the Articles of Confederation, had a bearing upon the great Constitution under which we live.[1] The process of evolution goes back even farther than that. It takes in the development of English liberty and government. It was not "struck off at a given time by the brain and purpose of man," as Mr. Gladstone said; but it has proceeded from progressive history as much as the British constitution. It has given America the great advantage of having a written public law, separate from ordinary legislation, to which all acts of the law-making body must conform. It made it necessary to have a Supreme Court, the greatest tribunal in

[1] Read and compare the Fundamental Orders and the Articles of Confederation.

the world, to determine whether the acts of ordinary legislation do so conform. Nor is it a revised version of the British constitution, as some have seemed to think. Its development has been its own, and as different from that of the British constitution as the life of America has been different from the life of England. Our Constitution, therefore, was not made; it grew.

The Constitution still Growing.[1] Not only was the Constitution of 1787 a growth, but it has been growing ever since. It was made for four millions of people who occupied a mere fringe of eastern North America. It answers just as well for eighty millions who have spread over the continent. It was made for eighteenth century conditions, before the great developments in science, in manufacturing, in commerce, in industry; before the growth of cities; before the building of railroads, canals, telephones; before the rise of corporations and the great accumulations of wealth. It stands the enormous strain that changed conditions bring, and seems to be as well adapted to our day as to the beginning of the nineteenth century. It was made before the United States had a territory; under it nearly forty territories have been organized, and most of them have grown into states. It was made for peace; it has stood the strain of four wars, one of them a civil war of vast proportions. It was made for a United States whose furthermost boundary, it was thought, would be the Mississippi; under it the United States have expanded to the Pacific, have taken Alaska, and passed the bounds of the North American continent. It was made for a simple civilization; it does for a complex civilization. These changes have made necessary new constructions of the Constitution and alterations in its form by amendments. The Con-

[1] Bryce, i. 391–399.

stitution drawn up by the convention and ratified by the states was practically never in operation. Changes in its written form began at once. The latest change, the Fifteenth Amendment, was made in 1870, and there is a possibility of a new one in the near future.

The Unwritten Constitution.[1] We should also bear in mind that alongside of the written has grown up an unwritten Constitution, which has changed many features of the Constitution and is as powerful and as binding as any part of the written document. The real life of the Constitution is in its unwritten parts, in the construction placed upon its provisions by the courts and by Congress, and in the construction which the will of the people and the political necessities of a growing nation have made inevitable. The written Constitution is a sort of framework within which methods of doing things may shift back and forth to suit the needs of the times. It is the unwritten part that enables our Constitution to reflect accurately the changing life of the people; without this possibility of growth and change, it could hardly have lasted until the civil war. The possibility of an unwritten Constitution is due to the doctrine of implied powers. Jefferson said that Chief Justice Marshall and the Supreme Court were making a new Constitution by means of the implied powers of the Constitution. He was right.

It will be found in general that the changes which the unwritten Constitution has brought have tended to break down the barriers to direct control by the people. The framers of the document prescribed a method of electing president and vice-president that should secure the election against the direct action of the people. But an unwritten law has grown up that has nullified

[1] Bryce, i. 393–396.

the written act, and has given into the hands of the people direct and absolute control of the elections of president and vice-president.

The controlling purpose of the convention in providing for the election of senators by state legislatures was to give, not to the people of the states, but to the states as political units, the control of the Senate of the United States. Within a few years we have seen a movement in favor of electing United States senators by the people so strong that in many states the people practically determine the choice before the legislature meets.

Although the Constitution in no way forbids it, probably no one ever will be elected the third time to the office of president of the United States, because there seems to be an unwritten law against a third term.

The Fourteenth Amendment was passed to make it clear that newly emancipated slaves were citizens of the United States and of the states in which they lived. It provided also that if the rights of these citizens to vote were denied in any state, the representation of that state in Congress should be reduced in like proportion. But during the last few years we have seen constitutions adopted in several southern states practically forbidding negroes to vote. Congress has not reduced the representation of these states in the national legislature, nor to all appearances will it ever do so.

If we refer back to the difficulty over ratification of the Constitution, we shall recall that many states hesitated because there was no bill of rights in the Constitution. The first ten amendments were afterward passed as such a bill of rights, guaranteeing to the people those rights regarded as natural and individual. But as the United States has grown and civilization has become more complex, the tendency has been more and more

to reduce the number of these rights or to impair them, although sacredly guarded by the Constitution. The Supreme Court of the United States has upheld acts that were an impairment of such rights, and the tendency has grown very strong for the central government of the nation to invade and control rights that had been looked upon as natural and individual.

The Constitution is, then, not entirely the set words and phrases written by Gouverneur Morris at the request of the convention. It is what by actual operation the people have made it, and upon their character it depends for what it really is. A constitution is not an end in itself, but a means to an end; and that end is the security of life, liberty, and property, and the opportunity of each individual, as a part of society, to develop his powers to the fullest. It must conform to the expanding needs that new conditions bring, or be thrust aside as were the Articles of Confederation. Happily for us, the framers of our Constitution were men of sufficient wisdom to make it the embodiment of general fundamental principles, leaving the details of their application to be worked out as new conditions might suggest. There is, therefore, as far as we can see, no limit to its expansion and change as to methods and details, so long as the fundamental principles on which the government was founded endure. If the time ever comes when these principles cease to be binding, some other convention may meet to draw up for the people of that period a new Constitution.

Nature of the Union under the Constitution.[1] As we have seen, the Second Continental Congress assumed and exercised powers not granted to it. In some-

[1] See Channing, *Students' History of the United States*, p. 259, and following.

what the same way the convention of 1787 assumed authority not granted to it. Its members overthrew the constitution then in use, *i. e.*, the Articles, and, like people who thought that they represented those in whom the ultimate power rested, went ahead with an entirely new order of things. When they adopted the Virginia Plan as the basis of their action, they certainly intended to set in motion a national or federal system with a strong central government. Chief Justice Marshall said: "From these conventions [which ratified the Constitution] the Constitution derives its whole authority." The people left to the states certain powers, granted to the central government other powers, and prohibited still others to the states and to the central government.

When the conventions in the various states ratified the Constitution, could they ever recall their ratification and withdraw from the Union? Those who thought that the states were sovereign said they could. Those who thought the people as a whole were sovereign said they could not without the consent of the rest. This was the difficulty which led to the civil war.

It has been said, and probably with truth, that if the states had thought when they were passing upon the Constitution that they could never withdraw, many would not have ratified. The idea that states could not withdraw, and that the Union was indestructible, was a matter of growth. It flourished as the United States flourished, and became stronger with the passing of every decade. The growth in population and territory, the increase in the power and influence of the central government, the necessary extension of its departments, brought nearer and nearer the day when it would be strong enough to maintain itself. Every year that passed made the people as a whole more accustomed to

the Union, more satisfied with its results; every year added to the immensity of the interests that depended upon it. The question is, therefore, one of little moment now. Whatever the Constitution meant then, it means now that the Union is indestructible. The very necessity of the growth of the United States has made secession impossible, although the Constitution itself is not entirely explicit on that point. Men of undoubted ability, honesty, and patriotism differed as to what the Constitution meant on this question; so that during the civil war both sides claimed to be following the real intent of the Constitution. Both sides failed to see that it was the growth of the national idea that had bound the states together with bonds that could not be broken. The growth of this idea still guarantees the Union against disruption. It has been added as an unwritten law to the Constitution, which is as binding as its most sacred written provisions, and notwithstanding the fact that the greatest war of modern times was fought about this question, no written amendment to the Constitution forbidding secession has ever been deemed necessary.

SUMMARY

The Constitution provides a double form of government. On the one hand it secures to the individual states the right of caring for all their internal affairs; on the other it establishes a strong central government, with full power to manage external affairs that concern all the states, and to keep peace among the states.

The difficulty of adjusting the respective powers of the states and the central government was exceedingly great. It came near being too great for the convention; and when the Constitution was submitted to the people of the states for ratification, it was this question of adjustment again which made ratification so difficult.

Finally, the question whether the Constitution created an indestructible union of the states has been settled by the course of American history rather than by the mere words of the Constitution.

In many other respects the written Constitution has been added to or has been modified by the course of events, so that we really have two constitutions, working side by side and supplementing each other, the one written, the other unwritten.

CHAPTER XVI

THE FEDERAL CONGRESS

Republican Government. It was easily seen that the new government must be republican in form; that is, it must be a government by the representatives of the people. A democratic form where the people as a whole acted, as in a town meeting, was clearly impossible. Hamilton and others were charged with trying to make the new government a monarchy. Hamilton's personal views probably were that a monarchy achieved the best results. But while he did declare, "Sir, your people is a great beast," it was evident to him that under the circumstances a government of republican form was necessary. It was in fact the only form to which the people were accustomed. Before the war they had a king, to be sure, but he was three thousand miles away and they never saw him. They had, too, royal and proprietary as well as charter or republican colonies. But the people through their assemblies had absorbed so much power into their own hands that government in each colony had become in great measure republican.

Congress of Two Houses.[1] It is strange that there was any opposition to a legislature of two houses.

Art. I., sec. i.[2]

The colonies, in the main, had been used to legislatures of two branches. Although not necessary, they had established them early after the

[1] See Bryce, i. 183–188.

[2] The side-headings refer to the Constitution of the United States.

pattern of the English Parliament. There were two exceptions to this: Pennsylvania and Georgia had legislatures of but one house. The Congress under the Confederation, too, had but one house, but the majority of the convention were not inclined to copy after so inefficient a government. A second house was looked upon by some as an obstruction to rapid action. This was the very reason why it was favored by such conservatives as Washington. The following anecdote of Washington and Jefferson illustrates his reasons. Jefferson was dining with Washington, and severely criticised the action of the convention in deciding upon two houses. Washington favored the plan, and said: "You yourself have proved the excellence of two houses this very moment." Jefferson, much surprised, asked for an explanation. "You have," said Washington, "turned your hot tea from the cup into the saucer to get it cool. It is the same thing that we desire of the two houses." This anecdote gives us not only an idea of the political tendencies of two great men, but also a glimpse of the manners of that day. The establishment of a national legislature of two houses finally led to the same thing being done in every state.

Representation in Congress.[1] The three great compromises of the Constitution arose in connection with the legislative part of the government, and two of them in connection with the matter of representation. Under the Confederation representation had been by states, each state being entitled to from two to seven delegates. Each state had, however, but one vote. It was early decided that the convention did not care to follow the Articles of Confederation in regard to representation in the new

Art. I., sec. ii., par. 1, and sec. iii., par. 1.

[1] See Fiske, *Critical Period*, pp. 232–249, 262–267.

Congress, as far as the number of delegates was concerned. Nor did it want the members of Congress to be subject to the states in regard to their salary, and be liable at any time to recall by the states. Those who wanted a national government were strongly in favor of representation in both houses according to population, but those who feared a strong central government wanted equal representation for the states in both houses. There was disagreement over popular representation even in the House of Representatives. But it was seen to be vitally necessary that the new government should be in direct touch with the people, and for that reason popular representation was insisted upon in the House. Great efforts were made to effect the same result in the Senate, and they seemed about to succeed.

After the Virginia Plan, which called for a popular representation in both houses, had been adopted as the basis of the new Constitution, the delegates from the small states were about to leave the convention. It seemed as if the whole project of a new government must be abandoned.

To satisfy the small states, it was necessary to find some method of giving them, as political units, considerable and equal powers in the new government. Here again, when much perplexed, experience guided the convention. The Connecticut delegates suggested that their method of representation might solve the problem. In that state, the governor and the upper house of the legislature were elected by the people as a whole; but the lower house was made up of representatives from the various towns, each having the same number. This, practically, was the method adopted by the convention as a compromise. The states, as political units, were

given equal representation in the Senate, regardless of their population, each being represented by two senators, but in the House the states were represented according to population. Thus resulted the first great compromise of the Constitution.

Art. I., sec. iii., par. 1.
Art. I., sec. ii., par. 1.

Apportionment of Representatives. The second compromise arose also in connection with the question of representation. In apportioning representatives according to population, the South would be at a great disadvantage unless slaves could be counted, because a large part of its population were blacks. These, the northern delegates protested, were property, not persons. The South contended that they were persons as well as property, and ought to be counted. The question also arose as to the method in which taxes should be levied upon the states, whether according to property or to population. The method of assessing upon each state its share of the expenses of government under the Confederation[1] had not been satisfactory. After long discussion, no good method could be found except taxation according to population. Should, then, the slaves be counted in determining the population? The South thought not; the North thought they ought to be so counted. For many years the colonists had been saying that representation and taxation ought to go together. It became necessary to apply the same rule at this time. The South agreed to have the slaves counted in ascertaining the population for purposes of taxation, and the North for purposes of representation. But it was deemed unfair that slaves should count as much as freemen in the basis of representation, and it was a hardship that, in the way of taxation, they should

[1] Articles of Confederation, Article VIII.

be counted as much as freemen whose wealth-producing power was much greater. It was agreed, therefore, as a compromise, that three fifths of the slaves should be counted in both instances. Three fifths was chosen because that fraction had before been agreed upon by the slave states when, under the Articles, they had discussed changing the basis of contribution by the states to the central government.

Art. I., sec. ii., par. 3. Amendment XIV., par. 2.

Slavery.[1] The third compromise arose in regard to the power of Congress over slavery and the slave trade. On the part of those who desired a strong central government, there was a firm determination to give Congress absolute control over commerce. Those who favored slavery would not agree to this, and insisted that the power of Congress over the slave trade should be limited. The result of the discussion was the section that forbids Congress to prohibit the slave trade before 1808, although it was authorized to levy a tax of ten dollars per head upon all slaves imported. This tax was never levied, because the influence of the South in Congress was very great.

Art. I., sec. ix., par. 1.

Representation and Bills of Revenue. Connected with the matter of representation in the Senate and the House was the question as to who should originate bills of revenue. When equal representation in the Senate was conceded to the smaller states, the power of originating bills of revenue was given to the House, but the Senate was allowed the power to make and concur in amendments.[2] Bills of revenue have been construed to mean bills for levying

Art. I., sec. vii., par. 1.

[1] For a good brief review of the three compromises, see Channing, *Students' History of the United States*, pp. 260–262.

[2] Bryce, i. 178.

taxes only, and many bills looking to the raising of money have originated in the Senate. There was an attempt, also, to secure a method of representation according to wealth as well as population.[1] It was thought by some that the Senate ought to be founded upon the relative amount of wealth of the states. This was found impracticable.

Right to vote for Representatives. As long as there was to be one house elected to represent the people, who should be allowed to vote? The convention decided to leave that to the states. The Constitution simply says that those whom the states allow to vote for members of the lower house of the state legislature may vote for members of the House of Representatives. There is at present one restriction on the power of the state to regulate the right to vote which was not in the original Constitution. It is the Fifteenth Amendment, which says that the rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude. This restriction is binding more in theory than in practice, for some states have succeeded, by educational and other qualifications, in practically denying or abridging the right of citizens to vote because of their race or color.

Art. I., sec. ii., par. 1.

Amendment XV.

Election of Representatives by Districts. The times, places, and manner of holding elections for members of both houses are left by the Constitution to the state, but Congress was given power to make or alter such regulations with one exception.

In 1842 Congress passed a law requiring representatives to be elected in each state by districts equal in

[1] See also the Albany Plan of Union.

number to the representatives from that state. But it also required that the districts should adjoin one another.[1] This has led, in many states, to political schemes that would favor, in the districting, the party in power. The parts of the states having large majorities in favor of the opposition party are thrown into one district. In this way a number of voters sufficient in a fair districting to elect four or five representatives can elect perhaps but one. And the party in power in the state gets an unfair proportion of the representatives from the state. Bryce, in his "American Commonwealth," speaks of the famous Shoestring District in Mississippi, and like examples in Missouri and South Carolina, where the negro voters are crowded together in as few districts as possible. Examples of this practice are to be found in nearly if not quite all of the states. The custom started long before the law of 1842. It got its name, "gerrymandering,"[2] from Elbridge Gerry, who contrived a method of dividing Massachusetts to suit his party.

Art. I., sec. iv., par. I.

Term of Office and Qualifications of Representatives. The term of office of a representative in Congress was fixed at two years. It was the design to make the House of Representatives directly subject to the will of the people. It therefore changes every two years, and has to be all elected over again. The whole policy of the House, and the party to which a majority of its members belong, may thus be changed

Art. I., sec. ii., par. I.

[1] When a new apportionment has given a state one or more additional representatives, Congress has sometimes allowed the state to choose them for the whole state until a new districting could be made. Such representatives are called representatives at large.

[2] On the custom of "gerrymandering," see Fiske, *Civil Government*, pp. 216, 217.

every two years at the discretion of the voters. There are restrictions, also, determining who may serve as representative. He must be at least twenty-five years old, must have been a citizen of the United States for seven years, and must be an inhabitant of the state in which he is chosen. Therefore, a foreign-born citizen may serve in the House of Representatives as well as the Senate, although he may not be President.

Art. I., sec. ii., par. 2.

Residence of Representatives. While a member of the House must be an inhabitant of the state in which he is chosen, he need not be, as far as the Constitution is concerned, of the district in which he is chosen. But here again the unwritten law has stepped in, and in practice a man is very seldom elected unless an inhabitant of the district. In England, a member of the House of Commons does not have to be an inhabitant of the part of the kingdom even in which he is chosen. An inhabitant of England may be chosen to represent a district in Scotland. In America it is different. Here the territory is so large in extent, and so diversified in interests, that it is well to require representatives to be at least inhabitants of the states they represent. Indeed, the growth of the colonies as separate units made any other plan impossible.

Art. I., sec. ii., par. 2.

The "People." When the Constitution says that the *people* of each state have the power to elect the members of the lower house of the national Congress, what does it mean by "people"? In general it does not mean *all* the people, because there are many of them who, for various reasons, cannot vote. The "people," therefore, are narrowed down to the voters. Among the voters the majority elects, and the

Art. I., sec. ii., par. 1.

minority has practically no power. So it is after all a comparative few who elect, for the number who have the right of casting a ballot is small compared with the whole population. On this account some have insisted that the sovereignty resides in those who actually wield the power in the state.

Direct Taxes and Persons bound to Service. Representatives and direct taxes, as we have seen, are apportioned among the several states according to population. The compromise which brought about this adjustment was not much of a compromise after all, for the national government has seldom resorted to direct taxes. It is interesting to notice, in this connection, that, in the article requiring representation and direct taxes to be based upon population, the Constitution speaks of a class of persons distinct from all the rest. It is "those bound to service for a term of years." This class was evidently a large one, and represented conditions of life that, happily, have long since passed away.

Art. I., sec. ii., par. 3.

Basis of Representation. In order to tell how to adjust the number of representatives to each state, a census was provided for every ten years. The one taken in 1900 was the twelfth census of the United States. The convention at first determined that there should be one representative to forty thousand people, as shown by the census. This was called the *basis of representation.*[1] Just before adjournment,

Art. I., sec. ii., par. 3.

[1] Congress decides upon what it considers the most convenient number of representatives, and then divides the total population of the United States by that number. The result is the basis of representation. The population of each state is then divided by the basis. The result is the number of representatives for the state. In case there is a fraction remaining, not less than one half, the state is generally granted an additional representative.

at the request of Washington, the basis was changed from forty thousand to not less than thirty thousand, in order to give the people a larger representation. The convention, of course, did not have any accurate way of knowing what the population of the United States was at that time, for no census had then been taken. The Constitution itself, therefore, says how many each state should have in the House of Representatives of the First Congress. The total number was sixty-five; no state had more than ten and two had but one representative. As the population of the United States has increased, Congress has had to raise the basis of representation in order to prevent the House of Representatives being too large. Now the basis is 194,182. But the state of Nevada has not one third that number of people. It might seem that such a state should have no representative, but the Constitution provides that each state shall have at least one representative, no matter what its population.

Art. I., sec. ii., par. 3.

The Speaker of the House.[1] The House has the right to choose its own Speaker. This office has grown to be one of importance, next, perhaps, to the presidency. More and more power has been drawn into the hands of the Speaker, because the work of so large a body as the House must be done by committees. The Speaker chooses the committees, and thus practically controls legislation.

Art. I., sec. ii., par. 5.

The Senate.[2] In the Senate we have a very different body. The term of members of the House is short, that of members of the Senate is long, six years. The House changes every two years, the Senate never changes completely, for but a third of that

Art. I., sec. iii.

[1] On the speaker and the committee system, see Bryce, i. 154–164.

[2] Bryce, i. 97–105.

body is chosen at each election. The people elect the members of the House, the senators are representatives of the states as organized political units, and are chosen by the state legislatures. The House is supposed to respond rapidly to changes of sentiment in the people, the Senate responds slowly. It was expected to be a sort of balance wheel. Whether it has entirely justified this expectation in all regards may, perhaps, be open to question. At any rate it has had a great history, and has enrolled among its members some of the greatest of Americans. Each state has two senators, and therefore all have equal representation. Nevada, with its less than fifty thousand people, has as many representatives in the Senate as New York with its seven millions of people. This is in striking contrast to the House, where New York or Pennsylvania has more than thirty times as many representatives as Nevada. Each senator has one vote, and if the senators from any state vote on different sides of a question the vote of that state is practically lost. The two senators are chosen by the state legislatures. The Constitution does not provide the method of election, but this has been done by Congress. Yet the people of a state often determine beforehand who shall be senator, and the legislature simply registers their decision.

Art. I., sec. iii., par. 1.

Organization of the Senate. To secure permanency for the Senate, the first senators were divided into three classes, to serve two, four, and six years respectively, so that the term of only one third could expire at any one time. This provision makes the Senate a permanent body, for at no time can there be an entirely new Senate. No one can be a senator who is not at least thirty years old, and who has not been a citizen of the United States nine years. Albert

Art. I., sec. iii., par. 2.

Art. I., sec. iii., par. 3.

Gallatin, one of our ablest financiers, was elected when too young, and his seat was vacated. The same thing happened in another case. The Senate cannot, like the House, choose its own presiding officer. The Constitution makes the Vice-President the President of the Senate. But the Senate chooses a presiding officer, who acts during the frequent absence of the Vice-President, and is called the President *pro tempore*. On account of the death of two Presidents and two Vice-Presidents, a President *pro tempore* has been necessary a considerable part of the time since the close of the Civil War. The President *pro tempore* always has his vote as a senator, but the Vice-President has a vote only when the Senate is equally divided on a question.

Art. I., sec. iii., par. 4.

Art. I., sec. iii., par. 5.

Impeachment. The Constitution gives to the House of Representatives the sole power of impeachment. Impeachment is accusing a person of misconduct, and is much the same as indictment by a grand jury, the House of Representatives acting somewhat as a grand jury. When a man is accused, or indicted, or impeached, he must be tried, and the Constitution gives to the Senate the sole power to try all cases of impeachment; that is, the Senate sits as a court, and while so sitting senators are under oath or affirmation. They cannot convict a person unless two thirds of the members present vote for conviction; and when the President of the United States is tried, the Chief Justice of the Supreme Court must preside. In the matter of impeachment the convention copied mainly from the custom in England, but there the punishment may be much more severe, and the conviction is much easier, as only a majority is necessary for conviction. There has been but one impeachment of a President, that of Andrew

Art. I., sec. iii., par. 6.

Johnson, during the exciting times of the reconstruction period, when party feeling was at a white heat. Fortunately for the reputation of the presidency, and for that of the United States, the impeachment failed, although by but a single vote.

Sessions of Congress.[1] Congress must meet at least once each year, upon the first Monday in December unless a different day is set by law. There are at least two sessions of each Congress,[2] and the second must close at noon on March 4. The President has power to call an extra session of both houses or of either house, and if the houses cannot agree as to adjournment he may adjourn them. The House of Representatives has never been convened alone; neither has the President had to adjourn Congress because of disagreement. The Senate has often been convened alone to transact executive business. Members of both houses are paid for their services out of the national treasury, and not out of the respective state treasuries as under the Confederation.[3] They are thus directly under the control of the national government as to compensation, and the state has no influence over them in this regard. They are also privileged from arrest, except in a few cases, while going to or returning from a session of Congress and while in attendance upon it, and they cannot be called to account elsewhere for what is there said in debate. In this the Constitution follows the English law, which is of ancient origin.

Art. I., sec. iv., par. 2.

Art. II., sec. iii.

Art. I., sec. vi., par. 1.

Art. I., sec. vi., par. 1.

[1] On the organization of the legislative department in 1789, see Hart, *Formation of the Union*, pp. 141–143; for description of usual proceedings in Congress, Bryce, i. 130–133.

[2] Since the House changes once in two years, we speak of a new Congress once in two years. Each Congress, therefore, must have two sessions.

[3] See Articles of Confederation, Art. V.

The President's Veto. Every bill to become a law must pass both houses of Congress, and be presented to the President. He may veto it if he disapproves of the bill, in which case he must send it back to the house which originated it, and give his reasons. If both houses wish to pass it over his veto by a two thirds' majority, they may do so, and it becomes a law. If he holds the bill more than ten days (Sundays excepted), it becomes a law without his signature unless Congress adjourns before the ten days elapse, in which case it does not become a law. This method of destroying a bill has received the name of "pocket veto," and was first used by Andrew Jackson. The word "veto" is not in the Constitution, but is in such common use that it accurately describes the method laid down for the passage of bills. The idea of vetoing bills was not at all new to the convention. Laws passed by colonial legislatures had often been vetoed by the king in council. But the crown in England lost its veto power over acts of Parliament by refraining from its use. It was an act of wisdom to give a partial veto to the President of the United States, and in the main the power has been wisely used.

Art. I., sec. vii., par. 2.

Powers of Congress.[1] The Constitution grants Congress large powers. The experience of the United States under the Confederation was sufficient to induce the convention to grant to Congress those powers for the lack of which the Confederation was a failure. We are not surprised, then, that the very first grant of power was that of laying and collecting taxes, duties, and excises, provided duties, imposts, and excises were uniform throughout the United States. In this connection we must bear in mind that direct

Art. I., sec. viii., par. I.

[1] Fiske, *Civil Government*, pp. 212–222.

taxes have to be apportioned among the various states according to population. The United States government gets most of its revenue from indirect taxes, such as duties on imported goods and excise duties on liquor and tobacco. It should be remembered, too, that a meeting had been called at Annapolis before the convention of 1787 to arrange the troubles that had arisen from each state having the power to make its own commercial regulations. The Constitution has settled that matter once for all by giving Congress the control of all commerce, among the states as well as with foreign nations.

Art. I., sec. viii., par. 3.

Naturalization. Emigration to America began immediately after the Revolution. It was clearly seen that as a new and undeveloped country the United States could not wisely discourage the coming of the men and women necessary to develop its great resources. Although there was a strong anti-foreign feeling, the matter was treated with great wisdom, and the control of naturalization was given into the hands of Congress, with the restriction that the laws must be uniform. The length of time necessary to acquire citizenship has been at different periods two and fourteen years respectively. It is now, and has been for nearly a century, five years. Notwithstanding that fact, large portions of territory have at various times been added to the United States and whole communities have been naturalized by treaty.

Art. I., sec. viii., par. 4.

Power to coin and borrow Money. Congress has a very important power in its exclusive right to coin money and regulate the value thereof. It may also borrow money on the credit of the United States. In accordance with this right, United States bonds have at various times been issued in vast

Art. I., sec. viii., pars. 2 and 5.

amounts in return for money borrowed for specific purposes. Under the power to coin money has grown up a great system of national banks and a system of paper money so guarded as to be a safe substitute for coin. In many parts of the United States almost no money is seen but paper money, "greenbacks," treasury notes, silver certificates, or the issue of national banks. In other parts, especially upon the Pacific coast, almost no money but coin of gold or silver is used.

Post Offices and Post Roads. Another power granted to Congress that has become of great importance is that of establishing post offices and post roads. This was a matter of small concern at first, but the post office system has grown to enormous proportions. The power which the President has of appointing post office officials has, because of their increase in numbers, added immensely to his political influence. He has under him a vast army of office-holders, who are ready to further his interests. In the time of Andrew Jackson grew up the political doctrine that "to the victors belong the spoils," and every four years, if there was a change of administration, there was a great overturning for political purposes. This condition of affairs led to great corruption, which civil service reform has to some extent succeeded in abolishing.

Art. I., sec. viii., par. 7.

The post office system is one of the most important features that have to do with our comfort, knowledge of the world, and high standard of intelligence. The ordinary letter now goes to any place within the United States for two cents. At first a charge was made according to distance, and the one who received the letter had to pay the postage. Letters were in that day so infrequent that any one was glad to pay for getting a letter. The rate was from six to twenty-five cents.

Prepaid stamps were not generally used until 1855, at which time began the *registering* of letters. In 1863 the postage on all ordinary letters was reduced to three cents; in the same year began the *free delivery* system. The use of the very convenient postal card did not begin until 1872.

Other Powers of Congress. A similar increase in importance has characterized the power which Congress has over the discoveries and writings of inventors and authors. The Patent Office, in which are deposited models of machines on which patents are desired, has become vast in extent, and the United States has become, probably, the greatest nation of inventors in the world. Writers secure the control of their works by copyrights.

Art. I., sec. viii., pars. 8–15.

Congress has the power to declare war, to raise and support armies and navies, and to provide rules for their government. It can arm and call out the militia, and govern them when in the actual service of the United States. The Constitution gives the people virtual control over the army by forbidding any appropriation for a longer term than two years, just the length of the term of the House of Representatives. It is a curious fact that Congress has formally declared war but twice, although the United States has carried on four wars. In the case of the Mexican War, it declared that war already existed by the act of Mexico. In the Civil War the government did not regard the southern states as a nation. Those in arms in the South were regarded as persons obstructing the laws of the United States. By the Constitution Congress is specifically given the power to suppress insurrections.

Implied Powers. It would have been unwise and impracticable to attempt a complete enumeration of all

the powers which Congress ought to have to carry out the national idea. Therefore a sweeping clause was added to the effect that Congress should have the authority to make all laws necessary and proper for carrying into effect the powers specifically enumerated in the Constitution, and all other powers vested by the Constitution in the government or any department or officer of the United States. From this clause come the implied powers of the government under which the authority of the central government has been enormously increased, but without which it could hardly have secured its present dignity and power.

Art. I., sec. viii., par. 18.

Checks on Congress. Congress was also forbidden to do many things. It was forbidden to prohibit the importation of slaves before 1808, or to levy any tax upon goods exported from any state. In order to make the government and society completely republican, no title of nobility can be granted by the United States; nor can any foreign power gain influence over officials under the government, for such officials are expressly forbidden to receive from any king, prince, or foreign state any present, emolument, office, or title.

Art. I., sec. ix.

SUMMARY

The Constitution vests all legislative power in a Congress of two houses. One of these is called the Senate, and is composed of two senators from each state, chosen for terms of six years by the state legislatures. Thus the states are equal in the Senate. The other, called the House of Representatives, is composed of members chosen every two years by the people of the several states. The representatives are apportioned among the states every ten years according to the census showing of population. In the House

of Representatives, therefore, the states are very unequal in power.

The things that Congress can do, as well as those it cannot do, are in general specified in the Constitution, but some powers are *implied* in addition to those granted.

CHAPTER XVII

THE FEDERAL EXECUTIVE[1]

Power of the President.[2] The President of the United States is in many respects more powerful than any European ruler. The Czar of Russia is an absolute ruler, theoretically, but his power is thoroughly hedged in by the fact that the real work of governing must be carried on by subordinate officers who determine for the Czar what shall be done. The President's power is set down in the Constitution, and within his sphere no one can limit him; nor would any of his subordinates think for a moment of thwarting his will. He is more powerful than the English sovereign, from whom the unwritten constitution has gradually taken rights that were formerly possessed by the crown. Then, too, the power of a president or a sovereign depends very greatly upon the size and importance of the country of which he is the head, and upon the kind of people in it. In this respect, the President of the United States has back of him a force extremely great because of the extent and wealth of the country. He has behind him the enormous power of a people of high average intelligence and education, who are ingenious, vigorous, resourceful, and intensely patriotic.

[1] On the organization of the executive department, 1789, 1790, see Hart, *Formation of the Union*, pp. 143–145; also Channing, *Students' History of the United States*, pp. 279–286.

[2] For powers and duties of the President, see Bryce, i. ch. vi.

A Single Executive. The matter of an executive for the new government caused considerable discussion in the convention. There had been no president of the Confederation. There had been a president of Congress, but he was a mere presiding officer. The office of governor in the various states was of course well known, and in Pennsylvania, at least, the head of the state was called president. All agreed that there ought to be an executive department separate from the other departments. But they were not sure that so much power ought to be given into the hands of one man. The weakness of the old Confederation without an executive settled the matter in favor of a single executive, but still the delegates had the old hatred of a central executive power. They had not forgotten the royal colonial governors nor George III.

Art. II., sec. i., par. 1.

Term of President and who should elect. They also were in doubt as to how long a term the executive ought to have, and whether or not he should have the right of reëlection. They differed widely, also, as to who should choose the President. At first it was decided that they would have (1) a single executive, (2) who should be elected by Congress, and (3) serve for seven years; (4) it was afterwards added that he should not be elected a second time. As will be seen, three of these four points were changed, showing how carefully the convention proceeded, and how ready they were to make changes that mature judgment approved. A very few, only, were in favor of allowing the people to choose the President. Many of the leaders considered the people as a whole a kind of mob, not to be trusted with the power of choosing their own rulers. The section of this book on the unwritten constitution shows us that the

Art. II., sec. i., par. 1.

Par. 2.

attempt to head off the people did not succeed, and that in spite of the Constitution they have taken the matter into their own hands. As soon as the convention saw what powers it would be necessary to give to Congress and the President, it was evident that it would not be wise to have him elected by Congress. If he were so elected, he would be under its influence, and would not be a sufficient check upon it. Then, too, their disgust with the Confederation led them to see that if the new government were to act rapidly, vigorously, and effectively, the executive must be able to act independently. One man can have a thing entirely completed before a body of men are half done quarrelling about whether to do it or not. The convention decided finally to take away from Congress the power of electing the President, but they were not willing to give it into the hands of the people.

The Electoral College. In casting about for some indirect way of electing the President, the experience of Maryland, which had a sort of electoral college, was taken as a guide. The convention expected the method of election by the electoral college to work in this way: The people, without having any one in mind for President, or having any party conventions to nominate men, would meet and choose electors whom they thought to be men of excellent judgment and experience. These electors would meet at the appointed time for the purpose of electing a President. They would talk the matter over and discuss who would be the best man; and, *using their own judgment*, without reference to what the people wanted, would select a President. This is all amusing to us now, for the members of the convention of 1787, although very wise men, evidently did not

Art. II., sec. i., par. 3, and Amendment XII.

understand the people. Their plan worked for a short time, but with the fourth election the original idea had forever vanished. Electors were chosen because they represented some party, and had pledged themselves beforehand to some candidate. To break this pledge would consign one to political oblivion.

Method of Voting. The first method of voting for President and Vice-President was found very unsatisfactory. The electors voted for two men without specifying which one they voted for as President and which as Vice-President. The person receiving the largest number of votes, if it was a majority of the electors, was President, and the one receiving the next largest number was Vice-President. In case there was no choice, if two persons had the same number and it was a majority, the House of Representatives had to elect, the representation from each state having but one vote. In this way, the President and the Vice-President might belong to different parties, — as was the case with Adams and Jefferson in 1796. This method of voting led to trouble in 1800. At that time Jefferson and Burr received the same number of votes and a majority of the whole, and the election had to be determined by the House. There was what we now call a "dead-lock," the votes of eight of the sixteen states being for Jefferson, six for Burr, and two scattering. This gave no one a majority of states. Although Hamilton was an enemy of Jefferson, he thought Burr so unsafe a man for the presidency that, after many ballots had been taken, he persuaded his friends to cast the two scattering votes for Jefferson, who was elected. This difficulty led to the Twelfth Amendment to the Constitution, in 1804. In 1824 the House of Representatives elected John Quincy Adams.

Amendment XII.

The most dangerous election case, however, was in 1876, when Hayes ran against Tilden.[1] There were double sets of returns from several states, mainly in the South, where there was still much trouble over reconstruction. The excitement was very great, and the country seemed on the verge of civil war. An electoral commission was appointed to decide the cases of double election returns. By a strict party vote Hayes was declared elected, although there was a great clamor against the decision as unjust. The serious difficulties in the presidential election of 1876 made it plain that something ought to be done to remove this danger to the republic. On this account the act of 1887 was passed, in which the final determination of disputed elections of presidential electors was given to state authorities.

The President a Party Man. The method of election adopted by the convention was supposed to arrange it so that the President could not be a party man, but would be somewhat like the King of England, removed from party strife. The exact opposite has come to pass. The President is wholly a party man. He would stand no chance whatever of election if he were not, and he keeps party interests always in view during his administration. The same tendency that has made the electors strictly party men, has made the President as well a party man. Yet he is no more so than the prime minister of England; and if it is right that the majority rule, it is right that the President whom they elect shall carry out their wishes.

While the President is and must be, in the best sense of the term, a party man, the obligation upon him is very great not to be a party man in the bad sense of the term, — that is, a mere party spoilsman.

[1] For an account of the contested election of 1876–77, see Wilson's *Division and Reunion*, pp. 283–286.

The presidents of the United States have been men of high character and unquestioned loyalty. Although often extreme partisans originally, they have felt that they represented the country as a whole, and the dignity of the office and the greatness of the responsibility have kept them from acting unworthily of the office.

Nominating Conventions.[1] When the party system had grown up, in order that a party might be successful it had to fix upon some plan whereby all of its members should be sure of voting for the same man. They had to determine beforehand, therefore, for whom they should all vote. It is clear that all of the party could not get together and agree upon a man. Who, then, should pick out the man? In the case of the first elections every one knew that Washington ought to be chosen. Afterward a congressional caucus selected the candidate. Sometimes state legislatures nominated candidates. In either case the people had no direct part in the matter. There was a great protest against the congressional caucus, and state legislatures could not well nominate. Jackson was the first to be nominated by a convention, although it was simply a convention of Blount County, Tennessee. Other local conventions were held in other states. Jackson thus figured as the people's man. By 1832 all candidates were nominated in national conventions, and this has been the custom ever since.[2]

Various Steps in Election. There are many steps

[1] For an account of party organization and nominating conventions, see Bryce, ii. 82 and following.

[2] These conventions are not required by the Constitution or by law. They have developed purely from the necessities of party management, and are examples of the growth of the unwritten constitution.

leading to the nomination and election of a man for President or Vice-President. (1.) Meetings are held, known as primaries ; of the ward, if in a city, and of the town or precinct, if in the county. In the primaries delegates are chosen to represent the party in the county or district convention. They are chosen to bring about the nomination of some particular candidate for President, and whether he is nominated or not may depend upon how the primaries vote. (2.) County or district conventions[1] choose delegates to the state convention, and the contest is to get delegates favorable to the candidate whom the primaries had in mind. (3.) State conventions choose delegates to the national convention, twice as many as the state has senators and representatives in Congress, having still in mind the candidate whose support began at the primaries. At these conventions, also, are nominated presidential electors, two at large, and as many district electors as there are congressional districts. These electors must vote in the Electoral College for the candidate nominated by the national convention. (4.) National conventions are the real nominating bodies, and play a peculiar and very important part in our system. The man who can command the most delegates is nominated by the party holding the convention. Nominations are generally made in June or early in July. (5.) The election occurs on the Tuesday following the first Monday in November. At this time the electors are appointed theoretically, but really the President and Vice-President are elected. Not one man in a thousand pays any attention to when

[1] In Massachusetts the state convention chooses four delegates at large (and four alternates) to the national convention, and each congressional district convention chooses two delegates (and two alternates).

the Electoral College meets or what it does. (6.) The electors do not meet in a body, so that the name "Electoral College" is figurative. Those from each state meet together at the state Capitol and vote by ballot for President and Vice-President. Three[1] lists of all persons voted for, and the number of votes for each, are made, signed, certified, and sealed. One copy is mailed to the president of the Senate at Washington, one is sent to him by a special messenger, and one is delivered to the judge of the United States district court for the district in which the electors meet. (7.) On the second Wednesday in February the Senate and House have a joint session in the hall of the House, and the president of the Senate opens the certificates. They are then counted by tellers of the House, who read and count the vote. (8.) If no one receives a majority for President, the House proceeds to elect. If no one receives a majority for Vice-President, the Senate elects.

Reëlection. At first the convention of 1787 thought that the term of the President should be seven years, and that he should not be reëlected. The term was finally made four years, and nothing was said as to reëlection. As far as the Constitution goes, a man may be reëlected as many times as the people choose. What we have said about the unwritten constitution, however, shows the practice to be that a President may be reëlected but once.

War power of President.[2] The power of the President varies according to the needs of the case. The Constitution is very specific that "he shall take care that the laws be faithfully executed." In time of peace his power runs within well-defined limits. In time of war it increases to an enor-

Art. II., sec. iii., last part.

[1] In some states the law requires a total of five copies.

[2] Bryce, i. 65, 66.

mous extent, and he becomes practically a dictator. Especially was this true in the Civil War, when Lincoln made use of what were called the war powers of the Constitution. Even before Lincoln died, and during the administration of Andrew Johnson, the contest over Reconstruction was really a contest between the executive and legislative branches of the government. The legislature was trying to reduce the power of the executive to its normal condition.

Eligibility and Salary. No foreign-born citizen can now be elected President. If such a one was a citizen at the time of the adoption of the Constitution, he was eligible. This provision was put in out of respect for Hamilton and others not born in America, but who had been of great service during the Revolutionary War. Up to 1873 the salary of the President was $25,000 a year; now it is $50,000, a small sum compared with what European rulers receive. He, however, has no court, has a house furnished him and many expenses paid, so that the salary is really much more than $50,000.

Art. II., sec. i., pars. 5 & 7.

Executive Departments.[1] The President has large powers in time of war, because he is commander-in-chief of the army and navy, and of the militia when called into actual service of the United States. He has the power of granting pardons and reprieves, provided the offences are against federal laws. The same section that gives him these powers says that "he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." The Constitution seems to take it for granted that executive departments will be established, but nowhere

Art. II., sec. ii., par. 1.

[1] Bryce, i. 86–96.

specially gives any one the power to create them. All of the departments have been created by acts of Congress as they have been needed. The new government needed but four, and with only four advisers Washington began his administration. They were: Secretary of State, Secretary of the Treasury, Secretary of War, and Attorney-General. At first the Secretary of War attended to all naval matters, but in 1798 the Secretary of the Navy was added. It would be interesting to discover why this department was added at this particular time. The Department of the Post Office was raised to the dignity of a Cabinet position by Jackson in 1829. The office itself seems to have existed from colonial times, when Franklin was made deputy postmaster-general for the continent. The Post Office, however, had been a Bureau of the Treasury Department since 1789. In 1849 the Department of the Interior was formed, and in 1888 that of Agriculture. There has been some discussion very recently about erecting the bureau of education into a separate department, and of creating a new department of commerce.

The Cabinet. The heads of these departments form what is called the President's Cabinet, although the word "cabinet" is not in the Constitution. They are entirely his servants, subordinate to him, and from him comes all their authority. They are independent of Congress, but cannot be members of either House or in any way control legislation. They are appointed by the President subject to the consent of the Senate. In practice, however, the Senate never refuses consent. Generally they are appointed because of their influence in the party and their services to the President in the election. Often the chief opponent to the nomination of the successful candidate is given the first place in the

cabinet, — the department of state. The members of the cabinet are almost invariably of the same party as the President. In the first cabinet it was not so. The idea still existed that the President and his administration would be above party and would administer affairs from a strictly national standpoint. Jefferson and Randolph were of one party and Hamilton and Knox of another. This naturally led to trouble, and it was not long before the system was changed.

English and American Cabinets. The cabinet in America is in many ways different from the cabinet in England. They are, however, alike in this respect: they have both grown up wholly outside of the written law. In England, and France, too, the crown or president is obliged to choose his ministers from the majority in the House of Commons or Chamber of Deputies. The President of the United States is free to choose whom he will. In England the crown is irresponsible as to acts of government. The ministers of its choice are wholly responsible, and may be held to account by Parliament. If measures they propose and favor are defeated, they must retire from office or else appeal to the country; that is, they must ask the people to vote for or against them. If defeated, they must resign. In the United States the President is wholly responsible and his cabinet entirely irresponsible. The President is not bound to consult his cabinet at all. The members of the cabinet cannot sit in Congress and vote upon any measure. Congress cannot call them to account; and even if measures they most cordially indorse are defeated in Congress, that does not in any way affect their positions. If the party to which they belong loses its majority in Congress, and both Houses, by large majorities, are hostile to the President and to

them, they still hold office, if they so wish, until dismissed by the President, or until the term of the President is finished.

Impeachment and Messages. The President, as we have seen, may be removed from office by impeachment. So may the Vice-President and any civil officer of the United States. The President, by his message, gives Congress information as to the state of the Union. The message is addressed hardly as much to Congress now as to the people of the United States; it serves as a statement of the President's policy, and is often the basis of the campaign of the party in the succeeding election. Washington, who was inclined to pomp and ceremony, delivered his messages in state before both Houses; so did President Adams. But Jefferson sent his message in writing to be read by the clerk. This method suited the democratic notions of the people, and the custom has come down to our times.

Art. II. sec. iv.

Art. II. sec. iii.

Treaties. An important office that a President performs is that of making treaties by and with the advice and consent of the Senate. Generally, however, the action of the Senate is limited to consent.[1] No treaty can be made unless ratified by two thirds of the senators present.

Art. II. sec. ii. par. 2.

Appointing Power. One of the greatest sources of strength which a President has, is his power of appointment. As the United States have grown and the departments of the executive branch have multiplied, the power that the President has acquired is enormous. The men who directly or indi-

Art. II. sec. ii. par. 2.

[1] "An interesting exception was in the matter of the settlement of the Oregon question, when Polk threw the final proposals of England into the Senate and asked its *advice*. For the inside history

rectly are subject to his appointment would make a great army. They are scattered in large numbers all over the United States. They form centres of political activity and influence either directly or indirectly.[1] The evil which has arisen from the spoils system was, and is yet, very great. However, a growing public opinion against removal from office or appointment to office for purely political considerations has tended to lessen the evils connected with the appointing power of the President. On the whole the tendency is more and more to increase the number of those who, according to civil service rules, are not subject to removal for political reasons. This is, however, one of the problems of our national government, and in this case, as in others, we may say that for the people "eternal vigilance is the price of liberty."

SUMMARY

The Constitution provides for a single executive, to be chosen every four years, and called the President of the United States. An indirect mode of election, by electors chosen by the voters in the several states, was provided for, but as things have turned out the people actually elect. The President is given very important powers, which vary in extent with circumstances. Custom, or the unwritten constitution, dictates that he may be reëlected but once.

of this interesting *use* of the Senate in making a treaty, see Polk's Diary for 1846, Lenox Library, New York." (Quoted from Joseph R. Wilson.)

[1] The appointing power is also a source of weakness, because it is impossible for a President to satisfy all demands. His use of this power creates or emphasizes faction in his party and makes bitter personal enemies. The best energies of the President are often given to the mere question of appointing to office, when they ought to be given to the important matters of his administration.

The President has a cabinet, whose members are the heads of the executive departments, are appointed by him, and are wholly responsible to him. The President is now always a leader of one of the political parties, and is nominated and elected as a party man. As such he also makes many appointments to office.

CHAPTER XVIII

THE FEDERAL JUDICIARY[1]

Importance of the Judicial Department.[2] A judicial system of equal range with the legislative and executive departments is an absolute necessity. Laws are general in form and statement. It is taken for granted that all citizens will find out what the law on any subject is, and govern themselves accordingly. There is no attempt — in fact it would be absurd to make the attempt — to prevent all the individuals of the nation or state from going counter to the law. The only practical way of proceeding is to take notice of cases where the law is believed to have been violated, or some one thinks himself injured by another's violation of the intent of some law. To illustrate : suppose there is a law in your state declaring it to be unlawful for any person to kill grouse during the year beginning October 1, 1900. All persons are supposed to know the law. The theory is that "ignorance of the law excuses no man." But some sportsman kills grouse in spite of the law. Possibly no punishment overtakes him. The law does not put itself in motion. It is necessary that some one be interested in the execution of the law before it can act. If a complaint is sworn out against a man who violates it, he is brought to the court, declared to have acted contrary to the law, and punished ; otherwise not.

[1] See Organization of the Courts, 1789–1793, Hart, *Formation of the Union*, pp. 145, 146.

[2] Bryce, i. 241.

Suppose again there is a law requiring division fences between fields owned by different proprietors, and suppose they are to be of a certain height and construction. One owner keeps his fence up as required by law; the other does not. The law does not execute itself upon the delinquent property owner, but if the adjoining owner is injured on that account, he may bring suit against him for damages. The court will say what the fence law means, and determine whether or not it applies to the case in hand, and also whether the law has been violated. If it has been, the suing owner has a good case.

So it appears that every law must have an interpreter; and a government without a system of courts coextensive with its law-making power is an anomaly. The states have such a system of courts. The great power of the state is shown in the fact that it has a complete judicial system independent of the national system. A suit may be brought first before a justice of the peace in a township or other local unit. From this court it may for good reasons be appealed to the county or the circuit court. Under certain circumstances it may go from there to the supreme court of the state, but it rarely gets over from the state system to the national system of courts.[1]

The Constitution and the National Courts. As we have seen, the idea of a government of three depart-

[1] The famous Dred Scott case was taken on appeal from the state courts of Missouri to the Federal Circuit Court. (See Wilson, *Division and Reunion*, pp. 197–199.) In general, if either party rests his case upon the Constitution, or some law of the United States, and the decision of the state court is against him, the case may be brought before the United States courts. Otherwise the state system is complete.

ments was thoroughly fixed in the minds of the Americans. They had experienced the evils of a government of one department in the Confederation, where the government was practically the Congress. One of its great defects was the lack of a judiciary and an executive. So when the Constitution was made to take the place of the Articles of Confederation, there was care exercised to provide for an effective executive department and also an effective judiciary. Mr. Madison, in writing about the work of the proposed convention in April, 1787, said: "Let the national supremacy be extended also to the judiciary department." When the convention met, there was no difference of opinion on the question of having a judiciary, and it was soon determined to have a supreme court and such inferior ones as the Congress should see fit to establish. But there was a difference as to the way of appointing the judges. Some delegates wished Congress to have the power of appointing. Others argued that it would not do to place their appointment in the hands of so large a body. Finally it was decided that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." By the preceding article of the Constitution, on the powers of the executive, the appointment of judges is placed in the hands of the President and the Senate.

Art. III. sec. i.

The clause quoted above contains all that the Constitution has to say directly on the make-up of the national system of courts. It does not say how many judges the

Supreme Court shall have, what shall be their qualifications, how many inferior courts shall be established, or what shall be the qualifications of their judges. It leaves all these matters to Congress.

Classes of United States Courts.[1] It will be seen that the Constitution provided in express terms for only one court, namely, a Supreme Court; but it contemplated the establishment of others by Congress. As the matter has worked out, there has been established a complete system of courts, with the Supreme Court of the United States at the head. Aside from a Court of Claims, a Court of Admiralty, and a Court for the District of Columbia, which are special courts, the national system is as follows: —

(*a*) The Supreme Court of the United States, with a chief justice and eight associate justices.

(*b*) The Circuit Court of Appeals, presided over by a Supreme Court justice.

(*c*) The Circuit Courts of the United States. There are nine circuits, one for each justice of the Supreme Court, who has general supervision of judicial business in the circuit, and is assisted by other judges.

(*d*) The District Courts of the United States. There is at least one for each state, and some states have several, depending on the amount of business.

Appointment, Tenure of Office and Salary. As has already been said, the judges of all national courts are appointed by the President with the consent of the Senate. They are to hold office during good behavior, and their salary is not to be diminished during their continuance in office. The tenure of office makes a judge independent of the President, and the fact that the salary cannot be decreased during his term

Art. III. sec. i.

[1] Bryce, i. ch. xxii.

makes him practically independent of Congress. This is necessary to secure an independent and fearless judiciary. It has been said that the judiciary of a nation is the weakest department, because it has neither power nor will, only judgment. The executive has power as head of the military forces; the legislative department has power because it is in control of the finances of the country; but the judiciary has neither of these powers, it is wholly dependent for the carrying out of its decrees upon the executive arm of the government. For instance, no criminal can be judged by it unless first brought before the court by the executive; and the judgment will go unexecuted unless carried out by the executive power. So the judiciary must be protected that it may remain independent both of the executive and of the legislative departments. For this reason the appointments are made for life, or during good behavior, and the salary is not to be diminished.

Classes of Cases tried in United States Courts. Section II. of Article III. deals first with the classes of cases that may be tried in the United States courts. There are ten classes, as follows: —

1. All cases arising under the laws of the United States. This simply makes the judicial power of the United States coextensive with the law-making power, which is necessary, as we have seen above. If a man violates the law against counterfeiting United States money, he is tried in a court of the United States. So, too, if a man is injured by a corporation like a national bank, acting under a United States law, he sues in a United States court.

2. All cases arising under the Constitution. The courts of the United States are the special guardians of the Constitution. Many things are by the Constitution

prohibited to the states. If they disregard these prohibitions, the cases arising under them must be tried in the courts of the United States.

3. All cases arising under treaties of the United States. The treaty-making power is exclusively a national power. Hence, the trial of cases under treaties is reserved to the United States courts.

4. All cases affecting ambassadors, other public ministers, and consuls. These are representatives of foreign powers. The United States is responsible to the foreign countries for their treatment. Therefore, it must have the right of judgment in cases affecting them, instead of giving that right to the state courts.

5. All cases of admiralty and maritime jurisdiction. The seas are the highways of nations. Upon them the commerce of the world is carried on. The rights of nations with respect to the seas are regulated partly by treaties and partly by the law of nations. The states have given up all power of dealing with foreign countries, and they cannot make treaties or claim rights under the law of nations. Cases relating to maritime affairs naturally, therefore, come to the United States courts.

6. Controversies to which the United States shall be a party. In these cases, the dignity of the United States demands that trials shall be held in its own courts.

7. Controversies between two or more states. One great difficulty under the Confederation was the lack of any effective method of settling the quarrels of the states.[1] This tribunal provides such a method. All cases of that kind, it is provided, may come at once into

[1] There was a method provided by the Articles of Confederation (see Art. IX.), but the states were not obliged to submit their disputes, and practically the plan amounted to nothing.

the Supreme Court of the United States. This makes the highest court in the land the judge in a quarrel between states. In like manner, cases affecting ambassadors, etc., may come into this court at once. In all the other classes of cases, the Supreme Court has jurisdiction only when a case is appealed from a lower court of the United States. This illustrates what is spoken of in the Constitution as "original" and "appellate" jurisdiction.

8. Controversies between a state and citizens of another state.[1] There are the same reasons for trying these cases in the United States courts as there are for the class above. Similar reasoning also applies to the next class, viz. : —

9. Controversies between citizens of the same state claiming land under grants of different states. This would, or might, resolve itself into a controversy between states.

10. Lastly, controversies between a state, or the citizens thereof, and foreign states, citizens, or subjects. All questions involving relations with foreign states are proper subjects for the United States courts, and cannot be tried in the state courts. This we have seen in connection with classes 3, 4, and 5 above.

[1] By the Eleventh Amendment it is provided in substance that a state cannot be sued in any but its own courts. This amendment was rendered necessary, because the states refused to submit to being summoned as parties to suits before the courts of the United States. Massachusetts, in 1793, called a special session of her legislature, which instructed her representatives in Congress to procure an amendment to the Constitution on this point. Chisholm *vs.* Georgia (1792–93) was the first case in which the question of jurisdiction was argued. The Supreme Court was divided on it, but the majority decided that it had jurisdiction. Georgia refused to appear, and judgment was rendered against her.

Trial by Jury, and Treason. It is also provided in Section II. of Article III. that the trial of all crimes, except in cases of impeachment, shall be by jury. This is carrying out an old principle of English law, which gives every man the right to a speedy and public trial by a jury of the neighborhood. The same thing is asserted in the Sixth Amendment to the United States Constitution, and also in the Virginia Bill of Rights, (page 109).

The last section of the Third Article defines treason, and declares how a man may be convicted of that crime. "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Treason is generally regarded as the blackest of all crimes, because a traitor strikes at the very foundation of society by attacking the state which holds society together. Therefore, terrible punishments have usually been inflicted upon convicted traitors in other countries. But the idea of treason is such an unsettling thing that persons charged with it have had the greatest difficulty in securing anything like a fair trial. There is always a disposition to make out a case of treason if possible. So the wise men who made our Constitution thought well to carefully define treason in order to prevent abuses. And, for a further safeguard, they provided the method by which treason should be proved against a man. "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." Thus it becomes very hard to convict a man of treason, and this is well, for the fewer trials for treason in a country the safer and calmer does society remain. Our experience as a nation has shown the wisdom of this provision.

The punishment of treason is, by section iii., paragraph 2, left to be declared by Congress. But there shall not be, because of treason, any "corruption of blood or forfeiture except during the life of the person attainted." Corruption of blood means that the heirs of the attainted person cannot inherit his property; forfeiture thus becomes perpetual, *i. e.*, the property goes to the government (is forfeited), and remains in its hands for all time.

The Supreme Court.[1] The Supreme Court of the United States is not only the highest court in the land, but has come to be regarded as one of the greatest courts in the world. Its members are always men who have gained a preëminent place in their profession; they are usually advanced in years before appointment; the appointment, being by the President with the consent of the Senate, neither of whom can have control over the justice when once appointed, is always carefully made. None but men of the very highest character can, usually, hope for such a place.

This court has the last word to say on the constitutionality of all laws made by the Congress and President of the United States. It also has the duty of determining whether the laws of the states are in harmony with the Constitution of the United States. Thus it may set aside the will of the people of the United States as well as the will of the people of any state. This seems like a dangerous power to lodge in the hands of any small body of men. But, as we have seen, the court simply judges; it has no army and no power of commanding the people's money. It could not become a tyrant if it would. Furthermore, the court has no interests which differ in the long run from those of the

[1] Bryce, i. 229, 230.

people as a whole. It may well be that its calm, legal judgment will sometimes run contrary to the temporary desires and passions of the people of the nation or of certain states, but this is on the whole a good thing.

There are many great names connected with the history of the Supreme Court. Among them all, perhaps the greatest is that of Chief Justice Marshall, whose long service during the early years of the nineteenth century did so much to make the national government what it is to-day.

SUMMARY

The third department of government provided for by the Constitution is the judiciary. Laws made by the legislative department and executed by the executive department must be interpreted and applied by a judiciary coextensive with the other departments. The Constitution, therefore, provides generally for a system of federal courts. At its head is the Supreme Court of the United States, which has come to be regarded as one of the greatest courts in the world. Other federal courts are the Circuit Court of Appeals, the Circuit Court, and the District Court. The judges of all of these courts are appointed by the President, with the consent of the Senate. They hold office during good behavior, and receive a salary which cannot be diminished during their term of office. These provisions render the judiciary independent of both the legislative and the executive departments.

CHAPTER XIX

OTHER IMPORTANT PROVISIONS OF THE CONSTITUTION

What Congress is forbidden to do. We have noted elsewhere that while Congress has great powers, it is also forbidden to do many things. One of the most important of these is that it is forbidden to suspend the privilege of the *writ of habeas corpus* except when in cases of rebellion or invasion public safety may require it. The writ of habeas corpus has to do with a right that has been jealously guarded for many centuries, and has always been looked upon as a bulwark of individual liberty. In early English times the king was often a tyrant. Without legal right to do so, and without warning, he seized freemen, imprisoned or outlawed or banished them, or took away their lands. Once in prison there was no way in which they could be liberated except at the king's will. So unbearable had this injustice become that the barons forced King John to declare specifically in Magna Charta (1215) that these things should not be done without due process of law.

Art. I., sec. ix., par. 2.

Very early, therefore, grew up the right of this writ. Habeas corpus means "have the body." If a person is held in confinement, and can show reason why he is unjustly held, a court or judge having the power may issue this writ. It is issued generally to the sheriff, who then has authority to bring the person from jail or prison before the judge or court. If unjustly held, he is liberated.

Export Duty and Appropriations. No tax or duty can be laid by Congress upon articles exported from any state.[1] This provision is a limitation upon the power of Congress over commerce, which otherwise is nearly absolute. It was a concession to the states which many men like Washington and Madison were at first not willing to make. To protect the states further from any possible discrimination by Congress in favor of or against any of them, the same section forbids Congress to make any regulation of commerce or revenue in any way giving the ports of one state preference over those of another. Neither can Congress make any regulations requiring vessels bound to or from one state to enter, clear, or pay duties in another. Such provisions largely increased the freedom of trade between the states.

Art I., sec. ix., par. 5.

Par. 6.

In order that Congress, which provides for the raising of revenue by taxation, may control the outgo of it when once collected, no money can be drawn from the treasury except by an appropriation made by both houses. An account of moneys received and expended must also be published from time to time.

Par. 7.

What the States cannot do.[2] The states are forbidden to do many things which, if they were sovereign, they must have had the power to do. They cannot, for instance, coin money, emit bills of credit, make any law impairing the obligation of contracts, enter into any treaty, alliance, or confederation, or grant letters of marque and reprisal. The Articles of Confederation provided that the states should not, with-

Art. I., sec. x., par. 1.

[1] The Constitution of the Confederate States allowed such a tax if voted by a two thirds' majority of Congress.

[2] Bryce, i. ch. xxviii.

out the consent of Congress, enter into any alliance with one of their own number or with a foreign state. In this respect the Constitution followed the Articles in the main.[1] In fact, many provisions of the Constitution were suggested by the Articles of Confederation.

The Constitution not only gives to Congress full power over commerce, but it also forbids any state to lay, without the consent of Congress, any imposts or duties on imports or exports, "except what may be absolutely necessary for executing its inspection laws;" and then Congress has the right to control and change these laws. The trouble that so nearly wrecked the United States under the Confederation is, therefore, carefully guarded against.

Art. I., sec. x., par. 2.

Rights and Duties of States. Article IV. of the Constitution has some very important provisions which guarantee uniformity among the several states, so that while the country is divided into many separate commonwealths, yet it forms one comprehensive whole. There is no barrier, as in some countries, to the removal of a person from one part of the Union to another. He finds in his new home practically the same conditions of life as to politics, laws, and institutions. The citizens of each state are entitled to all the privileges and immunities of the state to which they move, but can carry none of the local privileges peculiar to the state from which they came. Yet they find that the rights of liberty, person, and property are carefully guarded wherever they may reside. All the public acts, records, and judicial proceedings of each state, upon which the rights of citizens may depend, must be given full credit in any other state to which they may go.

Return of Criminals. Each state is sovereign within

[1] See Articles of Confederation, Art. VI.

its borders, and some provision was necessary in case of a criminal fleeing from the scene of his crime into another state. The Constitution makes it imperative that he shall be given up to the authorities of the state in which the crime was committed. Nations have a similar provision. In their case it is made by treaty, and the giving up of criminals is called extradition. These treaty provisions now govern most of the civilized nations.

In connection with this section of the Constitution was a clause made famous because under it were enacted the fugitive slave laws, that happily have long since passed away.

Republican Form of Government. The United States is obliged to guarantee to every state a republican form of government, and the states are thus as nearly uniform as it is wise they should be. They are obliged to have this form of government; any other is practically prohibited. It was under the provisions of this section, that the difficult work of reconstruction was undertaken at the close of the Civil War. Lincoln, and after him Johnson, undertook a method of reconstruction known as the Presidential Plan. The states lately in rebellion were to be received into the Union after having ratified the Thirteenth Amendment and accepted the results of the war. This would have left the control of the right to vote in the hands of the states, as it was in the Constitution. Many of the leaders in Congress, however, had come to believe that in order to preserve the liberty of the black, he must have the ballot. The southern states would never have given it to him of their own accord. It therefore had to be done by the national government before the states previously in rebellion were allowed

Art. IV., sec. iv.

to come back into the Union. It was necessary that the states in question be made to agree to his having the ballot before they would be allowed to send representatives to Congress. It seemed to the leaders in Congress that in this way only could the United States guarantee to the states a republican form of government. At the same time they had selfish ends in view, and whether their method of reconstruction has proved wise has been questioned by many people. It was a very difficult problem, about which the Constitution could give no special help. The passions of men were greatly aroused, and under these circumstances they could hardly act with cool judgment. At any rate, in the struggle between the President and Congress, Congress won, and the result was the Fourteenth and Fifteenth Amendments. A later effect is the new state constitutions in the South, which largely take away the negro's right to vote.

The Territorial System of the United States.[1] England, as we all know, has had for many years, and still has, colonies in various parts of the world. France and other European countries have colonies. We seldom think, however, that the United States has been one of the greatest colonizing nations in the world. The movement of population from England to America did not cease when the thirteen colonies were formed. The movement from England and Europe to America is still going on, and in the United States itself a like movement has covered this part of the continent with people who are mainly English. Indeed, this march of population in our country has not ceased yet, although it has crossed the continent. It is spreading into the islands of the Pacific and of the West Indies. The way in

[1] Bryce, i. ch. xlvii.

which this movement proceeded has always been in reality that of sending out colonies. These have grown into communities of large size, with many independent powers of government, and finally into independent states. Thus Massachusetts and Virginia were colonies of England that grew up into distinct, and in some ways radically different, communities, and finally developed into states. So the Western Reserve in Ohio and the Wyoming country in Pennsylvania were colonies of Connecticut; so was Kentucky a colony of Virginia. In a much less distinct way Kansas is connected with New England, and Nebraska with New York, and Oregon with Missouri and Tennessee.

Relation of Colonies to the United States. As the colonies grew in number and importance it was certain to become a question what their relation to the mother state or country would be. If England had been able or willing to take the American colonies into the empire on an equal footing with England herself, she might never have lost them. Evidently this question was going to be a very important one in the United States with a very small population and, especially after 1803, an enormous unoccupied territory.

There was a difficulty here. England was a single country. The United States were thirteen separate states, each sending out colonies. Should the Western Reserve always be a colony subject to Connecticut; should Kansas be under the control of New England? Evidently not; for this would bring endless trouble and danger. This was the very danger which the states were trying to avoid when they gave up to the central government their claims to western lands, before the Articles of Confederation were adopted. This giving up of the territory by the states meant that the nation

as a whole should deal with the colonies, and for the government of those in the Northwest Territory the Ordinance of 1787 was passed.

This was the condition of things when the new Constitution went into effect. The new government in turn had to decide how it would deal with the question of colonies. It followed very closely the Ordinance of 1787. Indeed, the first Congress under the Constitution reënacted the ordinance, and upon it as a model the government has based its action in regard to new territory. When a colony has grown into a community of five thousand people or more, a territorial government is formed by Congress, and the colony becomes a territory. It has now many of the rights of local self-government, but its governors and judges are always appointed under authority of Congress. It cannot, as a territory, take any part in national affairs, nor can its representatives vote in Congress. In fact, it is in much the same condition as many of the American colonies before the Revolution.

Admission of States. As the colony, now a territory, still increases, and the population reaches a sufficient number, the people of the territory petition Congress for permission to draw up a state constitution and be admitted into the Union. If Congress sees fit to do so, it passes an "Enabling Act," which means that the people of the territory may draw up a state constitution. A convention is held for that purpose, and, when drawn up, the constitution is presented to Congress. If it approves, it passes an act admitting the territory into the Union as a state. This is the usual way, but in the case of many states the method of procedure has varied.

Art. IV. sec. iii.

Was it fair that the new state should have all the

powers and privileges of states that for many years had been members of the Union? The universal practice of nations had been not to grant equal powers and privileges. But, warned by their experience with England, the United States early decided upon a new plan of dealing with colonies when they grew into states. It was determined that when of sufficient size and advancement they should be admitted as states into the Union, with all of the powers, privileges, and immunities of any state. This decision has had far-reaching results, and makes the United States different from any other nation. The addition of states thus far has only increased the power of the United States. It has enormously extended the influence of the national government and strengthened the ties that make us one people. What will be the relation to the United States of territory acquired outside of the bounds of the continent has yet to be worked out in detail. A recent decision of the Supreme Court of the United States has laid down the principle that the Constitution does not follow the flag; that the United States may hold, subject to the power of Congress, its newly acquired possessions as territories.

Amendments. Experience under the Confederation had shown that it was very unwise to make it practically impossible to amend the new Constitution. It was therefore decided that when two thirds of both Houses of Congress should think it necessary, Congress should propose amendments; or when the legislatures of two thirds of the states asked to have it done, Congress should call a convention for proposing amendments to the Constitution. In case these amendments were ratified by the legislatures of three fourths of the states, or by conventions in three

Art. V.

fourths of them, they should then become as binding as the Constitution, and indeed a part of it. The method first tried was that of the proposal by Congress, and the ratification by state legislatures, and no other plan has ever been attempted. There is now one restriction on amendments. No state can be deprived of its equal representation in the Senate without its consent.

Bill of Rights. As we have seen, there was great opposition to the ratification of the Constitution, because there was nothing in it protecting the rights of the people that were looked upon as fundamental. Such were the rights of personal liberty, of free speech and a free press, and others. The ratification was carried through in many states by a virtual pledge that amendments covering these points would be agreed to. Madison made it his business in the first Congress to see that these amendments were proposed. Congress proposed twelve, copying largely after those of Massachusetts and Virginia. Only ten were ratified by the people, and these are the first ten amendments to the Constitution.

Amendments I. to X. inclusive.

Because of their resembling the English and Virginia Bills of Rights, they are often called the Bill of Rights of the Constitution. After some discussion, it was decided not to incorporate them in the original document, but to place them at the end as a supplement.

Fifteen amendments in all have been made. The first ten were ratified so early as to be practically a part of the original Constitution. Only five, then, have been made in the course of one hundred and ten years, and three of those were brought about by the stress of a great war. The Constitution has proved very stable in its written form, and the difficulty in amending it amounts to an impossibility, except in case of danger or

grievous need. The Constitution is by its own express provision the supreme law of the land, and under it the United States have grown mightily in numbers, power, and wealth. It has proved a marvelous instrument, and it will be many years before the world will cease to owe a heavy debt to the wise and patriotic men who made it.

SUMMARY

Aside from providing a frame of government with legislative, executive, and judicial departments, the Constitution contains a number of special provisions. Among these are several which specifically limit the power of Congress, and others that specifically limit the power of the states. There are clauses which guarantee to the states a republican form of government; and still others which give to the national government power over territories. Finally, it provides definite methods of securing its own amendment.

SUGGESTIONS AND QUESTIONS

1. Give exact definitions of *state*, of *nation*, and of *confederation*. Explain the differences between them.

2. Why was it so difficult to adjust the relations of the states and the national government in the Constitution?

3. Who was John Locke; what episode of English history was he connected with; and how did his ideas of government come to influence the ideas of the framers of the Constitution?

4. Why is a government of three departments desirable; in what respects is it less effective than one of a single department?

5. What advantage would a one-chambered legislature have over one of two chambers?

6. Which of the three great compromises of the Constitution was most fundamental, and why?

7. The makers of the Constitution have at various times been charged with compromising moral principles, especially with regard

to the slave-trade. Is the charge well founded? Was slavery a moral question with the American people as a whole in 1787?

8. Who are persons bound to service for a period of years, and what great evils were connected with such service during colonial times? See Channing's *Students' History of the United States*, p. 66; or Fiske's *School History*, p. 71.

9. What connection is there between our method of originating revenue bills (by the House of Representatives) and the early English custom of voting supplies for the king? See Introduction, pages 10 to 12.

10. Why did the Constitution distinguish between the "most numerous branch" and the least numerous branch of the state legislatures in specifying the qualifications for electors of representatives?

11. What is the significance of the term "Czar" as applied to a recent speaker of the House of Representatives?

12. Give arguments for and against the advisability of giving the President the power of vetoing bills, as the Constitution does.

13. Mention some "post roads" within your state. Were they built by authority of Congress? If not, why are they called post roads?

14. What were the "Alien and Sedition" laws, and how was the power of passing naturalization laws involved in them? See Channing's *Students' History*, pp. 306–308.

15. What is the argument in favor of granting patents and copyrights? Are there any arguments against it?

16. Are all Americans forbidden to receive titles from foreign sovereigns? Select the parts of the Constitution bearing on this question; also give examples, if possible, to verify your answer.

17. What is the nature of "civil service reform?" See Bryce, ii. 609.

18. Is it possible for a person to be elected to the presidency with less than a majority of the popular vote in his favor? Explain.

19. Might the President, if he chose to do so, make the Vice-President a member of his cabinet?

20. "One verb in the Constitution having been written in the passive instead of the active voice made necessary the Electoral Commission to settle the Hayes-Tilden controversy. Find the word and explain." (Quoted from S. Y. Gillan.)

21. Why is not Washington regarded as a traitor by the British?

22. Make a list of the chief justices of the Supreme Court. How does it compare in length with the list of Presidents?

23. How did the Eleventh Amendment affect the question of whether or not the states were regarded as sovereign powers? See Bryce, i. 235.

24. How was the Dartmouth College Case connected with the question of state sovereignty?

25. Why did the Confederate Constitution allow an export tax?

26. Find how much time elapsed between the proposal of each of the last five amendments to the Constitution and its proclamation by the President as a part of the instrument. What inference?

27. Compare sec. i. of the Thirteenth Amendment with Article VI. of the Ordinance of 1787. See copy of the Ordinance in Larned, *History for Ready Reference.*

28. Compare and contrast the American system of colonization with the systems of the Greeks, the Romans, and the English.

29. Compare and contrast the American policy of naturalization with that of the Greeks, the Romans, and the English.

30. Do banks chartered by the states have the right to issue bank notes? Consider in this connection Art I., sec. x., paragraph 1, of the Constitution.

31. Explain, by reference to the Constitution, how there can be an "interstate commerce" law and an "interstate commerce commission."

32. What clauses of the Constitution had a bearing on the purchase of Louisiana, on the acquisition of Texas, on the acquisition of the Philippines?

THE CONSTITUTION OF THE UNITED STATES.

Preamble.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I. Legislative Department.

Section I. Congress in General.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section II. House of Representatives.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Repre-

sentatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the state of *New Hampshire* shall be entitled to choose three, *Massachusetts* eight, *Rhode Island and Providence Plantations* one, *Connecticut* five, *New York* six, *New Jersey* four, *Pennsylvania* eight, *Delaware* one, *Maryland* six, *Virginia* ten, *North Carolina* five, *South Carolina* five, and *Georgia* three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Section III. Senate.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore* in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section IV. Both Houses.

1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section V. The Houses Separately.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section VI. Privileges and Disabilities of Members.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses,

and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Section VII. Mode of Passing Laws.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section VIII. Powers granted to Congress.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post-offices and post-roads;

8. To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like author-

ity over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.[1]

Section IX. Powers denied to the United States.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section X. Powers denied to the States.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of

[1] This is the Elastic Clause in the interpretation of which arose the original and fundamental division of political parties. See above, p. 269.

credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of the Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

Article II. Executive Department.

Section I. President and Vice-President.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. [The electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal

number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.][1]

4. The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

8. Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States."

[1] This clause of the Constitution has been amended. See Amendments, Art. XII.

Section II. Powers of the President.

1. The President shall be Commander-in-chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section III. Duties of the President.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section IV. Impeachment.

The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Article III. Judicial Department.

Section I. United States Courts.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section II. Jurisdiction of the United States Courts.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.[1]

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section III. Treason.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless

[1] This clause has been amended. See Amendments, Art. XI.

on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV. — THE STATES AND THE FEDERAL GOVERNMENT.

Section I. State Records.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section II. Privileges of Citizens, etc.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.[1]

Section III. New States and Territories.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

[1] This clause has been canceled by Amendment XIII., which abolishes slavery.

Section IV. Guarantee to the States.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Article V. Power of Amendment.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress, provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Article VI. Public Debt, Supremacy of the Constitution, Oath of Office, Religious Test.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention by the unanimous consent of the States present,[1] the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

George Washington, President, and Deputy from VIRGINIA.
NEW HAMPSHIRE — John Langdon, Nicholas Gilman.
MASSACHUSETTS — Nathaniel Gorham, Rufus King.
CONNECTICUT — William Samuel Johnson, Roger Sherman.
NEW YORK — Alexander Hamilton.
NEW JERSEY — William Livingston, David Brearly, William Patterson, Jonathan Dayton.
PENNSYLVANIA — Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris.
DELAWARE — George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom.
MARYLAND — James McHenry, Daniel of St. Thomas Jenifer, Daniel Carroll.
VIRGINIA — John Blair, James Madison, Jr.
NORTH CAROLINA — William Blount, Richard Dobbs Spaight, Hugh Williamson.
SOUTH CAROLINA — John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler.
GEORGIA — William Few, Abraham Baldwin.

Attest: William Jackson, *Secretary.*

[1] Rhode Island sent no delegates to the Federal Convention.

AMENDMENTS.[1]

Article I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Article III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and

[1] Amendments I. to X. were proposed by Congress, Sept. 25, 1789, and declared in force Dec. 15, 1791.

district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Article VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

Article VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Article XI.[1]

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Article XII.[2]

1. The electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they

[1] Proposed by Congress March 5, 1794, and declared in force Jan. 8, 1798.
[2] Proposed by Congress Dec. 12, 1803, and declared in force Sept. 25, 1804.

shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article XIII.[1]

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

[1] Proposed by Congress Feb. 1, 1865, and declared in force Dec. 18, 1865.

Article XIV.[1]

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

[1] Proposed by Congress June 16, 1866, and declared in force July 28, 1868.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Article XV.[1]

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

APPENDIX B.

THE STATES CLASSIFIED ACCORDING TO ORIGIN.

1. The thirteen original states.
2. States formed directly from other states:
   Vermont from territory disputed between New York and New Hampshire; Kentucky from Virginia; Maine from Massachusetts; West Virginia from Virginia.
3. States from the Northwest Territory:
   Ohio, Illinois, Wisconsin,
   Indiana, Michigan, Minnesota, in part.
4. States from other territory ceded by states:
   Tennessee, ceded by North Carolina,
   Alabama, ceded by South Carolina and Georgia,
   Mississippi, ceded by South Carolina and Georgia.
5. States from the Louisiana purchase:
   Louisiana, Nebraska, Montana,
   Arkansas, Iowa, Minnesota, in part,
   Missouri, North Dakota, Wyoming, in part,
   Kansas, South Dakota, Colorado, in part.
6. States from Mexican cessions:
   California, Utah, Wyoming, in part,
   Nevada, Colorado, in part.
7. States from territory defined by treaty with Great Britain:
   Oregon, Washington, Idaho.
8. States from other sources:
   Florida, from a Spanish cession,
   Texas, by annexation.

[1] Proposed by Congress Feb. 26, 1869, and declared in force March 30, 1870.

THE GROWTH OF CIVIL GOVERNMENT IN OREGON

THE RISE OF A WESTERN STATE

American Boundaries in 1783. In order to get clearly in mind the facts connected with the early history of Oregon, it will be necessary to go back to the time when our nation began to acquire territory. We have seen that by the treaty with Great Britain in 1783 the United States secured the Mississippi as its western boundary. At that time all west of the Alleghanies was a wilderness, occupied by wild beasts and savage men. Only two small areas between the mountains and the Great River were held by white settlers. These were in what is now Kentucky, where Daniel Boone and his company settled shortly before the outbreak of the Revolution; and in eastern Tennessee, where people from North Carolina had established themselves about the same time. Men were only beginning to think of settling in the Ohio country. As for the great regions west of the Mississippi, they were practically unknown except for the tales of an occasional trapper or trader, whose wanderings led him far beyond the borders of civilization, among the distant Indian tribes.

All the country between the Mississippi and the Rocky Mountains had once belonged to France, because as far back as 1682 the great French explorer, La Salle, had passed down the river to its mouth, and had taken possession of all the territory drained by it and its branches in the name of Louis the Fourteenth. Of course the land to the eastward, as far as the Alleghany

Mountains, was included in this claim. Thus this country, which was called Louisiana, in honor of the French king, embraced the whole region between the crest of the Rockies and the crest of the Alleghanies.

In 1754 a war broke out between the English, who wanted the Ohio country for purposes of colonization, and the French, who claimed it as their own. The French were at first successful, defeating the army of Braddock and building a fort at the point where the Alleghany and Monongahela rivers join to form the Ohio.[1] This spot has often been called "the gateway of the West." But at last General Wolfe captured the strong fortress of Quebec, and the French were forced to yield. In the treaty of 1763, called the Treaty of Paris, because the negotiations were carried on at the French capital, France gave up all territory east of the Mississippi to the English. At the same time the country west of the river was given over to Spain.

This remained the condition of things until the Revolutionary War closed. Then the territory east of the Mississippi was ceded by Great Britain to the United States.

The Louisiana Purchase. The country west of the Mississippi had monopolized the name Louisiana since the treaty of 1763. Now, during the time that Napoleon had control of France, he got the government of Spain to give back Louisiana to France, because at that time he had some idea of beginning a colony in that country. But a little later, in 1803, having given up his notion of planting colonies there, Napoleon sold the whole vast region to our government for $15,000,000.

[1] This is the war in which George Washington won his first honors as a military leader. His presence of mind and skilful generalship saved the remnant of Braddock's army in the famous but ill-starred expedition of 1755.

The Lewis and Clark Expedition. The President who secured this magnificent domain to the United States was Thomas Jefferson. He had been interested in learning about this country as early as 1783, when he had asked George Rogers Clark, the famous Indian fighter, how he would like to lead a party to explore it. Nothing was done at the time, but when the Louisiana purchase was made, President Jefferson sent out an exploring party under Meriwether Lewis and William Clark (brother of George Rogers Clark). The party set out in 1804. They passed up the Missouri River to its source, and then crossed over to the head of the Columbia. This river they explored to its mouth, reaching the Pacific on the 7th of November, 1805.[1]

The Oregon Question.[2] The exploration of the Columbia gave the people of the United States a great interest in the Pacific Northwest, and also strengthened the claim of our nation to the Oregon territory. But it was not the beginning of that claim. In 1792 (May 11) Captain Robert Gray of Boston sailed across the bar of the great river of Oregon and passed thirty miles up the stream. His ship was the Columbia. This name he bestowed upon the beautiful river which he was the first to enter; and by that act we secured as valid a claim to the Columbia basin as France had to Louisiana on account of the exploration of La Salle.

At this time several European nations had claims to the Pacific coast. These were: first, Spain, which claimed the entire coast by virtue of the Pope's bull of

[1] "The Lewis and Clark Centennial and American Pacific Exposition" will be held at Portland, Oregon, in the year 1905, to celebrate this event.

[2] See on the Oregon question, Joseph R. Wilson, in *Quarterly of the Oregon Historical Society*, June and September, 1900.

1493, giving her all the land to the west of the "Line of Demarcation"; second, Great Britain, whose navigators had explored portions of the coast, and whose merchants were beginning to set up trading posts at various places;[1] third, Russia, who soon began to put forth claims to great sections of the country.

Settling the Claims. Two of these claims, those of Spain and Russia, were quickly disposed of. In 1819 the United States made a treaty with Spain by which she gave up to this country all her claims to the Pacific coast north of the parallel of forty-two degrees.[2] This finally shut Spain out from the Oregon country and gave us one more claim to it.

In 1824 the United States entered into an agreement with Russia by which that country gave up all claim to the Pacific coast south of fifty-four degrees forty minutes. This left a stretch of coast more than twelve and a half degrees in extent, which was wholly clear of European claims with the exception of those of Great Britain; but these, as it proved, were much harder to get rid of than those of Russia and Spain had been.

In 1818 an agreement was made between the United States and Great Britain which left the country open to both nations for the period of ten years. As yet there was no thought of any other occupation than that by traders. The region of the Columbia and the Willamette was rich in fur-bearing animals such as the beaver. It was by capturing these, and exchanging with the traders whose vessels touched at the coast, that the

[1] Captain Vancouver entered the Columbia October 19, 1792, only a few months after Gray visited and named the river.

[2] In the treaty with Spain, made in 1819, the United States (*a*) gave up claim to Texas, and (*b*) paid Spain the sum of $5,500,000. Spain (*a*) gave up claim to Oregon, and (*b*) ceded Florida.

Indians of the Pacific first came in contact with the civilization of white men.

This trade was so profitable that the great fur companies, both English and American, planned to get control of it. John Jacob Astor, as early as 1811, had a station at the mouth of the Columbia which was and is called Astoria. His plan was to connect the Columbia valley with the Mississippi by means of a chain of trading posts. All furs secured west of the Rockies were to be taken to Astoria. Thence his ships were to carry them to China and the far East, to be exchanged for silks and tea and other valuable goods; these in turn were to be sold in the markets of the Atlantic coast. But Astor met with great losses; the war of 1812 came and a British warship took possession of Astoria. Some time after the war it was given back to the Americans, but it never again became a great fur-trading station.

The Hudson's Bay Company. There was an English fur company whose early territory was in northern Canada, along the rivers flowing into Hudson's Bay, and for this reason it took the name of Hudson's Bay Company. It had long traded through the region of the Great Lakes in Canada, and along the Red River of the North. During the early part of the nineteenth century it extended its operations westward, and in 1821 secured almost complete control of the fur trade in the Oregon country. Three years later (1824) Dr. John McLoughlin, the company's agent, established Fort Vancouver on the Columbia, opposite the mouth of the Willamette, as the headquarters for this trade.

Vancouver was a noted place in the early history of Oregon. It was the metropolis and capital of a vast woodland empire. Out of its gates went forth each

spring the trapper and the trader, whose duty it was to penetrate the forest and ascend to the sources of the rivers in quest of beaver skins and Indian trade. To it they returned in the fall with their harvest of furs, and wonderful stories of wild life among the savages of the Rockies and the Cascades.

Here "for a quarter of a century Dr. John McLoughlin ruled with the sceptre of a czar the vast territory from Alaska to California and from the Rocky Mountains to the ocean."[1] His influence over the Indian tribes was supreme. No rival trader had the slightest chance of success against him and his well-trained agents. But he was more than a mere trader. The kindness shown by him to missionaries, speculators, colonists, and in fact all who chanced to come into the country and had need of any kindness, greatly endeared Dr. McLoughlin to the early settlers, who delight to honor him as the "Father of Oregon."

The Coming of the Pioneers. But the reign of McLoughlin and the Hudson's Bay Company was destined to come to an end much sooner than most men thought. When a country is wanted for the making of farms and homes, the Indian trader and the trapper find their occupation gone. Theirs is a temporary business. And yet in the history of our country it has been a most important business; for, as one historian says, "the Indian trade pioneered the way for civilization."[2] From the Atlantic to the Pacific, as the white population moved into the wilderness, over the mountains and across the plains, they were guided by the trader in trinkets and

[1] Eva Emery Dye, *McLoughlin and Old Oregon*, p. 55.

[2] Frederick J. Turner, "The Significance of the Frontier in American History," *Proceedings of the State Historical Society of Wisconsin*, 1893, p. 91.

furs, who had been some years in advance of the rest. But when a country became settled, these people, with the Indians who were their customers, moved on toward the setting sun.

In Oregon, as everywhere else in America, the real development of the country began when the fur-trader was forced to give way to the farmer. "Our expansion to the Pacific is a tale of pioneering."[1] The building of a great state on this coast became possible when the pioneer farmers began to come each year with their trains of wagons, their cattle, and their plows. It was a wonderful movement, full of meaning for the future of the United States, and even for the whole world. Happily it is not yet too late to study it at first hand from the accounts of the pioneers themselves. Every Oregon schoolboy and schoolgirl should make the best use of this opportunity while the pioneers remain with us, for the time will come when the importance of any knowledge gained in this way will seem very great.

Oregon saved to the United States. In the first place, the coming of the pioneers saved Oregon to the United States, or at least made it impossible for this country to lose the territory to Great Britain. The treaty of 1818 giving the British and the Americans joint occupation of the country came to an end in 1828. Then the agreement was renewed; but at the close of another period of ten years the boundary question was not yet settled, and in fact it was becoming a more and more difficult problem to settle it. The United States government was negotiating with the British government, and for a while tried to make our northern bound-

[1] F. G. Young, "Introduction to Correspondence and Journals of Captain Nathaniel J. Wyeth," *Sources of Oregon History*, vol. i. parts iii., iv.

ary the parallel of fifty-four degrees forty minutes, which was the southern boundary of the Russian claims. But the British government wished to make the Columbia River the boundary between the two nations. They could not agree, and were not willing to go to war over the matter; so the negotiations dragged on year after year.

Meantime the pioneers began to come into the country. On the frontiers of Missouri, and in the other Mississippi states, the hardy settlers learned of the great country on the Columbia, where the soil was fertile, the climate mild, and the chances of water connection with the markets of the world inviting. Moreover, this territory was in dispute between their country and England, which was an additional reason for its attractiveness to the spirited men who had won the Mississippi Valley; so they organized emigrant trains each spring, took their families and belongings in canvas-covered wagons, and set out. The route lay up the Platte and the Sweetwater, over South Pass, and down the Snake River to the Columbia.[1] It was a journey of two thousand miles, and required the entire summer. The trains set out in April or May, and reached the Willamette in October or November.

The emigrant bands were small at first. A couple of missionaries who accompanied Wyeth's trading party in 1834 made the nucleus for a colony in the Willamette Valley. They were joined by others coming from Boston by way of Cape Horn. To this little centre of civilized life came an occasional company of traders and trappers and a few arrivals by sea. Finally, in 1842, a regularly organized party of emigrants came by the

[1] See the Oregon Trail number of the *Quarterly of the Oregon Historical Society*, December, 1900.

Oregon trail from Independence, Missouri; and the next year a still larger band, guided by Dr. Whitman, who was on his way home after his famous winter ride across the continent. Thereafter the emigration was an annual event of the greatest interest and importance to the settlers already here.

There was no longer any doubt as to how the Oregon question would be settled. The pioneers were in possession, and they soon set up a regular form of government, to last until the United States should take control. The British government was at last convinced of the uselessness of further delay, and in 1846 a treaty was agreed upon. The United States had been claiming all the territory as far north as the point where Russia's claim stopped, fifty-four degrees and forty minutes. In fact, during the presidential campaign of 1844 the cry had been, "fifty-four forty or fight," indicating that no other boundary would satisfy the people of this country. The British, on the other hand, had insisted on making the Columbia River the boundary. But there was a good chance to compromise on the line of forty-nine degrees, which already formed our northern boundary from the Lake of the Woods to the crest of the Rockies. This was now extended to Puget Sound.

Thus the United States, starting with a territory limited on the west by the Mississippi, had expanded to the Pacific Ocean.

The Provisional Government. For a long time there were no civil magistrates in the Oregon country except the officers of the Hudson's Bay Company; some of them were justices of the peace, appointed under the laws of England. In fact, it has been said that "the history of government for about twenty years is summed up in

the person of one man, Dr. John McLoughlin."[1] He it was who kept Indians, trappers, traders, and Canadian farmers in order. For this purpose he made regular tours through his domains, much to the terror of evil doers, both white and red.

Such government was all well enough so long as the people to be controlled were of the classes described, but when American frontiersmen came to form a good part of this colony a different system was soon demanded. By 1841 there was a good deal of talk about forming a provisional government, and an accidental occurrence brought matters to a head. Among the early arrivals in the valley of the Willamette was a Tennesseean by the name of Ewing Young. He had been in California, then a Spanish colony, and had come to Oregon from there in 1834. In the course of a few years, by trading in cattle, running a saw-mill, and other means, he had got together property of considerable value. But in February, 1841, he died. Now, what to do with his property was a serious question. There was no one who had a legal right to take charge of it, and the settlers saw that a probate judge was necessary. But a probate court is a part of a regular government, so people began to insist that such a government be established. It is said that the men who gathered at the funeral of Ewing Young adopted resolutions in favor of a provisional government, and called a meeting of all the settlers to consider the matter. Other meetings followed, at one of which a committee was named to draw up a plan of government; and, to meet the pressing need of the hour, a "supreme judge with probate powers" was then and there appointed. Since it

[1] James Rood Robertson, *Quarterly of the Oregon Historical Society*, March, 1900, page 11.

was two years before a complete provisional government actually went into operation, this judge, together with the clerk, sheriff, and two constables, appointed at the same time, made up the first government of Oregon.

When, in the spring of 1843, a new series of meetings began, the cause was very different from that which called the men together in 1841. The settlers had been losing a great many cattle and sheep, killed by the wild beasts that infested the country. Some means had to be devised for saving their flocks and herds. This was a matter of interest to all, and therefore a general meeting was called to consider it. They decided to raise a fund by subscription, to pay bounties for the killing of wolves, lynxes, bears, and panthers; they appointed collectors to receive the money, and a treasurer to take charge of it. Before the meeting closed a committee was appointed to see about taking measures "for the civil and military protection of the colony," by which was meant the people south of the Columbia. This was on the first Monday in March. On the second of May following occurred the meeting at Champoeg, at which the government was actually established and officers were chosen.

The settlers south of the Columbia were not all Americans. A number of French Canadians also, who had been servants of the Hudson's Bay Company, were living on farms in the Willamette Valley. Many of these people were not ready to join in a provisional government which might weaken the claims of Great Britain to the whole of the country. No one knew exactly how many of them would oppose the scheme, but when the vote was taken it seemed so close that the chairman could not decide whether the measure had carried or not. Among the American settlers was one,

Joe Meek, a rugged trapper and Indian fighter, who had spent many years among the mountains before coming to the Willamette Valley. He was a natural leader, and just the man to meet a crisis like this. Stepping out in front of the crowd of excited men, he shouted: "Who's for a divide? All in favor of the report and of an organization, follow me." The outcome was that fifty-two men were in favor and only fifty against the resolution. In this manner the first regular government on the Pacific coast was established, and at once put into effect by the election of the officers agreed upon. These were, a supreme judge with probate powers, a clerk of court or recorder, a sheriff (Joe Meek was chosen to this office), and a treasurer; three magistrates, two constables, a major and two captains, and a legislative committee of nine persons. This committee was instructed to report a constitution and code of laws to a meeting called for July 5th. In the First Organic Law, printed herewith (see page 261), we have their report.

The Territorial Government. The settlers expected, when they formed the provisional government, that it would not be long before the boundary question would be settled and a territorial government set up by the United States. But three years passed before the first of these events occurred, and after that another three years before the nation actually took control. Therefore this provisional government, maintained by the sole authority of the people themselves, regulated the affairs of Oregon for a period of nearly six years. And it was completely successful. Under it "property was safe, schools established and supported, contracts enforced, debts collected, and the majesty of the law vindicated."[1]

[1] J. Quinn Thornton, quoted by Robertson, *Quarterly of the Oregon Historical Society*, March, 1900, p. 39.

MONUMENT AT CHAMPOEG

To commemorate the foundation of the first provisional government.

This proves that the people of Oregon were of the right stamp to be the builders of a great state.

On the 14th of August, 1848, the bill creating the territory of Oregon was passed, and on the 3d of March following, General Joseph Lane put the new government into operation. From this time on the political history of Oregon was similar to that of other new states.

On account of the steady incoming of settlers, the number of people grew rapidly, so that in a few years many were anxious for statehood. Several calls for a convention to frame a constitution were voted down, but by 1857 the people were ready for the change.[1] A convention of sixty delegates met at Salem on the 17th of August, and completed their labors on September 18th by the adoption of the state constitution. A year and a half later, February 14, 1859, Oregon was admitted into the Union.

With this event our survey of the early history of Oregon properly comes to a close.[2] The story of the next forty years is a story of growth and development along all lines, but we cannot tell it here. In 1817 Bryant wrote of this land as —

> " The continuous woods
> Where rolls the Oregon, and hears no sound
> Save his own dashings."

To-day it is a prosperous and wealthy state, whose half million of people are busy with the manifold works of civilization and progress.

[1] According to Bancroft, *History of Oregon*, ii. 421, there were 7617 votes in favor of the convention and 1679 against.

[2] It is expected that in the study of the constitution of the state of Oregon, use will be made of the outline placed at the end of Part III., on State Government. The authors advise that in the study of state government this chapter be brought in after Chapter XI.

SUMMARY

In the treaty with England in 1783 the United States secured the Mississippi as its western boundary; but in 1803 it bought the Louisiana territory west of the Mississippi. The exploration of the western country by Lewis and Clark, together with the earlier discovery of the Columbia River by Captain Gray, gave the United States a strong claim upon the Oregon country. The same territory was also claimed by Spain, Russia, and England. The two former claims were early given up by treaty; the latter was not abandoned until 1846. By this time many American settlers had arrived in Oregon, and a provisional government had been in operation for several years. This was the first regular government set up on the Pacific coast.

Soon afterward the United States organized the territory and sent out a territorial governor. In 1857 a constitutional convention adopted a state constitution, and in 1859 Oregon was admitted to the Union.

T. 3 S. R

36

1.

12

13

Cl. 6

Fra. 70 Ac

Michae
Acco

Cl.
68

Jean
Jeangras.
Cl. 79 No. 1039
Ac. 644 18

24

Ac

T. 4. S.

Laurent Sav
Cl. 67. 508.24 A

No. 75

2876

25

Michael Coyl
No. 776 Cl 65
318.74 Ac.

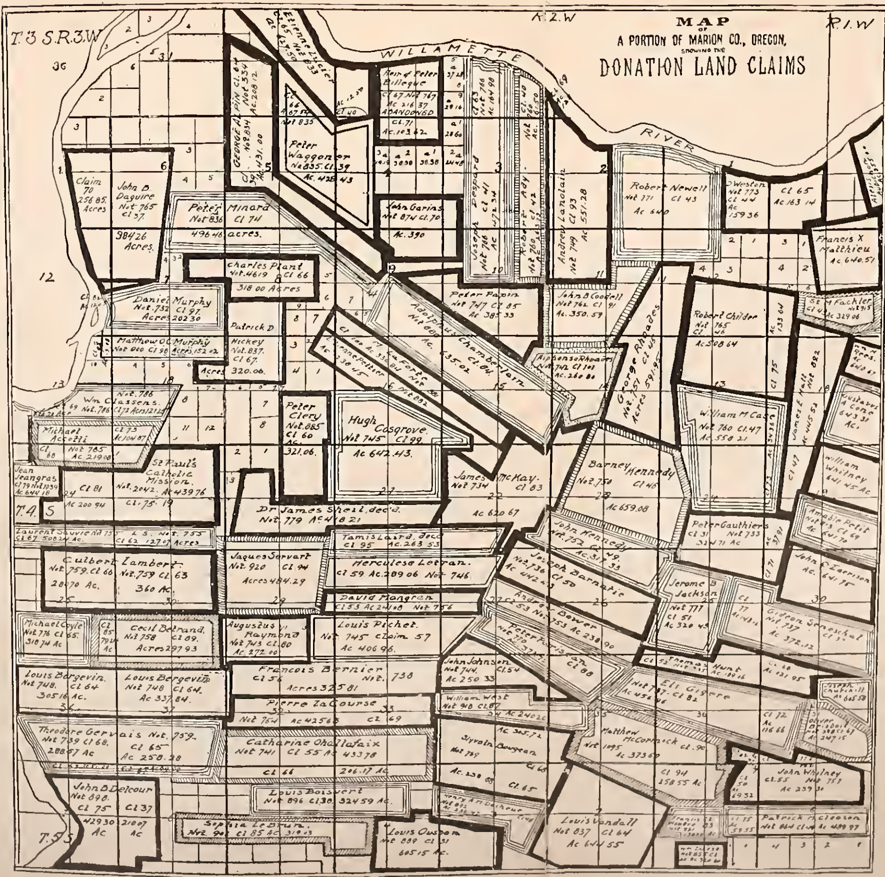
Louis Berg
No. 748.
305.16 A

36

Theodore
No. 739
288.57

Cl. 52

T. 5 S


MAP
OF
A PORTION OF MARION CO., OREGON,
SHOWING THE
DONATION LAND CLAIMS
WILLAMETTE
RIVER
T.3 S.R.3.W.
R.2.W
R.1.W
T.4. S
T.5 S
Peter Waggoner
Peter Minard
John Garins
Joseph Despard
Robert Ady
Andrew Lanolain
Robert Newell
Francis X Matthieu
Charles Plant
Daniel Murphy
Matthew OC Murphy
Patrick D Hickey
Adolphus Chamberlain
Peter Papin
John B Goodell
Robert Childer
George Rhoades
William M Case
Wm Classens
Michael Accozzi
Peter Clery
Hugh Cosgrove
St Paul's Catholic Mission
Jean Jeangras
James McKay
Barney Kennedy
William Whitney
Amable Petit
Dr James Sheil, dec'd.
Laurent Sauvie
Peter Gauthiers
John Kennedy
Tamis Laird, dec'd
Herculese Letran.
Culbert Lambert
Jaques Servart
David Mangren
Joseph Barnatie
Jerome B Jackson
Andrew Bower
Gideon Seneschal
Michael Coyle
Cecil Belrand
Augustus Raymond
Louis Pichet
Peter Parisian
John Johnson
Thomas Hunt
Eli Gisere
Louis Bergevin
Francois Bernier
Pierre LaCourse
William West
Theodore Gervais
Catharine Ohallafaix
Sylvain Bougean
Matthew McCormick
John Whitney
John B Delcour
Louis Boisvert
Sophia LeBrun
Louis Ouston
Louis Vandall
Patrick McGleeson

FIRST ORGANIC LAW

OR

CONSTITUTION OF OREGON[1]

Recommended by the citizens' legislative committee and adopted July 5, 1843, *by the inhabitants of Oregon, assembled in mass meeting held at Champooick, ten or twelve miles north of where the state capitol is now located at Salem.*

SECTION 1. We, the people of Oregon Territory, for purposes of mutual protection, and to secure peace and prosperity among ourselves, agree to adopt the following laws and regulations, until such time as the United States of America extend their jurisdiction over us.

Be it therefore enacted, by the free citizens of Oregon Territory, that the said territory, for purposes of temporary government, be divided into not less than three, nor more than five, districts; subject to be extended to a greater number when an increase of population shall require it.

For the purpose of fixing the principles of civil and religious liberty, as the basis of all laws and constitutions of government that may hereafter be adopted,

Be it enacted, that the following articles be considered as articles of compact, among the free citizens of this territory: —

Article 1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested, on account of his mode of worship, or religious sentiments.

Article 2. The inhabitants of said territory shall always be entitled to the benefits of the writ of habeas corpus, and trial by jury; of a proportionate representation of the people in the legislature, — and of judicial proceedings, according to the course of common law. All persons shall be bailable, unless for capital offences, where

1 This document, and the Provisional Constitution and State Constitution that follow, are copied from the Biennial Report of the Secretary of State of Oregon, 1897–1898, Appendix.

the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishments inflicted. No man shall be deprived of his liberty, but by the judgment of his peers, or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared that no law ought ever to be made, or have force, in said territory, that shall in any manner whatever interfere with or affect private contracts or engagements, bona fide and without fraud, previously formed.

Article 3. Religion, morality, and knowledge being necessary to good government, and the happiness of mankind, schools and the means of education shall forever be encouraged.

The utmost good faith shall always be observed towards the Indians. Their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars, authorized by the representatives of the people; but laws, founded in justice and humanity, shall, from time to time, be made, for preventing injustice being done to them, and for preserving peace and friendship with them.

Article 4. There shall be neither slavery nor involuntary servitude in said territory, otherwise than for the punishment of crimes whereof the party shall have been duly convicted.

Section 2. Article 1. Be it enacted, by the authority aforesaid, that the officers, elected on the second of May, inst., shall continue in office, until the second Tuesday in May, 1844, and until others are elected and qualified.

Article 2. Be it further enacted, that an election of civil and military officers shall be held annually, on the second Tuesday in May, in the several districts at such places as shall be designated by law.

Article 3. Each officer heretofore elected, or hereafter to be elected, shall, before entering upon the duties of his office, take an oath or affirmation, to support the laws of the territory, and faithfully to discharge the duties of his office.

Article 4. Every free male descendant of a white man, an inhabitant of this territory, of the age of twenty-one years and upwards, who shall have been an inhabitant of this territory at the time of its organization, shall be entitled to vote at the election of officers,

civil and military, and be eligible to any office in the territory, *provided*, that all persons of the description entitled to vote by the provisions of this section, who shall have emigrated to this territory after organization, shall be entitled to the rights of citizens after having resided six months in the territory.

Article 5. The executive power shall be vested in a committee of three persons, elected by the qualified voters at the annual election, who shall have power to grant pardons and reprieves for offences against the laws of the territory, to call out the military force of the territory to repel invasion, or suppress insurrection, to take care that the laws are faithfully executed, and to recommend such laws as they may consider necessary, to the representatives of the people, for their action. Two members of the committee shall constitute a quorum to transact business.

Article 6. The legislative power shall be vested in a committee of nine persons, who shall be elected by the qualified electors at the annual election, giving to each [district] a representation in ratio of its population, excluding Indians ; and the said members of the committee shall reside in the district for which they shall be chosen.

Article 7. The judicial power shall be vested in a supreme court, consisting of a supreme judge and two justices of the peace, a probate court, and in justices of the peace. The jurisdiction of the supreme court shall be both appellate and original. That of the probate court and justices of the peace as limited by law, *provided*, that individual justices of the peace shall not have jurisdiction of any matter of controversy, when the title or boundary of land may be in dispute, or where the sum claimed exceed fifty dollars.

Article 8. There shall be a recorder elected by the qualified electors, at the annual election, who shall keep a faithful record of the proceedings in the legislative committee, supreme and probate courts; also record all boundaries of land presented for that purpose; and all marks and brands used for marking live stock; procure and keep the standard weights and measures required by law, seal weights and measures, and keep a record of the same ; and also record wills and deeds, and other instruments of writing, required by law to be recorded.

The recorder shall receive the following fees, viz.: For recording wills, deeds, and other instruments of writing, twelve cents for every hundred words, and the same price for copies of the same; for every weight or measure sealed, twenty-five cents; for granting

other official papers and the seal, twenty-five cents; for serving as clerk of the legislative committee, the same daily pay as the members of the legislature; and for all other services required of him by this Act, the same fees as are allowed for similar services by the laws of Iowa.

Article 9. There shall be a treasurer elected by the qualified electors of the territory, who shall, before entering upon the duties of his office, give bond to the executive committee, in the sum of fifteen hundred dollars, with two or more sufficient sureties, to be approved by the executive committee, conditioned for the faithful discharge of the duties of his office. The treasurer shall receive all moneys belonging to the territory, that may be raised by contribution, or otherwise, and shall procure suitable books in which he shall enter an account of his receipts and disbursements.

Article 10. The treasurer shall in no case pay money out of the treasury, but according to law, and shall annually report to the legislative committee a true account of his receipts and disbursements, with necessary vouchers for the same, and shall deliver to his successor in office all books, money, accounts, or other property, belonging to the territory, so soon as his successor shall become qualified.

Article 11. The treasurer shall receive, for his services, the sum of five per cent. of all moneys received and paid out according to law, and three per cent. of all moneys in the treasury when he goes out of office, and two per cent. upon the disbursement of money in the treasury when he comes into office.

Article 12. The laws of Iowa territory shall be the law of this territory, in civil, military, and criminal cases; where not otherwise provided for, and where no statute of Iowa applies, the principles of common law and equity shall govern.

Article 13. The law of Iowa territory, regulating weights and measures, shall be the law of this territory; *provided*, that the supreme court shall perform the duties of the county commissioners, and the recorder shall perform the duties of the clerk of the county commissioners, as prescribed in said laws of Iowa. *And provided*, that 60 pounds, avoirdupois weight, shall be the standard weight of a bushel of wheat, whether the same be more or less than 2150 2-5 cubic inches.

Article 14. The laws of Iowa territory, respecting wills and administrations, shall be the laws of this territory in all cases not otherwise provided for.

Article 15. The law of Iowa respecting vagrants is hereby adopted, as far as adapted to the circumstances of the citizens of Oregon.

Article 16. The supreme court shall hold two sessions annually, upon the third Tuesdays in April and September; the first session to be held at Champooick, on the third Tuesday of September, 1843, and the second session at Twality Plains, on the third Tuesday of April, 1844. At the sessions of the supreme court, the supreme judge shall preside, assisted by two justices; *provided*, that no justice shall assist in trying any case that has been brought before the court by appeal from his judgment. The supreme court shall have original jurisdiction in cases of treason, felony, or breaches of the peace, and in civil cases where the sum claimed exceed fifty dollars.

Article 17. All male persons of the age of sixteen years and upwards, and all females of the age of fourteen and upwards, shall have the right of engaging in marriage; *provided*, that where either of the parties shall be under the age of twenty-one, the consent of the parents or guardians of such minor shall be necessary to the validity of such matrimonial engagement. Every ordained minister of the gospel of any religious denomination, the supreme judge, and all justices of the peace, are hereby authorized to solemnize marriages according to law, and to have the same recorded and pay the recorder's fee. All marriages shall be recorded by the territorial recorder within one month from the time of such marriage taking place and being made known to him officially. The legal fee for marriage shall be one dollar, and for recording the same, fifty cents.

Article 18. All offices subsequently made shall be filled by election and ballot in the several districts, in the most central and convenient place in each district, upon the day appointed by law, and under such regulations as the laws of Iowa provide.

Article 19. Resolved, that a committee of three be appointed to draw up a digest of the doings of the people of this territory, with regard to an organization, and transmit the same to the United States government, for their information.

Resolved, that the following portions of the laws of Iowa, as laid down in the statute laws of the territory of Iowa, enacted at the first session of the legislative assembly of said territory, held at Burlington, A. D. 1838–9; published by authority, Du Buque, Bussel, and Reeves, printers, 1839, certified to be a correct copy, by Wm. B.

Conway, secretary of Iowa territory, be adopted as the laws of this territory, viz.: —

The law of attachment	page 52 to 64
The law of bonds	page 70 to
The law of constables	page 71 to 73
The law of construction of statutes	page 73 to 75
The law of costs and fees	page 75 to 89
The law of criminal offences	page 109 to 125
The law of courts of probate	page 126 to 127
The law of depositions	page 172 to 177
The law of executions	page 197 to 205
The law of forcible entry and detainer	page 217 to 220
The law of gaming	page 221 to 224
The law of Indians, sale of liquor to	page 274 to
The law of jurors	page 277 to 281
The law of justices of the peace	page 281 to 321
The law of militia	page 329 to 337
The law of minors, orphans and guardians	page 347 to 350
The law of mills and millers	page 343 to 346
The law ne exeat and injunctions	page 350 to 353
The law of partition	page 354 to 364
The law of practice of the courts	page 370 to 381
The law of promissory notes	page 381 to 385
The law of public administrators	page 385 to 388
The law of public lands	page 388 to
The law of recorder	page 396 to 397
The law of replevin	page 398 to 400
The law of right	page 419 to 426
The law of seals	page 435 to
The law of securities	page 439 to 440
The law of sheriffs	page 441 to 447
The law of territorial treasurer	page 452 to
The law of vagrants	page 455 to 456
The law of venue, change of, etc	page 457 to 460
The law of waste	page 460 to 462
The law of water crafts, lost goods, and estrays	page 462 to 470
The law of weights and measures	page 470 to
The law of wills and administrations	page 471 to 513
The law of worshipping congregations	page 513 to 514

Adopted by the people, July 5, 1843.

NOTE. — The Rev. G. Hines presided at the meeting at which the foregoing organic law was enacted and adopted, and Mr. Geo. W. Le Breton acted as clerk or secretary. Mr. Le Breton's account of the meeting says: "The inhabitants of Oregon territory met, pursuant to adjournment, to hear the report of the legislative committee, and to do such other business as might come before them. The chairman of the meeting being absent, the meeting was called to order by G. W. Le Breton. On motion Rev. G. Hines was called to the chair. Mr. Moore, chairman of the legislative committee, presented his report, which was read and accepted." The report of the judiciary committee of the legislative committee was then taken up and their report adopted section by section as above given. Messrs. Hill, Beers, and Gale were elected as an executive committee to act as governors of Oregon for the ensuing year. Justices of the peace were elected for Champooick and Yamhill districts.

The legislative committee consisted of the following persons: Robert Shortress, David Hill, Dr. Robert Newell, Alanson Beers, Thomas Hubbard, W. H. Gray, James O'Neil, Robert Moore, and Wm. Dougherty.

OUTLINES AND QUESTIONS

FOR STUDYING THE FIRST ORGANIC LAW OR CONSTITUTION OF OREGON

1. The Introductory and Enacting Clauses.

a. By whom is the document made? for what purposes? for what limit of time?

b. What is it called by its framers, and what significance attaches to the name?

2. The Bill of Rights.

a. Select the articles which constitute it.

b. Compare these articles with the first ten amendments of the Constitution of the United States. Which articles appear to have been taken from the Constitution and which do not?

c. Compare clause 1 of Art. 3 with clause 1, Art. III. of the Ordinance of 1787; also, compare Art. 4 with clause 1 of Art. VI., Ordinance of 1787. (For a copy of the Ordinance, see Larned, *History for Ready Reference*, iv. 2382.)

3. The Frame of Government.

a. The executive department. How is it made up? what duties and powers are assigned to it?

b. The legislative department. How is it constituted, and how are its members to be chosen?

c. The judicial department. What classes of courts are provided for, and what jurisdiction is assigned to each?

d. Other officers. Make a list of them, describe their powers and duties, and show to whom they are responsible.

e. Special provisions. Select such matters as seem peculiar to this document, and try to find an explanation for them.

4. Comparative Study of First Organic Law and Provisional Constitution.

a. Compare each part of the First Organic Law with the corresponding part of the Provisional Constitution. (See p. 269.)

b. What differences do you observe in the bills of rights?

c. What differences are there in the frames of government, especially in the executive and legislative departments? (On reasons for the changes, see Bancroft's *Oregon*, or Robertson, *Quarterly of the Oregon Historical Society*, March, 1900.)

d. Point out any other differences between the two documents.

PROVISIONAL CONSTITUTION OF OREGON

The organic law of the provisional government of Oregon, 1845, adopted by the legislative committee, July 2, 1845, and ratified by the people of Oregon at the polls by a majority of 203 votes, July 26, 1845.

PREAMBLE.

WE, the people of Oregon territory, for purposes of mutual protection, and to secure peace and prosperity among ourselves, agree to adopt the following laws and regulations, until such time as the United States of America extend their jurisdiction over us:

Be it enacted, therefore, by the free citizens of Oregon territory, that the said territory, for the purposes of temporary government, be divided into not less than three nor more than five districts, subject to be extended to a greater number when an increase of population shall require.

For the purpose of fixing the principles of civil and religious liberty, as the basis of all laws and constitution of government, that may hereafter be adopted,

Be it enacted, that the following articles be considered articles of compact among the free citizens of this territory:

ARTICLE I.

Section 1. No person demeaning himself in a peaceable and orderly manner, shall ever be molested upon account of his mode of worship, or religious sentiments.

Section 2. The inhabitants of said territory shall always be entitled to the benefits of the writ of *habeas corpus* and trial by jury, of a proportionate representation of the people in the legislature, and of judicial proceedings, according to the course of common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishment inflicted. No man shall be deprived of his liberty, but by the judgment of his peers or the law of the land; and should the public exigencies make it necessary for the common preservation, to take any person's property, or

to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide and without fraud, previously formed.

Section 3. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars, authorized by the representatives of the people; but laws founded in justice and humanity shall, from time to time, be made for preventing injustice being done to them, and for preserving peace and friendship with them.

Section 4. There shall be neither slavery nor involuntary servitude in said territory, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.

Section 5. No person shall be deprived of the right of bearing arms in his own defence; no unreasonable searches or seizures shall be granted; the freedom of the press shall not be restrained; no person shall be twice tried for the same offence; nor the people deprived of the right of peaceably assembling and discussing any matter they may think proper; nor shall the right of petition ever be denied.

Section 6. The powers of the government shall be divided into three distinct departments: The legislative, executive, and judicial; and no person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted.

ARTICLE II.

Section 1. The legislative power shall be vested in a house of representatives, which shall consist of not less than thirteen, nor more than sixty-one members, whose numbers shall not be increased more than five at any one session, to be elected by the qualified electors at the annual election, giving to each district a representation in the ratio of its population (excluding Indians),

and the said members shall reside in the district for which they shall be chosen; and in case of vacancy by death, resignation, or otherwise, the executive shall issue his writ to the district where such vacancy has occurred, and cause a new election to be held, giving sufficient notice, at least ten days previously, of the time and place of holding said election.

Section 2. The house of representatives, when assembled, shall choose a speaker and its other officers, be judges of the qualifications and elections of its members, and sit upon its own adjournment from day to day. Two thirds of the house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members.

Section 3. The house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member, but not a second time for the same offence, and shall have all powers necessary for a legislature of a temporary government, not in contravention with the restrictions imposed in this organic law.

Section 4. The house of representatives shall, from time to time, fix the salaries of the different officers appointed or elected under this compact, *provided*, the pay of no officer shall be altered during his term of service; nor shall the pay of the house be increased by any law taking effect during the session at which such alteration is made.

Section 5. The house of representatives shall have the sole power of impeaching; three fourths of all the members must concur in an impeachment. The governor and all civil officers under these articles of compact shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit, under this compact; but the party convicted may be dealt with according to law.

Section 6. The house of representatives shall have power to lay out the territory into suitable districts, and apportion the representation in their own body. They shall have power to pass laws for raising a revenue, either by levying and collecting of taxes, or the imposing of license on merchandise, ferries or other objects, — to open roads and canals, either by the levying a road tax, or the chartering of companies, — to regulate the intercourse of the people

with the Indian tribes, — to establish post offices and post roads, — to declare war, suppress insurrection or repel invasion, — to provide for the organizing, arming, and disciplining the militia, and for calling forth the militia to execute the laws of Oregon, — to pass laws to regulate the introduction, manufacture or sale of ardent spirits, — to regulate the currency and internal police of the country; to create inferior tribunals and inferior officers necessary, and not provided for by these articles of compact, and generally to pass such laws to promote the general welfare of the people of Oregon, not contrary to the spirit of this instrument, — and all powers not hereby expressly delegated, remain with the people. The house of representatives shall convene annually on the first Tuesday in December, at such place as may be provided by law, and shall, upon their first meeting after the adoption of this instrument of compact, proceed to elect and define the duties of a secretary, recorder, treasurer, auditor, marshal or any other officers necessary to carry into effect the provisions of this compact.

Section 7. The executive power shall be invested in one person, elected by the qualified voters at the annual election, who shall have power to fill vacancies, to remit fines and forfeitures, to grant pardons and reprieves for offences against the laws of the territory, to call out the military force of the territory to repel invasion or suppress insurrection, to take care that the laws are faithfully executed, and to recommend such laws as he may consider necessary to the representatives of the people for their action. Every bill which shall have been passed by the house of representatives shall, before it becomes a law, be presented to the governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house, and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill; if, after such reconsideration, a majority of two thirds of the house shall agree to pass the same, it shall become a law. In such cases the votes shall be taken by ayes and noes, and entered upon the journals. If any bill shall not be returned by the governor to the house of representatives within three days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if the governor had signed it, unless the house of representatives, by its adjournment, shall prevent its return, in which case it shall not become a law. The governor shall continue in office two years, and until his successor is duly elected and qualified; in case of the office becoming

vacant by death, resignation or otherwise, the secretary shall exercise the duties of the office until the vacancy shall be filled by election. The governor shall receive the sum of ——— dollars per annum, as full compensation for his services, which sum may be increased or diminished at any time by law; *provided*, the salary of no governor shall be altered during his term of service. The governor shall have power to convene the legislature on extraordinary occasions.

Section 8. The judicial power shall be vested in a supreme court, and such inferior courts of law, equity and arbitration, as may from time to time be established. The supreme court shall consist of one judge, who shall be elected by the house of representatives, and hold his office for four years, and until his successor is duly elected and qualified. The supreme court, except in cases otherwise directed by this compact, shall have appellate jurisdiction only, which shall be co-extensive with this territory, and shall hold two sessions annually, beginning on the first Mondays of June and September, and at such places as by law directed. The supreme court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, and other original remedial writs, and hear and determine the same. The supreme court shall have power to decide upon and annul any laws contrary to the provisions of these articles of compact, and whenever called upon by the house of representatives, the supreme judge shall give his opinion, touching the validity of any pending measure. The house of representatives may, hereafter, provide by law for the supreme court having original jurisdiction in criminal cases.

Section 9. All officers under this compact shall take an oath, as follows, to wit: I do solemnly swear that I will support the organic laws of the provisional government of Oregon, so far as said organic laws are consistent with my duties as a citizen of the United States, or a subject of Great Britain, and faithfully demean myself in office, so help me God.

Section 10. Every free male descendant of a white man, inhabitant of this territory, of the age of twenty-one years and upwards, who shall have been an inhabitant of this territory at the time of its organization, shall be entitled to a vote at the election of officers, civil and military, and be eligible to any office in the territory; *provided*, that all persons of the description entitled to vote by the provisions of this section, who shall immigrate to this territory

after organization, shall be entitled to the rights of citizens, after having resided six months in the territory.

Section 11. The election of all civil officers, provided for by this compact, shall be held the first Monday in June annually.

ARTICLE III.

Section 1. Any person now holding, or hereafter wishing to establish a claim to land in this territory, shall designate the extent of his claim by natural boundaries, or by marks at the corners and upon the lines of such claim, and have the extent and boundaries of said claim recorded in the office of the territorial recorder, in a book to be kept by him for that purpose, within twenty days from the time of making said claim; *provided*, that those who shall be already in possession of land, shall be allowed twelve months from the passage of this act, to file a description of his claim in the recorder's office; and, *provided further*, that the said claimant shall state in his record, the size, shape and locality of such claim, and give the name of the adjoining claimants, and the recorder may require the applicant for such record, to be made to answer, on his oath, touching the facts.

Section 2. All claimants shall, within six months from the time of recording their claims, make permanent improvements upon the same by building or enclosing, and also become an occupant upon said claim within one year from the date of such record, or in case not occupied, the person holding said claim shall pay into the treasury the sum of five dollars annually, and in case of failure to occupy, or on failure of payment of the sum above stated, the claim shall be considered as abandoned; *provided*, that no non-resident of this territory shall have the benefit of this law; and *provided further*, that any resident of this territory, absent on his private business for two years, may hold his claim by paying five dollars annually to the treasury.

Section 3. No individual shall be allowed to hold a claim of more than one square mile, or six hundred and forty acres, in a square or oblong form, according to the natural situation of the premises. Nor shall any individual be allowed to hold more than one claim at the same time. Any person complying with the provisions of these ordinances shall be entitled to the same recourse against trespass, as in other cases by law provided.

Section 4. Partnerships of two or more persons shall be allowed to take up a tract of land not exceeding six hundred and forty

acres to each person in said partnership, subject to all the provisions of the law; and whenever such partnership is dissolved, the members shall each record the particular parts of said tract as may be allotted to him, *provided*, that no member of said partnership shall hold a separate claim, at the time of the existence of said partnership.

Section 5. The boundary lines of all claims shall hereafter conform, as near as may be, to the cardinal points.

Section 6. The officers elected at the general election, held on the first Tuesday in June, 1845, shall be the officers to act under this organic law, are hereby declared valid and legal.

Section 7. Amendments to this instrument may be proposed by the house of representatives, two thirds of the members concurring therein, which amendments shall be made public in all parts of Oregon, and be read at the polls at the next succeeding general election, and a concurrence of two thirds of all the members elected at said election may pass said amendments, and they shall become a part of this compact.

I, John E. Long, secretary of Oregon territory, do hereby certify that the foregoing is a true and correct copy of the original law, as passed by the representatives of the people of Oregon, on the fifth day of July, 1845, and submitted to the people on the twenty-sixth day of the same month, and by them adopted, and now on file in my office.

J. E. LONG,
Secretary of Oregon.

NOTE. — The journal of the legislature under date of Wednesday, June 25, 1845, under the head of "orders of the day," reads as follows: "The message of the executive being first in order was taken up, and on motion . . . so much of it as relates to revision of organic and other laws was referred to a select committee of five, consisting of Messrs. Lee, Newell, Applegate, Smith, and McClure." Also journal of legislature under date of July 2, 1845: "Mr. H. Lee reported from committee on revision, received and referred to committee of the whole. . . . The house went into committee of the whole, Mr. Garrison in the chair. When the committee arose, the chairman reported that the committee had had under consideration the original organic laws, and the committee recommended their adoption. The report from the committee of the whole was received, and on the question, Shall the organic laws be adopted by the house? the yeas and nays were demanded and were as follows: Yeas, Applegate, Foisy, Gray, Garrison, Hendricks, Hill, H. Lee, B. Lee, McClure, Newell, Smith, Straight, and Mr. Speaker — 13; nays — none. So the original laws were adopted by the house for the purpose of being submitted to the people." Also from legislative journal under date of August 5, 1845: "On motion of Mr. Applegate the clerk was called upon to inform the house what was the result of the vote of the people on the organic law. The result was read, when it appeared there was a majority of 203 in favor of the amended organic law."

The foregoing is all the official record that can be found concerning the drawing up and enacting and adopting of one of the most important written documents in the history of Oregon. The committee having the work in charge consisted of Messrs. Jesse Applegate, Robert Newell, J. W. Smith, John G. McClure, and H. A. G. Lee, — the latter name being in some doubt, as there were two Lees in the legislature and the name appears nowhere in connection with the enactment of the organic law in any other form than "Mr. Lee."

STATE CONSTITUTION OF OREGON

Framed by a convention of sixty delegates at Salem, Oregon, September 18, 1857, *and adopted by the people November* 9, 1857. *Approved by Congress February* 14, 1859.

PREAMBLE.

We, the people of the state of Oregon, to the end that justice be established, order maintained, and liberty perpetuated, do ordain this constitution.

ARTICLE I.

BILL OF RIGHTS.

1. We declare that all men, when they form a social compact, are equal in right; that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; and they have at all times a right to alter, reform or abolish the government in such manner as they may think proper.

2. All men shall be secured in the natural right to worship Almighty God according to the dictates of their own consciences.

3. No law shall in any case whatever control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

4. No religious test shall be required as a qualification for any office of trust or profit.

5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the legislative assembly.

6. No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief, to affect the weight of his testimony.

7. The mode of administering an oath or affirmation shall be

such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

8. No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely upon any subject whatever; but every person shall be responsible for the abuse of this right.

9. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search or seizure; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

10. No court shall be secret, but justice shall be administered openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in person, property, or reputation.

11. In all criminal prosecutions the accused shall have the right to public trial by an impartial jury in the county in which the offence shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

12. No person shall be put in jeopardy twice for the same offence, nor be compelled in criminal prosecution to testify against himself.

13. No person arrested or confined in jail shall be treated with unnecessary rigor.

14. Offences, except murder and treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable when the proof is evident or the presumption strong.

15. Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice.

16. Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishment shall not be inflicted, but all penalties shall be proportioned to the offence. In all criminal cases whatever the jury shall have the right to determine the law and the facts, under the direction of the court, as to the law, and the right of new trial, as in civil cases.

17. In all civil cases the right of trial by jury shall remain inviolate.

18. Private property shall not be taken for public use, nor the particular services of any man be demanded without just compen-

sation; nor, except in case of the state, without such compensation first assessed and tendered.

19. There shall be no imprisonment for debt except in case of fraud or absconding debtors.

20. No law shall be passed granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

21. No *ex post facto* law, nor law impairing the obligations of contracts, shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution; *provided*, that laws locating the capitol of the state, locating county seats, and submitting town and corporate acts, and other local and special laws, may take effect or not, upon a vote of the electors interested.

22. The operation of the laws shall never be suspended except by the authority of the legislative assembly.

23. The privileges of the writ of *habeas corpus* shall not be suspended, unless, in case of rebellion or invasion, the public safety require it.

24. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

25. No conviction shall work corruption of blood or forfeiture of estate.

26. No law shall be passed restraining any of the inhabitants of the state from assembling together in a peaceable manner to consult for their common good; nor from instructing their representatives; nor from applying to the legislature for redress of grievances.

27. The people shall have the right to bear arms for the defence of themselves and the state, but the military shall be kept in strict subordination to the civil power.

28. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, except in manner prescribed by law.

29. No law shall be passed granting any title of nobility, or conferring hereditary distinctions.

30. No law shall be passed prohibiting emigration from the state.

31. White foreigners who are or may hereafter become residents of this state shall enjoy the same rights in respect to the posses-

sion, enjoyment and descent of property as native-born citizens. And the legislative assembly shall have power to restrain and regulate the immigration to this state of persons not qualified to become citizens of the United States.

32. No tax duty shall be imposed without the consent of the people or their representatives in the legislative assembly; and all taxation shall be equal and uniform.

33. This enumeration of rights and privileges shall not be construed to impair or deny others retained by the people.

34. There shall be neither slavery nor involuntary servitude in the state, otherwise than as a punishment for crime, whereof the party shall have been duly convicted.

35. No free negro or mulatto, not residing in this state at the time of the adoption of this constitution, shall come, reside or be within this state, or hold any real estate, or make any contracts, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such negroes and mulattoes, and for their effectual exclusion from the state, and for the punishment of persons who shall bring them into the state, or employ or harbor them.

NOTE.—Section 35 has been superseded and annulled by the XIV amendment to the national Constitution. Sections 34 and 35 as printed above do not appear in the original enrolled copy of the constitution of Oregon now on file in this office, and both sections are rendered null and void by amendments to the national Constitution of the United States covering the same subject.

ARTICLE II.

SUFFRAGE AND ELECTIONS.

Section 1. All elections shall be free and equal.

Section 2. In all elections not otherwise provided for by this constitution, every white male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the state during the six months immediately preceding such election — and every white male of foreign birth of the age of twenty-one years and upwards, who shall have resided in this state during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law.

Section 3. No idiot or insane person shall be entitled to the privileges of an elector; and the privilege of an elector shall be forfeited, by a conviction of any crime which is punishable by imprisonment in the penitentiary.

Section 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, or of this state; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

Section 5. No soldier, seaman or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the state in consequence of having been stationed within the same; nor shall any such soldier, seaman or marine have the right to vote.

Section 6. No negro, Chinaman or mulatto shall have the right of suffrage.

Section 7. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to procure his election.

Section 8. The legislative assembly shall enact laws to support the privilege of free suffrage, prescribing the manner of regulating and conducting election, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult, and other improper conduct.

Section 9. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the state to fight a duel, shall be ineligible to any office of trust or profit.

Section 10. No person holding a lucrative office or appointment under the United States, or under this state, shall be eligible to a seat in the legislative assembly; nor shall any person hold more than one lucrative office at the same time, except as in this constitution expressly permitted; *provided*, that offices in the militia, to which there is attached no annual salary, and the office of postmaster, where the compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

Section 11. No person who may hereafter be a collector or holder of public money shall be eligible to any office of trust or

profit, until he shall have accounted for and paid over, according to law, all sums for which he may be liable.

Section 12. In all cases in which it is provided that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

Section 13. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same; and no elector shall be obliged to do duty in the militia on any day of election, except in time of war, or public danger.

Section 14. General elections shall be held on the first Monday of June, biennially.

Section 15. In all elections by the legislative assembly, or by either branch thereof, votes shall be given openly, or *viva voce*, and not by ballot forever; and in all elections by the people, votes shall be given openly, or *viva voce*, until the legislative assembly shall otherwise direct.

Section 16. In all elections held by the people under this constitution, the person or persons who shall receive the highest number of votes shall be declared duly elected.

Section 17. All qualified electors shall vote in the election precinct in the county where they may reside, for county officers, and in any county in the state for state officers, or in any county of a congressional district in which such electors may reside, for members of Congress.

Note. — The effect of the XV amendment to the national Constitution "is to deprive the provisions of the state constitution and the acts of the state legislature, restricting the exercise of the right of suffrage to white persons, of all legal force and efficacy."

Note. — Negroes or mulattoes born or naturalized in the United States and subject to the jurisdiction thereof, by virtue of the XIV amendment are now citizens of the United States, and the state wherein they reside, and therefore by virtue of the XV amendment are entitled to the right of suffrage in this state, the same as white citizens; and the same is true of all persons born or naturalized in the United States, and subject to the jurisdiction thereof. The Slaughter House Cases, 16 Wall. 36.

ARTICLE III.

DISTRIBUTION OF POWERS.

Section 1. The powers of the government shall be divided into three separate departments, — the legislative, the executive, includ-

ing the administrative, and the judicial; and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this constitution expressly provided.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

Section 1. The legislative authority of the state shall be vested in the legislative assembly, which shall consist of a senate and house of representatives. The style of every bill shall be, "Be it enacted by the legislative assembly of the state of Oregon," and no law shall be enacted except by bill.

Section 2. The senate shall consist of sixteen, and the house of representatives of thirty-four, members, which number shall not be increased until the year eighteen hundred and sixty, after which time the legislative assembly may increase the number of senators and representatives, always keeping, as near as may be, the same ratio as to the number of senators and representatives; *provided*, that the senate shall never exceed thirty, and the house of representatives sixty members.

Section 3. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Section 4. The senators shall be elected for the term of four years, and representatives for the term of two years from the day next after their general election; *provided*, *however*, that the senators elect, at the first session of the legislative assembly under this constitution, shall be divided by lot into two equal classes, as nearly as may be; and the seats of senators of the first class shall be vacated at the expiration of two years, and those of the second class at the expiration of four years; so that one half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of the increase of the number of senators, they shall be so annexed by lot to one or the other of the two classes as to keep them as nearly equal as possible.

Section 5. The legislative assembly shall, in the year eighteen hundred and sixty-five, and every ten years after, cause an enumeration to be made of all the white population of the state.

Section 6. The number of senators and representatives shall, at the session next following an enumeration of the inhabitants by the

United States or this state, be fixed by law, and apportioned among the several counties according to the number of white population in each. And the ratio of senators and representatives shall be determined by dividing the whole number of white population of such county or district, by such respective ratios ; and when a fraction shall result from such division, which shall exceed one half of such ratio, such county or district shall be entitled to a member for such fraction. And in case any county shall not have the requisite population to entitle such county to a member, then such county shall be attached to some adjoining county for senatorial or representative purposes.

Section 7. A senatorial district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating senatorial districts.

Section 8. No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States; nor any one who has not been for one year next preceding his election an inhabitant of the county or district whence he may be chosen. Senators or representatives shall be at least twenty-one years of age.

Section 9. Senators and representatives in all cases, except for treason, felony, or breaches of the peace, shall be privileged from arrest during the session of the legislative assembly, and in going to and returning from the same; and shall not be subject to any civil process during the session of the legislative assembly, nor during the fifteen days next before the commencement thereof. Nor shall a member, for words uttered in debate in either house, be questioned in any other place.

Section 10. The sessions of the legislative assembly shall be held biennially at the capital of the state, commencing on the second Monday of September, in the year eighteen hundred and fifty-eight, and on the same day of every second year thereafter, unless a different day shall have been appointed by law.

NOTE. — As allowed by the last clause in section 10, the legislative assembly of the state of Oregon at its session held in 1882 passed an act changing the time of meeting of the legislative assembly from that time forward to the second Monday in January instead of the second Monday in September following each biennial election. The act of 1882 reads as follows: "Section 1. That the sessions of the legislative assembly shall be held biennially at the capital of the state, and that the time of meeting be changed from the second Monday of September, as provided in Article IV, section 10, of the constitution of Oregon, to the second Monday in January in the year 1885, and on the same day of every second year thereafter."

Section 11. Each house, when assembled, shall choose its own officers, judge of election, qualifications and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall without the concurrence of the other, adjourn for more than three days, nor at any other place than that in which it may be sitting.

Section 12. Two thirds of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day and compel the attendance of absent members. A quorum being in attendance, if either house fail to effect an organization within the first five days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the five days until an organization shall have been effected.

Section 13. Each house shall keep a journal of its proceedings. The yeas and nays on any question shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; *provided*, that on a motion to adjourn, it shall require one tenth of the members present to order the yeas and nays.

Section 14. The doors of each house, and of committees of the whole, shall be kept open, except in such cases as in the opinion of either house shall require secrecy.

Section 15. Either house may punish its members for disorderly behavior, and may, with the concurrence of two thirds, expel a member; but not a second time for the same cause.

Section 16. Either house, during its session, may punish by imprisonment any person not a member who shall have been guilty of disrespect to the house by disorderly or contemptuous behavior in its presence, but such imprisonment shall not at any time exceed twenty-four hours.

Section 17. Each house shall have all powers necessary for a branch of the legislative department of a free and independent state.

Section 18. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

Section 19. Every bill shall be read by sections, on three several days, in each house, unless, in case of emergency, two thirds of the house where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill by sections on its final passage shall in no case be

dispensed with, and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

Section 20. Every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Section 21. Every act and joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

Section 22. No act shall ever be revised or amended by mere reference to its title, but the act revised or section amended shall be set forth and published at full length.

Section 23. The legislative assembly shall not pass special or local laws in any of the following enumerated cases, that is to say —

1. Regulating the jurisdiction and duties of justices of the peace, and of constables.

2. For the punishment of crimes and misdemeanors.

3. Regulating the practice in courts of justice.

4. Providing for changing the venue in civil and criminal cases.

5. Granting divorces.

6. Changing the names of persons.

7. For laying, opening and working on highways, and for the election or appointment of supervisors.

8. Vacating roads, town plats, streets, alleys and public squares.

9. Summoning and empanelling grand and petit jurors.

10. For the assessment and collection of taxes for state, county, township or road purposes.

11. Providing for supporting common schools, and for the preservation of school funds.

12. In relation to interest on money.

13. Providing for opening and conducting the elections of the state, county or township officers, and designating the places of voting.

14. Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.

Section 24. Provision may be made by general law for bringing suit against the state, as to all liabilities originating after or existing at the time of the adoption of this constitution; but no special

act authorizing such suit to be brought, or making compensation to any person claiming damages against the state shall ever be passed.

Section 25. A majority of all the members elected to each house shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed shall be signed by the presiding officers of the respective houses.

Section 26. Any member of either house shall have the right to protest, and have his protest, with reasons for dissent, entered on the journal.

Section 27. Every statute shall be a public law, unless otherwise declared in the statute itself.

Section 28. No act shall take effect until ninety days from the end of the session at which the same shall have been passed, except in case of emergency; which emergency shall be declared in the preamble or in the body of the law.

Section 29. The members of the legislative assembly shall receive for their services a sum not exceeding three dollars a day, from the commencement of the session; but such pay shall not exceed in the aggregate one hundred and twenty dollars for per diem allowance for any one session. When convened in extra session by the governor, they shall receive three dollars per day; but no extra session shall continue for a longer period than twenty days. They shall also receive the sum of three dollars for every twenty miles they shall travel in going to and returning from their place of meeting, on the most usual route. The presiding officers of the assembly shall, in virtue of their office, receive an additional compensation equal to two thirds of their per diem allowance as members.

Section 30. No senator or representative shall, during the time for which he may have been elected, be eligible to any office, the election to which is vested in the legislative assembly; nor shall he be appointed to any civil office of profit which shall have been created, or the emoluments of which shall have been increased during such term, but this latter provision shall not be construed to apply to any officer elective by the people.

Section 31. The members of the legislative assembly shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the constitution of the state of Oregon, and that I will faithfully discharge the duties

of senator (or representative, as the case may be) according to the best of my ability.

And such oath may be administered by the governor, secretary of state, or judge of the supreme court.

ARTICLE V.

EXECUTIVE DEPARTMENT.

Section 1. The chief executive power of the state shall be vested in a governor, who shall hold his office for a term of four years; and no person shall be eligible to such office more than eight in any period of twelve years.

Section 2. No person, except a citizen of the United States, shall be eligible to the office of governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years, and who shall not have been three years next preceding his election a resident within this state.

Section 3. No member of Congress, or person holding any office under the United States, or under this state, or under any other power, shall fill the office of governor, except as may be otherwise provided in this constitution.

Section 4. The governor shall be elected by the qualified electors of the state at the times and places of choosing members of the legislative assembly, and the returns of every election for governor shall be sealed up and transmitted to the secretary of state, directed to the speaker of the house of representatives, who shall open and publish them in the presence of both houses of the legislative assembly.

Section 5. The person having the highest number of votes for governor shall be elected; but in case two or more persons shall have an equal and the highest number of votes for governor, the two houses of the legislative assembly, at the next regular session thereof, shall forthwith, by joint vote, proceed to elect one of the said persons governor.

Section 6. Contested elections for governor shall be determined by the legislative assembly in such manner as may be prescribed by law.

Section 7. The official term of the governor shall be four years, and shall commence at such times as may be prescribed by this constitution or prescribed by law.

Section 8. In case of the removal of the governor from office, or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve upon the secretary of state; and in case of the removal from office, death, resignation, or inability, both of the governor and secretary of state, the president of the senate shall act as governor until the disability be removed or a governor be elected.

Section 9. The governor shall be commander-in-chief of the military and naval forces of this state, and may call out such forces to execute the laws, to suppress insurrection, or to repel invasion.

Section 10. He shall take care that the laws be faithfully executed.

Section 11. He shall, from time to time, give to the legislative assembly information touching the condition of the state, and recommend such measures as he shall judge to be expedient.

Section 12. He may, on extraordinary occasions, convene the legislative assembly by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have convened.

Section 13. He shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative and military departments upon any subject relating to the duties of their respective offices.

Section 14. He shall have power to grant reprieves, commutations and pardons, after conviction, for all offences except treason, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the legislative assembly, at its next meeting, when the legislative assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the legislative assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and the reason for granting the same; and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted.

Section 15. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated,

which house shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of the members present, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each house respectively; if any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, it shall be a law without his signature, unless the general adjournment shall prevent its return, in which case it shall be a law, unless the governor within five days next after the adjournment (Sundays excepted) shall file such a bill, with his objections thereto, in the office of the secretary of state, who shall lay the same before the legislative assembly at its next session, in like manner as if it had been returned by the governor.

Section 16. When, during a recess of the legislative assembly, a vacancy shall happen in any office, the appointment of which is vested in the legislative assembly, or when at any time a vacancy shall have occurred in any other state office, or in the office of judge of any court, the governor shall fill such vacancy by appointment, which shall expire when a successor shall have been elected and qualified.

Section 17. He shall issue writs of election to fill such vacancies as may have occurred in the legislative assembly.

Section 18. All commissions shall issue in the name of the state, shall be signed by the governor, sealed with the seal of the state, and attested by the secretary of state.

ARTICLE VI.

ADMINISTRATIVE DEPARTMENT.

Section 1. There shall be elected by the qualified electors of the state, at the times and places of choosing members of the legislative assembly, a secretary and treasurer of state, who shall severally hold their offices for the term of four years; but no person shall be eligible to either of said offices more than eight in any period of twelve years.

Section 2. The secretary of state shall keep a fair record of

the official acts of the legislative assembly and executive department of the state; and shall, when required, lay the same and all matters relative thereto before either branch of the legislative assembly. He shall be by virtue of his office auditor of public accounts, and shall perform such other duties as shall be assigned him by law.

Section 3. There shall be a seal of state, kept by the secretary of state for official purposes, which shall be called "The seal of the state of Oregon."

Section 4. The powers and duties of the treasurer of state shall be such as may be prescribed by law.

Section 5. The governor, the secretary, and treasurer of state shall severally keep the public records, books and papers in any manner relating to their respective offices at the seat of government, at which place also the secretary of state shall reside.

Section 6. There shall be elected in each county, by the qualified electors thereof, at the time of holding general elections, a county clerk, treasurer, sheriff, coroner and surveyor, who shall severally hold their offices for the term of two years.

Section 7. Such other county, township, precinct and city officers as may be necessary shall be elected or appointed in such manner as may be prescribed by law.

Section 8. No person shall be elected or appointed to a county office who shall not be an elector of the county; and all county, township, precinct and city officers shall keep their respective offices at such places therein, and perform such duties as may be prescribed by law.

Section 9. Vacancies in county, township, precinct and city offices shall be filled in such manner as may be prescribed by law.

ARTICLE VII.

JUDICIAL DEPARTMENT.

Section 1. The judicial power of the state shall be vested in a supreme court, circuit courts and county courts, which shall be courts of record, having general jurisdiction, to be defined, limited and regulated by law in accordance with this constitution. Justices of the peace may also be invested with limited judicial powers; and municipal courts may be created to administer the regulations of incorporated towns and cities.

Section 2. The supreme court shall consist of four justices, to be chosen in districts by the electors thereof, who shall be citizens of the United States, and who shall have resided in the state at least three years next preceding their election, and after their election to reside in their respective districts. The number of justices and districts may be increased, but shall not exceed five until the white population of the state shall amount to one hundred thousand, and shall never exceed seven; and the boundaries of districts may be changed, but no change of district shall have the effect to remove a judge from office, or require him to change his residence without his consent.

Section 3. The judges first chosen under this constitution shall allot among themselves their terms of office, so that the term of one of them shall expire in two years, one in four years, and two in six years, and thereafter one or more shall be chosen every two years, to serve for the term of six years.

Section 4. Every vacancy in the office of judge of the supreme court shall be filled by election for the remainder of the vacant term, unless it would expire at the next election, and until so filled, or when it would so expire, the governor shall fill the vacancy by appointment.

Section 5. The judge who has the shortest term to serve, or the oldest of several having such shortest term and not holding by appointment, shall be the chief justice.

Section 6. The supreme court shall have jurisdiction only to revise the final decisions of the circuit courts; and every cause shall be tried and every decision shall be made by those judges only, or a majority of them, who did not try the cause or make the decision in the circuit court.

Section 7. The terms of the supreme court shall be appointed by law, but there shall be one term at the seat of government annually. And at the close of each term the judges shall file with the secretary of state concise written statements of the decisions made at that term.

Section 8. The circuit court shall be held twice, at least, in each year in each county organized for judicial purposes by one of the justices of the supreme court at times to be appointed by law, and at such other times as may be appointed by the judges severally in pursuance of law.

Section 9. All judicial power, authority, and jurisdiction not vested by this constitution or by-laws consistent therewith exclu-

sively in some other court shall belong to the circuit courts, and they shall have appellate jurisdiction and supervisory control over the county courts and all other inferior courts, officers, and tribunals.

Section 10. When the white population of the state shall amount to two hundred thousand the legislative assembly may provide for the election of supreme and circuit judges in distinct classes, one of which classes shall consist of three justices of the supreme court who shall not perform circuit duty, and the other class shall consist of the necessary number of circuit judges who shall hold full terms without allotment, and who shall take the same oath as the supreme judges.

Section 11. There shall be elected in each county, for the term of four years, a county judge, who shall hold the county court at times to be regulated by law.

Section 12. The county court shall have the jurisdiction pertaining to probate courts, and boards of county commissioners, and such other powers and duties, and such civil jurisdiction not exceeding the amount of value of five hundred dollars, and such criminal jurisdiction not extending to death or imprisonment in the penitentiary as may be prescribed by law. But the legislative assembly may provide for the election of two commissioners to sit with the county judge whilst transacting county business in any or all the counties, or may provide a separate board for transacting such business.

Section 13. The county judge may grant preliminary injunctions and such other writs as the legislative assembly may authorize him to grant, returnable to the circuit court, or otherwise, as may be provided by law; and may hear and decide questions arising upon *habeas corpus; provided*, such decision be not against the authority or proceedings of a court or judge of equal or higher jurisdiction.

Section 14. The counties having less than ten thousand white inhabitants shall be reimbursed, wholly or in part, for the salary and expenses of the county court, by fees, percentage, and other equitable taxation of the business done in said court, and in the office of the county clerk.

Section 15. A county clerk shall be elected in each county for the term of two years, who shall keep all the public records, books, and papers of the county, record conveyances, and perform the duties of clerk of the circuit and county courts, and such other duties as may be prescribed by law; but whenever the number of

voters in any county shall exceed twelve hundred, the legislative assembly may authorize the election of one person as clerk of the circuit court, one person as clerk of the county court, and one person recorder of conveyances.

Section 16. A sheriff shall be elected in each county for the term of two years, who shall be the ministerial officer of the circuit and county courts, and shall perform such other duties as may be prescribed by law.

Section 17. There shall be elected by districts, comprised of one or more counties, a sufficient number of prosecuting attorneys, who shall be the law officers of the state, and of the counties within their respective districts, and shall perform such duties pertaining to the administration of law and general police as the legislative assembly may direct.

Section 18. The legislative assembly shall so provide that the most competent of the permanent citizens of the county shall be chosen for jurors; and out of the whole number in attendance at the court seven shall be chosen by lot as grand jurors, five of whom must concur to find an indictment. But the legislative assembly may modify or abolish grand juries.

Section 19. Public officers shall not be impeached; but incompetency, corruption, malfeasance, or delinquency in office may be tried in the same manner as criminal offences, and judgment may be given of dismissal from office, and such further punishment as may have been prescribed by law.

Section 20. The governor may remove from office a judge of the supreme court, or prosecuting attorney, upon the joint resolution of the legislative assembly, in which two thirds of the members elected to each house shall concur, for incompetency, corruption, malfeasance or delinquency in office, or other sufficient cause stated in such resolution.

Section 21. Every judge of the supreme court, before entering upon the duties of his office, shall take and subscribe and transmit to the secretary of state the following oath: —

"I, —— ———, do solemnly swear (or affirm) that I will support the Constitution of the United States and the constitution of the state of Oregon; and that I will faithfully and impartially discharge the duties of a judge of the supreme and circuit courts of said state, according to the best of my ability, and that I will not accept any other office except judicial offices during the term for which I have been elected."

ARTICLE VIII.

EDUCATION AND SCHOOL LANDS.

Section 1. The governor shall be superintendent of public instruction, and his powers and duties in that capacity shall be such as may be prescribed by law; but after the term of five years from the adoption of this constitution it shall be competent for the legislative assembly to provide by law for the election of a superintendent, to provide for his compensation, and prescribe his powers and duties.

Section 2. The proceeds of all the lands which have been or hereafter may be granted to this state for educational purposes (excepting the lands heretofore granted to and in the establishment of a university); all the moneys and clear proceeds of all property which may accrue to the state by escheat or forfeiture, all moneys which may be paid as exemption from military duty; the proceeds of all gifts, devices, and bequests made by any person to the state for common school purposes; the proceeds of all property granted to the state when the purposes of such grant shall not be stated; all the proceeds of the five hundred thousand acres of land to which the state is entitled by the provisions of an act of Congress entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant preëmption rights, approved September 4, 1841," and also the five per centum of the net proceeds of the sales of public lands to which this state shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two grants last mentioned), shall be set apart as a separate and irreducible fund, to be called the common school fund, the interest of which, together with all other revenues derived from the school land mentioned in this section, shall be exclusively applied to the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor.

Section 3. The legislative assembly shall provide by law for the establishment of a uniform and general system of common schools.

Section 4. Provision shall be made by law for the distribution of the income of the common school fund among the several counties of the state in proportion to the number of children resident therein between the ages of four and twenty years.

Section 5. The governor, secretary of state, and state treasurer shall constitute a board of commissioners for the sale of school and university lands, and for the investment of the funds arising therefrom, and their powers and duties shall be such as may be prescribed by law; *provided*, that no part of the university funds, or of the interest arising therefrom, shall be expended until the period of ten years from the adoption of this constitution, unless the same shall be otherwise disposed of by the consent of Congress for common school purposes.

ARTICLE IX.

FINANCE.

Section 1. The legislative assembly shall provide by law for uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious, or charitable purposes, as may be specially exempted by law.

Section 2. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each fiscal year, and also a sufficient sum to pay the interest on the state debt, if there be any.

Section 3. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only the same shall be applied.

Section 4. No money shall be drawn from the treasury but in pursuance of appropriations made by law.

Section 5. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislative assembly.

Section 6. Whenever the expenses of any fiscal year shall exceed the income, the legislative assembly shall provide for levying a tax for the ensuing fiscal year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expense of the ensuing fiscal year.

Section 7. Laws making appropriations for the salaries of public officers and other current expenses of the state shall contain provisions upon no other subject.

Section 8. All stationery required for the use of the state, shall

be furnished by the lowest responsible bidder, under such regulations as may be prescribed by law. But no state officer or member of the legislative assembly shall be interested in any bid or contract for furnishing such stationery.

ARTICLE X.

MILITIA.

Section 1. The militia of this state shall consist of all able-bodied male citizens between the ages of eighteen and forty-five years, except such persons as now are or hereafter may be exempted by the laws of the United States or of this state.

Section 2. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in time of peace, but shall pay an equivalent for personal service.

Section 3. The governor shall appoint the adjutant-general and the other chief officers of the general staff and his own staff, and all officers of the line shall be elected by the persons subject to military duty in their respective districts.

Section 4. The majors-general, brigadiers-general, colonels, or commandants of regiments, battalions or squadrons, shall severally appoint their staff officers, and the governor shall commission all officers of the line and staff ranking as such.

Section 5. The legislative assembly shall fix by law the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and make all other needful rules and regulations in such manner as they may deem expedient, not incompatible with the constitution or laws of the United States or of the constitution of this state, and shall fix the rank of all staff officers.

ARTICLE XI.

CORPORATIONS AND INTERNAL IMPROVEMENTS.

Section 1. The legislative assembly shall not have the power to establish or incorporate any bank or banking company or moneyed institution whatever; nor shall any bank, company or institution exist in the state with the privilege of making, issuing or putting into circulation any bill, check, certificate, promissory note, or other paper, or the paper of any bank, company or person, to circulate as money.

Section 2. Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended or repealed, but not so as to impair or destroy any vested corporate rights.

Section 3. The stockholders of all corporations and joint stock companies shall be liable for the indebtedness of said corporation to the amount of their stock subscribed and unpaid, and no more.

Section 4. No person's property shall be taken by any corporation, under authority of law, without compensation being first made or secured, in such manner as may be prescribed by law.

Section 5. Acts of legislative assembly incorporating towns and cities shall restrict their powers of taxation, borrowing money, contracting debts, and loaning their credit.

Section 6. The state shall not subscribe to or be interested in the stock of any company, association or corporation.

Section 7. The legislative assembly shall not loan the credit of the state, nor in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war, or to repel invasion or suppress insurrection; and every contract of indebtedness entered into or assumed by or on behalf of the state, when all its liabilities and debts amount to said sum, shall be void and of no effect.

Section 8. The state shall never assume the debts of any county, town, or other corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection or defend the state in war.

Section 9. No county, city, town, or other municipal corporation, by vote of its citizens or otherwise, shall become a stockholder in any joint stock company, corporation or association whatever, to raise money for, or loan its credit to or in aid of any such company, corporation or association.

Section 10. No county shall create any debts or liabilities which shall singly or in the aggregate exceed the sum of five thousand dollars, except to suppress insurrection or repel invasion; but the debts of any county, at the time this constitution takes effect, shall be disregarded in estimating the sum to which such county is limited.

ARTICLE XII.

STATE PRINTER.

Section 1. There shall be elected by the qualified electors of the state, at the times and places of choosing members of the legislative assembly, a state printer, who shall hold office for the term of four years. He shall perform all the public printing for the state which may be provided by law. The rates to be paid to him for such printing shall be fixed by law, and shall neither be increased nor diminished during the term for which he shall have been elected. He shall give such security for the performance of his duties as the legislative assembly may provide.

ARTICLE XIII.

SALARIES.

Section 1. The governor shall receive an annual salary of fifteen hundred dollars. The secretary of state shall receive an annual salary of fifteen hundred dollars. The treasurer of state shall receive an annual salary of eight hundred dollars. The judges of the supreme court shall each receive an annual salary of two thousand dollars. They shall receive no fees or perquisites whatever for the performance of any duties connected with their respective offices; and the compensation of officers, if not fixed by this constitution, shall be provided by law.

ARTICLE XIV.

SEAT OF GOVERNMENT.

Section 1. The legislative assembly shall not have power to establish a permanent seat of government for this state. But at the first regular session after the adoption of this constitution, the legislative assembly shall provide by law for the submission to the electors of this state, at the next general election thereafter, the matter of the selection of a place for a permanent seat of government; and no place shall ever be the seat of government under such law which shall not receive a majority of all the votes cast on the matter of such election.

NOTE. — By act of October 19, 1860, the location of the seat of government was submitted to the popular vote at the next general election in June, 1862, and every general election thereafter, until "some one point" should receive a majority of all the votes cast upon the question. At the election in 1862, Eugene received the most votes, but no point received a majority of all the votes cast. At the election in 1864, Salem received 6108 votes, Portland 3864 votes, Eugene 1588 votes, and all other places 577 votes; Salem received 79 majority of the whole vote cast, whereupon Salem was duly declared "the permanent seat of government."

Section 2. No tax shall be levied, or money of the state expended, or debt contracted for the erection of a state house prior to the year eighteen hundred and sixty-five.

Section 3. The seat of government, when established as provided in section one, shall not be removed for the term of twenty years from the time of such establishment; nor in any other manner than as provided in the first section of this article; *provided*, that all the public institutions of the state, hereafter provided for by the legislative assembly, shall be located at the seat of government.

ARTICLE XV.

MISCELLANEOUS.

Section 1. All officers, except members of the legislative assembly, shall hold their offices until their successors are elected and qualified.

Section 2. When the duration of any office is not provided for by this constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the legislative assembly shall not create any office, the tenure of which shall be longer than four years.

Section 3. Every person elected or appointed to any office under the constitution shall, before entering on the duties thereof, take an oath or affirmation to support the constitution of the United States, and of this state, and also an oath of office.

Section 4. Lotteries, and the sale of lottery tickets, for any purpose whatever, are prohibited, and the legislative assembly shall prevent the same by penal laws.

Section 5. The property and pecuniary rights of every married woman, at the time of marriage, or afterward acquired by gift, devise or inheritance, shall not be subject to the debts or contracts of the

husband; and laws shall be passed providing for the registration of the wife's separate property.

Section 6. No county shall be reduced to an area of less than four hundred square miles; nor shall any new county be established in this state containing a less area, nor unless such new county shall contain a population of at least twelve hundred inhabitants.

Section 7. No state officer or member of the legislative assembly shall directly or indirectly receive a fee, or be engaged as counsel, agent or attorney in the prosecution of any claim against this state.

Section 8. No Chinaman, not a resident of the state at the adoption of this constitution, shall ever hold any real estate or mining claim, or work any mining claim therein.

The legislative assembly shall provide by law in the most effectual manner for carrying out the above provisions.

ARTICLE XVI.

BOUNDARIES.

Section 1. In order that the boundaries of the state may be known and established, it is hereby ordained and declared that the state of Oregon shall be bounded as follows, to wit:

Beginning one marine league at sea, due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly at the same distance from the line of the coast lying west and opposite the state, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia river; thence easterly to and up the middle channel of said river, and when it is divided by islands, up the middle of the widest channel thereof, [and in like manner up the middle of the main channel of Snake river] to the mouth of the Owyhee river; thence due south to the parallel of latitude forty-two degrees north; thence west along said parallel to the place of beginning, including jurisdiction in civil and criminal cases upon the Columbia river and Snake river, concurrently with states and territories of which those rivers form a boundary in common with this state. But the Congress of the United States, in providing for the admission of this state into the Union, may make the said northern boundary conform to the act creating the territory of Washington. [See note.]

NOTE. — The act of February 14, 1859 (11 Stat. 383), admitting Oregon into the Union, changed this proposed boundary by substituting the following description for that contained in the words inclosed in brackets: "to a point near Fort Walla Walla, where the 46th parallel of north latitude crosses said river; thence east on said parallel to the middle of the main channel of the Shoshone or Snake river; thence up the middle of the main channel of said river."

ARTICLE XVII.

AMENDMENTS.

Section 1. Any amendment or amendments to this constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the legislative assembly to be chosen at the next general election; and if, in the legislative assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such amendment or amendments to the electors of the state, and cause the same to be published without delay at least four consecutive weeks in several newspapers published in this state; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this constitution.

Section 2. If two or more amendments shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments shall have been agreed upon by one legislative assembly, shall be awaiting the action of a legislative assembly, or of the electors, no additional amendment or amendments shall be proposed.

ARTICLE XVIII.

SCHEDULE.

Section 1. For the purpose of taking the vote of the electors of the state for the acceptance or rejection of this constitution, an election shall be held on the second Monday of November, in the year 1857, to be conducted according to existing laws regulating the election of delegate in Congress, so far as applicable, except herein otherwise provided.

Section 2. Each elector who offers to vote upon this constitution shall be asked by the judges of election this question:

Do you vote for the constitution — yes, or no?

And also this question:

Do you vote for slavery in Oregon — yes, or no?

And also this question:

Do you vote for free negroes in Oregon — yes, or no?

And in the poll books shall be columns headed respectively, "constitution, yes;" "constitution, no;" "free negroes, yes;" "free negroes, no;" "slavery, yes;" "slavery, no."

And the names of the electors shall be entered in the poll books, together with their answers to the said questions, under their appropriate heads. The abstracts of the votes transmitted to the secretary of the territory, shall be publicly opened and canvassed by the governor and secretary, or by either of them in absence of the other; and the governor, or in his absence the secretary, shall forthwith issue his proclamation, and publish the same in the several newspapers printed in this state, declaring the result of the said election upon each of said questions.

Section 3. If a majority of all the votes given for and against the constitution shall be given for the constitution, then this constitution shall be deemed to be approved and accepted by the electors of the state, and shall take effect accordingly; and if a majority of such votes shall be given against the constitution, then this constitution shall be deemed to be rejected by the electors of the state, and shall be void.

Section 4. If this constitution shall be accepted by the electors, and a majority of all the votes given for and against slavery shall be given for slavery, then the following section shall be added to the bill of rights, and shall be part of this constitution:

"Section —. Persons lawfully held as slaves in any state, territory, or district of the United States under the laws thereof, may be brought into this state; and such slaves and their descendants may be held as slaves within this state, and shall not be emancipated without the consent of their owners."

And if a majority of such votes shall be given against slavery; then the foregoing section shall not, but the following section shall be added to the bill of rights, and shall be a part of this constitution:

"Section —. There shall be neither slavery nor involuntary servitude in the state, otherwise than as a punishment for crime, whereof the party shall have been duly convicted."

And if a majority of all the votes given for and against free negroes shall be given against free negroes, then the following section shall be added to the bill of rights, and shall be a part of this constitution:

"Section —. No free negro or mulatto, not residing in this state at the time of the adoption of this constitution, shall come, reside, or be within this state, or hold any real estate, or make any contracts, or maintain any suit therein; and the legislative assembly shall provide by penal laws for the removal by public officers of all such negroes and mulattoes, and for their effectual exclusion from the state, and for the punishment of persons who shall bring them into the state, or employ or harbor them."

Section 5. Until an enumeration of the white inhabitants of the state shall be made, and the senators and representatives apportioned as directed in the constitution, the county of Marion shall have two senators and four representatives; Lane, two senators and three representatives; Clackamas and Wasco one senator jointly, and Clackamas three representatives, and Wasco one representative; Yamhill, one senator and two representatives; Polk, one senator and two representatives; Benton, one senator and two representatives; Multnomah, one senator and two representatives; Washington, Columbia, Clatsop and Tillamook, one senator jointly, and Washington one representative, and Washington and Columbia one representative jointly, and Clatsop and Tillamook one representative jointly; Douglas, one senator and two representatives; Jackson, one senator and three representatives; Josephine, one senator and one representative; Umpqua, Coos and Curry, one senator jointly, and Umpqua one representative, and Coos and Curry one representative jointly.

Section 6. If this constitution shall be ratified, an election shall be held on the first Monday in June, 1858, for the election of members of the legislative assembly, a representative in Congress and state and county officers, and the legislative assembly shall convene at the capital on the first Monday of July, 1858, and proceed to elect two senators in Congress, and make such further provision as may be necessary to the complete organization of a state government.

Section 7. All laws in force in the territory of Oregon when this constitution takes effect, and consistent therewith, shall continue in force until altered or repealed.

Section 8. All officers of the territory of Oregon, or under its

laws when this constitution takes effect, shall continue in office until superseded by the state authorities.

Section 9. Crimes and misdemeanors committed against the territory of Oregon shall be punished by the state as they might have been punished by the territory if the change of government had not been made.

Section 10. All property and rights of the territory and of the several counties, subdivisions and political bodies corporate of or in the territory, including fines, penalties, forfeitures, debts and claims of whatsoever nature, and recognizances, obligations and undertakings to or for the use of the territory or any county, political corporation, office or otherwise to or for the public, shall enure to the state, or remain to the county, local division, corporation, officer or public as if the change of government had not been made; and private rights shall not be affected by such change.

Section 11. Until otherwise provided by law, the judicial districts of the state shall be constituted as follows: The counties of Jackson, Josephine and Douglas shall constitute the first district; the counties of Umpqua, Coos and Curry, Lane and Benton shall constitute the second district; the counties of Linn, Marion, Polk, Yamhill and Washington shall constitute the third district; the counties of Clackamas, Multnomah, Wasco, Columbia, Clatsop and Tillamook shall constitute the fourth district; and the county of Tillamook shall be attached to the county of Clatsop for judicial purposes.

Done in convention at Salem the 18th day of September, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

Names of delegates to constitutional convention:

Matthew P. Deady, President.
Chester N. Terry, Secretary.
M. C. Barkwell, Assistant Secretary

BENTON COUNTY.

Henry B. Nichols.
Wm. Matzger.
Haman C. Lewis.
John Kelsay.

CLACKAMAS COUNTY.

J. K. Kelly.
A. L. Lovejoy.
Wm. A. Starkweather.
Hector Campbell.
Nathaniel Robbins.

CLATSOP COUNTY.

Cyrus Olney.

CURRY COUNTY.

Wm. H. Packwood.

COLUMBIA COUNTY.

John W. Watts.

COOS COUNTY.

Perry B. Marple.

DOUGLAS COUNTY.

Matthew P. Deady.
Stephen F. Chadwick.
Solomon Fitzhugh.
Thomas Whitted.

JOSEPHINE COUNTY.

L. B. Hendershott.
Wm. H. Watkins.

JACKSON COUNTY.

L. J. C. Duncan.
John H. Reed.
Daniel Newcomb.
P. P. Prim.

LINN COUNTY.

Delazon Smith.
Luther Elkins.
Reuben S. Coyle.
John T. Brooks.
James Shields.
J. H. Brattain.

LANE COUNTY.

Paul Brattain.
I. R. Moores.
A. J. Campbell.
Jesse Cox.
W. W. Bristow.
E. Hoult.

MARION COUNTY.

L. F. Grover.
Geo. H. Williams.
Davis Shannon.
Nicholas Shrum.
Joseph Cox.
Richard Miller.
John C. Peebles.

MULTNOMAH COUNTY.

S. J. McCormick.
Wm. H. Farrar.
David Logan.

MULTNOMAH AND WASHINGTON.

Thomas J. Dryer.

POLK COUNTY.

Reuben P. Boise.
Benj. F. Burch.
F. Waymire.

POLK AND TILLAMOOK.

A. D. Babcock.

UMPQUA COUNTY.

Jesse Applegate.
Levi Scott.

WASHINGTON COUNTY.

E. D. Shattuck.
John S. White.
Levi Anderson.

WASCO COUNTY.

C. R. Meigs.

YAMHILL COUNTY.

J. R. McBride.
R. V. Short.
R. C. Kinney.
W. Olds.

NOTE. — The convention of delegates reported the constitution as duly framed on September 18, 1857, and on November 9, 1857, the people of Oregon at a general election cast 7195 votes in favor of the new constitution and 3195 against it, thus approving it by a majority vote of 4000. It was believed that Congress would soon admit Oregon as a state. Communication with the national capital was very slow, requiring many weeks, and the people waited impatiently for the news of admission of Oregon as a state. At the spring election in 1858 a complete list of officers from the governor down, including members of the legislature, were elected for the proposed new state, and the legislature held a session. Still no news of the admission of Oregon came from the national capital. Two years and three months after the adoption of the constitution by the people the act creating Oregon state took effect and the state organization of Oregon officially came into existence.

NOTE. — In all books and printed lists of names of delegates and officers who framed the constitution of the state of Oregon the name of M. C. Barkwell, assistant secretary, does not appear, but it is signed to the original copy of the constitution on file in the department of state and therefore is printed in this list. Chester N. Terry, secretary, and M. C. Barkwell, assistant secretary, were not members of the convention.

OUTLINES AND QUESTIONS

FOR STUDYING THE STATE CONSTITUTION OF OREGON[1]

1. THE BILL OF RIGHTS, ARTICLE I.

a. Compare its length with that of the Bill of Rights in the Constitution of the United States (see first ten amendments).

b. What topics in the United States Bill of Rights are found in expanded form in the Oregon Bill of Rights?

c. What topics in the Oregon Bill of Rights are not treated in the United States Bill of Rights?

d. What topics found in the Oregon document are also found in the Declaration of Independence or the Ordinance of 1787?

e. What is peculiar about each of the sections 15, 20, 30, 31, 32, and 35?

2. THE LEGISLATIVE DEPARTMENT, ARTICLE IV.

a. What is peculiar about the last clause of sec. 2?

b. Sec. 2 fixes a maximum number for the membership of the Senate and House. Has that maximum been attained?

c. Note the restriction on the creation of senatorial districts, secs. 6 and 7. What was its probable object?

d. Do Oregon senators and representatives have any privileges which members of Congress do not have? Compare sec. 9 and Constitution of the United States, Art. I., sec. vi.

e. Explain the importance of sec. 20 and last clause of sec. 19.

f. Justify the prohibition of local or special laws. See Sec. 23.

g. Is there any limitation on the length of legislative sessions?

3. THE EXECUTIVE DEPARTMENT, ARTICLE V.

a. Does "highest number" of votes, sec. 5, mean a majority?

b. Is the provision for the succession, sec. 8, the usual one?

c. Compare sec. 15 with Art. I., sec. vii. of the Constitution of the United States, and note differences.

4. THE JUDICIAL DEPARTMENT, ARTICLE VII.

a. Note the relation between the supreme and circuit courts, secs. 2 and 8. Compare national system as described in ch. xviii.

b. But what has been the effect of sec. 10?

c. Oregon is the only state that does not impeach officers. But what substitute for impeachment is provided? See sec. 19.

[1] These outlines should be used to supplement the general outlines for state at end of Part III.

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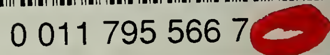
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