Glass JK251
Book .F726
1912

COPYRIGHT DEPOSIT

ADVANCED CIVICS

THE SPIRIT, THE FORM, AND THE FUNCTIONS OF THE AMERICAN GOVERNMENT

BY

S. E. FORMAN, PH.D.

The best laws, though sanctioned by every citizen of the State, will be of no avail unless the young are trained by habit and education in the spirit of the Constitution.—ARISTOTLE.

NEW YORK
THE CENTURY CO.
1912

JK251
.F726
1912

Copyright, 1905, 1912, by
THE CENTURY CO.

$1.25

©Cl.A316621

PREFACE

While preparing this book I constantly kept in mind the truth that instruction in Civics should have for its highest aim the indoctrination of the learner in sound notions of political morality, and I attempted to assist the teacher in achieving this aim wherever such assistance seemed to be practicable.

The plan followed in the development of the subject is the outgrowth of class-room experience, and is one which has proved to be particularly successful in awakening and sustaining interest. In Part I the underlying principles of our government are presented. The essentials are placed first in order, that the learner may at the outset begin to be imbued with the true American spirit. In Part II is an account of the governmental machine. In Part III the every-day work of government is considered and the practical problems connected with the work are discussed.

While preparing the first edition I was greatly assisted by the suggestions and criticisms of Dr. J. M. Callahan, Professor of History and Political Science in the University of West Virginia; by Dr. A. C. Bryan of the High School of Commerce, New York; and by Dr. Collyer Meriwether of the Business High School, Washington, D. C. In the work of revising successive editions I have received valuable hints from the following gentlemen who have used the book: Dr. W. A. Wetzel, Principal of High School, Trenton, New Jersey; Dr. William T. Fairley, Commercial High School, Brooklyn, New York; Mr. E. E. Hill, Chicago Normal School, Chicago, Illinois; Mr. Charles I. Parker, Principal of the South Chicago High School, Chicago, Illinois; Dr. P. L. Kaye, Baltimore City College, Baltimore, Maryland.

S. E. Forman.

April, 1909.

CONTENTS

PART I

THE ESSENTIAL PRINCIPLES OF THE AMERICAN GOVERNMENT:

THE SPIRIT

I

GOVERNMENT

PAGE

Society and Government 3
The Evolution of the State 4
Types of Government 6

II

POPULAR GOVERNMENT

Popular Government Defined; Majority Rule 9
The Growth of Democracy 10
Democracy in the United States 12
Why Popular Government is the Best 12
The Dangers of Popular Government 13
Democracy and the Individual 15

III

REPRESENTATIVE GOVERNMENT

Representative Democracy 17
Growth of Representative Government 17
Representative Government in the United States 19
Principles of Representation 19
The Representation of the Minority 20
The People and their Representatives 21

IV

THE THREE DEPARTMENTS OF GOVERNMENT

PAGE
How the Power of Government is Separated 24
The Development of the Three-Department System 24
The Three-Department System in the United States 25
The Legislature 26
The Judiciary 27
The Executive 28
Independence of the Departments 28

V

CONSTITUTIONAL GOVERNMENT

Charters 31
Constitutions 32
General Features of a Constitution 34
How Constitutions Obtain their Authority 34
The Amendment and Revision of Constitutions 35
Constitutions the Safeguard of Liberty 36

VI

FEDERAL GOVERNMENT

The Different Kinds of Political Unions 38
The Complexity of American Government 39
The Growth of Federalism in America 39
The Articles of Confederation 41

VII

THE DISTRIBUTION OF POWERS

Efforts to Strengthen the Confederation 46
The Constitutional Convention of 1787 47
How the Convention Distributed Power 49
Implied and Resulting Powers of the Federal Government . . . 51
Limitations of the Federal Government 52
How the Federal Constitution is Amended 53

VIII

THE STATE

PAGE
General Features of a State Government 55
The Powers of the State 56
The Conflict of Federal and State Authority 57
Interstate Relations 58
Federal and State Relations 59

IX

THE EXPANSION OF THE FEDERAL UNION

The Admission of New States 63
The Admitted States East of the Mississippi 63
The Louisiana Purchase 67
The Texas Annexation 69
The Oregon Country 69
The Mexican Cession 69
The Spirit of Federal Expansion 70

X

LOCAL GOVERNMENT

The Division of the Powers of the State 72
The Three Grades of Government 73
The Relation of the State to Local Governments 74

XI

PARTY GOVERNMENT

The Origin of Political Parties 79
The Origin of Political Parties in the United States 79
Historical Sketch of Parties in the United States 81
The Elasticity of Party Principles 83
Political Parties and the Individual 84

XII

CIVIL LIBERTY

Civil Liberty Defined 87
The Growth of American Civil Liberty 87
Constitutional Liberty and its Preservation 92

XIII

CIVIL RIGHTS AND DUTIES

PAGE
Civil Rights and Political Rights 95
Who are Citizens 95
The Civil Rights of State Citizenship 96
The Civil Rights of Federal Citizenship 98
The Duties of Citizenship 100

XIV

POLITICAL RIGHTS AND DUTIES

The Origin of Political Rights 102
The Elective Franchise 102
Political Rights Conferred by State Authority 103
The Qualifications of Voters 104
Female Suffrage 105
The Right of Holding Office 105
Duties of a Voter 105

XV

A REVIEW

The Characteristic Features of American Government 108
The American Spirit 109

PART II

THE ORGANIZATION OF THE AMERICAN GOVERNMENT:

THE FORM

XVI

THE ORGANIZATION OF CONGRESS

Representation in Congress 115
The Apportionment of Representatives 118
The Election of Representatives 119
The Election of Senators 120
Congress the Focus of American Political Life 120

XVII

CONGRESS AT WORK

PAGE
The Assembling of Congress and its Adjournment 123
The House at Work 124
The Senate at Work 127
The Powers of Congress 129

XVIII

THE PRESIDENCY

The Election of the President 132
The Powers and Duties of the President 134
The President's Share in Law-making 135
Succession to the Presidency 136
The President as a Political Personality 137

XIX

THE FEDERAL EXECUTIVE DEPARTMENTS

The Cabinet 139
The Work of the Departments 140
The Organization of a Department 142
Executive Work Outside the Departments 143
The National Civil Service 143

XX

THE FEDERAL JUDICIARY

The Independence of the Federal Judiciary 147
The Organization of the Federal Courts 148
Federal Courts Outside the Federal System 150
Officers of the Federal Courts 151
The Kinds of Cases Tried in the Federal Courts 151

XXI

THE FEDERAL JUDICIARY AT WORK

Explanation of Terms 155
The Jurisdiction of the Four Grades of Federal Courts 155
The Supreme Court and the Constitution 157
The Supreme Court and the People 160

XXII

THE STATE LEGISLATURE

PAGE
The Origin of State Legislatures 162
General Features of State Legislatures 163
The Passage of Bills 163
The Importance of State Legislation 165
The State Legislature and the State Constitution 166
The Initiative and Referendum 167

XXIII

THE STATE EXECUTIVE

The Distribution of Executive Functions 170
The Executive Departments 170
The Concentration of Power in the Hands of the Governor . . . 174

XXIV

THE STATE JUDICIARY

The Selection of the State Judiciary 177
The Several Grades of State Courts 177
Intermediate Courts of Appeal 180
Probate, County and Chancery Courts 181
The Relation of the State Judiciary to the Federal Judiciary . . 181
The Powers of the State Judiciary 181

XXV

TERRITORIES AND DEPENDENCIES

Territories and Dependencies Governed by Congress 184
Territories and Dependencies on the American Continent . . . 185
Insular Territories and Dependencies 189
The Attitude of the United States toward Dependencies 192

XXVI

THE COUNTY

The Importance of Local Government 195
The County in the South and Southwest 195
The County of the Middle States and the West 196

PAGE
The County in New England 197
The Organization of a Typical County Government 197
The Citizen and his County 200

XXVII

THE TOWN

The Origin and Character of the Early New England Town . . . 203
The Town-meeting 205
Town Officers 206
The Town as a Factor in the Civic Life in New England 207
Town Government Outside of New England 208

XXVIII

THE TOWNSHIP

The County-township System 210
The Two Types of the County-township System 210
The Powers of the Township 212
The Organization of the Township 213
The Township a School for Good Citizenship 214

XXIX

MUNICIPALITIES

The Necessity for Municipal Incorporations 216
The Two Classes of Municipalities 217
Villages, Boroughs, Towns 218
The Organization of Cities 218
The Sphere of Municipal Activity 222

XXX

PARTY ORGANIZATION

The Nomination of Candidates 225
The Development of Party Organization 225
Permanent Party Organization 226
Party Conventions 227
The Presidential Campaign 230
The Election of the President 231

PART III

THE FUNCTIONS OF THE AMERICAN GOVERNMENT:

ITS SERVICES

XXXI

THE FUNCTIONS OF GOVERNMENT

PAGE
The Scope of Governmental Activity 235
Government and the Individual 236
Individualism, Liberalism and Socialism 239

XXXII

LAWS

What a Law is; the Different Kinds of Laws 242
Some of the Characteristic Features of Law 244
Law-making and Public Opinion 245
Obedience to Law 247

XXXIII

DEFENSE

Defense an Indispensable Function of Government 249
National Defense 249
State Defense 253
Local Defense 253
Civil Government and Martial Law 254

XXXIV

INTERNATIONAL RELATIONS

International Affairs Regulated by the Federal Government . . . 256
International Law 256
Ambassadors, Ministers and Consuls 258
Treaties 260
Arbitration 261

XXXV

TAXATION

PAGE
The Cost of Government 265
The Source of the Taxing Power 266
The Different Kinds of Taxes 266
Direct and Indirect Taxation 268
The Principles which should Govern in the Levying of Taxes . . 269

XXXVI

NATIONAL FINANCE

The Extent of the Federal Taxing Power 272
National Expenditures 272
Federal Taxation—(Indirect) 274
The Collection of Federal Taxes 275
Direct Federal Taxes 276

XXXVII

STATE FINANCE

The Taxing Power of the State 280
The Authority for State Expenditures 280
Taxation in the State 281
Local Taxation 286

XXXVIII

PUBLIC DEBT

Public Debt a Necessity 288
How Government Borrows Money 288
The National Debt 289
State Debt 290
The Debts of Local Governments 291
How Public Debts are Paid 293

XXXIX

PROBLEMS OF TAXATION

The Difficulties of Taxation 296
The Corporation Tax 298
The Income Tax 299
Graduated or Progressive Taxation 301
The Single Tax 301

XL

MONEY

PAGE
The Different Kinds of Money 304
Silver and Gold 305
The Coinage of Money 306
Paper Money 307
Representative Money 309

XLI

METALLIC CURRENCY

Definition of "Currency" 311
Coinage before 1873 311
Coinage since 1873 313
Subsidiary Coinage 315
Bimetallism and Monometallism 316
International Bimetallism 316

XLII

PAPER CURRENCY

Bank Notes and Government Notes 319
The United States Banks 319
State Banks 320
National Banks 321
United States Notes 322
The Essential Facts of Our Monetary System 325
The Amounts of the Several Kinds of Currency 325

XLIII

FOREIGN COMMERCE

The Power of Congress over Foreign Commerce 328
The Tariff; Free Trade and Protection 329
Tariff Legislation in the United States 330
Regulations of Foreign Shipping 333
The Regulation of Immigration 334

XLIV

DOMESTIC COMMERCE

PAGE
Interstate and Intrastate Commerce 337
The Regulation of Interstate Commerce 338
The Interstate Commerce Commission 339
Intrastate Commerce 339
The Transmission of Intelligence 341

XLV

ELECTIONS

The Importance of Elections 344
Elections Conducted by State Authority 344
Registration 345
The Casting and Counting of the Ballots 345
The Advantages and Disadvantages of Secret Elections 346
Bribery 347
The Usefulness of Frequent Elections 349

XLVI

EDUCATION

Education a Function of Government 351
Education and Democracy 351
Public Education Controlled by the State 352
Education a Local Affair 353
The School District 353
School Supervision 354
The Support of the Public Schools 355
Common Schools, High Schools, Universities and Normal Schools . 356
The Educational Activities of the Federal Government 356

XLVII

CORPORATIONS

Corporations Created by State Authority 360
The Corporation in Modern Life 361
The Evolution of Corporate Industry 361
The Trust Problem 365

XLVIII

LABOR

PAGE
The Growth of Labor Organizations 369
Government and the Workingman 371
The Settlement of Labor Disputes 373
The Labor Problem 375

XLIX

CRIME

The Definition of Crime 377
The Punishment of Crime 378
Crime and the State Government 378
Crime and the Federal Government 380
The Prevention of Crime and the Treatment of Criminals . . . 381

L

CHARITIES

Charity a Function of Government 385
The Care of the Poor a Function of Local Government 385
Outdoor and Indoor Relief 386
The Defective Classes 387
State Boards of Charities 387
Organized Charity 388

LI

THE POLICE POWER OF THE STATES

The Police Power Defined 390
The Police Power Exercised by the State 391
The Public Health 391
The Public Safety 392
The Public Morality 393

Appendix A. The Constitution of the United States of America . 397

Appendix B. The First Written Constitution 421

Appendix C. The Ordinance of 1787 427

Appendix D. Home Rule for Cities 435

Index 445

PART I

THE ESSENTIAL PRINCIPLES OF THE AMERICAN GOVERNMENT: THE SPIRIT

ADVANCED CIVICS

I

GOVERNMENT

Society and Government. Man is impelled by the nature of his being to seek the companionship of man. Just as instinct brings birds together in flocks and causes bees to swarm and buffaloes to roam in herds, so by instinct men come together and live in groups. This disposition of men to live in groups is described by the word social (*socius*), which in its origin means *partaking of, sharing.* A body of persons united by this social instinct, this desire to share and participate with others in the fortunes and misfortunes of life, is a *society.*

If man could live separate from all of his kind his freedom would be perfect; his conduct would depend entirely upon his own will and desires. But he cannot live thus. He must live in society, and in the social relation he must do things that he does not wish to do, and he must refrain from doing things that he wishes to do. Wild, unrestrained freedom would destroy the peace and safety of the social group. In every society, therefore, there are rules (laws) to be obeyed and rulers to enforce the rules. The authority which imposes rules upon the conduct of men and punishes those who disobey is *government.* The word *government* is derived from a Latin word (*gubernare*) which means *to guide or steer or pilot a ship.* The idea of piloting or guiding clings to the word government in all its uses. We may say, with exactness of language, that government pilots society safely through the sea of man's passions and cruelty and selfish-

ness. The manifold services of government will receive attention in another place (p. 235). Here it is enough to say that government lays its hands upon us in our infancy and is a guiding and controlling force all our lives. If it is wise and just and efficient it is an instrument of happiness; if it is foolish or tyrannical or incapable, it is an agency of misery. Our interest, therefore, in securing and maintaining a good government is direct and permanent.

The Evolution of the State. The governments of the earth as we see them to-day are the product of thousands of years of growth, revolution, and change. History does not give a clear account of the beginnings of government, but it takes us back to a time when society was extremely rude, and when government was a very simple affair. A study of early society reveals the following development of government:

I. *The Family.* At the dawn of history society was organized upon the basis of kinship and religion, and in this organization the family was the center of much governmental authority. At the head of the family, consisting of parents, children, grandchildren, servants, dependents, and adoptive members, stood the house-father (patriarch) as priest and ruler. The power of the father, or pater familias, over the lives and possessions of the members of the household was absolute. He could pronounce the death sentence upon a child, or could sell it into slavery. No member might marry without the consent of the father, nor could any member hold property in his own name. As far as the members of the family were concerned the father was the source of all authority.

II. *The Tribe.* We are not certain, however, that the government of the family was ever a *sovereign* government. A sovereign government exercises within itself all power and supreme power and is independent of and uncontrollable by any other government. There is no proof that the family was ever a government of this kind. No matter how far back we go, we always find evidence that the family was in

some way subordinated to a larger government which we may conveniently call the *tribe,* and which consisted of a union of families which had a common earthly ancestor, and which worshiped the same God. At the head of the tribe, as its chief and high priest, stood that kinsman who by birth was nearest to the common ancestor. The chief was assisted in matters of government by the heads of the families which composed the tribe.

III. *The State.* The last step in the evolution of government was taken when tribes coalesced and formed the *nation* or *state.* The earliest state was still organized on the basis of kinship, as the word nation (*natus*) indicates. There was still a remote ancestor who was the common forefather of every person in the nation, and a direct living descendant of this ancestor was the king of the nation by divine right. As society developed, however, and as social interests multiplied and social necessities grew more pressing, the claims of birth gave way to the claims of meritorious leadership, and the kingship was bestowed upon the one who was thought to be the most worthy and the most capable. With the formation of the state the king's *council* comes into prominence. This body consisted of the leading men of the state, chieftains of the tribes and the heads of distinguished families. The council advised the king, and its advice had the moral effect of a command. There appeared in the early state still another factor of government. This was the *popular assembly.* The freemen of the state made bold to attend the sessions of the king and council and make known the popular will in respect to public affairs. The king and council were not bound to act in accordance with the wishes of the popular assembly, yet a prudent king could not completely ignore the expressed will of the people.

In the organization of the early state described above, an organization which was completed almost at the dawn of history, we find an enduring pattern for all the governments which were to follow. In the highly organized state of to-day the presidency is a development of the ancient kingship,

the legislature is a development of the ancient council, and the voting population is an enlargement of the ancient popular assembly.

With the appearance of the early state, public affairs, that is to say, *politics,* became a distinct subject of human interest. The *citizen* came into view. A man was now not only a member of a religious cult, he was a member of a commonwealth, a partner in a political enterprise. Men wanted effective armies, and good laws, and a just enforcement of these laws; and they regarded the state as an agency by which these things might be secured. As members of this organization they were citizens vested with the rights and duties of citizenship, owing allegiance to the state and receiving protection from it.

Types of Government. In tracing the evolution of government in the above section we have kept in mind the ancient history of the region around the Mediterranean Sea for the reason that the ancient government of this region can be studied to the best advantage. An early state of the Mediterranean region was always small; it was rarely as large as one of our smaller counties. Near its center was a compact settlement called the city (*polis*), around which was a wall, and within which was the residence of the king. At convenient distances from the city lived villagers, who would flee to the city for refuge in time of danger. The central fortified place, together with the outlying villages, was called the *city-state.*

The city-state, as it was constituted in the time of Homer (1000 B.C.), was invariably a *monarchy,* but, as we have seen, changes in the structure of society and in its interests brought changes in the organization of the state. In many of the city-states the leading men, the wealthy and high-born, deposed the king and took government into their own hands and set up *aristocracies.* Properly speaking, an aristocracy is a government conducted by a few of the best people of the state. It often happened in the ancient world

that a clique of political adventurers who could claim neither merit nor high birth would seize upon the power of the state by intrigue and hold it by force. A government of this kind was called an *oligarchy.* Again, in many cases all the citizens, that is, all who enjoyed the rights and privileges of the city, demanded and secured a direct participation in government. A government of this kind was called a *democracy.* An ancient democracy was really only an enlarged aristocracy, for in the ancient state there were large numbers of slaves with no rights of any kind, and large numbers of freemen with no political rights, and the number of people who could possibly have a voice in government was always but a small proportion of the adult male population.

Thus we see that after communities passed from a tribal to a national form of government, from a religious to a political organization, government began to be an affair of man's choice, a creation of his will, rather than a thing of divine ordination. As a result of this freedom many different kinds of states were evolved. Aristotle (333 B.C.) was able to classify the two hundred and fifty states around the Mediterranean under three heads:

(1) The *monarchy,* the government of one, the strong.

(2) The *aristocracy,* the government of the few, the wise.

(3) The *democracy,* the government of the many, the good.

The forty-odd sovereign governments of to-day may be most conveniently classified as follows:

1. *Absolute Monarchies,* in which the will of one person is unfettered and supreme.

2. *Limited Monarchies,* in which the monarch shares political power with a legislative body.

3. *Republics,* in which all political power flows directly or indirectly from the citizens who are entitled to vote.

QUESTIONS ON THE TEXT

1. What is society?
2. What is government?
3. Describe the ancient family.

4. Describe the tribal organization.
5. What were the three political elements of the early state?
6. Compare the organization of the early state with the state of to-day.
7. Describe the city-state of antiquity.
8. What is a monarchy? an aristocracy? an oligarchy? a democracy?
9. What was Aristotle's classification of governments?
10. How may the governments of to-day be classified?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Can society exist without government?

2. Religion, commerce, education, war—which of these tends most strongly to knit widely separated societies together? What forces are now operating to bring the United States into social relations with the other countries of the world?

3. What is the difference between *evolution* and *revolution* in government? Was the Declaration of Independence an act of evolution or revolution?

4. Compare the City of Refuge mentioned in the Old Testament with the city-state described in the text. (See Numbers xxxv, 1–5).

5. Which of the three classes of government mentioned by Aristotle prevails in the family of to-day? in the school? in the management of the affairs of a college? of a church? of an athletic association? of a railroad?

6. Classify the sovereign governments of the earth as absolute monarchies, limited monarchies and republics. In which class do we find the greatest number of people? In which class is the highest grade of civilization?

7. Among the services which government performs for society are the following: (1) It keeps the streets and roads in repair; (2) it supports the schools; (3) it administers justice between man and man; (4) it carries the mails; (5) it protects life and property; (6) it preserves the liberty of citizens; (7) it regulates the possession and transfer and descent of property; (8) it defends the nation against attack; (9) it protects the public health; (10) it helps the poor and unfortunate. Arrange these services in the order of their importance, placing the most important service first. Be prepared to give reasons for your arrangement.

8. Which is worse, *anarchy* or *despotism?*

9. Describe the effect which a hermit's life produces upon mental and moral character.

II

POPULAR GOVERNMENT

Popular Government Defined; Majority Rule. A government which receives its powers from the people is a democratic or popular government, and a state in which popular government prevails is a *democracy*. In the United States political power everywhere flows from the people. The President of the United States, the Congress, and the national Supreme Court, all receive their powers from the Constitution of the United States, and this Constitution is a creation of the people (**1**)[1] of the United States; the government of a State[2] receives its powers from the people of the State; a city or a town or a county is governed by the people who reside within its borders. Thus in the United States the will of the people prevails not only in the country taken as a whole but in all its parts as well. This is the fundamental principle of the American government.

The people govern by a political device known as *majority rule*. When a question of government is to be decided, or when an officer of government is to be chosen, an orderly vote is taken and the will of the majority is regarded as the will of all. The majority rules and the minority submits to the will of the majority; this is a necessary and unavoidable feature of democratic government. The minority, right or wrong, must bow to the will of the majority. If the cause

[1] The numbers in heavy-faced type refer to passages in the Constitution of the United States (Appendix A) which are distinguished by corresponding numbers on the margin.

[2] In this treatise, when the word "state" begins with a capital letter one of the members of the American Union is meant.

of the minority, however, is just, it may be promoted, and in good time the minority may become a majority. A righteous and aggressive minority will not suffer permanent defeat.

The Growth of Democracy. The ancient Greeks discovered the principle of majority rule, and by the year 400 B.C. most of the Grecian states were enjoying popular government. But the democracies around the Mediterranean soon perished, some through their own faults, others as the victims of conquest. The principle of democracy, however, was active among the Teuton tribes which overran Western Europe in the fourth and fifth centuries. Wherever these Teutons settled, whether along the Rhine, or in France, or in England, they planted democratic institutions. They lived in villages, and every freeman of the village had a vote and a voice in the village meeting where public affairs were discussed, and where the policies of the little government were determined. This Teuton village is an interesting example of a *primary* or *pure* democracy,—a democracy in which the people govern directly and personally.

For several hundred years after the coming of the Teutons the democratic principle among the nations of Western Europe was strong. Especially was it strong among the Teutonic settlers in England, the Angles and Saxons. During the dark ages, however, feudalism gave popular government a severe blow. Under the feudal system society was organized upon the basis of landownership and upon personal relations growing out of the ownership of land. In the troublous times of the early mediæval period it became the custom of the weak to "commend" themselves to the strong for protection. This commendation created a personal relation in which the protector was the lord and the protected the vassal. Since the large landholders were the most powerful it was they to whom commendation was usually made. The vassal, kneeling before his lord and placing his hands between the hands of his lord, would say: "I am your man."

The lord, in return for the homage, promised the vassal patronage and protection. If the vassal had any land the lord took it as his own, the vassal henceforth holding as a tenant, the tenure depending upon the performance of certain services, most of which were of a personal nature.

Under the workings of the feudal system a few lords came to own practically all the land in a country. A great landlord would parcel out a tract of land to tenants, and these would parcel out to sub-tenants, and these, possibly, to subtenants still lower down the scale. Under this system land was everything, man was nothing; every man, except the highest lord, was another man's man.

Of course democracy, which is founded on the principle that one person never obeys another *person,* but always obeys a *law,* could not thrive under such conditions. It did not thrive, but it survived. It was kept alive in the cities and towns. In a city people can easily meet to talk over public affairs and, if necessary, can unite quickly to protect their interests and liberties. Cities have always been the nurseries of democracy. When, therefore, the feudal lords attempted to override the rights of the cities situated on their lands, the citizens resisted. They were accustomed to equal rights and self-government, and they prized these blessings too highly to give them up without a struggle. They joined with the king, who generally had a quarrel with the lords, and after a long contest overthrew feudalism, the greatest enemy democracy ever had.

The people had now to reckon with monarchy. With the lords crushed and out of the way the king took all the power of government into his own hands and ruled in his own interest. This was to be expected. Government *by* one means government *for* one. Government *by* nearly always means government *for.* The monarchs built up their power rapidly, and it was not long before the very existence of popular government was threatened.

The people of England were the first to resist the encroachments of the crown. By the close of the seventeenth cen-

tury they had fought their battle and had won. On the Continent democracy slumbered for a hundred years longer. Then it awoke and asserted its terrible power. In France the people, who had become the servants of the government, revolted (1789) and tore up monarchy from its foundations. They beheaded the king, drove out the nobility, and established a government which was to be the servant of the people. The French Revolution was the first of a series of victories for democracy. From 1789 to the present time, in almost every country on the globe, the power of the people in matters of government has been increasing. Year by year the right to vote has been given to larger and still larger numbers of citizens, laws have become more and more favorable to popular needs and wishes, and governments themselves have become more and more democratic in spirit and form. We may safely say that the twentieth century opens with democracy triumphant in all the progressive nations of the earth.

Democracy in the United States. The above sketch shows that the principle of democracy is a persistent and indestructible force in human affairs. In America it was a powerful force even before the Revolution. In every colony large numbers of people participated in government, and when independence was declared it was declared in the name of the people. "The people" at the time of the Revolution meant but a small portion of the adult male population, but the proportion steadily grew, and by the year 1840 democracy in America meant that all white male adults had the right to vote. Thirty years later all black male adults also enjoyed this right. Democracy in the United States to-day means the rule of practically the whole body of grown men plus a portion of the grown women, about 18,000,000 persons, or one fifth of the total population.

Why Popular Government is the Best. What are the reasons which have urged the people to undertake the dangerous

and difficult task of governing themselves? There are three coercive reasons why popular government should be maintained:

(1) The people are the best guardians of their own liberties and interests. Government *by,* let it be repeated, is government *for.* Government by a king will be conducted in the interest of the royal family; government by an aristocracy will be administered for the benefit of a small class; government by all will aim to promote the welfare and protect the rights of all.

(2) Democracy is best for the individual. Participation in government adds to the interest of life, sharpens the intellect, broadens the sympathies, cultivates a civic conscience, and thus enriches and elevates individual character.

(3) Popular government develops the highest type of patriotism. Citizens of a democracy always spring quickly to the defense of their government, for it is a work of their own hands. Subjects of monarchies, on the other hand, have been known to be driven into battle by the lash. Popular government has had its fullest development in Switzerland, and the Swiss are the most patriotic people in the world.

The Dangers of Popular Government. We are sometimes taught to regard democracy as something divine. We are told that the voice of the people is the voice of God. We should cherish the principle of democracy and resist every attempt to undermine it or sap its strength, but we need not regard it as a divine institution. It is simply one of the forms of government. It is that form in which the people rule by the device of voting and abiding by the will of the majority. That is all. Democracy is a human institution, and like all human institutions it is beset by dangers. Three of these dangers are inherent and must be pointed out:

(1) *Indifference.* It is extremely easy to forget and neglect civic duty. It is next to impossible to keep the attention fixed constantly upon public affairs. Yet the success of

popular government requires that the citizen's interest in public affairs be sustained, and that his watchfulness shall never be relaxed. Eternal vigilance is the price of democracy as well as of many other good things. A people who are habitually indifferent to the affairs of government are not fit to rule themselves.

(2) *The Demagogue.* A demagogue is a leader who seeks to gain political power for his own selfish purposes, and not for his country's good. The demagogue flatters the people and confirms them in their prejudices and wrong-thinking and, if necessary, lies to them. He would rather lead the people to their destruction than fail in his designs. We must always have leaders, and as long as there are men who prefer their private gain to the public welfare, so long will the false leader, the demagogue, be with us. We ought, therefore, to keep a sharp lookout for this arch enemy of democracy and deal him a blow whenever he shows his baleful head.

(3) *Tyranny.* We are accustomed to associate the idea of tyranny with kings, but what is tyranny? It is an exercise of power without regard to justice; it is an exercise of brute force. Now if the majority ruthlessly trample upon the rights of the minority, the minority feels the tyranny as keenly as if it were inflicted by a despot. Tyranny in popular government is worse than the tyranny of monarchies. A tyrannical king can be overthrown, but when a majority is tyrannical its tyranny cannot be successfully resisted.

The danger of tyranny in popular government will be avoided if the majority will remember justice and right. But justice and right are not always identical with the popular will. "To say that the will of the majority makes a thing right or wrong is a palpable absurdity. Right and wrong are what they are by their own nature. They can as little be made by man as can the properties of the triangle. No man, no number of men, can do more than declare them. The will of the majority ought to prevail if it is in

accordance with right. For the sole ought is an ethical ought." (*W. S. Lilly.*)

Democracy and the Individual. We learn in physics that a body acted upon by a number of forces applied from different directions yields something to each force and moves in a line that is the resultant of all the forces. So it is in the political world. In a democracy a number of wills exert themselves upon government to make it go this way and that; it yields something to each and moves in a direction that is the resultant of all the wills. Plainly, then, the responsibility for the course of public affairs must be sought in the doings of individuals. Just as one's personal conduct affects the government of the home for good or for evil, or the government of the school for good or for evil, so does personal conduct affect the larger civil government for good or for evil. This is another way of saying that good government begins with one's self, not with one's neighbor. When I grasp the idea of personal responsibility in political matters, when I understand that the greatest contribution I can make to the cause of good government is to order my own life aright, I am beginning to understand the duty that rests upon me as a citizen of a democracy. The first fact of a democracy is the power of the people; the first fact of citizenship in a democracy is the responsibility of the individual.

QUESTIONS ON THE TEXT

1. What is a democracy? Why may we call the United States a democracy?
2. What is meant by majority rule?
3. In what countries did democracy flourish in early times?
4. What is a *pure* democracy?
5. How did feudalism affect popular government?
6. In what way have cities advanced the cause of democracy?
7. In what way have kings retarded the cause of democracy?
8. What was the French Revolution? What have been the results of that Revolution?
9. Give an account of the growth of democracy in America?

10. Give three good reasons why popular government should be maintained.

11. Point out three great dangers of popular government.

12. How can it be shown that responsibility for good government in a democracy rests upon the individual?

SUGGESTIVE QUESTIONS AND EXERCISES

1. (Plurality.) If in a contest for office A receives 5000 votes, B 4000, and C 3000 there is no majority, but A receives a plurality. Should the will of the plurality rule?

2. (Second Election.) "In a democracy no one ought to be declared elected to an office unless he has received a *majority* of all the votes cast. If there are three or more candidates and no person receives a majority of the votes there should be a second election, the candidates being the two persons who received the greatest number of votes at the first election." Discuss the above proposition.

3. In England practically all the male citizens of voting age have the right to vote. Is England a democracy?

4. What is *ochlocracy? plutocracy?*

5. Can democracy be strengthened by permitting women to vote? In what way may a non-voter influence government?

6. In the average school would the majority express its will in favor of order and industry? If so, would the minority acquiesce?

7. In olden times it was said that the voice of the king was the voice of God; in these times it is sometimes said that the voice of the people is the voice of God. In which statement is there more truth?

8. Which is better, self-government or good government?

9. Why should Civics be taught in the public school?

Topics for Special Work.—The Perils of Democracy: **1**, 279–301. 21–26. The Extension of Democracy: **4**, 87–102. Majority Rule: **4**, 161–173. The Meaning of Self-Government: **30**, 15–21.[1]

[1] The number in heavy-faced type refers to the book of the corresponding number in the book list on p. 437.

III

REPRESENTATIVE GOVERNMENT

Representative Democracy. A *representative government* is a popular government in which power is exercised by chosen agents (representatives) of the people, instead of being exercised directly by the people assembled as a pure democracy. A country which is governed by representatives elected by the people is a *representative democracy* or *republic*. In a representative democracy the people rule no less than in a pure democracy, but they rule indirectly.

Growth of Representative Government. We have seen that popular government in ancient times was a simple affair. At stated times all the freemen assembled at the meeting-place and disposed of public questions by a direct vote, the majority of votes ruling. When the body of freemen was small democracy in this pure form was practicable; but how was the principle of popular rule to be applied to large bodies? How was the will of a state consisting of millions of people to be ascertained or expressed, and how was the government of such a state to be conducted? The ancient Greeks and Romans never answered this question successfully. They never discovered a method by which very large bodies of people might knit themselves together and live under one government and at the same time enjoy self-government and civil liberty. Our Anglo-Saxon ancestors, however, solved this question in a very ingenious manner. When they invaded England (449 A.D.) they settled down in villages, but they united the villages into larger political associations

known as hundreds. This union was effected in the following way: In each village four discreet men were chosen to attend the *hundred moot,* or meeting-place of the hundred, where they met other discreet men from the other villages of the hundred. The four men sent to the hundred moot spoke and voted for the village from whence they came. "Their voice was its voice, their doings its doings, their pledge its pledge." At the hundred moot were done only those things that the village could not do for itself. Strife between village and village was allayed; appeals were heard; judgment in the weightier cases of law was rendered. All matters that were purely local were still in the hands of the little home government, the village moot. The central authority did not destroy local self-government.

The union of villages under the government of the hundred pointed the way to the formation of larger unions. The villages also sent their representatives to a *shiremoot,* where public business was transacted in the name of the shire, the parent of the modern county. The organization of the shiremoot was the model for a national moot, and in 1265 the nation through its representatives met in a council at Westminster, two representatives from each shire attending. Thirty years later, in addition to the two representatives of the shire, two citizens from each city and two burgesses from each borough were elected to the national council. This council, consisting of representatives of the whole body of the English people, was the first English Parliament. With this body the sovereign power of the people was lodged, and England has been a representative government, as far as its law-making body is concerned, ever since.

Representative government developed in the other countries of Europe, but not so rapidly, or with such unbroken success, as in England. Throughout the last century, just as democracy gained strength everywhere, so did representative government gain strength everywhere. At the present time in all the free governments of the world the people govern, in part at least, through chosen representatives.

Representative Government in the United States. The representative feature of the American government is as marked as is its democratic feature. In 1619 Virginia had the honor of electing the first representative body that ever met in America. In New England the people from the beginning managed affairs that were purely local in the purely democratic way (p. 205), but in reference to the general affairs of the colony they acted through their representatives. And so it was in all the colonies. To govern through representatives seemed the only natural way of conducting political affairs. Independence was declared by representatives of the colonies, and the Constitution was framed by representatives of the States (**130**).

In the United States government is representative not only in the law-making department, but in all its departments. Our Presidents and governors and mayors and, in most instances, our judges are chosen agents of the people. The officers of government who are not directly elected by the people are appointed by direct representatives, and are thus not far removed from the voters. The people govern not only through their representatives, but it is by means of chains of representation that counties and cities and States are bound together into one strong and indissoluble *UNION*.

Principles of Representation. What principles shall govern in the choice of representatives? Shall a representative act for a class, for an interest, for a locality, or for all the people who elect him? How shall representatives be apportioned? For how long a time shall a representative retain his power? These questions have given rise to many political battles, and have led to many political experiments. In the English Parliament for a long time manufacturing interests were represented by members from the boroughs and cities, farming interests were represented by members from the shires, church interests by the bishops, educational interests by members from the universities, the noble classes

by the lords. In other words, Parliament represented only classes and interests. With the rise of democracy in the nineteenth century the system of government by classes and interests broke down in England and elsewhere, and an officer of government began to be regarded as a representative of all the people. For the law-making branch of government the principle of representation according to number was adopted; so many people, so many representatives. In order that the people might have an opportunity of choosing new agents and instituting new policies of government the term of the representative was limited to a fixed period of time. Another rule which was quite generally observed was this: the voters chose as a representative one who resided within the district in which the vote was taken. These principles of representation are applied to a greater or less extent in all countries which enjoy free government. In the United States they are applied with great fidelity in all the grades of government, in township and county and city and State and nation. The principles are four in number, and may be stated as follows:

1. A representative acts not for favored classes or interests, but for people as people.
2. Representatives in the legislature are apportioned according to population.
3. A representative is chosen for a definite period of time, usually a short period.
4. A representative resides among his people.

The Representation of the Minority. In the choice of representatives the principle of majority rule prevails. If there are more than two candidates for an office, a candidate having a plurality of votes is usually declared elected. Sometimes the majority rule seems to work injustice to the minority. For example, in a State where the voters of one of the great political parties have a decided majority in all parts of the State, the minority will go unrepresented altogether. The legislature of Vermont at times does not contain a single

member of the Democratic party, although there are thousands of Democrats in the State. To secure a representation for the minority numerous devices have been proposed. Two of these have been practically applied. The first is known as the "limited vote" plan. When a group of three officers is to be chosen in a district, as, for example, three commissioners in a county, if no person is allowed to vote for more than two candidates, one of the three successful candidates may be a member of the political party which is in a minority. This plan has been adopted in Pennsylvania in the election of county officers. The second device for representing the minority involves the plan of "cumulative voting." Under this plan each voter may cast as many votes as there are candidates for office, and may distribute his votes or give them all to one candidate. By concentrating their votes upon one candidate a minority can generally secure representation. Cumulative voting has been practiced for many years in Illinois.

The People and their Representatives. In a representative democracy government on election-day passes out of the hands of the people for a time into the hands of their chosen agents. In the long run these agents will be like the people they represent. If the voters want good government their representatives will give it to them. As William Penn said: "Governments rather depend upon men than men upon governments. Let men be good and the government cannot be bad; for if it be ill they will cure it. But if men be bad, let the government be ever so good, they will endeavor to warp and spoil to their turn. . . . I know some say let us have good laws and no matter for the men that execute them; but let them consider that though good laws do well, good men do better, for good laws may want good men and be abolished by ill men; but good men will never want good laws nor suffer ill ones." The truth and logic of these words cannot be escaped. The character of a government depends upon the voters who control it. It is of little use

to scold our representatives, for they are one with us. When we become better they will become better. Nor should we attempt to shift responsibility from ourselves to our representatives. Representation is a device of great convenience, but it cannot work political magic. It cannot remove the burden of responsibility from the shoulders of the individual. When we assume the task of self-government we assume personal duties which no political contrivance will enable us to escape.

QUESTIONS ON THE TEXT

1. What is a representative government?
2. What is a republic?
3. Contrast pure democracy with representative democracy?
4. Give an account of the growth of representative government in England.
5. What has been the history of representative government in the United States?
6. State the principles which govern in the United States in the matter of representation.
7. State two devices by which the minority may be represented.
8. Show that representatives are like their constituents.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Name the four essentials of a good representative system. See Bryce, Vol. I, p. 296.
2. Distinguish between a "delegate" and a "representative."
3. What qualities are developed in the citizen of a pure democracy? Which is better for the individual, a direct or an indirect democracy?
4. In a number of the States local affairs—especially school affairs—are managed by the people meeting as a pure democracy. State the advantages and disadvantages of this custom.
5. In England voters sometimes choose as a representative one who does not reside among themselves. Give reasons for and against such a custom.
6. Give illustrations of representative bodies that are not political.
7. Arrange the following forms of government according to merit, placing the best first: Oligarchy, absolute monarchy, representative democracy, aristocracy, anarchy, pure democracy, limited monarchy.
8. Answer the following questions in reference to the relations that should exist between a representative and his constituents: Under what circumstances will a representative be justified in opposing the wishes of the people who elected him? If the wishes of the voters change after election, should the representative act according to the changed

views of his constituents? Should the representative under all circumstances act according to his own judgment? Should he abide by the promises made before his election? Should he resign if his views do not accord with the views of his constituents? When a representative is instructed by his constituents as to a course of action should he obey the instructions?

9. *The Recall.* In some places the people keep their representatives under complete control by means of a political device known as the "recall." Where the recall is in use the voters, upon the complaint or petition of a certain number of citizens, vote upon the question whether a certain officer shall be deprived of (recalled from) his office before his term expires and if the vote is in favor of the officer's removal he must give up his office before the end of his term. The recall is in operation in a number of cities along the Pacific Coast, and in several of the cities governed by the commission system (p. 222). It is also in general operation in the States of Oregon and California. What do you think of the recall as a political contrivance?

Topics for Special Work.—Representative Government: 4, 174–183. Four Essentials of a Representative System: 2, 217–218. The Limited and Cumulative Vote: **13**, 86–98. The Recall: **30**, 526–527.

IV

THE THREE DEPARTMENTS OF GOVERNMENT

How the Power of Government is Separated. The people of a free state will not confer all the power of government upon one person, or upon one body of persons. Experience has taught that it is better to divide governmental power into three portions, and to establish three departments of government, allotting to each department its own peculiar portion. The three departments of a popular government are: (1) The *legislative* department, upon which is conferred the power of making laws; (2) the *judicial* department, which is entrusted with the power of deciding how the law shall apply in particular cases when disputes arise; (3) the *executive* department, which is vested with the power of enforcing laws.

The Development of the Three-Department System. In the earliest times the king was legislator, judge, and executive: he made the law, he sat in judgment upon those charged with violating it, and he enforced the penalties against the guilty. Later, but still very early in the history of politics, the king began to share the power of government with a council of elders (p. 5). The council expressed the will of the state and the king executed what the council advised. Here was the first separation of governmental power. The growth of democracy in the ancient world brought a further separation. We find that in Athens as early as 500 B.C. there were lawmakers and judges and executive officers. It must not be thought, however, that in ancient times the three depart-

ments were fully developed, and that each department was entrusted only with power of a certain kind. Athenian law-makers sometimes did what only judges ought to do, and Athenian judges would sometimes do what only law-makers ought to do.

In the early history of England the folkmoot exercised legislative, judicial, and executive powers, but along with the development of representative government there was developed a system of distributing the powers to three great departments. Parliament confined itself chiefly to making laws, a class learned in the law acted as judges, and the king carried the law into effect. The lines that divided the three departments were not always clear, and one department frequently encroached upon another. In the seventeenth century a king (James I) ventured to sit on the bench as a judge, but his conduct was universally condemned. The protest which arose against the encroachment of James shows that Englishmen then had learned to draw the lines that should separate the departments, and in the struggle which followed it was settled that these lines should not be blurred or effaced. In 1765 the most celebrated expounder of English law (Blackstone) could say that in England the three departments of government were separate and distinct.

The Three-Department System in the United States. In America the lines which divide the three departments from each other are quite distinct and clear. In very few instances shall we find one branch doing what properly belongs to another branch. When the founders of the republic distributed the powers to the three departments they took great care that judges should do only the work of judges, that legislatures should only make laws, and that executives should be concerned only with the carrying out of laws, and they placed around each department effectual barriers against encroachment by the other departments. And the policy of the fathers has been continued to the present time. In the United States political power is everywhere distributed

to three departments. This is true of the American government in all its gradations. In the government of towns and cities[1] and States, as well as in the government of the nation, three departments are in operation, each doing a work that is peculiarly its own.

The Legislature. The most powerful and in some respects the most important department is the *legislature,* which expresses the will of the people in the form of laws. Almost every subject relating to the safety and welfare of society may come within the scope of legislative action. One of the most important powers of the legislature is to provide money by means of taxation for the support of government. In the United States it is a general rule that the legislative department shall consist of representatives elected by the people for short terms. The legislature does not sit in continuous session, but adjourns and disperses when the proper and necessary laws have been made.

The English parliament as originally constituted (1295) consisted of the representatives of four classes, (1) the nobility, (2) the clergy, (3) the knights, or representatives of the shires, (4) the burgesses, or representatives of the towns. Here was a legislature of four branches. Before the end of the fourteenth century the clergy were sitting and voting with the nobility, and the knights and burgesses were sitting and voting together. The four branches were thus reduced to two, the nobility and clergy constituting the House of Lords, and the knights and burgesses the House of Commons. In the colonies the English system of a bicameral legislature was quite generally imitated. Of the States formed at the time of the Revolution only three had legislatures of a single branch. At the present time the legislature of the nation (Congress) and the legislatures of all the States and those of most of our cities consist of two branches, an upper and a lower house. The upper house (often called the senate) usually consists of members

[1] For exceptions to this rule see p. 222.

who are older than members of the lower house, and who are elected for longer terms. The lower house is, on an average, about three times as large as the upper house. A measure must always pass both houses before it becomes a law.

Why is it necessary to have two separate bodies of men to pass a law? Experience, which has taught us so much about government, seems to decide in favor of two houses. Legislatures of a single house have been tried, and it has been found that they do not always act with sufficient deliberation. An anecdote related of Washington teaches very well the advantage of having two houses: Jefferson once, while dining with Washington, attacked the bicameral system as being clumsy and mischievous. Washington defended the American plan. "You yourself," he said, "have proved the excellence of two houses this very moment." "I?" said Jefferson, "how is that, General?" "You have," replied Washington, "turned your hot tea from the cup into the saucer to get it cool. It is the same thing we desire of the two houses." When a law must pass in two branches there is an opportunity for that sober second thought which is so valuable in every sphere of action.

The Judiciary. Violations of law will occur; disputes will arise between men as to their rights under the law; questions as to the meaning and scope of a law will be raised. The power of trying offenders and of settling controversies between contending parties and of interpreting the meaning of the law is lodged with the judicial branch. The work of the judge is confined to the cases that are brought before him. If no cases are brought, then he has nothing to do. The judges are usually chosen by the people, although they are sometimes appointed, either by the executive or by the legislature. Historically, they are really representatives of the people, for they pronounce the justice which was originally dispensed by a popular assembly. It has become the practice of all nations to select for the judiciary men who

are skilled in the law, and who by temperament and character are competent to render just and lawful decisions.

The Executive. The enforcement of the laws made by the legislature, and the decisions made by the judiciary, and the preservation of peace and order are the functions of the executive branch. In this department reposes the physical force of the State. The executive has at its command armies and navies and will use them if necessary. In republics the chief executive officers are elected by the people. Executive power in modern times is usually vested in one person—a president, a governor, a mayor, a prince, a king, an emperor. The executive very frequently has the power of *vetoing* an act of the legislature, but the veto usually can be overcome by a two-thirds vote. The veto power is plainly a legislative power.

Independence of the Departments. Under our system each of the departments is quite absolute in its sphere, and quite independent of the other two departments. If one department seems to another department to be going wrong the latter will refuse to coöperate with the former, and thus obstruct its action. Thus if the legislature passes an act which in the distribution of powers the judiciary thinks it has no right to pass, the judiciary may hold the act to be null and void as soon as a dispute arising under the act is brought before it. If the judiciary presumes to exercise powers that do not properly belong to it, the legislature may by appropriate laws check the usurpation. If the executive goes strongly counter to the wishes of the legislature the latter may refuse to vote the money that is necessary to conduct executive business and thus stop the wheels of government. Thus by a system of nicely balanced powers and effective checks the independence of each department is secured.

The maintenance of this system of "checks and balances" is a perpetual task of citizenship. If the people

are not vigilant one department will encroach upon another and gather to itself power that does not rightly belong to it. "The spirit of encroachment," said Washington, "tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism." As long as human nature remains what it is this "spirit of encroachment" will be present; it grows out of man's inborn love of power. Grant to a man a certain portion of power, and immediately he craves a larger portion. This disposition of one department to encroach upon another can never be smothered, but it can be effectually resisted. When one branch encroaches upon another and usurps its power, it does so simply by the natural operation of a superior force, and there is only one power that can check the usurpation, and that power is the people themselves: the voters can restore the balance by refusing to elect usurpers. If the people will always demand that there shall be no overreaching among the departments there is nothing to fear; but if they are remiss in this duty, sooner or later we shall witness the consolidation which Washington hoped might be averted.

QUESTIONS ON THE TEXT

1. Name the three departments of government and state the functions of each.
2. What division of governmental power was made in ancient times?
3. Give an account of the growth of the three-department system in England.
4. Give an account of the three-department system in the United States.
5. What are the powers of the legislature?
6. Trace the development of the bicameral legislature in England.
7. Why is the bicameral system better than other systems?
8. What powers are vested in the judiciary? How are these powers exercised?
9. What are the powers of the executive department?
10. Explain how one department may maintain its independence with respect to the other two.
11. Why is one department likely to attempt encroachment upon another? Can such encroachment be prevented?

SUGGESTIVE QUESTIONS AND EXERCISES

1. State to which of the three departments of government the following functions should be assigned: (*a*) The bombardment of a city by a fleet; (*b*) the sale of property for debt; (*c*) the execution of a murderer; (*d*) the sentencing of a thief; (*e*) the ordering of taxes to be collected; (*f*) the collection of taxes; (*g*) the dispersal of a mob; (*h*) the muzzling of dogs; (*i*) the declaration of a war; (*j*) the arrest of a man for disorderly conduct; (*k*) the construction of a bridge; (*l*) the regulation of the descent of property; (*m*) the settling of a dispute between the heirs of an estate; (*n*) the regulation of the speed of automobiles; (*o*) the determination of damages for injuries received in an automobile accident.

2. If power must consolidate, in which branch do you prefer that it will centre? Give your reasons.

3. Show that it would not be wise to have only two branches of government.

4. Write a description of an ideal judge.

5. Contrast the qualities which are desirable in a law-maker with those which are desirable in an executive officer.

6. Name the great law-givers of history.

7. Name several of the great executive geniuses of history.

8. Would it be wise to entrust the law-making power of a high school to the pupils? the judicial power? Give reasons for each answer.

9. Give reasons for the bicameral system in addition to those given in the text.

10. What would be the probable result if one of the departments of government should refuse to act in harmony with the others?

11. In the government of yourself you are actuated by conscience, judgment, and will—which of these is legislative, which executive, and which judicial?

12. Name the officers of government with whom you are acquainted, and state in which department each serves.

A Hint on Reading.—For a discussion of the subject of this lesson, see Woolsey's "Political Science," Vol. II, 258–347.

V

CONSTITUTIONAL GOVERNMENT

Introductory. A government may have all the characteristics thus far described, it may be democratic in form and spirit, it may be thoroughly representative, it may have the three branches clearly separated, and still there may be no guarantee that civil liberty will be permanently enjoyed. For representatives are liable to abuse power, and majorities, like individuals, in moments of excitement and passion are liable to choose a wrong or unjust course of action. Can there be ordained a power that will lay hold of our lawmakers and judges and governors and say to them, "Thus far you may go, and no farther." Can the people place before themselves an obstruction to hasty and unwise action? Is there a political contrivance that will protect citizens from both the tyranny of rulers and from the injustice of majorities? We may let our own experience answer these questions.

Charters. At the time when the English people were battling for their liberties in the seventeenth century, colonies of Englishmen were forming in America, and all the rights and privileges won in the mother country were claimed by those who came to the new world. Indeed many left England that they might enjoy a larger freedom in America. The new comers were careful from the beginning to throw every safeguard around their rights as Englishmen. Each colony had a written document called a *charter*, which described the kind of government it was to have, and the privileges it

was to enjoy. The charter of Connecticut is especially interesting to students of government. In 1639, three little towns along the Connecticut River joined to form the colony of Connecticut. The people of the colony framed an outline of the kind of government they wanted, and the plan, having been accepted by the king, remained the fundamental law of Connecticut until 1818. This is the first example in the history of the world of a government being successfully conducted according to the words of a written document.

The colonial charters, whether granted directly by the king—as most of them were—or prepared by the people, were pledges of the good faith of the home government, and as such they were held in the highest esteem by the colonies. A colony looked upon its charter as the written guarantee of its liberties, just as an owner of property looks upon his deed as giving him a title to his house or farm. When the king or his officers became oppressive or unjust the people pointed to their charter as their defense. Upon one occasion the king, wishing to deprive Connecticut of its rights, sent an officer after its charter, but the people frustrated the plan by hiding the precious document in the hollow of a tree. They felt that as long as they could keep their charter they were safe.

Under their charters the colonies grew and prospered, each colony developing in its own way and making its own laws. Each colony was independent of all the others, but all were dependent upon Great Britain. Since the charters were not all alike, the several governments of the colonies differed from each other, but since the charters all issued from the same source, and since the laws of England applied to all the colonies alike, the government of one colony could not differ very widely from that of another.

Constitutions. When the colonies separated from Great Britain and became independent States the old charters of course lost their validity, for there was no king to stamp

them with authority. The people saw at once that they must be their own king and make their own charters. As rapidly as possible each of the new States drew up for itself a charter which recognized the people as the source of authority in government. A new name was given to this new instrument. Instead of its being called a charter it was called a *constitution.* This constitution was to be the foundation plan and framework upon which the governmental structure was to be built. Of course each new constitution was quite similar to the charter which it supplanted. For a State to have planned for a government quite unlike the one to which the people were accustomed would have been to commit a grave political error. A government that is new and strange is not likely to receive the confidence and respect of the people, no matter how wise and beneficent may be its provisions. The statesmen of 1776, therefore, made the new State constitutions conform as closely as possible to the colonial charters. Connecticut and Rhode Island experienced no change at all in passing from colony to State. They simply substituted the word "people" for the word "king" in their charters, and these became their constitutions.

After they had established their independence the States found that it was necessary to unite and form a central government. The powers of this central government were expressed in the Constitution of the United States. The history and nature of this great document will be given hereafter. It is sufficient here to say that the Constitution [1] of the United States is our fundamental law. We have had occasion to refer to it heretofore, and throughout our work we shall refer to it constantly, and as we advance we shall learn more and more of its authority and influence in our political life.

Each of the States that have been admitted into the Union under the Constitution (**118**) has followed the example of the original States, and has framed a constitution for

[1] In this book when the word "constitution" begins with a capital letter the Constitution of the United States is meant.

itself. Every State, therefore, and the United States as well, has a written constitution as its fundamental law. Cities likewise are governed by charters (p. 75) which in some respects are like written constitutions. Thus government in America is everywhere conducted according to the written word; it is everywhere constitutional.

General Features of a Constitution. The special provisions of constitutions will receive notice from time to time as we proceed. At present it is necessary to call attention only to their broad features. The strong resemblance which the forty-eight constitutions of the States bear to one another and to the Constitution of the United States makes it possible to describe all in outline by describing one in outline. The essentials of a constitution are:

(1) A *preamble* (**1**) stating the general purpose for which the government is instituted.

(2) A *Bill of Rights* guaranteeing to the people republican principles of government, personal security, private property, freedom of conscience, freedom of speech and of the press, and other fundamental rights of citizenship.

(3) *Provisions for the organization of the three departments* of government, and a description of the powers to be exercised by each.

(4) *Miscellaneous provisions* relating to such topics as corporations, public debt, education, taxation, suffrage, amendments, revisions.

(5) A *schedule* describing how and when the constitution shall go into effect.

How Constitutions obtain their Authority. The first American constitutions were promulgated in the name of the people, yet they were not as a rule the direct creations of the

people. The statesmen of 1776 did not have a very strong faith in the wisdom of the people, and were not quite willing to submit a fundamental law to a popular vote. As democracy grew more fashionable, and as the people came to be more fully recognized as the real masters of government, the custom of submitting constitutions to voters for their approval became general. At the present time a constitution is usually ratified by the people at the polls before it is put into operation. This popular ratification clothes the constitution with all the authority that a law can possibly have, for it is a law passed by the people themselves acting as legislators. A constitution, therefore, is a solemn and deliberate expression of the popular will, and as such it is a fixed, permanent law which all the branches of a government must obey. If the legislature should pass a law conflicting with the provisions of the constitution, such a law would cease to have effect if it should be tested in the courts and should be declared unconstitutional; and if a judge or the executive should act in violation of the constitution, such action would be illegal and possibly punishable.

The Amendment and Revision of Constitutions. Although a constitution is a fixed, unchanging law, it may not remain unchanged and unchangeable forever. A provision in a constitution which was wise and just fifty years ago may be harmful now. Every constitution recognizes this fact, and provides for making changes, when these may seem necessary. These changes or *amendments* are effected in various ways, the usual procedure being as follows:[1] the amendment that is thought to be desirable first passes the legislature of the State and is then submitted to the people for their approval. If it receives the required number of votes—frequently a majority of all the votes of the State is necessary—it becomes a part of the constitution. An amendment, it will be seen, is simply a law passed by the

[1] For the subject of amendments to the Constitution of the United States, see page 53.

people and placed in the constitution; but it is a law that cannot be repealed by the legislature.

Constitutions provide not only for their own amendment, but also for their own complete revision. They provide for the calling of a *constitutional convention,* which shall have power to revise the old constitution and frame a new one. A general revision of a State constitution is usually accomplished in the following way: The legislature submits to the people the question whether or not a convention shall be called to frame a new constitution. In several States this question must be submitted to the voters every twenty years; in Michigan it must be submitted every sixteen years; in Iowa every ten years. If the vote is in favor of a convention, delegates are elected, and the work of revision begins. It is the custom to submit the revised constitution to the people for their approval, although this is not always done.

Whatever may be the regulation for amendment and revision the constitution cannot be suddenly altered. Usually two or three years must elapse before a proposed change can be fully effected. This necessary delay has its disadvantages, but upon the whole it results in good. It gives time for discussion and reflection. A constitution would not be worthy of its name if caprice or passion could change it in a day.

Constitutions the Safeguard of Liberty. We may now answer the questions asked at the beginning of this chapter: The people may protect themselves from themselves, and from their rulers, by means of a *constitutional* government. They may formally and solemnly declare their will in a written constitution, and demand that government be conducted according to the terms of this document. When a person maps out for himself a course of right conduct, and rigidly abides by the rules he makes for himself, he is a free and self-governing being; and likewise, if a people will impose upon themselves a fundamental law, a constitution,

and will abide faithfully by its terms, civil liberty and self-government will be assured.

QUESTIONS ON THE TEXT

1. What was a colonial charter?
2. Give an account of the first charter of Connecticut.
3. What place did the charter occupy in the political life of the colony?
4. How did the charters become constitutions?
5. To what extent are written constitutions employed in the United States?
6. What are the general features of a written constitution?
7. From what source does a constitution obtain its authority?
8. How may a constitution be amended?
9. How may a new constitution be secured?
10. Show that constitutional government is a safeguard of liberty.

SUGGESTIVE QUESTIONS AND EXERCISES

1. What is the derivation of the word *charter? constitution?*
2. Compare the constitution of your State in outline with the outline indicated in the text.
3. Give briefly the constitutional history of your State, stating when the first constitution was adopted, what revisions have been made, the date of the adoption of the present constitution and the amendments that have been added.
4. Mr. Bryce, an Englishman, imagines that the American people could govern themselves without written constitutions. Give reasons why an American would hardly be able to imagine such a thing.
5. Explain fully the following sentence: The United States is a democratic, representative, constitutional republic.
6. Is it generally understood that the constitution of your State needs revision or amendment? If so, how may it be revised? How may it be amended?
7. Draw up a constitution for the government of a debating society. (In preparing this exercise remember that a constitution describes only the outline of government, and states only general principles.)
8. Would it be wise for your State to exchange constitutions with a neighboring State? Give reasons for your answer.

Topics for Special Work.—Contents of State Constitutions: 2, 306–316. The Written and Unwritten Constitution: 5, 10–13; 192–193; 30, 51–55. How the Colonies were Governed: 6, 36–51.

VI

FEDERAL GOVERNMENT

The Different Kinds of Political Unions. An *alliance* is an agreement between two or more sovereign states to co-operate in the accomplishment of some mutually desirable purpose. A state entering into an alliance does not surrender or impair its sovereignty. Since an alliance may be dissolved at the pleasure of any of the contracting parties, it is the weakest of all political unions. Another kind of union between states is the *confederation* or *league*. A confederation is formed by two or more states uniting and establishing a central government, vesting it with certain powers, but withholding from it the right of exercising authority over individuals. In exercising its power the central government of a confederation must operate through the agency of the states which compose the union. The confederation, therefore, is a "band of states" (*Staatenbund*) united more firmly than they would be by an alliance, but not so closely and so intimately as to form an indestructible and indivisible union.

The strongest of all political associations is the *federal union*. In the federal union the uniting states establish a central (federal) government which is independent of themselves, and which operates with organs of its own, its power extending even to individuals. In the formation of the federal union, or the federal state, as it may very properly be called, the federal government is made sovereign, in respect to matters which concern all the states taken collectively, while each separate state retains its sovereignty in respect to those matters which concern only itself. The

federal principle is an outgrowth of the representative principle, and federal government is the latest important development in political science.

The Complexity of American Government. The United States is a federal republic, and its government is complicated and difficult to understand. Under our system authority flows from two sources: we have one government of the nation and another government of the State; we have two constitutions and two sets of laws to be obeyed, and two sets of officers to enforce the laws; we have forty-eight States working side by side, each attending to its own affairs in its own way, and over and through and in all these States there is the federal government attending to the affairs of the nation. How is this twofold authority possible? How can a person serve two masters? Suppose the federal government should command what the State forbids, which shall be obeyed? Where is the line which divides the authority of the federal government from the authority of the State? Such questions as these early force themselves upon the student of American government. We may best approach the task of answering them by taking a glance at history.

The Growth of Federalism in America. The American union as we see it to-day is the result of nearly three centuries of political association of colony with colony and State with State. The story of our union properly begins with an account of the *New England Confederation.* In 1643 commissioners from Massachusetts Bay, Connecticut, New Haven, and Plymouth met and resolved:

> Whereas we live encompassed by seuerall Nations and strang languages which hereafter may proue injurious to vs or our posteritie, and forasmuch as the Natives have formerly committed sondry insolences and outrages vpon seuerall plantacons of the English . . . wee therefore doe conceiue it our bounden Dutye without delay to enter into a present consotiation amongst ourselues for mutual help and strength in all our future concernments.

The "concernments" were the encroachments of the Dutch and the ravages of the Indians. Each colony was represented by two commissioners. The Confederation had full power to determine all matters relating to peace and war. The league fulfilled the purposes for which it was formed and dissolved in 1684. It lasted long enough and accomplished enough to show to the colonies the great benefit of union, and the lesson it taught was never forgotten.

In 1754, when the colonists were hard pressed by the French and Indians, delegates from seven colonies met at Albany and agreed upon a *Plan of Union* drawn up by Benjamin Franklin, whose long life was devoted to the cause of union. The plan proved to be acceptable neither to the people of the colonies nor to the English government, and the work of the Albany convention came to naught.

In 1765, nine colonies sent delegates to the Stamp Act Congress that met in New York to protest against the unjust and oppressive acts of England. This Congress was so vigorous in its declaration of American rights and so thoroughly animated by the spirit of coöperation that it has been called the "day-star of American Union."

We see how the idea of union was enlarging. In the confederation of 1643 *four* colonies joined; in the Albany convention *seven* were represented; in the Stamp Act Congress *nine*. In 1774, a Congress of delegates from *twelve* colonies met at Philadelphia, and after making a declaration of rights, recommended a cessation of trade with England, commended Massachusetts for opposing the oppressive acts of Parliament, and resolved that all the colonies ought to support her in her resistance. As the union grew larger the colonists grew more determined and aggressive. In 1775, a Continental Congress of delegates from *all* the colonies met in Philadelphia.

The Congresses before 1775 had merely talked and petitioned and passed resolutions. The Continental Congress of 1775 began at once to act like a real government. It took

charge of those matters that were of general rather than of local concern. It assumed command of the army that had been put into the field; it took charge of foreign affairs; it issued a currency; it managed the post-office. The question of its right to do these things was not raised. It did the things it thought the people wished it to do. Thus in 1776 it thought the people of the colonies wished a separation from the mother country. To make sure that it was not wrong in this opinion, it adjourned in order that the delegates might go back to their homes and learn the exact state of public sentiment. Upon reassembling, Congress, convinced that the people were ready for a separation, on July 4, 1776, declared the colonies free and independent States, absolved from all allegiance to the British Crown.

The Articles of Confederation. While Congress was meditating independence it was also considering plans for bringing all the colonies under one regular, permanent government. Franklin, in 1775, submitted a plan of confederation, but it was not adopted. In 1776, John Dickinson reported a plan, which in 1777 was adopted as the "Articles of Confederation." These articles were submitted to the States for their approval, and in March, 1781, having been ratified by all the States, they became the framework for a new government for the United States.

The government established by the Articles was a confederation. Its sole organ of authority was a legislature of one house, called a Congress, presided over by a president elected by members from their own number. A State could not send less than two delegates nor more than seven to the Congress; but whatever the number of delegates, a State had but one vote, determined by a majority of its delegates present. Voting was, therefore, done by States, and it required the votes of nine States to carry any important measure. Any alterations in the Articles had to be agreed to by Congress and afterward confirmed by the legislatures of all the States, a provision that made amendment prac-

tically impossible. The most important powers committed to the new government were:

(1) To determine questions of peace and war.

(2) To enter into treaties and alliances.

(3) To send and receive ambassadors.

(4) To make rules governing captures on land and water.

(5) To decide, upon appeal, disputes between two States concerning boundaries.

(6) To determine the value of current coin.

(7) To manage Indian affairs.

(8) To establish and regulate post-offices.

(9) To appoint naval officers and the higher grades of army officers.

The States, while bestowing these powers upon the confederated government, expressly denied the same powers to themselves, and pledged themselves to abide by the decisions of Congress in all matters submitted to it for determination. Congress could in no case bring its power to bear upon the individual citizen, nor had it any means at its command to compel the obedience of a State. By the terms of the Articles, each State was to retain its sovereignty, freedom and independence, and every power, jurisdiction and right.

The Articles did not really create a new form of union. They simply described the central government as it was constituted and conducted by the Continental Congress at the time of their adoption. The powers granted to the new Congress were almost precisely those which the Continental Congress had been exercising since 1775, and these were chiefly powers relating to war and to foreign affairs. Before 1781 Congress was guided by unwritten law, by custom, by public opinion and consideration for the public safety; after 1781 it was guided by a written constitution, the Articles of Confederation.

The government provided by the Articles was fatally defective in organization, if it can be said to have had an organization at all. It had no executive branch and no judicial branch, and as a legislature it was bad, for it was

one of a single house. All the powers were united in one body. Such a government must either rule like a tyrant or it must collapse.

As long as the war with England continued the Articles of Confederation rendered valuable service, but when peace came, and common danger no longer spurred the States to united action, it was soon seen that they were a rope of sand. It was seen that Congress "could make and conclude treaties, but could not recommend the observance of them. It could appoint ambassadors, but could not defray the expenses of their tables. It could borrow money, but could not pay a dollar. It could coin money, but could not purchase an ounce of bullion. It could make war and determine what troops were necessary, but could not raise a single soldier. In short, it could *declare* everything, but *do* nothing." It could not do what every useful government must be able to do: it could not secure obedience to its laws. It could not reach the individual, and it would have been folly to have attempted to enforce its laws against a State.

As a result of its inherent weakness the Confederation soon fell into a deplorable condition. Solemn treaties were violated, debts were repudiated, worthless paper money was issued, State quarreled with State. Disregard for the laws of Congress was naturally followed by a contempt for the laws of the State. In several States courts were broken up by armed mobs, and rebellion threatened the very existence of government. Congress sank to such a condition of inefficiency and feebleness that it lost the respect of the country. On one occasion it was chased from its place of meeting by a handful of drunken soldiers clamoring for their pay. Things went rapidly from bad to worse, and it became plain as early as 1785 that the Confederation was on the verge of a collapse.

QUESTIONS ON THE TEXT

1. Define *alliance; confederation.*

2. What is a *federal union?* In what respect does a federal union differ from a confederation?

3. What difficult questions arise in the study of federal government?
4. Describe the New England Confederation.
5. What step toward union was taken in 1754?
6. What was the object of the Stamp Act Congress?
7. Describe the first Continental Congress.
8. What were some of the things done by the second Continental Congress?
9. Describe the Confederation of 1781. What were the most important powers of the Confederation?
10. Point out the defects of the Confederation.
11. Give an account of the decline and fall of the Confederation.

SUGGESTIVE QUESTIONS AND EXERCISES

1. What is the derivation of the word *federal?*
2. Name the great federal governments of the earth.
3. Make out a list of powers that should be granted to a federal government.
4. Give an account of the federal government in Ancient Greece.
5. Name some of the great alliances of the past. What great alliances exist at present?
6. What does the individual State lose by entering into a federal union? What does it gain?
7. Give an account of the services of Benjamin Franklin in the cause of American Union.
8. Prepare a five-minute paper on "The Dark Days of the Confederation." Consult Fiske's "Critical Period of American History."
9. Indicate the growth of federalism in America by reproducing the accompanying diagram.

Topics for Special Work.—The Articles of Confederation: **5**, 80–87. The Formation of the Union: **6**, **69–72**. Defects in the Articles of Confederation: **30**, **39–44**.

1789
CONSTI-
TUTION

1781
ARTICLES OF
CONFEDERATION

1776
DECLARATION OF
INDEPENDENCE

SECOND CONTINENTAL
CONGRESS. 1775
(Thirteen Colonies)

FIRST CONTINENTAL CONGRESS
1774. (Twelve Colonies)

1765. STAMP ACT CONGRESS. (Nine Colonies)

1754. THE ALBANY CONVENTION. (Seven Colonies)

1643. THE NEW ENGLAND CONFEDERATION. (Four Colonies)

VII

THE DISTRIBUTION OF POWERS

Efforts to Strengthen the Confederation. Thoughtful men viewed the approaching downfall of the Confederation with alarm. They saw that if the union of the States were dissolved, and each State should assume complete and undisputed sovereignty, the fruits of independence would be most bitter. With thirteen nations instead of one, the country would be the easy prey of foreign invaders, sectional interests would jostle each other and bring State into conflict with State, commerce between the States would be shackled, and all the social, moral, and intellectual advantages which flow from union would be lost.

Before it was too late men like Washington and Hamilton and Franklin came forward with measures designed to strengthen the union. In 1785 commissioners from Maryland and Virginia met at Washington's home at Mount Vernon to adjust some matters of interstate navigation. At this meeting Washington suggested that the two States ought to enter into an agreement as to the regulation of interstate commerce in all particulars. The discussion following this suggestion showed that if there was to be any useful regulation of commerce between the States all the States must join. Accordingly all the States were invited to appoint commissioners to discuss the matter. In response to this invitation five of the thirteen States met at Annapolis in 1786. This representation was considered too small and the meeting adjourned without attempting anything. Be-

fore adjourning, however, it recommended that a convention of all the States be held at Philadelphia in May, 1787, "to take into consideration the situation of the United States, to devise such further provisions as shall appear necessary to render the constitution of the federal[1] government adequate to the exigencies of the times." Congress, seeing the drift of affairs, adopted the idea of holding a general convention, and resolved that it was expedient that in May, 1787, one be held at Philadelphia "for the sole and express purpose of *revising* the Articles of Confederation."

The Constitutional Convention of 1787. All the States responded to the call, excepting Rhode Island. The men sent to the Convention were the ablest and wisest in America. They represented conflicting interests, and differed widely among themselves in their views of government, but they were capable of placing the public good above selfish considerations. They had not proceeded far with their work before they saw that a mere revision of the Articles of Confederation would not bring relief to the country. If union was to be anything more than a name there must be a central government clothed with substantial power. Instead of continuing the Confederation, which was avowedly a mere "league of friendship" in which the exercise of power depended upon the States, the men of the Convention bravely decided to frame a Constitution for a real *federal* government, one which should have its three departments conducted by its own officials, and which should be independent of the State in the exercise of its powers. The proposed government was to reach the individual, make laws for him, take money out of his pocket for taxes, and judge and punish him if he violated its laws.

The framework of the new government was agreed to after a most serious and thorough discussion, and was sub-

[1] The Confederation was frequently called a federal government. In 1787 men had not yet learned to distinguish clearly between a federal and a confederated government.

mitted in September, 1787, to the people of the States as a "Constitution for the United States of America." If ratified by nine States (**129**) the new Constitution was to go into operation. Its adoption was opposed fiercely by those who did not believe in a strong central government, but its friends were stronger than its enemies, and by July, 1788, it had been ratified by eleven States, North Carolina and Rhode Island withholding their consent. In 1789 the new government was organized in New York with Washington as President.

The Constitution of 1787 is a distinct political creation. True, the framers drew upon the political experiences of the past, and true, they received hints from existing State governments, but we must remember that the task that lay before them was the building of a federal government, and in planning for a federal structure they were thrown on their own resources, for they had no adequate model from which to copy. The federal temple which they reared was an original political creation. To refuse to admit this because they availed themselves of the political experiences of the past would be almost as unreasonable as it would be to refuse to call St. Peter's a creation because in planning for it Angelo availed himself of the architectural experience of the past. When we consider the magnitude and the difficulties of the task which lay before the statesmen of the Convention of 1787 — thirteen jealous, proud, and independent States to be brought under one strong federal power, warring interests of sections to be reconciled, a lawless and chaotic condition of affairs in the Union to be safely tided over, a turbulent and distrustful public opinion to be faced, problems connected with the government of unorganized communities in the west and southwest to be solved — when we consider the nature of this task, and contemplate the success which followed their efforts, we can understand Gladstone when he says that "their work was the most wonderful ever struck off at a given time by the brain and purpose of man."

How the Convention Distributed Power. If we wish to understand our political system we must gain clear notions respecting the manner in which the framers distributed power to the State and federal governments. Let us suppose that the men of the Constitutional Convention of 1787 had at their disposal *all* the powers of a sovereign state, *all* the powers that it is possible for a government to exercise, and that they divided these powers between the new federal government and the existing State government in such a manner as they thought best. With this supposition in mind let us see what disposal they made of the great reservoir of governmental power which was at their command. And first let us learn what powers they gave exclusively to the federal government:

I. *Powers Exclusively Federal.* When granting a power exclusively to the federal government it had to be plain to the minds of the framers (1) that the States would be willing to surrender the power; (2) that the federal government needed the power; (3) that the power when exercised would affect all the States alike. Applying these tests to each grant of power, the framers gave the federal government absolute control in the following matters: war, peace, treaties, alliances, ambassadors, postal affairs, the army and navy, foreign commerce, interstate commerce, naturalization, coinage of money, Indian affairs, bankruptcy, patents, copyrights, territories, letters of marque and reprisal.

II. *Concurrent Powers.* If the proposed federal government was to be strong and efficient it must be permitted to raise money by taxation and to borrow money; it must define the qualifications of those who were to vote for its officers and regulate the time and manner of holding the elections of its officers; it must have the support of the State militia in times of war. But it was not considered wise for the federal government to be given the exclusive power of collecting taxes and borrowing money and controlling its elections and militia. Hence it became necessary for the framers to grant certain powers to the federal government,

and at the same time reserve powers of the same kind for the State. Powers belonging to both governments are called *concurrent*. The concurrent powers established by the Convention relate to the following matters: taxation, public debt, citizenship, suffrage, elections, militia, eminent domain.

III. *Powers Prohibited to the Federal Government.* While the framers planned for a federal government which should be capable of achieving its rightful purposes, they at the same time took care that it should not be an instrument of oppression. To safeguard the interests of the States they formally prohibited certain powers to the federal government. The powers which were denied to the federal government in the Convention are stated in Article I, Section 9, of the Constitution (p. 403). Other prohibitions are found in the first eight articles of the Amendments which were adopted in 1791 to allay the fears of those who thought the new government might exceed its powers. These eight amendments are the bill of rights of the Constitution. They restrain the federal government, but they do not restrain the State.

IV. *Powers Prohibited to the State.* The framers saw that certain limitations upon the power of the State would also be wholesome. Indeed in 1787 prohibitions upon the power of the State were more necessary than prohibitions upon the federal government, for the States were strong, and were disposed to disregard the authority of the central government. Accordingly, as a pledge of good faith on the part of the States a self-denying section (Article I, Section 10) was inserted in the Constitution.

It should be noticed that there are three prohibitions upon both State and federal governments: neither a State nor the United States can grant any title of nobility (**71, 73**), or pass an *ex post facto* law,[1] or any bill of attainder [2] (**65, 73**).

[1] An *ex post facto* law makes an act criminal which was not so when done, or increases the severity of the punishment of a previous act.

[2] A bill of attainder is a legislative act which inflicts punishment without judicial trial.

These are things that no popular government ought to do, and in the United States they cannot possibly be done by any existing governmental agency.

V. *Powers Reserved to the State.* After the framers had provided for the general powers of the federal government, and had made the needful prohibitions of power, we may think of them as having reserved to the States and to the people all the remaining powers of government. They did not formally make this reservation in the Convention, but it was understood that the powers not granted to the federal government or prohibited to the States remained to be exercised as the States or as the people of the United States might ordain. In order that there might be no mistake on this point an amendment (**144**) adopted in 1791 declared that "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." The nature and extent of the powers reserved to the State will be the subject of the following chapter. At present it is enough to say that the framers were able to invest the federal government with supreme powers in reference to the great affairs of a nation and still leave the State supreme in most of the affairs which concern us in daily life.

Implied and Resulting Powers of the Federal Government. The powers of the federal government are accurately defined and enumerated in the Constitution (Article I, Section 8). Among these powers is one giving Congress the right to make all laws which are necessary and proper (**63**) for the execution of the enumerated powers. Under the authority of this right there have been exercised many *implied* powers, —powers which are not specifically mentioned in the Constitution, but which naturally arise from those which are specifically mentioned. For example, from the expressed power of regulating commerce (**47**) arise the implied powers of building lighthouses and improving harbors; from the expressed power of coining money (**49**) arises the implied

power of establishing mints. Hundreds of things done by the federal government are justified by the doctrine of implied powers.

The Constitution does not expressly grant to the federal government certain powers which the government of a sovereign nation ought to have. To meet this deficiency Alexander Hamilton brought forward his doctrine of *resulting* powers,—powers which result from the "whole mass of the power of government, and from the nature of political society rather than as a consequence of any especially enumerated power." According to Hamilton's views a new sovereign nation had been brought into being by the events of the Revolution and the adoption of the Constitution, and this nation, by the very fact of its existence, possessed all the powers a nation ought to have, whether all were mentioned in the Constitution or not. For example, he contended that if the United States should conquer a country, it would have sovereign jurisdiction in that country although the Constitution says nothing whatever about such jurisdiction. Hamilton was bitterly opposed by Jefferson and others who believed in holding the federal government strictly to the terms of the Constitution; but the doctrine of resulting powers carried the day, and Jefferson was destined to give to it its most distinguished application when he purchased Louisiana without authority specifically expressed in the Constitution.

Limitations of the Federal Government. It must not be understood that under the guise of implied and resulting powers the federal government can do anything and everything, for it is in a true sense a government of limited powers. Jefferson and Hamilton were both right. We are bound by the words of the Constitution, as Jefferson contended, but, as Hamilton contended, the words "general welfare" (**45**), and the "elastic clause" (**63**), are broad enough to permit us to do anything which is consistent with the purposes for which the Constitution was adopted.

Chief Justice Marshall, who did as much as any man to mold and direct the policy of the federal government, once said:

> "This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising and will probably continue to arise as long as our system shall exist. . . . The powers of this government are limited, and its powers are not to be transcended. But the sound construction of the Constitution must allow to the national legislature that discretion with reference to the *means* by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people. Let the *end* be legitimate, let it be within the scope of the Constitution, and all *means* which are appropriate, which are plainly adapted to that end, which are not prohibited, but are consistent with the letter and spirit of the Constitution, are constitutional."[1]

How the Federal Constitution is Amended. The fathers, when providing for the betterment of the federal government, avoided the rigidity of the Articles of Confederation, under which an amendment could be adopted only with the consent of all the States, and established easier methods of amendment. The two processes by which the Constitution may be changed are:

(1) Congress may, by a two-thirds vote of both Houses, propose an amendment, and then submit it to the States for ratification (**122**); (2) two thirds of the States may join in ordering Congress to call a National Constitutional Convention for the purpose of considering a desired amendment. In either case the amendment must be ratified by three fourths of the States before it can become a part of the Constitution (**123**).

Although it is much easier to amend the Constitution now than it was under the Articles, still experience has proved that it is very difficult in ordinary times to secure an amend-

[1] McCulloch *vs.* Maryland.

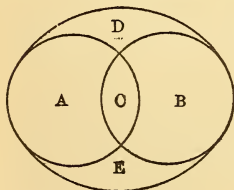
ment. The first eleven amendments came as the result of inordinate and intense State jealousy; the twelfth amendment came easily enough because it touched no great interest, and because it merely removed a palpable absurdity from the Constitution (p. 417); the last three amendments were secured only after a terrible war.

QUESTIONS ON THE TEXT

1. What efforts were made to strengthen the Confederation in its last days?
2. Give an account of the work of the Convention of 1787.
3. What tests did the framers apply to each grant of power given exclusively to the federal government?
4. What matters were placed entirely under the federal control?
5. What is a concurrent power? To what matters do the concurrent powers relate?
6. Enumerate the powers prohibited by the Constitution to the federal government.
7. Enumerate the powers prohibited to the States.
8. What powers are prohibited to both governments?
9. What is the nature of the powers reserved to the State?
10. What is an implied power? What is a resulting power?
11. Explain why the federal government is one of limited powers.
12. In what two ways may the federal Constitution be amended?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Prepare a large chart exhibiting the powers of government under our federal system. Suggestion: Let the outer circle of the figure[1] represent all the powers of government, all the powers that were at the disposal of the framers. In circle A write the powers exclusively federal; in segment C the concurrent powers; in segment D the powers prohibited to the federal government; in segment E the powers denied to the State. Reserve circle B for the powers of the State.



2. Discuss each of the powers granted exclusively to the federal government and give reasons for the grant.
3. Explain fully this sentence: "The United States is a representative, constitutional, federal republic."

Topics for Special Work.—Limitations of the Union: 6, 236–242. Federal and State Autonomy: 9, 122–134.

[1] Suggested by C. S. Tiedeman in his "Unwritten Constitution."

VIII

THE STATE

General Features of a State Government. Since each of the governments of the forty-eight States is framed according to the political notions and peculiar necessities of the people of a particular section, we must not expect to find the governments of any two States precisely alike. If, therefore, we wish to get detailed information about the government of a State we must study the constitution of that State. There can be no general description of a State government that will yield such information. Nevertheless there are several political features that are common to all the States. Every State—

(1) has a republican (democratic) form of government (**120**).

(2) has a written constitution.

(3) has the three great departments of government.

(4) has a legislature consisting of two houses elected by the people.

(5) has an executive called the governor elected by the people.

(6) must conform strictly to the Constitution of the United States.

(7) removes high officials by the process of impeachment.

(8) supports a system of public schools.

(9) recognizes the common law of England (Louisiana excepted).

(10) provides for the amendment of its constitution.

(11) provides for a system of local self-government.

The Powers of the State. After independence had been declared and the colonies had been transformed into States, each State found itself the possessor of almost unlimited political power. No State, however, at any time actually exercised all the powers of government. For example, no State ever made a treaty with a foreign country. From the moment of their separation from England the States relied upon a central government, the Continental Congress, to manage the affairs of war and peace and to establish foreign relations. Nevertheless, this central government was never strong, and in its last days it can hardly be said to have possessed any power at all. The States, therefore, went into the Convention of 1787 as masters of the situation. We have learned what powers they granted to the new federal government, what powers they expressly denied to it, what powers they expressly denied to themselves, and we have seen that they reserved for themselves all the powers they did not part with in the Convention. What were these reserved powers? This question cannot be fully answered. The powers of the federal government can be enumerated, but the powers of the State can be indicated only in general terms. The framers provided liberally for the federal government, but they did not deprive the State of the privilege of managing its own affairs in its own way. The State government could still enter the home and prescribe the legal relations that were to exist between husband and wife, between parent and child, between master and servant; it could still enter the domain of business with laws to regulate buying and selling, debt and credit, partnership and contracts, possession and alienation of property, wills and inheritances; it could still control all its local governments, county and city and town, and almost all private corporations (p. 75); it could still maintain its own schools and its own system of police; it could still administer justice in all ordinary cases and punish all ordinary crimes; it could still determine the religious, civil and political rights of its citizens and prescribe the qualifications of voters and conduct its elections.

The powers reserved to the State included those which the State was free to exercise, and which it actually was exercising under the Constitution at the time of its adoption, and they also included those which the State in the future might have occasion to exercise. In 1787 there were no railroads, and consequently there was no such thing as a power in reference to a railroad, yet when railroads began to be built they fell under the authority of the State by reason of its reserved powers (**143, 144**). And so it has been with the powers relating to the telegraph and telephone, and scores of other things that had not been dreamed of in 1787.

The Conflict of Federal and State Authority. Under such a scheme of powers as has been ordained by the Constitution it is to be expected that State authority will sometimes clash with federal authority. The federal government within the circle of its powers is supreme and irresistible, and the State within its circle is independent of any higher power. Where two governments exercise political power within the same territory over the same people, disputes are almost certain to arise. Then again, the concurrent powers relating to taxation, elections and citizenship are sometimes a source of conflict. Moreover, there will sometimes be collisions between the two governments when each is exercising a power that appears to be strictly its own. For example, if in the exercise of its police power (p. 390) a State should pass a law forbidding the running of trains from one point to another within the boundaries of the State on Sunday, it might appear to be acting strictly within the scope of its authority, yet such a law would almost certainly clash with the federal regulations for carrying the mails. What is to be done in such a case? Shall the engineer move on with the train and carry the mails, or shall the State law be obeyed? The framers of the Constitution provided a method of determining all such questions. They established a *Supreme Court* (**105**) which has the power of deciding between the two governments in every possible case that may arise (**110**). The judges of the Supreme Court, as we shall see (p. 147),

enjoy an almost complete independence, they are chosen from among the ablest lawyers in the land, and they are in every way equipped to discharge faithfully their high duty. That duty is to see that the Constitution which they swear to support (**128**) is obeyed, and that both governments work smoothly together. The two governments will work smoothly together so long as each keeps within the circle of its powers and does not encroach upon the other. It is the constant task of the Supreme Court, when rendering decisions upon cases brought before it, to keep each government within its proper sphere, and for considerably more than a hundred years this tribunal has performed this delicate service with remarkable success.

Interstate Relations. Politically speaking, one State is quite independent of another. A State may establish such a government as seems to it best, providing that its constitution and laws are not contrary to the Constitution and laws of the United States, and providing that its government is republican in form. The republican form of government guaranteed to the State by the Constitution (**120**) is, broadly speaking, one in which the principle of representative democracy is recognized. The federal government under this guarantee would not permit an aristocracy or an oligarchy or a monarchy to be established within a State. When rival governments are set up within a State the federal government will decide which is the lawful government, and if necessary will assist in crushing the unlawful rival.

Although the political isolation which exists between the States is quite complete, nevertheless a State cannot treat another State precisely as if it were a foreign country. Under the Constitution there are several important interstate obligations:

(1) If one State recognizes a certain law or certain records, as of wills or deeds, as valid, all other States must recognize them as valid (**115**). If the authorities in Maine recognize a certain law of the State as being a good law the

authorities of all the other States must recognize that law as being good *in Maine,* although the law need not be obeyed in the other States.

(2) A State must accord to a citizen of another State who comes within its borders all the rights and privileges which it accords to its own citizens (**116**). For example, a citizen of Pennsylvania can go into Illinois and move about and transact business on the same terms with the citizens of the latter State.

(3) When a criminal flees from a State in which he has committed a crime into another State, the governor of the latter State is charged with the duty of assisting in the arrest of the criminal and in his return to the State in which the crime was committed (**117**). If, however, the governor of a State for any reason, good or bad, should refuse such assistance, there is no way to compel him to perform his duty. The Constitution has here issued a mandate with no provisions for its enforcement. The surrender of fugitive criminals, therefore, seems to rest quite as much upon interstate comity and courtesy as upon constitutional necessity. In practice governors seldom fail to do their duty in arresting and returning fugitive criminals.

Although a State is permitted under the Constitution to regulate its own affairs quite without regard to its sister States, yet, as a matter of fact, no State does this. Every State in framing its constitution and making its laws has been influenced consciously or unconsciously by the social and commercial conditions which have existed in neighboring States. This interstate influence is making laws and customs throughout the United States more and more uniform.

Federal and State Relations. We may now revert to a question heretofore asked (p. 39) but not answered: Where is the line which divides the authority of the federal government from the authority of the State? The answer is found in the Constitution of the United States. If the Consti-

tution be read aright the line which separates State from federal power can be traced as clearly by the mind as a visible physical line can be traced by the eye. On one side of this line are the powers relating to matters which concern the welfare of the whole body of the American people. These are the federal powers. If a State through presumption should cross the line and exercise any of these powers, it would not only trespass upon the authority of the federal government, but it would also impair the glory and greatness of the Union. On the other side of the line are those powers which relate to matters of local and personal concern. These powers belong to the State. If the federal government should cross the line and exercise any of the State powers it would be a usurper and an enemy of local self-government and individual rights.

An ample experience has proved that the State and federal relations established by the fathers and maintained by the people to the present time are conducive to our highest happiness. These relations ought, therefore, to be forever maintained. Whether they will be maintained or not will depend upon the intelligence and political sagacity of the people. The American citizen should keep a watchful eye upon all his representatives and hold them all to a faithful observance of the Constitution, not permitting them to rob either the federal government or the State of its rightful powers. We do not want the federal Union to become a consolidated state like France, where the powers of a central government extend to the smallest affairs of the smallest village. The government at Washington must not be empowered to issue orders to our governors and to the mayors of our cities as to how they shall conduct their affairs. If we do not preserve local self-government we shall hardly escape federal tyranny. On the other hand, States should not exceed their constitutional power and invade the rights of the federal government. We must not permit the Union to become the worthless fabric it was in the days of the Confederation. "The States and federal government, like the planets in their revolution

around the sun, acting and acted upon, will move on in harmony and majesty only so long as a beautiful equilibrium between them is preserved!" The preservation of this "beautiful equilibrium" is the most sublime and important task imposed upon the American voter.

QUESTIONS ON THE TEXT

1. What political features have the States in common?
2. Indicate in general terms the powers of the State.
3. What is the nature of the reserved powers of the State?
4. For what reason are there likely to be conflicts between State and federal authority? How are disputes between the State and the federal government settled?
5. What is the nature of the "republican form of government" to which a State is entitled?
6. What interstate relations are established by the Constitution?
7. How may you distinguish State authority from federal authority?
8. Why is it important that existing State and federal relations be preserved?

SUGGESTIVE QUESTIONS AND EXERCISES

1. On the chart suggested in the preceding chapter insert in circle B the most important State powers.
2. Prepare a ten-minute paper on "Our State." (Sketch briefly the history of your State; write of its size, its population, its industries, its resources, its schools, its cities, its great men, and give reasons why you are proud of it.)
3. Show how neighboring States have influenced your State in reference to (*a*) government, (*b*) religion, (*c*) occupation, (*d*) education, (*e*) political parties.
4. Of the following matters name those which come within the authority of the federal government: (*a*) Punishment for robbing the mails; (*b*) regulation of the speed of trains; (*c*) the suppression of a riot; (*d*) punishment for robbing a store; (*e*) the construction of a sewer; (*f*) the building of a school-house; (*g*) the construction of a battle-ship; (*h*) the repairing of a road; (*i*) the defense of a coast; (*j*) the improvement of a harbor; (*k*) the granting of a pension to a soldier; (*l*) the borrowing of money for public purposes; (*m*) the annexation of territory; (*n*) the maintaining of a military academy; (*o*) the protection of the public health; (*p*) the organization of a company of militia; (*q*) the controlling of the movements of a flying-machine; (*r*) the protection of an author in his rights; (*s*) the regulation of the descent of property; (*t*) the construction of a canal from

Cleveland, Ohio, to Columbus, Ohio; the construction of a canal from Columbus, Ohio, to Chicago; (*u*) the regulation of the use of dynamite; (*v*) the regulation of wireless telegraphy; (*w*) the regulation of flying-machines.

5. What is meant by the "New Nationalism"?

Topics for Special Work.—The Limitations of the State: 6, 243–247. The Relation of States with One Another: 8, 131–155. Interstate Relations: 9, 272–289. The Present Meaning of the Constitution: 30, 65–73. The Constitution and the New Federalism: 30, 76–82. The States and the Federal Government: 30, 89–92.

IX

THE EXPANSION OF THE FEDERAL UNION

The Admission of New States. The federal government which went into operation in April, 1789, included within its authority eleven States—New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, and Georgia. In November, 1789, North Carolina, and in May, 1790, Rhode Island, ratified the Constitution and joined the Union. The federal union thus began its history with thirteen States. The Constitution provided for the growth of the Union by authorizing Congress to admit new States (**118**). The terms upon which a new State may be admitted are determined by Congress, but when a State is once within the Union it is the equal of its sister States. With the consent of Congress a State may be divided into two or more States, and two or more States may join to form a single State; but no State once within the Union can withdraw from it. There is nothing said in the Constitution of the right of a State to secede, but since the Civil War the United States has been regarded as "an indestructible Union composed of indestructible States."

The Admitted States East of the Mississippi. In giving an account of the growth of our Union it will be convenient to begin in the east and follow the course of expansion westward to the Pacific. The original boundaries of the United States, as they were determined upon by the treaty which acknowledged our independence, and as they existed in

1789, were the Great Lakes and Canada on the north, the Atlantic on the east, the Gulf of Mexico on the south (excluding Florida) and the Mississippi River on the west.

The story of expansion in this region begins with the admission of Vermont, the first adopted daughter of the Union. Vermont had framed for herself a constitution during the Revolution, and had declared herself an independent State, but because she was claimed by New York she was not recognized as a State. In 1790, however, New York relinquished her claim, and in 1791 Vermont was admitted into the Union on the same footing with the original States.

Vermont 1791

During the Revolution and throughout the period of the Confederation emigrants from the older States rapidly filled the rich and inviting territory west of the Appalachians, and at the time of the inauguration of the federal government there were two communities south of the Ohio River that deemed themselves worthy of the honor of statehood. These were Kentucky and Tennessee. Kentucky belonged to Virginia, but her people wanted to be recognized as a separate State, and in 1789 the parent State consented to a separation, which took place in 1792, when Kentucky was admitted to the Union. Tennessee belonged to North Carolina (a narrow strip on the south belonged to South Carolina), but, like Vermont, during the Revolution she longed for statehood and was not permitted to enjoy it. In 1790 she was ceded by North Carolina to the United States to be governed by Congress as a Territory (p. 184) until her population should entitle her to be admitted as a State. In 1796 she knocked at the door of the Union and was admitted.

Kentucky 1792

Tennessee 1796

We now come to one of the most interesting phases of our national development. Into no quarter of the Western country did emigrants move more rapidly after independence was acknowledged (1783) than into the fertile districts north of the Ohio River and west of Pennsylvania.

The matter of governing this vast region, known as the Northwest Territory, and now forming the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, and a part of Minnesota, was taken up by the Congress of the Confederation, and one of the last acts of that body was to pass the Ordinance of 1787,[1] a political document second in importance only to the Constitution itself. This law provided that not less than three nor more than five States should be formed out of the Northwest Territory; that each State should have a republican form of government; that there should be no slavery; that religious liberty should be guaranteed; that education should be encouraged; that the Indians should be justly treated; that when one of the political communities should have 60,000 inhabitants it should be admitted into the Union with all the rights of a State; that until a community should be large enough for statehood it should be governed (as a territory) in part by Congress and in part by the people, Congress appointing the governor and judges, and the people electing the legislature.

This Ordinance enacted by the old Congress was reënacted and faithfully carried out by the new government. In 1802, the community just west of Pennsylvania and north of the Ohio River, having been governed for fourteen years by Congress as a territory, sought to be admitted into the Union as the State of Ohio. Congress passed an act enabling the people to frame a constitution for themselves, and a convention met at Chillicothe to lay the foundation for a great State. What did the members of the convention have to guide them in their work? The framers of the constitutions of the original States had their old charters as patterns, but the men of Ohio had no charter upon which to build. They could do nothing contrary to the Constitution of the United States, or to the Ordinance of 1787; aside from these instruments they had to rely upon their own experience and knowledge for guidance. As former citizens of the older States, of Virginia, of New York, of Pennsylvania, they

[1] See Appendix C.

naturally drew upon the constitutions of these States for suggestions; but their chief guides were the peculiar needs and sentiments of the people of the Ohio region. They drew up a constitution to suit the conditions which confronted them. Their work was submitted to Congress and was accepted, and Ohio was admitted as a State in 1803. The new State was prepared to be happy and contented in the Union, for it had just the government it wanted. The policy adopted in reference to Ohio was followed in reference to future applications for admission: a State was allowed to enter the Union with a constitution of its own making.

Ohio 1803

The portion of the Northwest Territory left after Ohio was cut off was governed as the Indiana Territory until 1816, when the people within the boundaries of what is now Indiana, numbering 60,000 souls, were admitted into the Union as a State. The stream of emigration ran strong, and two years after the admission of Indiana, Illinois was large enough for statehood and was admitted. What is now Michigan was governed as a territory from 1805 to 1837, when it was admitted as a State. In 1848 Wisconsin, the last of the five States provided for by the Ordinance of 1787, was admitted, leaving a slice of the Northwest Territory for Minnesota. The governments of all five of the States formed under the Ordinance developed under the influence of men who were accustomed to the institutions of the northern States.

Indiana 1816

Illinois 1818

Michigan 1837

Wisconsin 1848

While emigrants from the northern States were settling in the northwestern region and establishing governments and institutions according to northern ideas, emigrants from the southern States were pouring into the great southwest with their southern notions of government. Mississippi, a region granted to the United States by South Carolina and Geor-

Mississippi 1817

gia, was rapidly settled, and in 1817 the western portion was admitted as the State of Mississippi. Two years later the eastern part was admitted as the State of Alabama. In the year in which Alabama was admitted the United States purchased the Florida country from Spain and governed it as a territory until 1845, when it was received into the Union. The governments of these three States developed strictly in accordance with southern ideas.

Alabama 1819

Florida 1845

Maine was a part of Massachusetts until 1819, when she was given permission by the government of the latter State to form a government of her own if her people desired to do so. The sentiment was in favor of a separation, and in 1820 Maine was admitted as a State.

Maine 1820

As an outcome of a division in political sentiment during the Civil War the portion of Virginia west of the Alleghany Mountains was detached (**118**) from the parent State and brought into the Union as a separate State in 1863 under the name of West Virginia, thus making twenty-six States east of the Mississippi River.

West Virginia 1863

The Louisiana Purchase. The account of the expansion west of the Mississippi may begin with the purchase from France (1803) of the region known as Louisiana—a purchase by which the area of the Union was doubled. In the admission of the States formed out of the Purchase the federal government was still guided by the Ordinance of 1787, except that slavery was sometimes allowed. The first State carved out of the Purchase was admitted under the name of Louisiana in 1812. The people of Louisiana were French in language, laws and institutions, and their constitution was greatly influenced by this fact. Missouri was admitted in 1821, and

Louisiana 1812

Missouri 1821

Arkansas in 1836. These two States, being settled by pioneers from the older southern States, established governments of the southern type, and introduced southern institutions. Iowa, the next State to be formed from the Purchase, was admitted in 1846. Minnesota, formed in part from the Northwest Territory and in part from the Purchase, entered the Union in 1858. Iowa and Minnesota were organized by settlers from the northern States, and their government, of course, reflected their origin.

Arkansas 1836

Iowa 1846

Minnesota 1858

Kansas was the scene of a long and bitter struggle between northern and southern settlers as to the nature of the government that was to be established. Northern ideas prevailed, and Kansas was admitted in 1861. Nebraska, whose early political history is linked with that of Kansas, was admitted in 1867. Colorado, formed in part from the Purchase, in part from territory acquired from Mexico, was admitted in 1876 as the "Centennial State." Dakota was organized as a territory in 1861, but when the time for statehood arrived it was divided into two sections. The northern section came into the Union as North Dakota and the southern section as South Dakota. They were both admitted on the same day (November 2, 1889). Six days after the Dakotas were admitted, Montana, the greater part of which was formed from the Purchase (the smaller part from the Oregon country), was received into the Union. In 1868 a fragment of the great Purchase was combined with portions of the Mexican Cession and the Oregon country to form the territory of Wyoming, and this was admitted as a State in 1890. Thus twelve large States have been formed out of the wild region purchased by Jefferson.

Kansas 1861

Nebraska 1867

Colorado 1876

North Dakota 1889

South Dakota 1889

Montana 1889

Wyoming 1890

The Texas Annexation. In 1836 Texas tore itself away from Mexico and became an independent republic. It soon sought admission into the Union, and this was secured by a joint resolution of Congress in 1845. Texas entered the Union with the privilege of forming out of its territory four additional States if it cared to do so. By the admission of Texas an independent nation was incorporated into the Union. This step in expansion increased our territory by an area greater than the combined area of France and England.

Texas 1845

The Oregon Country. The region west of the Rocky Mountains, lying between parallels 42 and 49, known as the Oregon country, was for a time jointly occupied by England and the United States, but in 1846 England released her claim and the United States became the sole possessor. The country was organized as the Oregon Territory in 1848, and in 1859 Oregon was set off as a State and admitted into the Union. In 1889 Washington entered the Union, to be followed by Idaho in the following year.

Oregon 1859

Washington 1889

Idaho 1890

The Mexican Cession. As a result of war, Mexico was compelled, in 1848, to cede to the United States about half a million square miles of her northern territory. Gold was at once discovered in the newly acquired region and thousands hastened to the scene. To meet the need for a civil government the people hurriedly framed a constitution in 1849, and in the following year the great State was admitted. California differed from all the other States in the history of her admission. She had no previous territorial government; she was not a part of another State. She sprang into statehood at a bound. At the same time that California was admitted as a State Utah was erected into

California 1850

Nevada 1864

Utah 1896

a territory. Nevada was organized as a territory in 1861 and became a State in 1864. Utah was admitted in 1896. Oklahoma, formed out of a part of the Louisiana Purchase, was organized as a Territory in 1890 and after a remarkable growth in wealth and population was admitted in 1907. Arizona and New Mexico were admitted in 1912.

The Spirit of Federal Expansion. The above sketch shows that growth is a characteristic feature of our Union. Quietly and steadily the United States has extended its boundaries until it has become one of the largest and most powerful nations of the world. When we regard the nature of our Union, its size, its strength, its texture, we may justly say that it is the greatest political achievement of man. Several causes have contributed to the success of this marvellous expansion. The economic advantage of being within the Union has been duly appreciated. A man in his effort to earn a living is not hemmed in under our system by the narrow boundaries of a State, but has the whole country as a field for his energies. The forces of industry and commerce have also contributed to strengthen the Union. Railways, canals, the telegraph, the telephone, have all helped in our national growth. But the most powerful element of success in our career of expansion is to be found in our political conduct. The federal government has not gone forth as a conqueror to bring States into the Union by force, and then ruled them with the heavy hand of power, but it has permitted States to enter when they were ready and willing, and has treated them with moderation and justice after they have entered. When a State has been admitted into the Union it has received all the benefits of the Constitution. Expansion, therefore, has always meant an extension of popular and constitutional government, and an increased enjoyment of civil liberty.

QUESTIONS AND SUGGESTIONS

1. Bound your State and recite any interesting historical facts

connected with its boundaries. Are the boundaries of your State natural or artificial?

2. How did your State receive its name? its nickname?

3. Has your State ever been a part of another State? Did it ever include another State? If it is one of the admitted States, how long was it a territory?

4. Describe the steps that are usually taken for the admission of a territory into the Union. (See the case of Ohio as stated in the text.) Could Congress admit a State which had a king for its executive (120)?

5. Could California be divided into two States (118)? Under what conditions could two States unite to form one State? Give reasons for the constitutional provisions governing the division and union of States.

6. Do you find in the Constitution authority given to the national government to acquire territory? Have we failed to embrace any opportunity of enlarging our boundaries? State the circumstances under which Louisiana was acquired.

7. Prepare an expansion map of the United States, marking off with colored lines the several purchases and cessions.

8. What three States were admitted into the Union without having passed through any territorial experience?

9. Explain this sentence: "The history of the United States from the settlement of Jamestown to the present time has been the history of the colonization of the West."

10. Trace the great influence of the Ordinance of 1787 upon our political history in reference to (*a*) slavery, (*b*) self-government, (*c*) education.

11. As a special exercise, let one of the pupils prepare a ten-minute paper on "This Country of Ours," giving an account of its boundaries, its area, its river and mountain systems, its population, its industries, its resources, etc. Consult the article "United States" in any good encyclopedia.

Topics for Special Work.—The Admission of New States: **9**, 263–271. The Purchase of Louisiana: **5**, 127–130; 273. New States: **6**, 327–335.

X

LOCAL GOVERNMENT

The Division of the Powers of the State. We have learned how governmental power is broadly divided between the federal government and the State. There is a further division to be studied. The State does not exercise directly through the agency of State officers all the powers which belong to it, but shares its powers with inferior governments which it creates, and which it equips with proper officers. These lower governments are called local, because they transact the public business of a locality only. The local governments which are found in all the States are counties and municipal corporations (villages, boroughs, towns, cities). In many States there is an additional local government known as the township or district—"town" it is usually called in New England.

The powers granted to the local governments are not the same in all the States, yet it may be said that as a rule the local government does the following things:

(1) It preserves the peace and good order of the locality.

(2) It supports the public schools.

(3) It cares for the public health.

(4) It helps the poor and unfortunate.

(5) It licenses trades and assesses and collects taxes.

(6) It opens and repairs roads and paves streets and builds bridges.

(7) It establishes and supports courts of lower grades.

(8) It erects public buildings.

It should be clearly understood that the local government

is in all things dependent upon the State. The relation of a city, for example, to the State is entirely different from the relation that exists between the State and the Union. The powers of the State are its own: the federal government cannot subtract from them nor add to them. The powers of a city are not its own: the State gives them and the State can take them away. What the State creates it can govern according to its own will. The State can deprive local officers of their positions and administer the affairs of the locality, the county, or city, or whatever it may be, with officers of the State government.

While it is true that the State has the power to send its officers into a locality and govern it without consulting its citizens, yet as a matter of fact the State does not use its power in this way. In practice the State allows the people of a community to elect their local officers and to conduct their local affairs largely according to their own notions. Any other policy would be contrary to the political instincts of the American people, and would excite the most bitter resentment. A denial of the right of local self-government would be an attack upon the principle of democracy. Where the people do not have their will in respect to their schools and roads and the other affairs of public concern, they do not enjoy fully the blessings of popular government.

The Three Grades of Government. Thus everywhere in the United States there are three grades of government in operation: (1) The federal government defends us against foreign foes, attends to foreign affairs, delivers and collects the mails, regulates the currency and foreign and interstate commerce, maintains federal courts to try cases that come under federal jurisdiction (p. 152), and collects the federal taxes. The federal government does these things in its own way with its own officers, and the people of the locality and of the State are not consulted. (2) The State government is responsible everywhere within its borders for the following things: for the protection of life, liberty,

property and reputation; for the punishment of crime; for the maintenance of justice; for the holding of elections; for the regulation of domestic and business relations; for the collection of State taxes; for the fulfillment of the constitutional guarantees contained in the bill of rights. The State is responsible for these things, and it does not surrender its power in reference to them. It either attends to them through the agency of its own officers, or it compels the local government to attend to them. (3) The local government attends to the matters enumerated in the preceding section.

This gradation of authority gives us a *decentralized* government. Instead of having one great irresistible central power, we have thousands of centers of power. The decentralization of government as to local affairs is a characteristic feature of American politics, and is an effectual safeguard of liberty. Where the central government can extend its arm into remote localities and do what a local government ought to do, the people become the victim of an officialism which is as harmful as tyranny. The system of decentralizing power as between the State and the federal government is firmly established, and there is little danger of federal interference in the purely internal affairs of a State. But the State also must remain decentralized. A consolidated State would be as inconsistent with the spirit of American government as a consolidated Union would be.

The Relation of the State to Local Governments. One of the most important problems demanding the attention of the citizen refers to the relation that should exist between the State and the local governments. It is worth our while, therefore, to inquire carefully into this relation.

There is not a word in the federal Constitution about local government. The locality receives all its powers from the State constitution and the State legislature. Counties and townships are organized and governed under general laws passed by the legislature. All the counties and townships

within the State have substantially the same kind of government and the same powers.

The government of cities and boroughs and villages is accomplished through the agency of municipal corporations. A *corporation* is a group of individuals authorized by law to act in respect to certain specified matters as one individual; or, it is a group of natural persons authorized to act as one artificial person. This artificial person known as a corporation lives forever, unless the power (the law) that created it chooses to destroy it or to limit the period of its existence; it has a name, and under this name it can sue and be sued in the courts like a natural person; with certain restrictions it can acquire property and borrow money like an ordinary person; it can make such by-laws (local laws) as may be necessary to regulate its internal affairs, and these by-laws have all the force of law. Corporations are either private or public. A *private* corporation is one organized for the private profit or pleasure of the individuals who secure the incorporation. Railroads, banks, colleges, clubs, are examples of private corporations. *Public* corporations are organized for political purposes, for the promotion of the public welfare. Counties and towns and townships are public corporations in so far as they are permitted to hold property and to sue and be sued. The most conspicuous example of a public corporation, however, is the municipal (*municipium, town*) corporation. Wherever there is a community with a compact population requiring special governmental powers, the State gives this community a name and boundaries, organizes its citizens into a municipal corporation, and grants to it the right of municipal or local self-government.

The written instrument that specifies the rights and privileges of a corporation is its *charter*. The charter of a municipal corporation names the municipality, describes its boundaries, and states in great detail how the local government is to be organized, and what powers it is to exercise. The strength and efficiency of the government of a munici-

pality are determined almost wholly by the provisions of its charter.

In colonial times the first municipal charters were granted by the governor; but long before the Revolution we find the legislature taking a part in the government of towns. After the Revolution the legislature took municipal government entirely into its own hands and granted, revoked or amended municipal charters at its will. A century of experiment followed, each State trying in its own way to solve the problem of governing the rapidly growing cities within its borders. A complete history of municipal government in the forty-six States would fill a library. The net result, however, of a long and varied experience may be stated in a few words: The State legislatures remain in complete and undisputed control of cities, and they exercise their power freely. They do not hesitate to change or amend a municipal charter or to revoke one altogether; they will reserve to themselves or will give to the governor the appointment of officers whose duties are of a strictly municipal character; they will raise the salaries of city officers without consulting the city authorities. They may even deprive a regularly elected mayor of his office and give it to another. The habit of State interference with local matters is at times so strong as to threaten seriously the highly prized principle of local self-government.

In some States the constitutions are attempting to protect municipal rights by giving to the people of the city the privilege of framing their own charter, just as the people of a State frame their own constitution.[1] Missouri, California, Minnesota, Washington, Oklahoma, Colorado and Michigan are trying this plan. Under this policy the city would stand in somewhat the same relation to the State as the State does to the Union. Locality, State and nation would each be supreme in respect to those things which concern itself.

This is an attractive reform, but it suggests serious difficulties. Under our present system it is a long step down-

[1] See Appendix C.

ward, politically, from the State to the city, immeasurably longer than from the nation down to the State. The State in the limited sphere of its action is supreme: it may educate its youth ill, its laws may be unwise, its courts corrupt, and yet the federal government may not interfere. Shall we make the city as independent of the State as the State is of the federal government? We are told that the care of the streets, parks, sewerage, city lighting, water supply, the fire extinguishment system, and many details connected with sanitary and police administration, should be placed absolutely under the control of the city. But suppose the lighting in the city is so wretchedly poor that criminals thrive in the darkness, or that the police department is inefficient, and that the peace and security of the city are threatened, shall the State not interfere? Shall it make such a surrender of its rights as will prevent it from entering the city and lighting the streets properly and improving the police service? Such questions as these are constantly arising in connection with municipal government, and they indicate how difficult it is to determine precisely where State authority should end and local authority begin.

It is perhaps impossible to draw a clearly visible line between State and local control. The State must keep a firm grasp upon all its parts, counties, townships and cities; and while it should not allow a part to operate against the welfare of the whole, it should nevertheless recognize and encourage the principle of local self-government or "home rule." Experience suggests the following rules for the guidance of the State in its dealings with cities:

1. All charters should be subject to the approval, at least, of the legislature.

2. The borrowing power of municipalities should be carefully restricted.

3. The taxing power should be limited to a certain per cent. of the assessed value of the property.

4. Reports of the expenditures of municipalities should be regularly made to the State government.

5. The municipalities should be given power according as they use it well.

QUESTIONS ON THE TEXT

1. How are the powers of the State divided?
2. Name the functions of the local government.
3. What is the policy of the State in reference to local government?
4. Give an account of the grades of American government.
5. What is a decentralized government? Why is a decentralized government favorable to liberty?
6. How are counties and townships governed?
7. What is a corporation? What are the attributes of a corporation? What is a private corporation? What is a public corporation?
8. What is a municipal charter?
9. How does the legislature act in respect to the government of municipalities?
10. What difficulties lie in the way of municipal home rule?
11. Give five rules for the guidance of the State in its dealings with cities.

SUGGESTIVE QUESTIONS AND EXERCISES

1. What are the provisions of the constitution of the State in reference to local government? Can the legislature pass a special law for the government of a city? Have the cities of the State the right to frame their own charters? If not, ought they to have this right?
2. In what way could the present constitution of this State be amended so as to give cities better government than they now enjoy?
3. What is the difference between a charter and a constitution?
4. In a city which of the following services should be rendered by the State and which by the local government?—(*a*) the regulation of the sale of intoxicants; (*b*) the paving of the streets; (*c*) the regulating of the employment of children; (*d*) the granting of franchises (p. 267) to street railways; (*e*) the constructing of sewers; (*f*) the holding of courts of justice; (*g*) the educating of children; (*h*) the lighting of streets; (*i*) the keeping of the peace; (*j*) the suppression of a riot; (*k*) the regulation of the use of arms; (*l*) the construction of water-works; (*m*) the collecting of taxes; (*n*) the regulating of the hours of labor; (*o*) the operating of gas-works; (*p*) the inspecting of steam-boilers; (*q*) the inspecting of factories with the view of protecting the health of employees; (*r*) the maintaining of libraries; (*s*) the maintaining of parks; (*t*) the extinguishing of fires.

Topics for Special Work.—State Control of Cities: **14**, 85–109. Municipal Government in the United States: **2**, 435–451.

XI

PARTY GOVERNMENT

The Origin of Political Parties. There are always differences of opinion as to how public affairs shall be managed. Shall the county have a new court-house? Shall the State compel parents to send their children to school? Shall the federal government assist the locality in the construction of roads? Such questions are bound to divide men into opposing groups. Now government acts through the agency of men as well as through the agency of laws, and if we want it to do a certain thing we must not only have the laws on our side, but we must also have the officers of government on our side. This means that those who favor a certain measure of political action must first become the possessors of political power. They must win the support of public opinion, and they must get votes enough to elect officers who are favorable to the proposed measures or policy. Out of the struggle for the possession of power the political party emerges. Men holding the same political views organize and work together for the purpose of securing control of the government, and when they have secured control they govern as a political party.

The Origin of Political Parties in the United States. The original division of voters into parties in the United States was brought about by the collision of two forces which are always opposing each other in a free country. One of these forces tends to bestow greater and greater power upon government. If certain phases of individual freedom result

in some trifling inconvenience we are sure to find people who will instantly advise that government administer a remedy. When an affair of local government is badly managed there are always people to suggest that that affair be placed under the control of a larger and more central government. If the township does not manage its affairs well they would take its powers from it and give them to the county; if certain functions of the county are not faithfully performed they would have them performed by the State; if the State is remiss in anything they would place that thing under the control of the federal government. This tendency to take power from the local and lodge it with the central government has been called the *centripetal* force in politics.

In opposition to this centripetal, centralizing force are the people who, jealous of the powers of government, desire to limit them. These would lodge as little authority as possible with the central government and reserve as much as possible for the locality. They would have no interference with the individual except such as is necessary for the peace and safety of society. This tendency to restrict the power of the central government and enlarge that of the locality and of the individual has been called the *centrifugal* or decentralizing force in politics.

The discussion of the political questions which arose when the Constitution was put into operation offered an excellent opportunity for the free play of the centralizing and decentralizing forces. Those who believed in a strong central government advocated a liberal interpretation of the "elastic clause" (45). Foremost among these was Alexander Hamilton. That great man thought that Congress has a right to pass laws on any subject which relates to the general welfare and which requires the application of money. It is easy to see that under such an interpretation many things could be done by Congress which could not be done either under the enumerated or the implied powers of the Constitution. For example, under such a construction Congress would have the right to take charge of the public

schools. Those who held centripetal notions respecting government rallied around Hamilton and formed the *Federalist* party, or the party of *loose construction.*

The centrifugal tendencies of the time were reinforced by the genius of Thomas Jefferson. That statesman was jealous of the power of the federal government. He was afraid the central authority would encroach upon the rights of the States and of individuals. In order to prevent this he advocated a *strict construction* of the Constitution. He believed that the only proper subjects for the action of Congress were those enumerated in the Constitution. If a new power should be desirable he believed it should be secured by way of amendment and not by way of interpretation. Those who held the same views with Jefferson joined with him and organized the *Democratic-Republican* party, or the party of *strict construction.*

Historical Sketch of Parties in the United States. The federalists controlled the federal government until Jefferson in 1800 led the Democratic-Republican party to victory. The Federalists did not long survive their defeat, and for twenty-five years after the election of Jefferson the Democratic party—as it soon came to be called—had but little opposition. In the presidential election of 1820 it was victorious in every State. No political party is likely, however, to remain for a long period of time in undisturbed possession of power. The operation of natural forces will produce discord and disunion. About 1824 opposition began to show itself under the leadership of Henry Clay, who advocated a more liberal construction of the Constitution than was pleasing to the Democrats. In 1831 Clay was nominated for president by the newly organized *National Republican* or *Whig* party. The Whigs—as the adherents of the new party were usually called—demanded protection to American industry (p. 329) and a system of internal improvements by the federal government, including the building of roads and the digging of canals. For twenty years the

Whigs disputed the ground with the Democrats and twice (in 1840 and 1848) they elected their candidates for President. About 1850 the slavery question began to play havoc with both parties. By 1856 it had destroyed the Whig party and had split the Democratic party in twain. In 1860 the Republican party—the one which bears that name at the present time—led by Abraham Lincoln, secured control of the federal government. The Republicans proposed that Congress should exclude slavery from the territories; the Democrats asserted that under the Constitution Congress had no power to regulate slavery. Here we find the Democrats as usual claiming a strict construction. The Civil War removed the question of slavery from our politics (**149**), but after the war the Democrats and Republicans continued the struggle for power, and they are to-day the chief contestants.

During the last thirty years several minor political parties have asked for the votes of the people. In 1876 the *Greenback* party, which was opposed to redeeming with specie and then destroying the greenback money issued during the war, and which advocated the issue of more greenbacks upon the faith of the government (p. 323), placed a presidential candidate[1] in the field. The success of the greenbackers was variable, and in 1892 it coöperated with the *People's* party. The People's party, which began to show strength in 1890, advocates the betterment of the condition of the common people by means of government ownership of railroads and by issues of money based on the faith of the government. In 1892 this party nominated a candidate for President and secured 22 electoral votes. The *Prohibition* party, which seeks to prevent the manufacture and sale of intoxicating liquors (p. 393), has had a national organization since 1872, and has named presidential candidates since that time. The *Socialist Labor* party and the *Social Democratic* party have been organized with the view

[1] When an organization nominates a candidate for President it is entitled to be called a political party.

of promoting the interests of the workingmen, and have nominated candidates for President.

The Elasticity of Party Principles. The above sketch shows that throughout our political history the centralizing and decentralizing forces have always been at work. The line which divided the party of Hamilton from the party of Jefferson may be clearly traced throughout our history as the dividing line of two great parties, and it is the dividing line to-day. The Republican party is descended from the Federalists, and is the party of loose construction; the Democratic party comes in unbroken succession from the Democratic-Republican party, and is the party of strict construction.

It must not be thought, however, that the Democratic party is always the enemy of loose construction or that the Republican party always opposes strict construction. Each of these parties, as we shall see hereafter (p. 226), is a mighty organization, and the leaders of each are always striving for the supremacy. Victory depends upon votes, and in order to get votes either party will sometimes advocate measures which are not in strict accordance with its historic principles. This is the way of political parties when they have grown powerful. For the sake of control they will adapt their principles to the issues of the time. The Conservative party in England in 1867 ignored its past and advocated an extension of suffrage, while the Liberal party turned right about face and opposed the extension of suffrage.

It is a fortunate circumstance that the principles of a great political party are elastic. New political issues are always arising, and these issues must be settled by the action of a party, either by one of the old parties or by a new organization. To organize a third party and carry it to complete victory is a task that has not been accomplished once in our history. We have had many third parties, but the history of them all is the same: "At the

beginning, a new issue, which neither of the old parties has the courage to face resolutely, leads a certain number of persons to separate themselves from the organization with which they have previously acted and to form a new party. The movement originates with the people and not with the politicians, and the candidates nominated by the new party are new men. As soon as the movement has developed enough strength to make the votes it can command an object of envy to the weaker of the old parties a period of coquetry begins. At first there is trading for positions on a fusion ticket by two independent parties, then there is a gradual drawing together of the two parties with nearly identical platforms [principles] and a common ticket, and in the end a complete absorption of the third party by its more powerful ally."[1] When the absorption of a new issue by an old party results in success, as it frequently has resulted, the people attain their object much more quickly than they would by the tedious process of building a new party.

Political Parties and the Individual. Political parties are voluntary associations formed outside of the pale of government. They are not recognized as agencies of government, and until quite recently they have had no legal existence whatever. Nevertheless ours is a government by party: no important policy of government, whether federal, State, or local, can be adopted without the sanction of a party, and no one can be elected to an important office who has not first received the endorsement of a party. Thus far no one has been able to show how popular government on a large scale can be conducted without the aid of parties.

Since we must have parties and must accomplish our political purposes through them, the relation of the individual to his party presents itself as a serious problem of citizenship. For reasons known to himself a man has been acting with a certain party: under what circumstances

[1] Stanwood, "History of the Tariff," Vol. II, p. 361.

may he as a good citizen leave his party? His entrance into the party was a matter of choice, and he is as free to withdraw from it as he was to enter it. He is under no legal obligations to remain in his party, but is he not under a moral obligation to withdraw from it when his judgment and his conscience tell him that its course is wrong and that the course of another party is right? When party loyalty leads a man into voting for dangerous measures and dishonest candidates he is not a free citizen, but is the victim of a despotism. Party loyalty is a good thing, but loyalty to the interests of one's country is an infinitely better thing; and when a man is convinced that his party is pursuing an unpatriotic course he should break away from it, despite the cracking of the party lash.

QUESTIONS ON THE TEXT

1. What is the origin of political parties?
2. Describe the centrifugal and centripetal forces of politics.
3. What were the political views of Alexander Hamilton? of Thomas Jefferson?
4. Sketch the history of parties in the United States.
5. Name the minor political parties and state the principles held by each.
6. How are new issues absorbed by the great parties?
7. In what relation do the parties stand to government?
8. In what relation does the individual stand to his party? When should this relation be severed?

SUGGESTIVE QUESTIONS AND EXERCISES

1. State whether a Democrat who was guided solely by the traditions and principles of his party would favor or oppose: (*a*) the control of railroads by the federal government; (*b*) the issue of money by State banks; (*c*) the management of elections by the federal government; (*d*) the control of telegraph lines by the State government; (*e*) the planting of colonies by the federal government; (*f*) the support of the public schools by the federal government; (*g*) the ownership of mines by the State government; (*h*) the control of cities by the federal government; (*i*) the coöperation of the federal government with local government in road-building.

2. What influences besides party principles lead one to vote for this or that party?

3. Give reasons why it is best that the party in power should have opposition even though its principles are right.

4. Compare the last National Democratic platform with the last National Republican platform, and point out the chief difference in the principles of the two parties.

5. How many people voted for the Democratic party in the last presidential election? How many for the Republican party? If the Republican vote for that year should be represented by a line one yard in length, how long would be the line which should represent the Democratic vote? How long the line representing the Prohibition vote? the Populist vote? the Socialist vote?

6. Name a few of the great politicians who have figured in the history of this country. Who are the great politicians of the present time?

7. What is a statesman? a partizan? a trimmer? a mugwump? an independent? a henchman?

8. Distinguish between a ''boss'' and a leader.

9. Define *faction, cabal, junto, ''ring,'' clique.*

10. Under what circumstances is a man justified in deserting his party?

Topics for Special Work.—False Leaders: 1, 301–312. Party Loyalty: 12, 265–269. Political Parties and Their History: 2, 455–464.

XII

CIVIL LIBERTY

Civil Liberty Defined. We have now described the several devices by which our political system is operated, and have described the nature of the power which has been assigned to each of the three grades of government. For what purpose have these ingenious devices been invented? Why have these nice adjustments of power been made? In order that we may be secure in our civil liberty. And what is civil liberty? It is the liberty which a man enjoys in civil society; it is liberty under law. The desire for freedom is implanted in every human breast. History is largely an account of man's struggle for freedom, and the greatest lesson which history has for us teaches that man ought to be free. But there must be limits to his freedom. Where there is government there must be restraints upon the will and upon the desires. The only liberty that is possible in society is civil liberty, which has been defined as natural liberty so far restrained (and so far only) as is necessary and expedient for public good. The restraints regarded as necessary and expedient for the public good are not the same in all countries. Civil liberty, therefore, is not everywhere the same: in Germany it is one thing; in France it is another thing; and in the United States it is still another thing.

The Growth of American Civil Liberty. The rights of our citizenship seem to come to us, like the air and the sunshine, as a matter of course, but it seemed otherwise to those an-

cestors of ours who secured these rights. To them civil liberty came as the result of hard-fought battles. When we read the bill of rights in one of our constitutions, where our liberties are itemized, our hearts would throb with gratitude did we know the suffering and the sacrifice which each item has cost. The history of American liberty cannot be given here in full, but we must find room for its outlines:

I. *The Great Charter.* The story of our civil liberty may conveniently begin with an account of the Great Charter. King John of England had been acting in a tyrannical and unpatriotic way, and the leading men of England, in order to protect themselves from his cruelty and oppression, met (1215 A.D.) at Runnymede, near London, and declared the rights of Englishmen in a formal document which they compelled the king to sign. This document was the famous *Magna Carta.* "One copy of it," says Green, "still remains in the British Museum, injured by age and fire, but with the royal seal still hanging from the brown shrivelled parchment. It is impossible to gaze without reverence on the earliest monument of English freedom, which we can see with our own eyes and touch with our hands, the Great Charter, to which, from age to age, patriots have looked back as the basis of English liberty."

Since the Great Charter is the basis of English liberty, it is the basis also of American liberty. It consists of a preamble and sixty-three clauses. The clauses of lasting interest are the following:

1. "Common Pleas shall not follow the king's court, but shall be held in some certain place." (John had been dragging suitors for justice about from post to pillar, causing them great inconvenience and expense.)

2. "A freeman shall be fined for a small offense after the manner of the offense; for a great crime after the heinousness of it." (Making the punishment suit the crime.)

3. "No scutage (land tax) or aid (contribution) shall be imposed except by the common council of the nation." (No taxation without representation.)

4. "No freeman shall be taken or imprisoned or disseized, or outlawed, or exiled, or in any way destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land." (Due process of law and trial by jury.)

5. "To none will we sell, to none will we deny or delay right or justice." (Habeas corpus.)

6. "The city of London shall have all its ancient liberties and free customs, and so of all other cities, boroughs, towns and ports." (Local self-government.)

Swift and impartial justice, punishment according to the offense committed, taxation according to the wishes of representatives of the people, trial by jury, habeas corpus, local self-government—these are the grand features of the Great Charter. "To have produced it, to have matured it, to have preserved it, constitute the immortal claim of England upon the esteem of mankind. Her Bacons and Shakespeares, her Miltons and Newtons, with all the truth which they have inspired, are of inferior value when compared with the subjection of men and of their rulers to the principles of justice, if indeed it be not more true that these mighty spirits could not have been formed except under equal laws, nor roused to full activity without the influence of that spirit which the Great Charter breathed over our forefathers."[1]

II. *The Petition of Right.* It is easy to declare human rights, but it is difficult to defend and preserve them. John's successors confirmed the Great Charter whenever they were compelled to do so, but they violated its provisions whenever they dared. During the fifteenth and sixteenth centuries the aggressions of royalty threatened to make Magna Carta a dead letter; but in the seventeenth century the spirit of English liberty revived. When the Stuarts began to trample under foot the most precious rights of Englishmen the people revolted. A long and bloody conflict followed. One king lost his life, another his crown, and thousands

[1] Mackintosh, "History of England," Vol. I, 222.

of citizens fell in civil strife. Out of the contest there were evolved two liberty documents of the highest importance. The first of these is the *Petition of Right* which Parliament sent to Charles I in 1628 and compelled him to sign. This famous constitutional law—for it, like the Great Charter, must be regarded as part of England's constitution—recites the rights of the people, and protests against the wanton infringements which were being made by the king. Among the misdeeds of the king were the quartering of troops in the homes of private citizens. The petition prays: "That your majesty will be pleased to remove said soldiers and mariners, and that your people may not be so burdened in time to come." Another complaint refers to the practice of putting citizens to death after a trial conducted by the soldiery. The petition prays: "That commissions by martial law be revoked and annulled." The Petition of Right, therefore, declared anew formally the ancient rights of Englishmen, and also enriched their civil liberty in two particulars: first, it forbade the quartering of troops upon private citizens; and, second, it put an end to the trial of private citizens by military courts.

III. *The Bill of Rights.* No sooner had the Cromwellian power been overthrown and the old monarchy restored under Charles II, than the perversity of the Stuart house renewed itself. James II attempted to establish a permanent despotism, but he was driven from his throne before his purpose was accomplished. When his successor, William III, was invited to be king, Parliament, as an act of precaution, declared (1689) the conditions upon which the crown was to be held. This declaration, known as the *Bill of Rights,* was the second liberty document produced by the conflict between the Stuarts and the people, a document which has been called "the third great charter of English liberty, and the coping-stone of the constitutional building." The most important of its declarations are the following:

(1) That laws shall not be suspended or repealed, and that taxes shall not be levied without consent of Parliament.

(2) That the right of petition shall not be denied.

(3) That a standing army shall not be kept in time of peace.

(4) That subjects shall not be deprived of the right of carrying arms.

(5) That freedom of speech and debate in Parliament shall not be impeached or questioned in any place out of Parliament.

(6) That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(7) That Parliament ought to assemble frequently.

IV. *The Declaration of Independence.* The rights won in England accrued of course to the English colonists in America. When the time for independence arrived the Americans had several important items to add to the list of human rights. These they announced in the Declaration of Independence. They declared:

(1) That all men are equal.

(2) That governments derive their just powers from the consent of the governed.

(3) That for good reasons the people may abolish the old form of government and institute a new form.

In these three propositions are wrapped up the whole doctrine of democracy. In them we see equality before the law, universal suffrage, democratic government and constitutional conventions. When we consider the world-wide influence of these three declarations we must regard them as the greatest enlargement of civil liberty recorded in the history of politics.

V. *State Constitutions.* When the people of the revolting colonies were ready to begin government on their own account, the Great Charter, the Petition of Right, the Bill of Rights and the Declaration of Independence served as texts for a new and complete declaration of American civil liberty. This declaration was made in the State constitution

of the newly formed States. If you will examine the bill of rights in any State constitution—the newer States have fashioned their constitutions after those of the older States —you will find that it declares the rights affirmed in the three great English liberty documents and in the Declaration of Independence. If it does more than this it simply adds several additional rights which have been evolved from American experience.

VI. *The Federal Constitution.* We have seen that the first ten amendments were hurriedly added to the Constitution as a check upon the power of the federal government. The first eight of these amendments bear a strong resemblance to the bill of rights of a State constitution, and are regarded as the bill of rights of the federal Constitution. It ought to be clearly understood, however, that the rights declared in these amendments do not belong to the American citizen unless they are also declared in the constitution of the State in which the citizen lives. The federal government cannot deprive a citizen of any of these rights, but the State can. For example, Congress cannot abridge the freedom of speech, but a State legislature can do so if the State constitution does not forbid. The federal government cannot guarantee the rights which the Constitution forbids it to infringe. It is to the State constitution we must look for most of the positive guarantees of our civil liberty.

Constitutional Liberty and its Preservation. Thus it is seen that civil liberty in America means constitutional liberty. In the constitutions we find set down in black and white precisely the rights we are to enjoy. The constitutions, however, do not create civil liberty. Liberty is not an artificial creation of a convention. It is a divine gift bestowed only upon those who make themselves worthy of it by being true to the nobler impulses and longings of their nature. All the constitution can do is to give liberty a voice. It states in plain words the rights which the people claim. When rulers are tempted to act tyrannically the solemn

prohibitions of the constitution bid them pause; when the majority is tempted to ignore the rights of the minority or of the individual, the words of the constitution stare it in the face. If people or rulers violate the bill of rights, then the constitution is a mockery and civil liberty does not exist.

Constitutions do not create rights, nor do they preserve them. We have seen that American civil liberty is the fruitage of many centuries of costly and patriotic endeavor. As it has been acquired, so will it be maintained. The preservation of human rights will always depend upon the watchfulness and zeal of those who love freedom. If we do not love freedom well enough to fight for it, if we prefer the quietude of despotism to the boisterousness of liberty, we may be sure that the lovers of power will sooner or later fasten a despotism upon us. We ought, therefore, to cultivate the habit of keeping our eyes upon our constitutions, and protesting whenever a right is denied, and we ought not to rest content until the right is regarded and the violator of the constitution punished.

QUESTIONS ON THE TEXT

1. Define civil liberty.
2. What is the Great Charter? What are its important provisions?
3. What is the Petition of Right? Name its most important provisions.
4. What is the Bill of Rights? Name its most important declarations.
5. What great principles of democracy are declared in the Declaration of Independence?
6. Of what is the bill of rights in the State constitution composed?
7. What is the origin of the bill of rights of the federal Constitution? How does this differ from the bill of rights of a State constitution?
8. Explain the statement that civil liberty is constitutional liberty.
9. How may constitutional liberty be preserved?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Prepare a bill of rights for a State constitution, using Magna Carta, the Petition of Right, the Bill of Rights, and the Declaration of Independence as a basis, and after it is prepared compare it with the

bill of rights of your State constitution, and with the first eight amendments of the federal Constitution.

2. Bring into the class for inspection a facsimile of Magna Carta.

3. Prepare a five-minute paper on "The Reign of John." Green's "Short History," pp. 147–156.

4. Prepare a five-minute paper on "Charles First and the Petition of Right." Green, pp. 485–495.

5. In what respects are men equal?

6. What great names are connected with the cause of American liberty?

Topics for Special Work.—The Principles of the Fathers: **3, 1–45.** Liberty, Equality, Fraternity: **4, 78–87.**

XIII

CIVIL RIGHTS AND DUTIES

Civil Rights and Political Rights. The rights flowing from American civil liberty may be divided into two classes, civil rights and political rights. Civil rights are those which a person enjoys as a private citizen, as an individual. They are enjoyed under the authority and sanction of government, but they are not related to the subject of government. Political rights are those which belong to a citizen regarded as a participator in the affairs of government: they may be called the public rights of citizenship. Citizenship does not necessarily carry with it the whole body of civil liberty. Minors and incapables do not have all the civil rights, and the political rights belong to only about one fifth of the total number of citizens.

Who are Citizens. Who are American citizens? This question was left in doubt by the Constitution until the adoption of the fourteenth amendment in 1868. That amendment declares (**150**) that "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." Under this definition the following have been adjudged to be citizens of the United States:

(1) All persons born in the United States excepting the children of diplomatic agents and of hostile aliens.

(2) Children born in foreign countries whose parents at the time of their birth were citizens of the United States.

(3) Women of foreign birth married to citizens of the United States.

(4) Indians who pay taxes and no longer live in tribal relations.

(5) Naturalized persons.

Persons who do not belong to any of the above classes are aliens (*alienus,* a foreigner). There are already seven millions of aliens living in our midst, and thousands of foreigners enter the United States every week. Aliens may become citizens by complying with the regulations prescribed by Congress (48) for *naturalization,* the process by which foreigners lose citizenship in one country and acquire it in another.

The process of naturalization is as follows: (1) At least two years before he can be admitted as a citizen the alien must appear before a State or a federal court and take an oath that it is his intention to become a citizen of the United States and ''to renounce forever all allegiance and fidelity to any foreign prince or state and particularly to the one of which he may at the time be a citizen or subject.'' He must also swear to support the Constitution of the United States.

(2) Not less than two years nor more than seven years after this declaration of his intentions the alien may apply to a federal or State court for full admission as a citizen. If the judge of the court is satisfied that the alien is able to speak the English language and write his own name, that he has resided in the United States for five years, and that he is a person of good moral character, full citizenship will be conferred. A person thus naturalized has the same rights as native born citizens of the United States except that he cannot become the President or Vice-President of the United States. The children of naturalized persons are considered as citizens if they were under twenty-one years of age and were dwelling in the United States at the time of the naturalization of their parents. Alien Chinese and Japanese are not entitled to be naturalized. Persons professing the doctrines of anarchy and openly opposing all form of organized government are also refused the gift of naturalization.

The Civil Rights of State Citizenship. The rights of American citizenship flow from two sources, from the State and from the nation. Since each State in a large measure de-

termines for itself the character of the civil liberty that is to be enjoyed within its borders, the rights of an American citizen are not everywhere the same. As we travel through the States our rights change every time we pass from one State into another. When the citizen of one State enters another State he has the rights of the citizens of that State (**116**), and those rights only. There are, however, certain civil rights which are enjoyed in every State in the Union and which may be called the civil rights of State citizenship. These are the rights guaranteed in the State constitutions. In the constitution of almost every State it is declared:

(1) That all men have the right of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness:

(2) That men have a right to worship God according to the dictates of their own conscience, and that no preference by law should be given to any religion, and that no person should be disqualified for office on account of his religious belief:

(3) That trial by jury is a right inviolate.

(4) That the printing-press shall be free, and that every citizen may freely print, write and speak on any subject, being responsible for the abuse of this privilege:

(5) That people shall be secure in their persons, houses, papers and possessions against unreasonable searches and seizures, and that no warrant to search any place or seize any person shall issue without probable cause:

(6) That in all criminal prosecutions the accused has a right to be heard by himself and his counsel, to meet witnesses face to face, to compel witnesses who are in favor to come to court and testify, and to a speedy trial by an impartial jury:

(7) That no person can be compelled to give evidence against himself, nor be deprived of his life, liberty or property unless by the law of the land:

(8) That no person for the same offense shall be twice put in jeopardy of life and limb:

(9) That all courts shall be open and that every man shall have justice without sale, denial or delay:

(10) That excessive bail shall not be required, nor excessive fines be imposed, nor cruel punishment inflicted:

(11) That all prisoners shall be bailable by sufficient sureties, unless for capital offenses:

(12) That the writ of habeas corpus [1] shall not be suspended unless in time of rebellion or invasion:

(13) That there shall be no imprisonment for debt, unless in cases of fraud:

(14) That citizens have a right to assemble in a peaceable manner and to apply to the rulers for a redress of grievances:

(15) That the military shall at all times be kept in strict subordination to the civil power:

(16) That no soldier in time of peace be quartered in any house without the consent of the owner.

The Civil Rights of Federal Citizenship. The first section of the fourteenth amendment to the Constitution (**150**) creates a distinct federal citizenship, and provides that no State shall abridge the privileges of that citizenship. What are the privileges which a citizen of the United States enjoys and which no State can abridge? This is a question which has been constantly asked in the federal Supreme Court since the adoption of the fourteenth amendment. The court will not undertake to enumerate all the rights arising under the amendment, but it has been declaring them from time to time as cases have been brought

[1] Whenever a man is placed in confinement against his will and the fact is made known to a judge of a court, the judge, unless he knows the confinement is legal, is bound, upon application, to issue *immediately* a writ, called *habeas corpus,* commanding the prisoner to be brought before him for examination. If there seems to be cause for the detention of the prisoner he is sent back to prison to await a full trial; if there seems to be no cause he is set free.

before it. Human rights are acquired slowly, and it may be many years before we shall know the full effect of the fourteenth amendment. At present it is possible to enumerate the following as the rights of federal citizenship,—rights which flow from the Constitution, which belong to every citizen of the United States, and which cannot be denied by State authority:

I. *Due Process of Law.* No person in the United States shall be deprived of life, liberty or property without due process of law. Here is a right which no State can abridge (**151**) and which the federal government itself cannot deny (**152**). A person seeking justice, whether in civil or criminal cases, under his right of due process may demand (1) that there be a court of law for the trial of his case; (2) that the proceedings of the trial be regular; (3) that the trial be fair. What the regular course of procedure in a State court shall be is a matter for the State itself to determine; but after the State has once decided upon the course that justice shall take, after it has once established the process of law, it cannot deprive any person of the benefits that arise from those processes. What due process in the federal courts is may be learned in the fifth, sixth, seventh and eighth amendments of the Constitution.

II. *Equal Protection of the Laws.* "Every person within the jurisdiction of any State, whether he be rich or poor, humble or haughty, citizen or alien, is assured of the protection of equal laws (**152**)—applicable to all alike and impartially administered without favor or discrimination." (*Guthrie.*)

III. *Protection on the High Seas and in Foreign Countries.* A citizen of the United States, in whatever part of the world he may be, is entitled to protection against injustice or injury, and this protection is a right of federal citizenship, and is extended by the federal government.

IV. *State Citizenship.* Every citizen of the United States has a right to become a citizen of a State by a *bona fide* residence therein.

The above rights have been declared by the federal Supreme Court to belong to every person who is a citizen of the United States. Add to these rights of federal citizenship the rights enumerated as belonging to State citizenship and you have a list of the most important civil rights of the American citizen.

The Duties of Citizenship. The duties of citizenship are always equal to its rights. If I can hold a man to his contracts, I ought (*I owe it*) to pay my own debts; if I may worship as I please, I ought to refrain from persecuting another on account of his religion; if my own property is held sacred, I ought to regard the property of another man as sacred; if the government deals fairly with me and does not oppress me, I ought to deal fairly with it and refuse to cheat it; if I am allowed freedom of speech, I ought not to abuse the privilege; if I have a right to be tried by a jury, I ought to respond when I am summoned to serve as a juror; if I have a right to my good name and reputation, I ought not to slander my neighbor; if government shields me from injury, I ought to be ready to take up arms in its defense.

Civil rights are inseparable from civil duties; the continued and full enjoyment of the former depends upon the fulfillment of the latter. Since duty is largely a matter of morals, good citizenship also would seem to be a question of morals. In the last analysis this is true. After all is said, good citizenship is reached only by the rough path of duty, and men will tread this path not because a legislature commands them, but because conscience leads them on.

QUESTIONS ON THE TEXT

1. What is meant by *civil* rights? *political* rights?
2. What classes of people are citizens of the United States?
3. Describe the process of naturalization.
4. Explain how the rights of citizenship may differ in the different States.

5. Enumerate the civil rights guaranteed by the State.
6. What effect did the adoption of the fourteenth amendment have upon the character of citizenship in the United States?
7. Enumerate and describe the rights that grow out of federal citizenship.
8. What is the relation of civic right to civic duty? Name some of our civic duties.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Examine the Constitution for answers to these questions: (1) Can a person be compelled in a federal court to be a witness against himself (138)? (2) What are the rights of an accused person in a federal court (139)? (3) What is the rule in federal courts in reference to witnesses (140)? (4) What is the rule in reference to trial by jury (141)? (5) In reference to bail (142)?
2. Under the fourteenth amendment what are the rights of an alien? Enumerate your individual rights as these are declared in the constitution of your State.
3. Political philosophers frequently speak of *natural* rights. What is the root meaning of the word *natural?* Name the rights which you would be inclined to class as natural.
4. What is meant by the "inalienable rights" mentioned in the Declaration of Independence?
5. Joined with every right there is a duty. Name the duty which belongs to each of the rights of American citizenship.
6. Discover, if you can, a social or civil right to which there is not a duty attached.
7. Has a student a right to study so hard that his health is injured thereby?
8. Do you as minors enjoy all the civil rights? Name those of which you are deprived.
9. What does the constitution of the State say about aliens?

A Hint on Reading.—W. D. Guthrie, "The Fourteenth Amendment."

Topics for Special Work.—Citizenship: 9, 241–249. Duties of Citizenship: 5, 525–530. The Writ of Habeas Corpus: 30, 105–110. The Rights of Citizenship under the Fourteenth and Fifteenth Amendments: 30, 100–105.

XIV

POLITICAL RIGHTS AND DUTIES

The Origin of Political Rights. Political rights invest the citizen with the privilege of participating in government, and consist of the right of voting at elections and of holding public office. These rights are an outgrowth of the struggle for civil rights. In that struggle the people learned that a privileged ruling class could not be trusted. They saw that if their rights were to be respected, government must pass either into their own hands or into the hands of their chosen agents. Therefore in order that they might protect their civil rights they demanded the reins of government. At first the privilege of voting and holding office was granted only to the leaders among the people, to the high-born and wealthy and learned. Later a middle class consisting of small property-holders, tradesmen and artisans and professional people, saw that its interests would be promoted by a participation in government. It demanded political rights and obtained them. Finally the propertyless men and the ignorant men began to think that their civil rights would be worth more to them if they had the right to vote. They asked for the right and it was granted to them. From first to last, therefore, political rights have grown out of men's efforts to preserve and promote their civil rights.

The Elective Franchise. The suffrage, or the right of voting, is sometimes regarded as a natural right, as a right inherent in citizenship. Men will say that you might as

well deny the right of acquiring property or of defending one's person from attack, as to deny the right of suffrage. This view is justified neither by the facts of history nor by the present policy of government. The right to vote is a *franchise* or privilege granted by the state to such citizens as are deemed worthy of possessing it. For a long time governments were accustomed to sell the elective franchise for a sum of money. Thus in the early days of New York City a man was not allowed to vote until he had first paid twenty-five dollars into the city treasury. With the growth of popular government the custom of selling the franchise was discontinued, and the right of voting was conferred upon certain citizens because they possessed certain qualifications. At the time of the Revolution a most important qualification was the possession of property. Before a man could vote, he must be possessed of a certain income or a certain amount of land. With the progress of democracy in the nineteenth century the property qualification was gradually removed.

In the United States at the present time the qualifications of a voter relate chiefly to age, sex and nativity, although in a few instances an educational or property qualification is still required. Whatever the qualifications may be, it ought to be noticed that they are imposed by government, and that the elective franchise is a privilege which may be granted or withheld, and is not a right which the citizen enjoys simply because he is a citizen.

Political Rights Conferred by State Authority. Authority for granting the suffrage and defining the qualifications of voters resides chiefly in the State. The only restriction upon the power of the State to regulate the elective franchise is found in the fifteenth amendment to the Constitution, where it is declared that the right of citizens of the United States to vote shall not be abridged by any State on account of race, color or previous condition of servitude (159). As long as the State does not violate this amend-

ment it is free to regulate the suffrage in its own way. It may even grant the elective franchise to aliens and may withhold it from citizens. If the State should violate the fifteenth amendment it is difficult to say what would be done. It would seem that the State's representation in Congress would be decreased, for when the right to vote at any election for President or Vice-President, or for representatives in Congress, is denied to any of the male adult citizens of a State other than criminals, the basis of the State's representation in Congress may be reduced in the proportion which the number of disfranchised citizens bears to the whole number of male adults in the State (**154**). According to this rule, if a State with twelve representatives in Congress should disfranchise one third of its male adult citizens it should lose four of these representatives. Its basis of representation, however, would not be reduced without action on the part of Congress (**158**).

The Qualifications of Voters. When we observe how widely the political conditions in one State differ from those in another, and consider how great is the opportunity for a variety of regulations in reference to voting, the laws governing the suffrage throughout the Union seem to be remarkably uniform. This uniformity is due in part to a democratic spirit of equality, and in part to the provisions of the fourteenth and fifteenth amendments.

In all the States the age qualification for voting is twenty-one years; in forty-two States only males can vote at general elections; in all the States a previous residence within the State varying from six months to two years is required; in thirty-three States a voter must be a citizen of the United States; in twelve States aliens may vote; in all the States but nine there is an absence of anything like an educational qualification. In all the States certain classes of persons are excluded from the privilege of voting. Chief among these are lunatics, idiots, paupers and convict criminals.

Female Suffrage. In recent years the question of extending the suffrage to women has arisen in legislatures and in constitutional conventions, and in parts of the country there is a strong public opinion in favor of allowing women to vote. In Colorado, Idaho, Utah, Washington, California and Wyoming women may vote at all elections. Where questions of taxation or education are involved there seems to be a wide-spread disposition to give women an opportunity to be heard. Since women pay taxes, and since they are as deeply interested in the public schools as men can be, it is quite generally conceded that they should not be entirely ignored as taxpayers, and that they should have a voice in the management of schools. In accordance with this sentiment, many States are granting to women the right to vote on certain financial questions and in the selection of school officials. More than half the States permit women to participate in some degree in public affairs.

The Right of Holding Office. The right of holding office is more indefinite than the right of suffrage. It may be stated as a general rule that any one who may vote is qualified to hold office. It does not follow, however, that because one may not vote one may not hold office, for women often hold office even in States in which they have no right to vote. Qualifications for the occupants of most offices are prescribed by law, and these of course must be met. When there are no special legal qualifications attached to an office it may usually be held by any one who can get himself elected or appointed to it. A person who, as a State official, has taken an oath to support the Constitution of the United States and who has afterwards joined in rebellion against the United States is debarred from holding office (**155**).

Duties of a Voter. The American voter should regard himself as an officer of government. He is one of the members of the *electorate,* that vast governing body which consists

of all the voters, and which possesses supreme political power, controlling all the governments, federal and State and local. This electorate has in its keeping the welfare and the happiness of the American people. When, therefore, the voter takes his place in this governing body, that is, when he enters the polling-booth and presumes to participate in the business of government, he assumes serious responsibilities. In the polling-booth he is a public officer charged with certain duties, and if he fails to discharge these duties properly he may work great injury. What are the duties of a voter in a self-governing country? If an intelligent man will ask himself this question and refer it to his conscience, as well as deliberate upon it in his mind, he will conclude that he ought at least to do the following things:

(1) To vote whenever it is his privilege.

(2) To try to understand the questions upon which he votes.

(3) To learn something about the character and fitness of the men for whom he votes.

(4) To vote only for honest men for office.

(5) To support only honest measures.

(6) To give no bribe direct or indirect, and to receive no bribe direct or indirect.

(7) To place country above party.

(8) To recognize the result of the election as the will of the people and therefore as the law.

(9) To continue to vote for a righteous although defeated cause as long as there is a reasonable hope of victory.

QUESTIONS ON THE TEXT

1. What has been the origin of political rights?
2. How does the right of voting differ from a natural right? What is the policy of governments in reference to the suffrage?
3. What restrictions are placed on the State in the matter of granting suffrage?
4. State the qualifications which are usually placed upon the suffrage.

5. To what extent does female suffrage prevail in the United States?
6. What is the general rule in reference to the right of holding office?
7. In what sense is a voter an officer of government?
8. Enumerate the duties of a voter.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Examine the constitution of your State for answers to the following questions:
   (1) What is the qualification of voters as to age? as to residence —(*a*) in the State? (*b*) in the county? (*c*) in the election district? as to sex? as to education? as to the possession of property? as to citizenship? Can an alien vote in this State?
   (2) What special immunities have voters on election day?
   (3) What persons are disqualified to vote in this State?

2. Are the qualifications and disqualifications mentioned in the State constitution all just and proper? If not, state where you would have changes made.

3. After careful thought state the arguments for and against an educational qualification for voting.

4. Discuss the subject of female suffrage from the standpoint (*a*) of justice, (*b*) of woman's fitness for voting, (*c*) of the effect upon politics, (*d*) of the effect upon woman herself.

5. Give the meaning of the following words: *elector, resident, inhabitant, denizen, citizen, subject.*

6. Would you vote for or against a bill that compelled citizens to vote? Give reasons for your answer. What proportion of the voting population of the United States voted at the last presidential election?

7. Of the duties of the voter mentioned in the last section which are the easiest to fulfil?

8. When you shall become qualified do you intend to vote? What personal advantage may you reap from voting? State the losses that society would sustain if you should be deprived of your right to vote.

9. What influence and considerations will probably determine your vote?

10. Suppose the people of an absolute monarchy enjoyed to the fullest extent all civil rights, would they profit any by having the political right granted to them?

11. What are the constitutional provisions in this State in reference to holding public office?

Topics for Special Work.—Political Rights: 1, 62–103. Suffrage and Elections: 5, 423–430. Qualifications for Voting: 25, 10–21. The Education of Voters: 30, 118–126. The Responsibility of Citizenship: 30, 126–128.

XV

A REVIEW

The Characteristic Features of American Government. The essentials of our political system have now been presented. If we will review the previous chapters and analyze their contents we shall find that the characteristic features of the American government may be indicated in the following propositions:

I. *It is democratic.* It is "of the people and by them and for them." In small matters and in great matters the wishes of the people are consulted and their will obeyed.

II. *It is representative.* In but few instances do we find the people governing as a pure democracy. They are content that the actual business of government shall be conducted by chosen officers.

III. *Its powers are sharply separated and nicely balanced.* The law-maker has his peculiar duties, and so has the executive and the judge. Each department acts independently of the others. One department may check another, but it may not control another or usurp its powers.

IV. *It is constitutional.* Public business is conducted and laws are enacted according to the plain provisions of a formal instrument. Officers of government swear to support the Constitution, and the people are under a solemn obligation not to violate it.

V. *It is federal.* Everywhere a central power administers the great affairs which pertain to the national welfare, while other affairs are left to be administered by the

authority of the State. The federal relation is firmly established and clearly defined: the State and the federal government working together give us a Union which cannot be dissolved, and a State which cannot be destroyed.

VI. *It is expansive.* It is always extending the area of its influence. A community under the protection and authority of the Union is usually admitted as a State soon after it is prepared to govern itself in the American way.

VII. *It is decentralized as to local affairs.* All power does not radiate from a central source. Large authority resides in the State as well as in the Union, and local self-government lodges power in places still further removed from the centre.

VIII. *It is conducted by political parties.* The popular will is ascertained by the efforts of political organizations, and the organization that gets the most votes is deemed the rightful possessor of political power.

IX. *It yields a full measure of civil liberty.* The American people are the political heirs of all the ages. Collectively they are provided with every means of resisting tyranny and injustice, while the individual citizen enjoys all the civil and political rights that can be enjoyed consistently with the safety and welfare of society.

X. *It rests upon the performance of individual duty.* The more we study the American government the plainer this truth appears. We learned at the outset that the success of democracy depends upon the conduct of individuals, and in the examination of the various political contrivances by which our government is operated we have discovered no device for relieving the individual of a personal performance of political duty.

The American Spirit. Some one has said that in every high school and college there should be a "professor of America." There is just a little boastfulness in the utterance, yet it nevertheless contains a sane suggestion. One of the chief tasks of this "professor of America" would be to

train his pupils to distinguish between that which is American and that which is un-American. It should be confessed that as far as political matters are concerned such a training would be useful. It is good to be able to stamp instantly and unerringly a political act or movement or sentiment as American or as un-American.

The student ought at this point to be able to tell what is truly American and what is not. It is American to trust the people, to have implicit faith in their ability to govern themselves; it is un-American to be always carping at democracy and predicting its downfall. It is American to recognize the moral and legal equality of men and to cherish the feelings of universal brotherhood; it is un-American to foster the spirit of aristocracy or of class hatred. It is American to give power abundantly to leaders who have been elected at the polls, for such leaders are real representatives; it is un-American to submit tamely to the rule of a self-appointed "boss." To encourage and sustain a department of government when it is contending for its rights is American; to aid in increasing the power of a usurping department is not. To accomplish a political purpose by altering the Constitution in a formal, deliberate manner is American; to act in wanton disregard of constitutional restraint is not. It is American to exalt the Union, but it is un-American to belittle the State. It is American for the State authority to uphold and maintain justice and law and order, but it is un-American to give to the State government the management of affairs that are purely local. It is American to use the political party as a means of government, but to regard party as the end of government is un-American. To enjoy every right which belongs to a free and enlightened people is American, but it is un-American to insist upon a liberty that runs into license and riot.

By adhering to the American way we shall preserve the spirit of the American government, and the spirit of a government is as important as its form. "The letter kill-

eth, but the spirit giveth life.'' Indeed the form of the American government is only an outgrowth of the spirit which animated its founders. The American fathers loved liberty and believed the people should have a controlling hand in government, and they drew the Constitution in trend with their affections and beliefs. The spirit of the fathers became the spirit of the generations which followed, and is the American spirit to-day. As long as that spirit shall survive the American citizen may say: ''Under my government I know and exultingly feel both that I am free and that I am not dangerously free to myself or to others. I know that if I act as I ought no power on earth can touch my life, my liberty, my property. I have that inward and dignified consciousness of my own security and independence which constitutes, and is the only thing which does constitute, the proud and comfortable sentiment of freedom in the human breast. I know, too, and bless God for my own mediocrity; I know that I cannot, by any special favor or by popular delusion or by oligarchical cabal, elevate myself above a certain very limited point so as to endanger [incur the risk of] my own fall or the ruin of my country. I know there is a constitution that keeps things fast in their place: it is made to us and we are made to it.'' (*Edmund Burke.*)

AN EXERCISE

Classify the following as American or un-American, testing each classification by some fundamental principle: (*a*) The people of a State choose as their governor a man who does not reside in the State; (*b*) a town with a population of 500 has as many representatives as a city with a population of 100,000; (*c*) a man seeks a title of nobility; (*d*) a pupil seeks a medal awarded for scholarship; (*e*) the State government controls the police force of a city; (*f*) the State government controls the public schools of a city; (*g*) the local government constructs roads; (*h*) the federal government constructs roads; (*i*) the State government constructs roads; (*j*) a man always votes with his party; (*k*) a man never votes at all; (*l*) the legislature raises the salary of public employees; (*m*) the executive raises the salary of public employees; (*n*) a man contends that democracy is the worst form of government; (*o*) a man is punished for contending that democracy is

the worst form of government; (*p*) a man was arrested for teaching the doctrine of Buddha; (*q*) a legislator would not receive a request to enact a certain law; (*r*) there was held a mass meeting at which the representatives of the people were requested to enact a certain law; (*s*) there was held a mass meeting at which the representatives were commanded to enact a certain law; (*t*) the legislature of a State passed a resolution denouncing the action of a foreign government; (*u*) a law provides that the governor shall appoint the county commissioners; (*v*) a law provides that the governor shall appoint the county judges; (*w*) the federal government informed the drivers of its mail-carts that they might drive at a speed greater than that permitted by the local authorities; (*x*) a State made forty years the age qualifications for voting; (*y*) a State made seventeen years the age qualification for voting; (*z*) a law forbidding adults to be on the street after midnight; (*aa*) a law forbidding children under twelve years of age to be on the streets after 10 P.M.

A Hint on Reading.—C. G. Tiedemann, "The Unwritten Constitution of the United States"; Wright's "American Constitutions."

PART II

THE ORGANIZATION OF THE AMERICAN GOVERNMENT: THE FORM

XVI

THE ORGANIZATION OF CONGRESS

Introductory. Now that the fundamental principles of our government have been learned, we may pass to the subject of its organization. We shall study the organization of (1) the federal government, (2) the State government, (3) local government, and (4) political parties.

The organization of the federal government is determined by the Constitution, Article I providing for the legislature, Article II for the executive, and Article III for the judiciary. We can learn in these Articles of the qualifications of federal functionaries, of the length of their terms of service, of the manner of their appointment or election, of their duties and privileges. Many of the facts of federal organization are stated in the Constitution so clearly and fully as to make it unnecessary to refer to them in the text. No important facts, however, ought to be neglected by the student, and he will neglect none if, in addition to answering the questions on the text, he will also answer those questions at the end of the chapters where reference is made to the Constitution.

Representation in Congress. At the time when the Constitution was framed many novel theories of government were in circulation, but fortunately the men of the Convention avoided ideal schemes. As practical statesmen they knew that if their work was to be successful they must plan for a central government which should resemble as nearly as possible the government to which the people were already accustomed. Accordingly it was early determined

by the Convention to take the existing State government, with its three departments, as a pattern for the federal structure. Having determined upon this, the next problem was to provide for a legislature. Since in all the States but two (Georgia and Pennsylvania) the legislatures were bicameral, and since a bicameral legislature is a characteristic institution of English speaking peoples, the sentiment for a Congress of two houses easily carried the day(**2**). Then arose the question, how shall the States be represented in Congress? Should they be represented as they had been under the Confederation—one State, one vote? Should they be represented according to wealth? Should they be represented according to population? These questions gave the Convention a deal of trouble.

Some of the members wanted representation according to wealth, but the democratic spirit in the convention was too strong for them. Virginia and several large States wanted representation according to population, while New Jersey and several small States contended that each State ought to have equal representation in Congress. Here was a struggle between the large States and the small States, or, regarded from another standpoint, a struggle between the national principle and the federal principle. The national, or large-State, party insisted that the United States *was* a nation, one homogeneous political society consisting of thirteen sections or geographical districts called States, and that each of these States ought to be represented in the federal Congress according to its population. According to this view the new government was to be national, and if the national principle had fully prevailed a government resembling the centralized type (p. 74) would have been established. The small-State party contended that the United States *were* thirteen different political societies, each the judge of its own political competency, each the political equal of another, and that since the new government was to be a union of equals, each State should be equally represented in the legislature. The supporters

of this idea desired the new government to be strictly federal and decentralized.

The debate upon the Virginia plan and the New Jersey plan continued without the prospect of a satisfactory conclusion until Connecticut came forward with this proposition: Let each State, regardless of its population, be represented in the Senate by two senators (**15**); in the House let each State be represented according to its population (**7**). The aged Franklin supported this compromise: "When a broad table is to be made," he said in his homely wisdom, "and the edges of the planks do not fit, the artist takes a little from both and makes a good joint." The Connecticut plan prevailed and a Congress was established that was partly federal and partly national.

In the Senate the federal principle prevails, but not fully, for the two senators are not required to vote together and cast a single vote, as they would be required to do under a purely federal plan. Nevertheless it is in the Senate that we must look for the federal element of our system, for there a State as a State is strong. The twenty-five smallest States with their three million voters can wield more power in the Senate than the twenty-three largest States with their fifteen million voters. There is nothing unjust in this. The decentralized features of our system cannot be maintained unless we keep the States equal in the Senate.

The framers intended that this equality should never be destroyed, for when they prepared the clause relating to amendment they took care to provide that "no State without its consent shall be deprived of its equal suffrage in the Senate" (**124**). According to these words we can never amend the Constitution so as to give a State more or less than two Senators. Of course this is going too far. One generation cannot by a stroke of the pen bind all succeeding generations. If the people should want this provision changed, the change would have to be made. Nevertheless it is not likely that the "plighted

faith of past generations to the small States " will ever be broken.

In the House of Representatives the national principle prevails, for representatives do not appear as representing States, but as representing people. But the House is not national in every respect, for in the event that it is required to take part in the election of a President (**84**) it votes by States, the representation of each State having one vote—a recognition of the federal principle. Moreover, a State must have at least one representative (**10**), a condition that is not required under a purely national system. Upon the whole, however, the House is national; its 435 members represent not forty-eight States, but ninety millions of people.

The Apportionment of Representatives. When it was proposed to give to each State a number of representatives proportional to its population the question of enumeration arose: Should every human being count one? In the northern States there were but few slaves; in some of the southern States there were vast numbers of them. The northern States were unwilling to be outnumbered by having the slaves counted; the southern States wished them to be counted. This difference also ended in a compromise. It was agreed that five slaves should be counted as three persons (**8**), a rule which was changed by the fourteenth amendment, which provides that in the apportionment of representatives to Congress all people except untaxed Indians should be counted (**153**). The number of representatives that each State was to have until a census could be taken was fixed by the Constitution (**11**). After the first census was taken the apportionment was to be regulated by Congress in accordance with the results of the census.

At the establishment of the government one representative was allowed for every thirty thousand inhabitants, but with the increase of population it was found necessary

to increase the ratio of representation. This was done to prevent the House from becoming unwieldy by reason of numbers. If the original ratio had been retained the House of Representatives would now consist of quite three thousand members—a body entirely too large for deliberate action. The present ratio of representation (211,877) gives a House of 435 members.

The Election of Representatives. Any one who is qualified to vote for members of the more numerous branch of the State legislature is qualified to vote for a representative in Congress (**4**). The members of the House are elected by a direct vote of the people. For more than half a century the States were allowed to elect their representatives in their own way, but in 1842 Congress, exercising its power (**24**), ordered that when a State was entitled to more than one representative, the representatives should be elected by districts composed of contiguous territory; that the number of these congressional districts should be equal to the number of representatives apportioned to the State; that no district should be entitled to more than one representative. The division of a State into congressional districts is left with its legislature. The districts may conform to such boundaries as the legislature may decide upon, but they must contain as nearly as possible the same population. Sometimes the dominant party in the legislature "gerrymanders" the districts, that is, marks them out in a way that is grossly unfair to the minority party. A representative need not reside in the district which he represents, but public opinion is strongly in favor of residence within the district. It sometimes happens that a State, after receiving an increase in the number of its representatives, fails to be re-districted before the next congressional election. In such cases the additional members (or member) are elected by the voters of the whole State as a general ticket, and are called "congressmen-at-large."

The Election of Senators. Members of the Senate are elected by the legislatures of the several States (**15**). For more than three fourths of a century the legislature of each State chose United States senators in its own way; but, since disagreements were constantly arising as to the manner in which the election should be held, Congress, in 1866, in accordance with its rights (**24**), ordered that the two houses of the legislature should meet in joint assembly and elect by joint ballot; that if on the first ballot no person should receive a majority of all the votes in each house, the balloting should continue from day to day (at least one vote being taken each day), until a senator should be elected by a majority of all the votes, a majority of each house being present.

This rule, although it may be as good as any that can be devised, does not always work well. The position of United States senator is highly prized as an honor, and the struggle for it is becoming so keen as seriously to interfere with the regular business of the legislature. Sometimes, after a contest that has consumed much of the time and attention of an entire session, the legislature is compelled to adjourn without electing a senator. Thus at times the rule not only does not work well, but does not work at all. One remedy proposed is to have the senators elected by the people. To do this with governmental authority would require an amendment to the Constitution. The House of Representatives by more than a two-thirds vote has several times prepared an amendment providing for the popular election of the senators, but the Senate has not looked with favor upon the proposed change.

Congress the Focus of American Political Life. Congress, by virtue of its organization, is the political nerve-center of the Union. The members of the House come fresh and direct from the people of the whole country; the voice of the House is, therefore, the voice of the nation. The senators are the federal ties which unite the State govern-

ment with the national government. In the halls of Congress have been done the things which have made the United States the country it is. As in the past Madison, Clay, Webster, Calhoun, John Quincy Adams, Sumner, Thurman, Blaine, workers in the House and Senate, shaped the policies and directed the course of the American nation, so in the present the fortunes of the Union are in the hands of the men we send to Congress. While we keep statesmen there we are safe, but if we should allow Congress to become a body of political gamesters we would doubtless advance rapidly to national ruin.

QUESTIONS ON THE TEXT

1. What problems of representation arose in the Convention of 1787?
2. Explain the difference between the national principle of representation and the federal principle.
3. What was the Connecticut compromise?
4. In what respect is Congress a national body? In what respect is it a federal body?
5. Why is it likely that the equality of the States in the Senate will not be disturbed?
6. In what manner are representatives apportioned to the several States?
7. Give an account of the election of representatives.
8. Give an account of the election of United States senators.
9. Why is Congress the center of national politics?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Show from the history of the times that the people in 1787 needed a government which would accomplish just such objects as are mentioned in the preamble (1).
2. What words in the preamble reveal the democratic feature of our Constitution? What words its federal feature?
3. In referring to the government which has its seat at Washington, why do we sometimes speak of it as being *federal* and sometimes as being *national?*
4. Give the history of the word "gerrymandering." Is there any sign of gerrymandering in the boundaries of the congressional districts of your State? Point out the wrongs of gerrymandering. Bound the congressional district in which you live.
5. By referring to the Constitution answer the following questions, and give reasons for the constitutional provisions: How is a member

of the House of Representatives elected, and what is the length of his term of office (3)? What are the qualifications of a member of the House as to age, citizenship and residence (5)? When is a person qualified to vote for representatives in the House (4)? How is a vacancy in the House of Representatives filled (12)? What are the qualifications of a senator as to age, citizenship and residence (18)? When does the Vice-President have a right to vote in the Senate (20)? Who presides at an impeachment trial when the President has been impeached (22)? If the right to membership in Congress is contested how is the question decided (26)? How is the compensation of members of Congress determined (32)? What special privileges do members of Congress enjoy (33)? What circumstance will prevent a member of Congress from receiving an appointment to office under the federal government (34)? What circumstance will disqualify a man for membership in Congress (35)?

6. Should a member of the lower House consider the interests of his district as being of more importance than those of the nation? Should a senator place the interests of his State above those of the nation?

7. Congressmen receive twenty cents for every mile of travel to Washington and return to their homes. What is the amount of the mileage of the member of the House who represents your district?

8. *The Oregon Plan of Electing Senators.* In Oregon voters express their choice for United States Senators at the same time that they vote for members of the legislature, and the members of the legislature, in accordance with a pledge previously made, simply vote for the senatorial candidate who has received the greatest number of votes at the polls. This plan has also been adopted by Ohio and Nebraska. It takes the election of Senators away from the legislature and gives it to the people. What do you think of the Oregon plan?

9. *The Popular Election of Senators.* In 1912 Congress submitted to the States for ratification an amendment to the Constitution providing for the election of Senators by a direct vote of the people.

Topics for Special Work.—The House of Representatives: 7, 33–70. The Senate: 7, 79–125. Rights of Senators and Representatives: 6, 182–186. An Apportionment Bill: 30, 148–149. The House of Representatives and the House of Commons: 30, 149–156. Popular Election of Senators: 30, 156–162.

XVII

CONGRESS AT WORK

The Assembling of Congress and its Adjournment. Every year on the first Monday in December (**25**) Congress assembles in the Capitol at Washington, the Senate occupying the north wing of the building and the House the south wing. It convenes and adjourns by virtue of constitutional authority, and not by virtue of a summons or an order from the executive.

The self-convening and the self-adjourning feature of Congress is a valuable item of American civil liberty. The political history of England had taught the framers that it was dangerous to make the assemblage and adjournment of the legislature dependent upon the action of the executive. Kings had refused to call Parliament together when the country needed its services, and had dissolved it as soon as it showed opposition to the royal will. So the framers placed the assembling and adjournment of Congress quite beyond the power of the executive (**25**).

The President, however, may on extraordinary occasions convene Congress in an extra session (**100**), and he may also adjourn Congress if the two Houses cannot themselves agree upon a day for adjournment (**101**).

When making laws the two Houses must carry on work during the same period of time, although either House may sit alone for a period not exceeding three days (**31**).

The first Congress began its legal existence March 4, 1789, and expired at the hour of noon March 4, 1791, when the term of the first elected representative ended; the second Congress came into power March 4, 1791, and ended its

career March 4, 1793; the third Congress began March 4, 1793, and ended March 4, 1795; and thus on to the present time. From this we learn (1) that Congresses are numbered according to the biennial periods for which representatives are elected, and (2) that the legal existence of Congress begins on March 4 following the election of representatives and ends March 4 two years later. Representatives are elected in November,[1] but, unless an extra session is called, they do not actually enter upon their duties until the December of the first year of their legal term—more than a year after their election. If a Congress should choose to do so, it could sit in continuous session from the time it first meets to the expiration of its term. In practice the work of a Congress is done in two regular sessions. The first session begins when a Congress assembles in December for the first time and ends late in the spring or early in the summer of the following year. This is the long session. The second or short session begins when the Congress assembles in December for the second time and ends at twelve o'clock meridian the following March 4. Extra sessions begin on a date fixed by the President and end at the pleasure of Congress.

The House at Work. The House consists of nearly four hundred men, ambitious, enthusiastic, and for the most part in the prime of life. Every member has his heart set upon the passage of at least one bill, while many a member has a dozen which he wishes to push through. In the first few days after the assembling of the House several thousand bills are introduced. The ruling purpose of the individual member is to get his own measures passed. His reputation as a useful public servant, and even his seat in Congress may depend upon his success in this matter. Every member, therefore, strives with all his might to get his favorite measure singled out and brought to

[1] By a special provision of the law Maine and Vermont are permitted to elect their representatives in September and Oregon in June.

a consideration and a vote. But every bill must be duly discussed and must be disposed of in an orderly, decent way.

Amid the stormy conflicts of interest which are bound to arise in the House, and in the confusion and strife which are attendant upon the proceedings of such a large and virile body, how can business be conducted in due form and order? The answer to this question involves the consideration of (1) the speakership, (2) the committee system, and (3) the rules of the House.

(1) *The Speakership.* When the members of a new House assemble for the first time the clerk of the previous House calls them to order, causes a roll to be called, and, if a quorum (**27**) is present, invites the House to proceed with the election of a Speaker (**13**) who is always chosen from among the members of the House. After the election of the Speaker the other officers of the House, the sergeant-at-arms, the clerk and the doorkeeper are elected, and the work of the session begins.

The character of the proceedings of the House depends largely upon the man selected as Speaker. The duties of the Speaker are defined by the rules of the House. He preserves order, he signs all bills, he decides questions of parliamentary law, he puts questions to the House to be voted upon, and he recognizes those members whom he regards as being entitled to be heard upon the floor. No member who fails to secure the recognition of the Speaker is entitled to be heard. This power of recognition, therefore, is most important.

(2) *The Committees.* A large legislative body in full and open session cannot look into the merits and discuss all the items of every proposed bill. There must be a method of sifting proposed measures and rejecting worthless and absurd propositions so that the attention of the legislature may be given to serious and important matters. From time immemorial this preparation of measures has been accomplished through the agency of *committees,* small groups of members, to each of which is assigned the duty of attending to a particular branch of legislation.

The more important committees of the House consist of from fifteen to twenty-one members. The principal standing committees—committees which are provided for by the rules, and which continue in existence through the entire session—are those on ways and means (p. 274), appropriations, the judiciary, foreign relations, currency, commerce, pensions, military affairs, elections, manufactures, agriculture, and rivers and harbors. The committees are elected by the House but before the vote is taken the membership of each committee is determined by party action.

The work of the House is effected through these committees. When a bill is introduced upon the floor of Congress it is promptly referred to the appropriate committee. Friends of the bill may appear before the committee and speak in its behalf. The committee may amend the bill, or reject it outright, or pay no attention to it whatever. If a bill is rejected in committee, it has little chance of becoming a law. If it is reported favorably to the House, it has a chance at least of receiving serious consideration. A committee, besides reporting upon measures that have been referred to it, may report bills originating with itself. In practice, before a bill can become a law it must first receive the favorable judgment of a committee. For this reason much of the most important work of Congress is done in the committee rooms.

(3) *The Rules.* When a bill is reported favorably by a committee it is usually placed upon the calendar along with hundreds, perhaps thousands, of other bills. The calendar is a kind of catalogue or register of bills, and has been called "the cemetery of legislative hopes," because so many bills are never heard of again after they reach it. When a bill has found its way to the calendar its fate henceforth rests with the rules of the House. The rules of procedure are determined by the House itself (28), and are framed with the view of conducting business in a fair and orderly manner. The general rule in reference to a bill on the calendar is that it must wait its turn for con-

sideration, a rule which if strongly enforced might postpone action indefinitely.

Foremost among the agencies for controlling procedure in the House is the *committee on rules,* which consists of eleven members, six of whom belong to the political party which is in a majority and five of whom belong to the minority party. The committee on rules has the high privilege of bringing in at any time "a special rule" or order, by which a certain time may be appointed for the consideration of a bill. It can thus at any time without discussion or delay order any bill to be taken from the calendar for immediate consideration. This committee on rules can also determine the conditions of debate, how long members may speak, whether amendments to the bill may be offered or not, when a vote shall be taken. The course of legislation in the House is thus practically determined by the committee on rules. The first of committees, therefore, is the committee on rules and the first of rules is the special rule. The committee on rules, like all the other committees, is elected by the House. Its membership, however, is first determined by party action.

The Senate at Work. When a Congress expires two thirds of the members of the Senate retain their seats in the next Congress (**16**). The Senate is thus in part a continuous body; "always changing it is forever the same." It is not reorganized at the opening of every Congress. The Constitution provides for it a permanent presiding officer (**20**); the temporary President (**21**) and other officers hold their positions for indefinite periods. Senators on an average are much older[1] than members of the House, and they exert a greater personal influence by reason of their right to be consulted in reference to the appointment of important executive officers (**96**).

The continuity of its existence, the stability of its organization, the maturity and experience of its members,

[1] The average age of senators is sixty.

and its great power are all reflected in the Senate's proceedings. The Senate goes about legislation in a reposeful, dignified way. It does not have to hurry, for it always has at least four years in which to accomplish its purposes. Senators take hold of legislation with a masterful hand, for they bring to the work the lessons of a long public career. The Senate sometimes wields power in a manner that appears to be arbitrary, and it is sometimes accused of ignoring the rights of the House. It will ignore the rights of the House, of course, if the House does not defend itself, just as the House will ignore the rights of the Senate if it is permitted to do so. We must expect encroachments, and if a contest between the House and the Senate should arise the people should not be surprised, but should cheerfully settle the matter by supporting at the polls the branch which happens to be acting in accordance with the American spirit.

The course of legislation in the Senate is smoother than it is in the House. The committees are not appointed by the presiding officer, but are elected by the vote of the Senate. On the floor of the Senate there is the utmost freedom of debate. Any senator may talk as long as he pleases on any subject that comes up for discussion. The Senate could adopt rules (**28**) that would curtail debate and hasten measures to a conclusion, as is done in the House, but it has not cared to do so. It proceeds upon the principle that the more fully a subject is discussed in a serious way the better, and it assumes that no senator will abuse the privilege of unlimited debate and talk merely to kill time. Senators, however, occasionally do talk to kill time. In 1890 a senator, in order to keep a measure from coming to a vote, spoke for fourteen hours without interruption. In 1903 a senator, wishing to force the Senate to yield on a certain point, placed Lord Byron's complete works upon his desk and threatened to read every word of them if the Senate did not do what he wanted it to do. The Senate yielded because the demand

was made in the closing hours of a Congress and important business was ahead.

The Powers of Congress. The strictly legislative powers of Congress have been referred to in a general way heretofore. They are enumerated in Article I, Section 8 of the Constitution. These powers will receive particular attention at appropriate points in subsequent chapters. At present it is sufficient to notice that the powers granted by the framers to the new federal Congress are quite like the powers granted to the Congress of the old Confederation (p. 42), the most important additions being (1) the *taxing* power, which gave the new government its dignity and strength, and (2) the power to regulate *commerce,* the subject, it will be remembered, which led up to the calling of the Convention of 1787. As far as the legislative powers are concerned the House and Senate are coördinate branches: a bill passed by one house is not a law until it is passed by the other also, and either house can originate and pass such bills as it chooses, excepting that bills for raising revenue must originate in the House of Representatives (**36**).

Two matters not of a strictly legislative nature must receive attention here:

I. *Impeachment.* When high public officials are charged with gross misconduct in office, as when the President is charged with not enforcing a law, or a federal judge is accused of habitual drunkenness, they may be reached by the process of impeachment. Impeachment begins in the House of Representatives, where the charges against the unfaithful officer must be laid (**14**). If in the judgment of the House the accused person is guilty, the impeachment, or accusation, is carried to the Senate to be tried (**22**). The Senate, while trying the impeachment, sits as a court of justice. Witnesses are summoned and examined and evidence *pro* and *con* is presented. If by a two-thirds vote the Senate sustains the impeachment the

accused person is deprived of his office (**23**). He may afterwards be tried and punished in a court of law for his offense, but such a trial is not a part of the process of impeachment. The main object of impeachment is to protect the government from the acts of faithless officers, not to punish crime. Its purpose, therefore, is fulfilled when the offending officer is removed. Impeachment is plainly a judicial rather than a legislative function.

II. *Confirmation of Treaties and of Presidential Appointments.* A treaty (p. 260) is a law of the land (**126**). It is only right, therefore, that the legislature should participate in the treaty-making power. The Constitution recognizes this principle to the extent that treaties shall be confirmed by a two-thirds vote of the Senate (**95**). The Constitution also provides that certain presidential appointments must be confirmed by the Senate (**96**). In the exercise of this power the Senate has established a custom of confirming only those appointments which are agreeable to the senator from the State in which the appointment is made. The senator to be consulted belongs to the President's party. If the State in which the appointment is made has no senator of the President's party, the party leaders of the State must be consulted. This deference to the wishes of individual senators in the matter of confirming appointments is called *senatorial courtesy.* The application of the rule of senatorial courtesy almost doubles the power of the Senate, for it has the effect of taking federal patronage from the President and bestowing it upon senators. When confirming appointments and treaties the Senate regards itself as acting in an executive capacity. It holds its executive sessions behind closed doors. All purely legislative sessions, both of the House and of the Senate, are open to the public.

QUESTIONS ON THE TEXT

1. How is Congress assembled? How is it adjourned? Why were these methods of assembling and adjourning adopted?

2. On what principle are Congresses numbered? When does the legal existence of a Congress begin? When does it terminate?

3. Give an account of the two regular sessions of Congress.

4. What are the duties of the Speaker of the House?

5. Give an account of the committee system.

6. How is it possible for the committee on rules to control the course of legislation in the House?

7. Describe the Senate in its leading characteristic. On what principle is debate in the Senate conducted?

8. Discuss in a broad way the powers of Congress.

9. Describe the process of Impeachment.

10. What is the power of the Senate in reference to treaties and presidential appointments. What is meant by "senatorial courtesy"?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Answer the following questions by referring to the Constitution: How is a Speaker of the House of Representatives chosen (13)? When does the Vice-President have a vote in the Senate? When a President is impeached who presides at the impeachment trial in the Senate (20)? What constitutes a quorum in the House (26)? How may disorderly behavior in Congress be punished (29)? How may a member of Congress be expelled (29)? How may a yea and nay vote be secured (30)? Give the history of a bill after it has passed Congress (37). How may the veto of the President be overcome (40)? Under what circumstances may the President defeat a bill without vetoing it (41)? To what things besides bills is the approval of the President necessary (42)?

2. Give reasons for not allowing the Vice-President to preside at an impeachment trial when the President is accused.

3. Why is it unfortunate that so long a time should elapse between the election of Congress and its first regular session?

4. What are the advantages and disadvantages of "senatorial courtesy"? What is meant by "filibustering"?

Topics for Special Work.—Congressional Procedure: 7, 71–78. The Powers of Congress: 5, 268–281. The Senate, its Workings and Influence: 2, 83–93. The House at Work: 2, 108–114. The Committees of Congress: 2, 115–122; also 30, 162–166. Freedom of Debate in the Senate: 30, 167–170. A Defense of the Senate: 30, 177–184.

XVIII

THE PRESIDENCY

The Election of the President. As we have seen, a fatal weakness of the Union under the Articles of Confederation was the absence of an executive to enforce the laws. The Convention soon decided to remedy this defect by establishing a strong executive department and vesting its powers in a President (**78**). How was this officer to be selected? This question gave rise to a vast amount of discussion. Some wanted him elected by Congress, but it was said that this would make the executive dependent upon the legislature, and it was highly important that these two branches should be independent of each other. It was suggested that he be elected by the Senate, but this method was opposed as being too aristocratic. An election by a popular vote of the whole country was recommended; this plan was opposed as being too democratic. To end the discussion a plan of indirect election was adopted: the President was to be chosen by State colleges of electors, the electoral college of each State to have a number of electors equal to the combined number of senators and representatives to which the State was entitled in Congress (**81**). Each State was permitted to select its electors in a way agreeable to the legislature (**80**). Each of the electors was to vote for two persons (**82**) and the person who received the greatest number of votes (providing it was a majority) was to be the President, and the one who stood second in the list was to be Vice-President (**83**). If more than one person received a majority of the

electoral votes the election of the President was to be made by the House (**84**).

The electoral plan as first adopted proved to be as clumsy in practice as it was excellent in theory. It worked well enough at the first and second presidential elections when Washington was the choice of every elector, but when in the third election it resulted in choosing a Federalist (John Adams) as President and a Democrat (Thomas Jefferson) as Vice-President, its efficiency as a means of expressing the popular will began to be questioned. In the fourth presidential election the electoral system as devised by the framers broke down almost completely and the Constitution had to be speedily amended (**146**). By Amendment XII, which was adopted in 1804, the work of the electoral college is simplified by making the election of Vice-President an affair distinct from the election of the President (**147**).

The State legislature may appoint the electors itself, it may vest their appointment in some other body, or it may call upon the people to elect them. In the early days of the Union the States differed in their methods of selecting electors. In some States they were elected by the legislature, in some they were elected by districts as representatives in Congress are at the present time, while in a few States they were elected on a common ticket. To-day every State elects its presidential electors in the same way —on a common ticket by a popular vote. Such uniformity is at first sight almost amazing. Why have all the States agreed to do this thing in the same way? Democracy and party organization must answer. We still adhere to the forms of the electoral system as provided in the twelfth amendment, but the spirit of that system has long since departed. The people long ago took the election of the President into their own hands. They have done this through the agency of political parties, and the requirements of party organization have produced uniformity in the methods of electing the presidential electors. How

eighty millions of people actually accomplish this stupendous and inspiring task of selecting one of themselves as their ruler may best be told when we come to speak of party organization (p. 227).

The Powers and Duties of the President. The members of the Convention were distrustful of executive power and were disposed to clothe the new President with only so much authority as was absolutely necessary. Nevertheless, they probably gave him fully as much power as an executive ought to have. They made him commander-in-chief of the military forces (**92**); they gave him the power of pardoning offenses against the government of the United States (**94**); they conferred upon him jointly with the Senate the treaty-making power (**95**) and the power of appointing foreign ministers, consuls, judges of the Supreme Court and many other federal officers (**96**); they imposed upon him the function of receiving foreign ambassadors and representatives of foreign governments (**101**); they gave him authority to lay before Congress at the beginning of a session a message setting forth the condition of public affairs and recommending measures for legislation (**100**); they gave him power to convene Congress in extraordinary session and to adjourn Congress when the two Houses cannot agree as to the matter of adjournment (**101**); they gave him the veto power (**38**).

The highest and the chief duty of the President is "to take care that the laws be faithfully executed" (**102**). This is a purely executive duty and one that the President cannot escape. A law may be distasteful to the President, he may regard it as hurtful or unconstitutional, yet as long as it is a law he must enforce it. "As the citizen may not elect what laws he will obey neither may the executive elect which he will enforce." Should the President wantonly refuse to execute a law he would be removable by the process of impeachment.

The President's Share in Law-making. While the President is bound to carry out laws that have been made whether he is in sympathy with them or not, he at the same time may do much to prevent the enactment of laws obnoxious to himself and much to secure the enactment of favorite measures. His power of prevention lies in the veto. How great this power is may be seen by a simple calculation. A bill may pass in the present House of 435 members by a vote of 218 to 217, and in the Senate by a vote of 49 to 47. Now, if the President should veto the bill it would require 72 more votes in the House and 19 more in the Senate (40) to pass the measure over his veto. The legislative weight of the President's veto, therefore, is nearly one sixth as great as that of Congress itself.

In theory the veto is placed in the hands of the President solely as a weapon for defending the Constitution and the executive department against the encroachments of the legislature; it is not placed there for the purpose of making the President a law-maker. Early Presidents acted upon this theory, but Andrew Jackson set the example of using the veto power to prevent the passage of any measure to which he was opposed; he exercised his independent judgment on every bill which Congress sent to him and vetoed all bills to which he objected, whether his objection rested upon constitutional reasons or upon partizan or personal reasons. In other words, Jackson assumed to share with Congress responsibility for legislation, and his successors in the Presidency have not hesitated to use the veto as a real legislative engine. Taking it all in all, however, Presidents have not abused the veto power, and no President is likely to abuse it while Congress is faithful to the Constitution and to the interests of the nation.

The President's share in law-making does not end with the negative power of the veto; he possesses several legislative powers of a positive nature. In making the laws known as treaties (p. 260) he takes the initiative and is

coördinate with the Senate. By convening Congress in extra session he can present to that body subjects for its exclusive consideration. In annual and special messages he can give his views in respect to needed legislation, and through his influence as a party leader and as a distributor of patronage he can often cause Congress to follow the suggestions contained in his messages.

Besides his constitutional means of reaching Congress the President has another convenient method of approaching that body. He may, through the secretaries of executive departments, communicate with the committees of Congress and cause them to consider measures in which he is interested. A secretary of the President may not appear on the floor of either House as the advocate of a measure, but he may appear in a committee-room and act as the mouthpiece of the President. When committees in good faith invite an executive officer to appear before them and inform them in reference to certain matters of administration there is no harm done, but if the executive department should impose itself upon the committees there would be encroachment.

Succession to the Presidency. A vacancy in the office of President may occur by the death, impeachment or resignation of the incumbent, or by his inability to discharge the duties of his office. The Constitution provides a Vice-President (88) to succeed in the case of a vacancy. If for any reason neither President nor Vice-President can serve, an officer designated by Congress (89) succeeds to the Presidency. Under the presidential succession act of 1886 it is provided that members of the President's cabinet shall succeed to the Presidency in the following order: (1) The Secretary of State, (2) the Secretary of the Treasury, (3) the Secretary of War, (4) the Attorney-general, (5) the Post-master-general, (6) the Secretary of the Navy, (7) the Secretary of the Interior. The one succeeding to the Presidency serves for the remainder of the

four years, but any one thus succeeding must have the constitutional qualifications.

Thus far in our history the only officer who has been called upon to fill a vacancy in the Presidency has been a Vice-President. Five times such a succession has occurred, the vacancy each time being caused by death. The office of Vice-President is, therefore, one of great potential importance. In selecting a Vice-President we ought to be almost as careful as we are when we select a President. A party convention, when nominating a candidate for the Vice-Presidency, should keep in mind the interests of the country as well as the interests of a party and refuse to name as candidate for Vice-President any man who would not be likely to acquit himself well in the presidential chair.

The President as a Political Personality. The President is the most commanding political personage in the United States. He is not only the fountain of executive energy, he is also the representative of a great people. He reflects the ideals and aspirations and attributes of the American electorate. If the electorate should become vainglorious and selfish and low in its standard of morality, it might place in the presidential chair a man like unto itself. To the honor of our democracy only pure and honest men have been elected to the Presidency, and to the honor of party management no low or vile man has ever been named as a presidential candidate. Voters ought to demand that this high level of personal character in presidential aspirants be maintained. The Presidency under the Constitution is attainable by any natural born citizen (86), but no citizen of smirched reputation or base character should feel that it is within the range of possibility for him to become President. The saneness and goodness of democracy will be assured only so long as it refuses to ally itself with evil—evil men or evil policies.

QUESTIONS ON THE TEXT

1. What methods of electing the President were suggested in the Convention of 1787? Explain the method which was adopted.
2. What were the defects of the original method of electing the President?
3. In what ways may presidential electors be chosen? Why has the present method been adopted in all the States?
4. What are the constitutional powers and duties of the President? What is his greatest duty?
5. Give an account of the share the President has in law-making.
6. In what way, other than constitutional, may the President influence Congress?
7. How is a successor to the Presidency provided?
8. Why should the personality of the President be above reproach?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Examine the Constitution for answers to the following questions: What is the length of the President's term of office (79)? What are his qualifications as to residence, citizenship, and age (86)? If neither President nor Vice-President can serve, how is the office of President filled (89)? Can a President have his salary increased (90)? What is the President's oath of office (91)?
2. Many people think that the President should be elected for a term of six years, and that he should be ineligible for a second term. Discuss this.
3. What are the qualifications for the office of Vice-President? What are the duties of the Vice-President?
4. Name the qualities which should be found in a President. Name the four Presidents who have been the highest embodiment of these qualities.
5. How many Presidents have been elected a second time. Have the second administrations of Presidents generally been successful?
6. Is the pardoning power a judicial or an executive function? Is the veto power a legislative or an executive function?
7. Prepare a five-minute paper on "Federal Impeachments." Woodburn, "American Republic," 231–241; Callahan, "Impeachments," in Encyclopedia Americana under article "United States."
8. What Vice-Presidents have succeeded to the Presidency? Of these how many were especially fitted for the higher position?

Topics for Special Work.—The President: 8, 185–226. Presidential Powers and Duties: 2, 36–51. Parliamentary *vs.* Representative Government: 30, 192–196. Executive Supremacy: 30, 196–202.

XIX

THE FEDERAL EXECUTIVE DEPARTMENTS

The Cabinet. The operations of the executive department of the federal government affect the welfare of nearly a hundred millions of people and involve the annual expenditure of more than half a billion of dollars. Responsibility for the smooth and efficient working of the great federal machine rests wholly on the President, but in the supervision of the executive business there must, of course, be division of labor. To assist him in governing, the President summons to his aid assistants known as secretaries. Washington began his administration with three secretaries, a Secretary of State, a Secretary of the Treasury and a Secretary of War. As the business of government increased the work of the administration was further divided and new secretaries were brought in. The chief assistants of the President now number nine and are as follows:

1. The Secretary of State.
2. The Secretary of the Treasury.
3. The Secretary of War.
4. The Attorney-general.
5. The Postmaster-general.
6. The Secretary of the Navy.
7. The Secretary of the Interior.
8. The Secretary of Agriculture.
9. The Secretary of Commerce and Labor.

Each of these secretaries is appointed by the President and is responsible to him for the management of one of the great departments of executive business. At stated times

the secretaries meet the President for consultation. This executive council is known as the cabinet. The cabinet as a body has no legal functions and is unknown to the Constitution, although its existence is foreshadowed in the words, "the President may require the opinion in writing of the principal officers in each of the executive departments upon any subject relating to the duties of their respective offices" (93). Washington, following the letter of the Constitution, communicated with his secretaries individually and required the opinion of each in writing, but his successors soon established the custom of calling the secretaries together around a council board when important matters of administration are to be settled. It is said of Jefferson: "When a question occurred of sufficient magnitude to require the opinion of all the heads of departments he called them together, had the subject discussed and a vote taken in which he counted himself as but one." From out of these early meetings of the President and his secretaries has grown the cabinet meeting of to-day. The cabinet meets at the White House at the call of the President. No records of its meetings are kept, and the public does not know what takes place at them. The President is not bound to act according to the wishes of the Cabinet, nor does he always do so. The function of the cabinet is to discuss and advise; it is for the President to decide and act.

The Work of the Departments. It is through his cabinet officers as heads of departments (98) that the President governs. The names of these departments and a brief description of the work done by each will now be given:

I. *The Department of State* under the management of the *Secretary of State* attends to foreign affairs. It conducts the negotiations which lead up to the making of treaties (p. 261), instructs our foreign ministers and consuls in their duties, extends official courtesies to the ministers from other countries, gives passports to those in-

tending to travel abroad, protects American citizens in other lands, and transacts all other business arising between our government and other governments. The Secretary of State is regarded as first in rank among the members of the cabinet.

II. *The Department of the Treasury* under the *Secretary of the Treasury* manages the financial business of the country. It collects the internal revenue raised from whisky and tobacco (p. 276), and the custom duties levied on foreign goods (p. 275); it attends to the expenditure of money appropriated by Congress; it manages the public debt; it organizes and inspects national banks; it controls the mints and supervises the making of paper money. In addition to its purely financial duties this department controls the life-saving service maintained for the rescue of persons from shipwreck, supervises the construction of public buildings, and manages the marine hospitals maintained for disabled soldiers.

III. *The Department of War* under the *Secretary of War* has charge of the land forces. It purchases supplies for the soldiers, controls the transportation of troops, directs the improvements of rivers and harbors, superintends the signal service and controls the Military Academy at West Point (p. 357).

IV. *The Department of Justice* under the *Attorney-general* is the law department of the national government. When the President or a member of the cabinet desires legal advice it is furnished by this department. When the government of the United States is interested in a case in court, the Attorney-general defends or prosecutes the suit.

V. *The Post-office Department* under the *Postmaster-general,* in addition to collecting, carrying and distributing the mail, establishes and discontinues post-offices, provides the public with stamps and postal cards, and conducts a money postal-order system by which money may be safely transmitted to all parts of the world (p. 341). There are

nearly two hundred thousand people employed in this department.

VI. *The Department of the Navy* under the *Secretary of the Navy* purchases naval supplies, provides for the construction and equipment of vessels, supervises the navy yards and docks, and controls the Naval Academy at Annapolis.[1]

VII. *The Department of the Interior* under the *Secretary of the Interior* has charge of national affairs that are of a purely domestic nature. It examines pension claims and grants pensions, controls Indian affairs, directs the sale of public lands, issues patents and copyrights, superintends such educational interests as are of a national concern (p. 357), and directs the work of the geological survey.

VIII. *The Department of Agriculture* under the *Secretary of Agriculture* diffuses among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that term, and procures, propagates and distributes among the people new and valuable seeds and plants.

IX. *The Department of Commerce and Labor* under the *Secretary of Commerce and Labor* "fosters, promotes and develops the foreign and domestic commerce, the mining, manufacturing, shipping and fishing industries, the labor interests and the transportation facilities of the United States." This department (created in 1903) has charge of the census, statistics, immigration, steamboat inspection, the coast and geodetic survey and lighthouses.

The Organization of a Department. Each of the nine departments has the control of a vast amount of executive business, and it is necessary to subdivide the work of a department and place an officer at the head of each subdivision. A subdivision of a department is usually called

[1] For the duties of the Secretary of War and the Secretary of the Navy in times of actual war, see p. 252.

a *bureau,* and the head of a bureau is called a director or commissioner or superintendent. For example, in the recently organized department of Commerce and Labor there is a Bureau of Corporations, a Bureau of Labor, a Bureau of the Census, a Bureau of Statistics, a Bureau of Fisheries, a Bureau of Navigation, a Bureau of Immigration, a Bureau of Standards, and a Children's Bureau. When the work of the secretary of a department becomes too heavy for one man he is provided with as many assistant secretaries as may be needful. For example, in the Department of State there are three assistant secretaries.

Executive Work Outside the Departments. A few items of executive business have not been assigned to any one of the nine great departments. The work of the *Interstate Commerce Commission* (p. 339) is performed by seven commissioners who act independently of any department. The *Civil Service Commission,* whose duty is to regulate and improve the civil service of the United States, consists of three commissioners who are responsible directly to the President. The *Government Printing Office,* the *Library of Congress* and the *Smithsonian Institution* are also outside of departmental control. The chief officers in all these cases of extra-departmental activity are nominated by the President and confirmed by the Senate, just as other principal officers are.

The National Civil Service. There are more than three hundred and seventy-five thousand persons employed in the executive civil service of the federal government, and every person on the list, from the secretary of a department down, receives his position directly or indirectly from the President. Congress creates positions, but it cannot name the persons who are to fill them. It may vest the appointment of inferior officers elsewhere than in the President (**98**), but it cannot place the appointing power beyond the President's reach. Through his secretaries the President's

power to appoint extends to all the ramifications of the civil service.

And the presidential power to remove is even greater than is his power to appoint. Most of his appointments to the higher offices must be agreed to by the Senate (**96**), but in the matter of removal the Senate need not be consulted. The President may remove any person employed in the federal executive service at any time for any reason or for no reason.

Of course the President cannot give special attention to every case of appointment and removal. In these matters, as in everything else, he must be guided by the heads of the departments. He must also consult with the senators and representatives of the several States, and he must take care to allot to each State a number of appointments proportioned to its population.

Questions connected with the appointment of the great army of government employees and with the tenure of their employment have received much attention in recent years. It is generally agreed that the incoming President should fill the higher offices with men of his own party, for these help to shape public policy and should, therefore, be members of the political party that is in power. But should inferior officers, clerks and employees performing routine duty also be removed when the administration changes? or should they be allowed to continue in their places so long as they do their work well and conduct themselves properly? For a long time in our history these positions were regarded as the spoils of political warfare, and when a party came newly into power, practically all the employees under the old administration were dismissed and adherents of the victorious party were put into their places. During the last twenty-five years, however, there has been developing a new policy in respect to civil service. In 1883 Congress provided for the competitive examination of a large class of employees in the civil service, and for appointment according to merit

rather than according to party affiliation. It also provided that removals shall not be made for political reasons. The rule of appointment according to ascertained merit has been extended until it now reaches almost every department of the national civil service and embraces about two thirds of all the employees. Appointees under the competitive system hold their positions during good behavior and efficient service. No employee, however, is placed beyond the President's power to remove.

NOTE.—The salaries of the principal officers of the federal government are as follows:

President	$75,000
Vice-President	12,000
Members of the cabinet	12,000
Chief Justice of the Supreme Court	15,000
Associate Justices of Supreme Court	14,500
Judges of Circuit Courts	7,000
Judges of District Courts	6,000
Representatives	7,500
Senators	7,500
Foreign ministers and ambassadors	10,000 to 17,500
Heads of bureaus and divisions	3,000 to 6,000

QUESTIONS ON THE TEXT

1. Name the officers who form the President's cabinet. What is the function of the cabinet.

2. Give a brief account of the work of each of the nine great federal executive departments.

3. In what manner is an executive department organized?

4. Mention several examples of executive business which does not come under departmental control.

5. To what extent does the President possess the power of appointment? the power of removal?

6. What is the policy of the government in reference to the appointment and the retention of employees?

SUGGESTIVE QUESTIONS AND EXERCISES

1. It is often proposed that the members of the cabinet be allowed to appear in Congress and urge upon that body the passage of measures

which are desired by the executive. What characteristic principle of our government would such a course violate?

2. What is meant by the words: "To the victor belong the spoils"?

3. To which of the executive departments would you take a claim for pensions? a request for a passport in foreign countries? an application for a patent? an application for admission to the academy at West Point? a request for a sample of a new kind of seed? an application for a position in the life-saving service? a complaint of ill treatment in a foreign land? a request for a copyright on a book? an application for service as an architect?

4. What is a bureaucracy?

5. Prepare a five-minute paper on "The organization and work of the Department of the Treasury." Consult the "congressional directory," a copy of which may be obtained from your representative in Congress.

6. How could you secure a position as a stenographer in the federal service? Consult report of the Civil Service Commission, a document which may be obtained by writing for it to Washington.

Topics for Special Work.—The Cabinet: 8, 227–245; 2, 64–70. For an account of the workings of the several executive departments of the National Government: 16. The Cabinet: 30, 211–218. Civil Service Reform: 30, 232–237.

XX

THE FEDERAL JUDICIARY

The Independence of the Federal Judiciary. Under the Articles of the Confederation disputes between States as to boundaries and cases involving charges of piracy or felony committed on the high sea could be tried by Congress, but since there was no executive to enforce the decisions the judicial power of the old government was a mere shadow. The framers of the Constitution completed the machinery of the new government by establishing a judicial department independent of the other departments and equal to them in rank and dignity. They regarded the independence of this third department as of the highest importance. The new federal judges were to administer justice not only between man and man, but between State and State. Even conflicts of section with section might reach a settlement in the decisions of the federal judiciary. It was necessary, therefore, that a federal judge in rendering a decision should fear neither the President nor Congress, that he should incline neither to this political party nor to that, that he should avoid anything like partiality towards a particular section or locality, that he should be, as far as possible, uninfluenced by personal considerations of any kind. The Constitution does all that can be done to secure an independent judiciary. It is true the President appoints the federal judges (**96**), but once appointed they cannot be removed except for cause (**106**), and then only by the solemn process of impeachment. Moreover, the salary of a federal judge is secure; it may be increased, but it can never be decreased (**106**). Indeed, the condi-

tions which surround the federal judiciary render it as independent as it is possible to make it.

The Organization of the Federal Courts. In the administration of justice there is always a gradation of courts, lower courts for the least important cases, higher courts for the weightier cases and a highest or supreme court. The men of the Convention doubtless had the existing graded system of State courts in mind when they planned for the federal judiciary, but in the Constitution they indicated the organization of the federal courts only in the broadest manner. They provided for the Supreme Court (**105**) and left the establishment and the gradation of the lower courts to the action of Congress. A Supreme Court there must be, just as there must be a President, but the existence of the lower courts depends upon legislation.

One of the first things done by the first Congress was to pass (1789) the Judiciary Act by which the Supreme Court and the lower federal courts were organized. This famous law provided that the Supreme Court should consist of a chief justice and five associate justices. The office of Chief Justice is established by the Constitution (**22**), but the further organization of the Supreme Court rests with Congress. The law of 1789 also created thirteen judicial districts—the boundaries of a district coinciding as a rule with those of a State—in each of which a district judge was to hold a District Court. It then grouped these districts into larger divisions called circuits—a circuit embracing several States. In each judicial circuit a district judge and an associate justice of the Supreme Court were to hold a Circuit Court. The Circuit Court was to be (as its name implies) a wandering court, and was to go from district to district to hold its sessions. The Act of 1789 further created the office of Attorney-general (p. 141) and provided a marshal (sheriff) for each judicial district.

Although under the Judiciary Act of 1789 there were

three grades of courts,—the District, the Circuit and the Supreme Court,—there were only two grades of judges, district judges and justices of the Supreme Court. In 1801 Congress provided for sixteen circuit judges for the circuit courts, but through the influence of Jefferson, who was jealous of the power of the federal judiciary, the office of circuit judge was abolished in the following year. Jefferson could not remove the circuit judges, and their salaries could not be taken from them, but the act creating the office could be repealed and was repealed.

With the growth of the population and the admission of new States the work of the courts became very heavy, and in 1869 Congress found it necessary to revive the office of circuit judge. It provided for nine circuit judges, one for each of the nine circuits then existing, and at the same time made the Supreme Court to consist of a chief justice and eight associate justices. Each member of the Supreme Court was assigned to one of the nine circuits as its circuit justice. A session of the Circuit Court could now be held by the circuit justice or by a circuit judge or by two of the district judges within the circuit. In practice it was rare that a member of the Supreme Court sat as a circuit justice.

In 1891 Congress provided for the appointment of an additional circuit judge in each circuit, and additions were afterward made in particular circuits. Every circuit now had at least two circuit judges and several circuits had four judges each. The act of 1891, providing for the additional judges, also created a Circuit Court of Appeals designed to relieve the Supreme Court of a part of its work. This court consisted of three judges selected from the circuit judges and district judges within the circuit, although one of the three could be the justice of the Supreme Court who was assigned to the circuit. In 1911 Congress abolished the circuit courts, but retained the office of circuit judge and provided that circuit judges should sit as members of the Circuit Court of Appeals.

The federal judiciary, therefore, as organized under the act of 1911, consists of three grades of courts:

I. *Ninety District Courts,* each with a district judge. The boundaries of a federal judicial district frequently coincide with those of a State, although the larger States are divided into several districts.

II. *Nine Circuit Courts of Appeal,* composed of regular circuit judges and of judges of the other courts, three judges being necessary to try a case.

The First Circuit consists of Maine, Massachusetts, New Hampshire, Rhode Island. Second—Connecticut, New York, Vermont. Third—Delaware, New Jersey, Pennsylvania. Fourth—Maryland, North Carolina, South Carolina, Virginia, West Virginia. Fifth—Alabama, Florida, Georgia, Louisiana, Mississippi, Texas. Sixth—Kentucky, Michigan, Ohio, Tennessee. Seventh—Illinois, Indiana, Wisconsin. Eighth—Arkansas, Colorado, Oklahoma, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming. Ninth—Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Hawaii.

III. *The Supreme Court,* consisting of the Chief Justice and eight associate justices. This court holds its regular sessions in the Capitol at Washington, sitting from October to July. The presence of at least six judges is required in the trial of a case, and the judgment of a majority is necessary in rendering a decision. The Chief Justice presides at the sessions of the court, but when the court is forming its decision he is on an equality with the other judges. He has but one vote, and that is often cast with the minority. In authority and dignity the Supreme Court of the United States transcends all other judicial tribunals.

Federal Courts Outside the Federal System. Exercising federal authority, but not a part of the federal judicial system described above is the *Court of Claims,* established in 1855 for the purpose of hearing claims founded upon contracts made with the government of the United States.

The judgments of this court being against a sovereign state cannot be enforced against the government as judgments are enforced against private persons. They are satisfied out of money appropriated by Congress for the purpose. The Court of Claims holds its sessions in Washington.

Other courts outside of the regular federal system are the territorial courts (p. 186), and the courts which have been established by the District of Columbia. These are not the federal courts contemplated in the Constitution; they are ordinary law courts established by Congress in pursuance of its power to govern the Territories (**119**) and the District of Columbia (**61**). Their functions correspond to that of the law courts of a State (p. 178).

Officers of the Federal Courts. Every district must be supplied with a district attorney, a marshal and a clerk. The district attorney prosecutes and defends in the federal courts suits to which the United States is a party. The marshal is the federal sheriff (p. 198). He executes the judgments and orders of the court. The marshal is the connecting link between the judiciary and the executive. He acts under the order of the court, but in the name of the President. In the enforcement of a decision of the court he may call to his aid a posse of citizens and even the federal army. If the President should refuse to furnish the force necessary to execute a decree of the court, he would thereby paralyze the arm of the judiciary. The clerk (appointed by the court) keeps a record of the proceedings of the court. The officers of a district court serve also as officers of a circuit court. District attorneys and marshals are appointed by the President.

The Kinds of Cases Tried in the Federal Courts. The Constitution plainly enumerates the kinds of cases that may be tried in the federal courts (Article III, Section 2). The reason for trying these cases by federal authority in-

stead of trying them in State courts have been stated in a decision rendered by John Jay, the first Chief Justice of the Supreme Court:

(1) "The judicial power extends to all cases affecting ambassadors, other public ministers, and consuls (**107**), because, as these officers are of foreign nations, whom this nation is bound to protect and treat according to the laws of nations, cases affecting them ought to be cognizable only by national authority:

(2) "To all cases of admiralty and maritime jurisdiction (**108**), because, as the seas are joint property of nations, whose rights and privileges relative thereto are regulated by the laws of nations and treaties, such cases necessarily belong to national jurisdiction:

(3) "To controversies to which the United States shall be a party (**108**); because, in cases in which the whole people are interested, it would not be equal or wise to let any one State decide and measure out the justice due to others:

(4) "To controversies between two or more States (**109**); because domestic tranquillity requires that the contentions of States should be peacefully terminated by a common judicatory, and because, in a free country, justice ought not to depend on the will of either of the litigants:

(5) "To controversies between a State and citizens of another State (**109**); because, in case a State—that is, all the citizens of it—has demands against some citizens of another State, it is better that she should prosecute their demands in a national court than in a court of the State to which those citizens belong, the danger of irritation and crimination arising from apprehensions and suspicions of partiality being thereby obviated:

(6) "To controversies between citizens of the same State claiming (**109**) lands under grants of different States; because, as the rights of the two States to grant the land are drawn into question, neither of the two States ought to decide the controversy:

(7) "To controversies between a State, or the citizens thereof, and foreign States, citizens, or subjects (**109**); because, as every nation is responsible for the conduct of its citizens toward other nations, all questions touching the justice due to foreign nations or people ought to be ascertained by and depend on national authority."

The fifth class of cases enumerated above requires a word of explanation. In 1793 one Chisholm of South Carolina sued the State of Georgia in the federal courts for the recovery of a claim and won his case. Here a State was dragged into a federal court by an individual from another State. This was resented by the States and the eleventh amendment was speedily adopted (1798), and since its adoption a State cannot be sued against its will in a federal court by a citizen of another State (**145**).

QUESTIONS ON THE TEXT

1. Why is the independence of the federal judiciary important? How is this independence secured?
2. Explain the provisions of the Judiciary Act of 1789.
3. What change was made in the organization of the federal judiciary in 1869? in 1891?
4. Name the four grades of federal courts and tell what judges sit in each of these courts.
5. Give an account of the federal courts which are outside the regular federal system.
6. Name the officers of the federal courts and state the duties of each.
7. Enumerate the kinds of cases that may be tried in the federal courts and give reasons for trying these cases by federal instead of by State authority.
8. What is the effect of the eleventh amendment?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Name three famous men who have been Chief Justices of the Supreme Court, giving a brief sketch of the life of each.
2. What is the number of the federal circuit which holds sessions in your State? What are the boundaries of this circuit? Name the circuit judges of the circuit.

3. What are the salaries of the judges of the several federal courts? Do these salaries seem to be sufficient?

4. Thomas Jefferson proposed that the terms of the judges of the Supreme Court be limited to four or six years. Discuss the proposition.

5. How many of the present judges of the Supreme Court are Democrats? How many are Republicans? Should a President in appointing a judge consider the party affiliations of the appointee?

6. Name the Chief Justice of the federal Supreme Court and the eight associate justices.

7. *The Court of Commerce.* In 1910 Congress established a Court of Commerce, consisting of five judges who are circuit judges in rank and who are appointed by the President. This court tries certain classes of cases which arise under the findings and orders of the Interstate Commerce Commission. Its regular sessions are held in Washington, D. C., although it may try cases in other places.

Topics for Special Work.—The Federal Courts: **2**, 167–177. The Courts and the Constitution: **2**, 178–187. The Organization of the Courts of the United States: **10**, 137–152. The Tenure of Office in the Federal Courts: **30**, 250–255. The Character of the Good Judge: **30**, 247–250.

XXI

THE FEDERAL JUDICIARY AT WORK

Explanation of Terms. In the last chapter we learned how the federal courts are organized and what kind of cases come before them to be settled. In this chapter we shall learn how the federal cases are distributed to the several grades of courts, but before we proceed several terms need to be explained.

Cases or actions that come before courts are either criminal or civil. A *criminal* case is one in which a person is tried for crime. In a federal court a person accused of crime is guaranteed a trial by jury (**139**) in the State within which the crime was committed. A *civil* case, broadly speaking, is a controversy between private individuals concerning the rights of property. When a civil case is tried before a judge and jury (**141**) it is a case *at law;* when a civil case is tried before a judge only, it is a case *at equity.* The *jurisdiction* of a court is its power or authority to hear and determine controversies. When a court may deal with an action from its commencement it has *original* jurisdiction; when it reviews a case that has been tried in a lower court it has *appellate* jurisdiction; when a case may be tried either in one court or another the two courts are said to have *concurrent* jurisdiction; when a case is carried from a lower court to a higher one to be heard, an *appeal* is said to be taken.

The Jurisdiction of the Three Grades of Federal Courts. The jurisdiction of the several classes of federal courts has been determined from time to time by acts of Congress

(**110**). Congress cannot increase or diminish the federal judicial power, but with the exception of certain specified cases where jurisdiction is provided in the Constitution (**110**) it can assign to each of the several courts its own peculiar jurisdiction. Under the act of 1911 the jurisdiction of the three grades of courts was distributed as follows:

I. *The Jurisdiction of the District Courts.* The District Court has original jurisdiction in nearly all those classes of cases both civil and criminal which arise under the laws of the United States. In this court are tried admiralty and maritime cases, counterfeit cases, copyright and patent cases, cases arising under the postal laws, under the revenue laws, under the pure-food law, under the public-land laws, under the laws regulating immigration and naturalization, under the interstate commerce laws. Cases involving controversies between citizens of different States may also be tried in the District Court when the defendant in such a case so desires. In fact almost every kind of case cognizable by the authority of the United States is tried in the first instance in the District Court. A case appealed from a District Court is carried either to the Circuit Court of Appeals or to the Supreme Court.

II. *The Jurisdiction of the Circuit Court of Appeals.* This court, as would be inferred from its name, has appellate jurisdiction only. As we have seen, it was established for the purpose of trying certain classes of cases which had hitherto been tried by the Supreme Court. With this purpose in view Congress has provided that all appeals from the District Court shall be taken directly to the Circuit Court of Appeals, except in the five following instances: (1) When the case involves a question of jurisdiction; (2) when it involves the construction of the Constitution of the United States; (3) when it involves a question of the constitutionality of a law; (4) when it involves the construction of a treaty; (5) when it involves conviction for higher crimes. These excepted classes of appeals must be taken direct from the District Court

to the Supreme Court. In all other cases than these the appeal lies to the Circuit Court of Appeals. The decisions of this court are made final in certain enumerated classes of cases, including copyright, patent and admiralty cases, thus relieving the Supreme Court entirely of those cases. The cases not enumerated as final are still appealable to the Supreme Court.

III. *The Jurisdiction of the Supreme Court.* This great tribunal has original jurisdiction in all cases affecting ambassadors, ministers and consuls, and in those cases in which a State is one of the parties to the controversy (**110**). Its appellate jurisdiction includes certain cases which are brought up to it from the Circuit Court of Appeals, and all those cases which must be brought to it direct from the District and Circuit Courts. As there is no higher tribunal a decision of the Supreme Court of the United States is accepted as being the law of the land.

The Supreme Court and the Constitution. The Supreme Court has been called "the guardian of the Constitution." Of course the real guardian of the Constitution is the electorate, yet the Supreme Court may do much and has done much to preserve our fundamental law in its integrity. The place of the Supreme Court as a defender of the Constitution is seen in its power to declare as void and without force all acts which are repugnant to the Constitution. If a State law or a law of Congress seems to the Supreme Court to conflict with the Constitution, that tribunal, when a case arising under the law is brought before it, will declare the law unconstitutional, and its existence will be blotted out. "When a statute is adjudged to be unconstitutional it is as if it had never been. Rights cannot be brought up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made." (*Cooley.*)

When the Supreme Court declares an act of Congress unconstitutional we see the judiciary undoing the work of the legislature, and at first sight we are inclined to accuse the judiciary of assuming more power than belongs to it. But when we look at the matter closely we find that this is not so. Courts of law, whether low or high, are established to settle disputes between litigants. They do not seek cases, but wait until cases are brought to them. The Missouri Compromise was placed on the statute books in 1820, but it was not until 1857 that it was declared unconstitutional. When a case is brought into court the judge must settle it strictly according to the law. His will, his opinion, his prejudices, his preferences, must not enter into his decision. Now there are four kinds of laws in the United States which every judge, high or low, must consider when rendering a decision, viz., (1) laws of the State legislature, (2) the State constitution, (3) the laws of Congress, and (4) the federal Constitution. The court, whether the Supreme Court of the United States or the petty town court, has these laws before it when it decides a case, and if there is a conflict between two laws the lower law must give way. If the conflict is between a law of Congress and the Constitution of the United States the former must give way because the Constitution is the supreme law of the land (**127**). So when the Supreme Court decides that a law of Congress is unconstitutional it does only what a justice of the peace might do: it selects from conflicting laws the law of greatest authority and renders a decision in accordance with this highest law. There is, however, this great difference between a justice of the peace declaring a law of Congress unconstitutional and a similar decision of the Supreme Court of the United States; there is an appeal from the decision of the justice, but there is no appeal from the decision of the Supreme Court.

The reasons for reposing in courts the power to declare acts of legislatures null and void are to be sought in the

principles which underlie a government whose powers are enumerated in a written constitution. These reasons are set forth with wonderful clearness in a celebrated decision[1] of the great Marshall: "The original and supreme will (the people) organizes and assigns to different departments their respective powers. The powers of the legislature are defined and limited; that these limits may not be mistaken or forgotten the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? Certainly all those who have framed written constitutions contemplate them as the fundamental paramount law of the nation, and consequently the theme of every such government must be that an act of the legislature repugnant to the constitution is void. It is emphatically the province and duty of the judicial department to say what the law is. If a law be in opposition to the Constitution the court must either decide the case conformably to the law disregarding the Constitution or conformably to the Constitution disregarding the law. The court must determine which of the conflicting rules governs the case. This is the very essence of the judicial duty. The courts cannot close their eyes to the Constitution and see only the law. This doctrine would subvert the very foundation of all written constitutions. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits and declaring that these limits may be passed at pleasure."

This reasoning alarmed those who were opposed to a strong central government, for they saw in the doctrine of the chief justice an attack not only upon the rights of Congress but upon the rights of the States as well. If the Supreme Court could set aside an act of the federal legislature with greater ease could it set aside an act of a State

[1] Marbury *vs.* Madison.

legislature or a clause of a State constitution, and if it could do this what would become of the rights of the State? Marshall was attacked bitterly by the opposition, but he stood by his guns and in decision after decision he continued for more than thirty years to assert the supremacy of the federal Constitution and to declare void any law that was repugnant to it. In this he was supported by public opinion, and his doctrine became embedded in the thoughts of the people as a cardinal tenet of American political faith. In the one hundred and fifteen years of its existence the Supreme Court has pronounced twenty-one acts of Congress and more than two hundred State laws to be in conflict with the Constitution.

The Supreme Court and the People. When the Supreme Court renders a decision in a case the litigants must obey and the whole body of the American people must completely and peacefully acquiesce in the decision. This does not mean, and it ought not to be regarded as meaning, that the Supreme Court has the last word on any and every constitutional question, and that its decisions shall be binding forever and forever. The last word is always with the people. The Supreme Court when expressing an opinion simply utters the will of the people as it is expressed in the Constitution. If the people do not like the sound of their own voice, if they are no longer satisfied with their Constitution, they can amend it. When they shall have amended it the Supreme Court will instantly recognize the amendment as the supreme law of the land and will render judgment in accordance with the letter and spirit of the amendment.

QUESTIONS ON THE TEXT

1. What is a criminal case? A civil case? A case in equity? What is meant by original jurisdiction? concurrent jurisdiction?
2. How is the jurisdiction of the federal courts determined?

3. In what cases has the District Court jurisdiction? The Circuit Court? The Circuit Court of Appeals? The Supreme Court?
4. What is the effect of declaring a statute to be unconstitutional?
5. What four kinds of laws must be considered by every judge?
6. What are the reasons given by Marshall to sustain the power of the Supreme Court, to declare an act of Congress unconstitutional?
7. What has been the result of Marshall's decision?
8. In what relation does the Supreme Court stand to the people?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Give an account of two famous decisions of the Supreme Court of the United States.
2. If Congress should pass a law that the people wanted and the Supreme Court should set the law aside, what remedy have the people?
3. Explain each of the following checks and balances mentioned by John Adams: [1]
   (1) The House of Representatives is balanced against the Senate and the Senate against the House of Representatives.
   (2) The Executive authority is balanced against the legislature.
   (3) The judiciary power is balanced against the House, the Senate, the executive power and the State governments.
   (4) The Senate is balanced against the President in all appointments of office and in all treaties.
   (5) The people are balanced against their representatives by biennial elections.
   (6) The legislature of the several States are balanced against the Senate by sextennial elections.
   (7) The electors [presidential] are balanced against the people in the choice of president. (?)

Topics for Special Work.—The Workings of the Courts: 2, 188–200. The Judicial Power of Declaring what has the Form of Law not to be Law: 10, 98–125; also 30, 250–255.

[1] Works, Vol. VI, 407–408.

XXII

THE STATE LEGISLATURE

Introductory. In this chapter and the two chapters that follow we shall discuss the organization of the State government. As we have already learned (p. 55), one State is quite like another in its political characteristics. No State, however, is precisely like another, and the organization of the government of any particular State can be learned in detail only from the constitution of that State. All that a text-book can do, therefore, is to treat the subject in a general way. The particular facts may be learned by answering the questions which refer to the State constitution.

The Origin of State Legislatures. The first legislature that ever sat in America met in Jamestown, Virginia, in 1619. This was the Virginia House of Burgesses, in which eleven settlements, which the planters were pleased to call boroughs, were represented. Two years later Virginia had a governor, an advisory council, and a legislative assembly. This was the type of all succeeding colonial governments. At the time of the Revolution, in all the colonies the legislature was elected by the people, and in all but two (Pennsylvania and Georgia) it consisted of an upper and a lower house.[1] When the colonies assumed the rank of States the new legislatures were modeled faithfully

[1] The federal Constitution assumes (4) but does not require that the State legislature shall consist of more than one branch. Georgia in 1789, Pennsylvania in 1790, and Vermont in 1836 changed to the bicameral system.

after the old. The legislatures of the admitted States have invariably been fashioned after those already in existence.

General Features of State Legislatures. In outward form, at least, the legislature of one State, although it may be widely separated by distance, and although it is created independently, is very much like that of another State. All legislatures meet at the State capital; the upper house is always called the Senate and is always about one third as large as the lower house, which is usually called the House of Representatives; in all the States members must reside in the district which they represent; in all but eight States the legislature meets every two years; in all the States the compensation of members is the same for both houses; in forty-five States a law passed by the legislature can be vetoed by the governor, and the veto can be overcome by a majority vote, or by a three-fifths or a two-thirds vote, of both houses; in every State each house is the judge of the qualifications and election of its own members; in nearly every State members of both houses are apportioned strictly according to population.

The Passage of Bills. Upon assembling, each house of a newly elected legislature elects its presiding officer. In the lower house this officer is called the speaker; in the Senate he is called chairman or president. In some States there is a lieutenant-governor, who presides in the Senate but does not vote except when there is a tie. As soon as a clerk, a sergeant-at-arms, doorkeepers, messengers and other minor officers have been elected the presiding officer of each house announces the committees, which are as numerous as the interests and subjects that engage the attention of the legislature, the most important being those on finance, corporations, municipalities, the judiciary, appropriations, elections, education, labor, manufactures, agriculture, railroads. The committees are agencies

of the utmost importance, for they are the channels through which all legislation must pass.

Any proposed law, called a bill, immediately after it is introduced and read, is referred to its proper committee. The committee considers the bill in a private room where citizens may appear to defend or oppose it, and if it thinks the bill ought not to become a law it reports it unfavorably, and thus usually kills it. It is possible to pass a bill after it has been thus unfavorably reported, but this is rarely done. The judgment of the committee is practically final. If the bill is reported favorably its title is read and it is allowed to pass upon its *second* reading. In its regular order it comes up for its *third* and last reading. Now it is read in full, amended, perhaps, and voted upon. If it fails to get a majority of the votes that is probably the last of it. If it receives a majority of the votes it is sent to the other branch to be acted upon. Here it is referred by the presiding officer to its proper committee, is read three times upon three different days, is fully discussed upon its last reading, and is then voted upon. If it passes without amendments made in this second branch it goes to the governor to be signed by him. If it passes with amendment it must be returned to the house in which it originated to be voted upon in its amended form. If it passes in the house in that form it becomes, as far as the legislature is concerned, a law. If there is trouble over the amendment a joint committee, or conference committee, consisting of three members from each house, is appointed to see what can be done to settle the matter. The action of this committee, if it reaches an agreement, is usually accepted by both houses. A bill may originate in either house, but, as a rule, bills for raising revenue must originate in the lower house, because this branch is supposed to be closer to the taxpayers.

After a bill has passed both houses it is sent to the governor for his approval. In order to guard against hasty and unwise legislation, and especially against encroach-

ments of the legislature upon the other two departments, the governor, like the President of the United States, can (in all but one State) forbid the passage of a bill by his veto. When he does this he sends the bill back, with his objections stated in writing, to that branch of the legislature that sent it to him. The bill may be voted upon again, and if it can secure the number of votes required by the constitution in such cases it becomes a law in spite of the governor's veto.

The Importance of State Legislation. We have seen how wide is the range of power reserved to the State government (p. 56). The State legislature determines how these powers are to be exercised. The only limitations of its power are those imposed by the constitution of the State, and by the Constitution, laws and treaties of the United States (**127**). Within these limits it is at liberty to enact laws upon any subject that may come within the scope of governmental authority. The powers of Congress are enumerated; the powers of a State legislature are innumerable. When we say that a State legislature grants charters to cities, boroughs, towns, villages, railroads, banks, colleges, seminaries, and other institutions public and private; that it defines the boundaries of counties and towns; that it regulates taxes, licenses, fees; that it enacts punishment for treason, murder, arson, theft, kidnapping, bribery, forgery, fraud, perjury, and other crimes; that it makes laws concerning the sale of land, the giving of mortgages, the granting of deeds, the making of wills, the settlement of the estates of bankrupts, the management of the estates of the dead; concerning education, charity, health, marriage, divorce; concerning voting and elections; concerning steamboats, canals, telegraph, and telephone companies; concerning farming, fishing, mining, manufacturing, trading,—when we say this much of the legislature, we may make it plain that its authority is very great, but we by no means exhaust the list of things it does.

The State Legislature and the State Constitution. There is a tendency in recent years to strip the legislature of some of its power by inserting into the constitution, either by way of amendment or in constitutional convention, specific provisions concerning such matters as the management of railroads, the sale of intoxicating drinks, the chartering of corporations. The constitution of one State prescribes to the legislature how it shall purchase its stationery, as if this body could not be trusted to do this wisely. It is quite certain that a constitution is not the place for such special provisions. A constitution should mark out a path for legislation, but should not contain the laws themselves. A legislature should be restrained by the constitution in all fundamental matters, in all matters that involve the framework of government and the principles of civil liberty, but in all other matters it should be given a wide discretion. Frequently a legislature is so hampered by the constitution that it cannot pass needful laws. When this is the case there have been placed in the constitution items of a non-constitutional nature.

These details are placed in the constitution beyond the reach of the legislature because of the distrust that has overtaken that body. For many years in private conversation, in newspapers and in books, on the platform and in the pulpit, law-makers have been denounced as grasping, stupid and corrupt. It has become almost a fixed habit for the American people to abuse their legislatures. The habit is unreasonable and unjust: unreasonable, because the legislatures, taking them one after another through a considerable period of time, fairly represent the people who elect them; unjust, because, as a matter of fact, no legislature is largely stupid or corrupt. In all legislatures the average ability of membership is high, and in the worst legislature an overwhelming majority of the members are honest men.

Perhaps the quality of our law-making bodies would be improved if we would trust them more and stop scolding

them and calling them bad names. Censure and distrust will only make them worse; honor and respect would tend to elevate them. It is true that if you treat people as if they were better they will be better; it is equally true that if you treat them as if they were worse they will be worse.

The Initiative and Referendum. As a remedy for the real and supposed shortcomings of the State legislatures many students of political science urge the use of the political device known as the "initiative and referendum." The *initiative* enables the people to propose a law to the legislature; the *referendum* enables them to vote upon a law which they have commanded the legislature to refer to them. Where the initiative and referendum are in use a certain per cent. of the voters may propose to the legislature a measure which must be enacted by that body as a law and then be referred back to the people to be voted upon. Further, where this system prevails, a certain per cent. of the voters may demand that a law which the legislature has passed be referred to the people, although it be a law which was not at first proposed by the people. Thus by means of the initiative and referendum the voters, if they choose, can participate directly in the work of law-making. The system, if generally adopted, would change us from a representative to a pure democracy.

The referendum in one form or another has been in use in the United States from the beginning. Every State constitution that provides for the submission of amendments to a popular vote recognizes the principle of referendum. The principle is also quite generally recognized where such matters as the incurring of debt or the selling of intoxicants are concerned. Direct legislation is provided for in South Dakota, Oregon, Oklahoma, Maine, Missouri, California and Colorado. The constitution of South Dakota says:

The people expressly reserve to themselves the right to propose measures which measures the legislature shall enact and submit to a vote of the electors of the State, and the people reserve to themselves the

right to require that any law which the legislature may have enacted shall be submitted to a vote of the electors of the State before it goes into effect.[1]

In Switzerland, where the people have had centuries of training in public affairs, direct legislation has been a success. In the United States it is probable that the initiative and referendum would succeed only in those States where the people by instinct and tradition are intensely democratic, where the popular interest in public affairs is keen, universal and sustained, and where the average of popular intelligence is very high.

QUESTIONS ON THE TEXT

1. What has been the historical development of State legislatures?
2. In what respect do the legislatures of the different States resemble each other?
3. Give a general account of the organization of a State legislature.
4. How does a bill become a law?
5. Upon what subjects may the legislature pass laws?
6. In what way is the action of legislators sometimes hampered?
7. Give reasons why the constitution should not fetter the legislature in respect to small matters?
8. Why should legislatures receive the support of public opinion?
9. What is the "initiative and referendum"? To what extent is this system of legislation in use in the United States?

SUGGESTIVE QUESTIONS AND EXERCISES

(Answers to many questions in this chapter and also in several of the following chapters may be found in the State constitution).

1. What is the name of the lower house of the legislature of this State? What is the name of the legislature taken as a whole? Where and how often does the legislature meet?
2. What are the qualifications of senators in this State as to age, citizenship and residence? What are the qualifications of members of the lower house? Under what circumstances is a person disqualified for membership in the legislature? What pay do the members of the legislature receive for their services?
3. What is the nature of the oath taken by a member of the legislature in this State?

[1] Five per cent of the qualified votes may invoke either the initiative or the referendum.

4. What provision does the constitution make in respect to the number of senators? In what manner are the senators apportioned to the cities and counties? What provision is made in respect to the number of representatives? How are they apportioned to the cities and counties? Is there any question as to the fairness of this method of apportionment in this State? If the method is unjust how may a remedy be found?

5. Describe the manner in which each of the houses is called to order and organized on the first day of a session. What constitutes a quorum in each house? How may a person who is disorderly or disrespectful in the presence of the senate or the lower house be punished? Does the legislature sit in secret or in open session?

6. In whose name are the laws of the State enacted? Describe the passage of a bill from the time it is introduced until it becomes a law. To what extent is the initiative and referendum recognized in the constitution of the State?

7. (In many States the constitution forbids the legislature to pass *special* laws in reference to certain enumerated subjects, that is, when it passes a law in reference to any one of such subjects the law must operate not upon certain specified individuals or localities, but must be uniform in its operation throughout the State.) Name the subjects upon which the legislature of this State is not permitted to pass special laws.

8. Describe the process of impeachment in this State. How may a member of the legislature be punished for unfaithful service?

9. What general prohibitions are placed upon the powers of the legislature of this State by the constitution? Does it seem that some of these prohibitions are unreasonable?

10. Bound the senatorial district in which you live and name your State senator.

11. Is the capital of this State conveniently located? How can its location be changed?

12. Discuss fully each of the following sentences: (*a*) For good or for evil the legislature affects us in almost every relation of daily life. (*b*) When the people generally condemn their legislators they virtually condemn themselves. (*c*) We cannot elect able and skilful legislators; we can elect able and prudent men and reëlect them until they become able and skilful legislators. (*d*) The position of the law-maker is a difficult one, for he must try to promote the interest of his locality and also the general welfare, and these often clash. (*e*) When we hear that legislators have received bribes a part of our indignation should be hurled against those who have given bribes.

Topics for Special Work.—Procedure in State Legislature: 7, 183–195. Influencing Legislative Action: 7, 275–298. The Workings of State Government: 2, 366–378. The Initiative and Referendum: 5, 432–435; also 30, 295–302.

XXIII

THE STATE EXECUTIVE

The Distribution of Executive Functions. The administration of a State differs considerably from that of the nation. In the administration of the federal government great power is given to the President. He appoints the heads of the departments and, directly or indirectly, almost all subordinate officers. His responsibility is, of course, as great as his power. If the administration of the affairs of the United States is successful the President receives the credit; if it is ill-fated he receives the censure. It is not thus in the State. The execution of the laws of a State is not given to one person or to one body of persons, but is intrusted to various officials and various bodies. The greater part of the public business in a State is administered by local governments, by cities and townships and counties (p. 195). Those laws which pertain to special branches of State administration are distributed to State officers and State boards to be executed, and very often these officers and boards are elected by the people and are not responsible to a higher authority for their conduct. Cases of gross wrong-doing on the part of these high officials, however, may be reached by the legislature through the process of impeachment.

The Executive Departments. The State officers and boards whose duties consist in managing special branches of the State's business constitute the executive department. Since this department is organized according to the particular needs of each State, we are prepared to find it dif-

fering in its details in the several States. The outlines of the executive department, nevertheless, are nearly the same in all the States. Every State has a governor (thirty-three States have a lieutenant-governor), a secretary of state and a treasurer; almost every State has a comptroller, or auditor, an attorney-general and a superintendent of education. The length of the terms of service of these officers, the manner of their election or appointment, and their qualifications and salaries are regulated by the constitution or by statute. Their duties, which do not vary widely from State to State, are as follows:

I. *The Governor.* (1) The first duty of the governor is to take care that the *laws are faithfully executed.* This may mean much or little. In reference to private law, the law that regulates the relations between man and man, and in reference to the peace and good order of the State, it means much, for the governor is commander-in-chief of the military forces of the State, and he can call upon the soldiers to assist him in enforcing the judgment of a court or in suppressing riots and disorderly proceedings (p. 253). In reference to the laws regulating the business of the special departments it frequently means but little, for, as we have seen, the officers of these departments are often elected independently of the governor and are themselves the authorized executors of the laws relating to their respective departments, and whether they administer the law well or ill the governor has no control over them.

(2) Another duty of the governor is to transmit to the legislature a *message,* informing it of the condition of affairs within the State and suggesting such legislation as he may deem wise. The legislature, however, is not bound to follow the suggestions made in the message or even to consider them. If the legislature is not in session and the governor thinks certain legislation urgent, he may summon it to meet in *extra session* and lay before it the measures that demand immediate consideration.

(3) In many States the governor has the pardoning

power which it is his duty to exercise when he thinks a person has been unjustly convicted of crime. His pardon may be absolute or he may *commute* the punishment. For good reason he may grant *reprieves.* In a few States the power of pardon, commutation and reprieve is not left to the governor, but is vested in a special body of officers known as the board of pardons.

(4) In every State it is the duty of the governor to appoint many officials whose selection is not otherwise provided for. When an elective official dies or resigns before his term ends the governor fills the vacancy by appointing some one to serve until another election is held. When vacancies occur in the representation of the State in Congress, he issues writs for a new election in the case of Representatives (**12**) and makes temporary appointments in the case of Senators (**17**).

(5) It is the duty of the governor to check hasty or corrupt or unwise legislation by interposing his veto. Experience seems to prove that the possession of the veto power enables the governor to exercise a wholesome restraint upon the legislature, and accordingly the veto power is given to him in all the States but one.

(6) The governor performs numerous social duties. He opens fairs, dedicates public buildings, presents diplomas to the graduates of normal schools and colleges, and honors important celebrations and meetings with his presence.

II. *The Lieutenant-governor.* This officer serves when the governor is out of the State or is incapacitated for duty. He is *ex officio* president of the Senate, and when a vacancy occurs in the governorship he succeeds to the office. In those States where there is no lieutenant-governor the president of the Senate usually succeeds to the governorship in case of a vacancy.

III. *The secretary of state* records the official acts of the governor and files the laws passed by the legislature. He has charge of all State papers, of the journals of the legislature, and of the historical documents, statuary, paintings,

relics, etc., owned by the State. This officer may properly be called the chief clerk of the executive department.

IV. *The State comptroller* or *auditor* manages the financial business of the State. He prepares plans for the improvement and management of revenue, reports estimates of the revenue and expenditure of the State, and enforces the prompt collection of taxes. He keeps an account of all the money paid into the treasury and all drawn from it. Not a dollar can be taken from the treasury without his order. As a rule it is his duty to see that those charged with the collection of revenue of the State are responsible persons and are properly bonded. In a few States the comptroller serves on one or more State boards.

V. *The State treasurer* has in his keeping the money paid into the State treasury. His principal duties are to receive the State funds, place them where they will be safe, and pay them out as he is ordered by the comptroller. Like the comptroller, the treasurer sometimes serves upon State boards.

VI. *The attorney-general* is the law officer of the State. He appears in court for the State when it needs the services of a lawyer, and he gives legal advice to executive officers when he is called upon to do so.

VII. *The superintendent of public instruction* stands at the head of the public-school system of the State. He reports to the governor or to the legislature the condition of educational affairs throughout the State, visits teachers' institutes and other educational meetings, and delivers lectures upon educational topics, inspects schools, suggests methods of teaching and courses of instruction and promotes the cause of education in many ways. In some States he prescribes the qualifications of teachers and issues their certificates, and supervises the distribution of the school funds. In a few States the executive authority in reference to the public schools is vested in the State Board of Education. Where this is the case the superintendent of instruction is simply an agent of the board.

The above officers are found in almost every State. The governor and lieutenant-governor are always elected by the people, but the method of choosing the others varies; sometimes the people elect, sometimes the governor appoints and sometimes the legislature elects. In addition to these principal officers we find in the different States such minor officers and boards as special conditions may require. The titles of these suggest the nature of their duties and may be mentioned without comment:

State insurance commissioner; State librarian; State commissioner of agriculture; State inspector of mines; State commissioner of immigration; State surveyor; State tax commissioner; State fire marshall; State factory inspector; State commissioner of fisheries; State dairy inspector; State inspector of steam boilers; adjutant-general; State vaccine physician; State board of health; State board of medical examiners; State board of public works; State board of dentistry; State board of railroad commissioners; State liquor license commissioners; State board of charities; State board of pardons.

No State has all of the above officers, but every State has a few of them. Besides the major and minor officials that have been mentioned there are in the service of the State such assistants, secretaries, clerks and employees of various kinds as may be necessary for the efficient working of the several departments.

The Concentration of Power in the Hands of the Governor. Many writers criticize the organization of the executive departments of our State governments. The powers accorded to the governor seem to them to be entirely too small. They contend (1) that the chief State officials should not be the governor's colleagues, each managing his part of the State's business to suit himself, but that they should be his subordinate and dependent assistants; (2) that if you scatter power, you scatter and weaken responsibility; (3) that if you will place the whole power of administration in the hands of the governor, giving him the appointment of all State officials and the power of removing them,

you will have better government, for you will have a person (the governor) whom you can hold responsible.

Others object to such a concentration of power in the governor's hands, claiming: (1) that the mischief that could be done by a bad governor with great powers might easily prove to be greater than our present evils, which are really not great; (2) that we should not risk giving the most extensive power to one man unless we are sure that the man has knowledge and skill co-extensive with his powers—in other words, that omnipotence implies omniscience; (3) that concentration of great power in the hands of rulers has not in the past worked for the happiness of mankind.

QUESTIONS ON THE TEXT

1. How are the executive functions of the State government distributed?
2. Name the State officials that are found in almost every State.
3. What are the duties of the governor?
4. What are the duties of the lieutenant-governor? of the secretary of State? of the State comptroller? of the State treasurer? of the attorney-general? of the superintendent of public instruction?
5. Name some of the minor officers of the State executive department.
6. What services are rendered by the State executive department?
7. Give reasons for and against the concentration of power in the hands of the governor.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Which of the higher officials of this State mentioned in the text derive their authority from the constitution? From what source do the others derive their authority?
2. State the qualifications, term of office, salary and chief duties of the several State officials provided for in the constitution; also state which of these are elected by the people and which are appointed.
3. Which of the minor officials mentioned in the text are found in this State? Why do not all the States have minor officials of the same character?
4. Has the governor of this State the veto power? If so, how may his veto be overcome?
5. Under what circumstances may the governor remove an official?
6. Is the tendency in this State to give much or little power to the governor? Is this tendency fortunate or unfortunate?

7. Name the chief executive officials of this State. In what sense are these officers representatives?

8. What are some of the qualifications of a good governor? a good comptroller? a good attorney-general? a good State superintendent of instruction?

9. Has the governor of this State the pardoning power? Is the pardoning power an executive or a judicial function?

10. In which of the three departments of the government of this State do the people take the most pride? In which do they take the least pride?

11. What officers of this State would be best fitted to serve as the President of the United States? What officer would be best fitted to serve in the President's cabinet?

12. Fill out the following scheme for the executive department of the State:

	Name?	Appointed or Elected?	Term of Office?	Salary?	Duties?
Governor					
Lieutenant-Governor					
Secretary of State					
Treasurer					
Comptroller or Auditor					
Attorney-General					
Superintendent of Education					

Topics for Special Work.—The Power of Pardon: 8, 83–92. The Governor's Part in Legislation: 8, 181–184. The State Governor: 30, 271–275. Public Service Commissions: 30, 275–281.

XXIV

THE STATE JUDICIARY

The Selection of the State Judiciary. Under England's rule each colony had its own judicial system. The judges —excepting those of Rhode Island and Connecticut—were appointed by the colonial governor. After independence was declared each State retained the system of courts to which it had been accustomed, but under the new constitutions eight States vested the election of judges in the legislature, while five gave the appointment of them to the governor. Early in the nineteenth century, Georgia, venturing upon a policy hitherto unknown in the history of politics, entrusted the election of its judges to the people. As democracy grew stronger the people began to demand the privilege of electing their judges as well as their other officers, and the example set by Georgia came to be generally followed, especially in the new States. At the present time in about three fourths of the States the judges are chosen by the voters. In the other States they are either appointed by the governor or chosen by the legislature.

The Several Grades of State Courts. The names of the several grades of State courts and the jurisdiction of each, the method of choosing the judges, their qualifications, their salaries, their term and tenure of office, and other important matters pertaining to the judiciary are usually prescribed in the State constitution.

Since the judicial department of a State is organized in accordance with the necessities and traditions of a par-

ticular region, we must not expect to find the system of any two States precisely alike. The work of a State court, however, is everywhere the same: it administers justice in cases that come within the scope of State laws, and these are the laws which relate to most of the affairs of daily life (p. 56). In the administration of justice in the State it has been found convenient in all the States to have at least three grades of courts:

I. *The Justice's Court.* This court, the lowest in the series, is held by a justice of the peace and may be called the court of the neighborhood, for in every community it is near at hand to administer justice in small affairs. In it are tried petty misdemeanors and civil cases involving small sums of money. In the trial of trivial offenses and of civil cases involving but a small sum of money the decision of the court is usually final, but when its judgment inflicts a severe penalty or involves a considerable sum of money an appeal may be taken to a higher court. In cities, police courts, sometimes called municipal, sometimes magistrates', courts, are often established for petty criminal cases. Where the police court exists side by side with the justice's court the latter tries only civil cases.

II. *The Circuit or District Court.*[1] This is the tribunal next above the justice's court, and it may be called the court of the county, for it is held in every county at the county-seat. It must not be understood, however, that the jurisdiction of the judges of this court is limited to a single county. A circuit (or district) usually includes several counties, and the judges of a circuit go from county to county to hold court. In rural districts this court tries both civil and criminal cases, but in the larger cities there

[1] This tribunal is called the circuit court in 19 States, the district court in 12 States, the superior court in 9 States, the court of common pleas and oyer and terminer in 2 States, the court of general sessions in one State, and the county court in one State. The student should be careful not to confuse the circuit or district court of the State with the circuit and district courts of the federal system.

is generally a criminal court of corresponding grade for the trial of the criminal cases.[1]

These courts of the second grade are the centres of most of the judicial activity of the State. In them are tried the weightier cases of the law. They review the cases appealed from the justice's court and they have original jurisdiction in serious criminal cases and in important civil cases.

It is in these courts, too, that the jury figures most prominently as an agency of justice. Juries are of two kinds, grand and petit. The grand jury is a body of men varying from 12 to 23 in number, chosen by court officials to inquire whether there have been any violations of the law in the community and to determine whether or not these persons under suspicion should come up for trial. When making an inquiry into a criminal charge the grand jury sits in secret and hears only the evidence against the accused. Its function is not to try the accused, but to decide whether on the face of things there is sufficient evidence of guilt to warrant a trial. When a majority of the grand jury are satisfied that the case ought to be tried the indictment is endorsed with the words "a true bill," and the case goes to the petit jury to be tried. This body (in all the States but one) must consist of twelve men. It sits in open session, hears evidence on both sides of the case. During the progress of the trial questions of law are determined by the court; the jury determines only questions of fact. After the evidence has all been given and counsel on both sides of the case have been heard, the jury retires from the court-room and is locked into a small room where it remains until it finds a verdict, or until the judge decides that no verdict will be reached. All the twelve members must agree upon the verdict. When no agreement is reached a new trial may be ordered. As a general rule it may be said that the verdict of a jury is decisive.

Juries are chosen from the ordinary citizens in the neigh-

[1] A very large city often has an elaborate system of courts of its own.

borhood in which the trial is conducted—from farmers, mechanics, merchants—and this is the feature doubtless that makes trial by jury so popular. When a man is tried by men who are neither too far above him nor too far below him to have sympathy with him, he has a good chance for a fair trial. The jury system, like every other human institution, has its defects, but notwithstanding its shortcomings it is one of the greatest safeguards of civil liberty ever invented.

III. *The Supreme Court.*[1] In this court resides the supreme judicial authority of the State. It sits at the State capital,[2] where it holds sessions the greater part of the year. Its jurisdiction is for the most part appellate, although there are a few instances in which it has original jurisdiction. For example, a case involving the official action of a State officer is usually begun in the supreme court. Most of the cases, however, tried in the supreme court come up to it from the courts below. When a decision of this court conflicts in no way with the federal authority it is final, and is binding upon the people of the State as long as the State constitution remains unchanged, but when the decision conflicts with federal law or with the federal Constitution it may be reversed by the Supreme Court of the United States.

Intermediate Courts of Appeal. In several States where the work of the courts is unusually heavy there has been inserted between the court of the second grade and the supreme court an intermediate court of appeals.[3] This additional tribunal has been established to relieve the State supreme court of some of its burden, just as the federal

[1] In four States (Kentucky, Maryland, New Jersey and New York) this court is called the Court of Appeals. In Texas there are two supreme courts, one for civil and one for criminal cases.

[2] In a few States the supreme court, for the convenience of the public, holds sessions at several different places in the State.

[3] Pennsylvania, Illinois, Louisiana and Missouri have courts of this kind. In New York there is below the court of appeals, the highest court of the State, a supreme court, one division of which is an inter-

Circuit Court of Appeals (p. 156) was established for the purpose of making easier the work of the federal Supreme Court. The jurisdiction of this intermediate court is purely appellate, and its decisions are final, except in a few specified cases which may be carried from it up to the higher court.

Probate, County and Chancery Courts. In many of the States we find in every county a probate court—sometimes called the orphans' court (p. 199). In States where there is no separate court, the probate business is given to the county court, an institution found in many States. This county court in a few States has functions which are purely judicial and may try misdemeanors and small civil cases. In six States we find chancery courts separate from the law courts. In these chancery courts the equity cases are tried. As a rule, however, equity cases are tried in the regular law courts of the system.

The Relation of the State Judiciary to the Federal Judiciary. The State courts are entirely independent of the federal courts. They have their own judges and court officers—sheriffs, clerks and prosecuting officers (p. 198)—and their own court-houses. They attend to the judicial business of the State and cannot be compelled to perform judicial duties of a federal nature. Their decisions, however, may be reviewed and reversed by the federal courts. When one of the parties to a case in a State court claims that the decision of the court is contrary to the federal Constitution or to federal law the case may be carried over to the federal courts for trial, but when a case is wholly outside of federal authority it must receive its final settlement in a State court.

The Powers of the State Judiciary. The part played by the State judiciary in our civil life is of the highest im-

mediate court of appeals. The other division of the supreme court does for the most part the work of a court of the second grade, that is to say, of a circuit or district court.

portance. Most of the cases that come up for settlement are tried in the State courts. The volume of State judicial business is probably ten times as great as the business of the federal judiciary within the State. Among the powers of the State judge are the following:

(1) He may declare a statute of the legislature invalid on the ground that it conflicts (*a*) with the Constitution of the United States (**127**), or (*b*) with a statute or treaty of the federal government, or (*c*) with a decision of the Supreme Court of the United States, or (*d*) with the constitution of the State.

(2) When the case before the court is novel, and there is no law, either customary or written, which will fit the case the judge may nevertheless render a decision, and this decision is not only law for the case in hand, but it will also generally be regarded in other courts of the State as the law for similar cases when they shall arise. Laws thus established by judicial decisions are distinguished from those enacted by the legislature and are called judge-made laws or *case laws*.

(3) Judges in courts of equity—and in most States the regular law courts are also courts of equity—have the power to issue the *writ of injunction* forbidding a person to do, or commanding him to do, a certain thing. If the injunction is disobeyed the person disobeying it is liable to punishment. The injunction is generally used to prevent the commission of wrongs which could not be prevented by the ordinary workings of a lawsuit. Thus, if a railroad company begins to lay its tracks across a man's property without first securing a right of way, a judge in a court of equity, at any time of the day or night, will issue an injunction forbidding the railroad to continue the laying of the tracks. In recent cases courts have forbidden labor leaders and others to induce or coerce workingmen to strike where the strike would cause irreparable injury and damage to the employers. This use of the injunction has met with fierce opposition and is regarded by

many as unwarranted and unjust. The power of injunction is exercised by federal as well as by State judges.

QUESTIONS ON THE TEXT

1. How were judges selected in colonial times? How are they selected at the present time?
2. What is the function of the State judiciary?
3. Give an account of each of the three grades of State courts.
4. For what purpose have intermediate courts of appeal been established?
5. What is a probate court? a chancery court?
6. In what relation does the State judiciary stand to the federal judiciary.
7. Name three important powers of the State judiciary?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Examine the constitution of this State for answers to the following questions: (*a*) What are the names of the several grades of courts beginning with the lowest? (*b*) How do justices of the peace and police magistrates receive their office, by election or by appointment? (*c*) What is the name of the court corresponding to the circuit court described in the text? State the qualifications of the judges of this court, the term of their office, the mode of their election or appointment and the salary received. What is the number of the circuit (or district) in which you live? Bound this circuit and name the judges. (*d*) What is the name of the court corresponding to the supreme court described in the text? State the qualifications of the judges of this office, the term of the office, mode of election or appointment and the salary received.
2. Enumerate the qualities of a good judge and determine which of the following methods of selection will be most likely to secure the right man: (1) Election by the people; (2) appointment by the governor; (3) election by the legislature.
3. Why should the term of office of a judge be longer than that of other officers?
4. Which are the most important, good law-makers, good executive officers or good judges?

Topics for Special Work.—Trial by Jury: **10**, 184–197; **30**, 320–327. The American Lawyer: **10**, 344–364. The Writ of Injunction: **10**, 47; 290–292.

XXV

TERRITORIES AND DEPENDENCIES

Introductory. The account of the organization of the State may appropriately be followed by an account of the organization of the Territory, for the Territory is simply an infant State,—a State in the first grade of government. This chapter, therefore, will treat of territorial government, but the treatment will include both Territories properly so-called and also those other territorial possessions that do not as yet bid fair to be incorporated into the Union. In the account it will be convenient to speak of Territories and Dependencies, but it need not be supposed that the distinction between a Territory and a Dependency is always sharp and clear. The student, however, will do well to bear in mind that a Territory is incorporated into and forms a part of the United States, while a Dependency belongs to but it is not an integral part of the United States. Moreover, it may be broadly stated that the inhabitants of a Territory are citizens of the United States, while the inhabitants of a Dependency are not.

Territories and Dependencies Governed by Congress. All territory not included within the boundaries of a State, yet subject to the dominion of the United States, is wholly dependent upon Congress for its governmental powers. This is the fundamental principle underlying all questions relating to the government of territory subject to the sovereignty of the United States and not included within a State. "The Congress," says the Constitution, "shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belong-

ing to the United States" (**119**). The power of Congress over federal territorial possessions of whatever kind or wherever located is practically supreme. "The Territories of the United States are entirely subject to the legislative authority of Congress. They are not organized under the Constitution nor subject to its complex distribution of powers of government as the organic law, but are the creation exclusively of the legislative department and subject to its supervision and control. The United States, having rightfully acquired the territories, and having become the only government that can impose laws upon them, have the entire domain and sovereignty, national and municipal, federal and State. It may legislate in accordance with the special needs of each locality and vary its regulations to meet the circumstances of the people. . . . In a Territory all of the functions of government are within the legislative jurisdiction of Congress."[1]

When planning for the government of federal territory from time to time, Congress has dealt with each case according to its merits. Now it has permitted a newly acquired possession to enter into an immediate enjoyment of statehood; now it has provided liberally for local self-government; now it has held the reins of government tightly in its own hands. This policy of giving to each community a government suitable to its needs has led to the establishment of so many different kinds of governments in the Territories and Dependencies that a satisfactory classification of them cannot be made. Nevertheless, the inferior governments may be conveniently studied under two headings, namely: (1) Territories and Dependencies on the American Continent, and (2) Insular Territories and Dependencies.

Territories and Dependencies on the American Continent. These are: New Mexico, organized as a Territory in 1850;

[1] Endlemen, *et al.*, *v.* United States. Quoted in Willoughby's "Territories and Dependencies.

Arizona, separated from New Mexico and organized as a Territory in 1863; Indian reservations and National Parks; Alaska, purchased from Russia in 1867; the District of Columbia, ceded to the United States by Maryland and Virginia[1] in 1790 as the permanent seat of the federal government; and the Panama Canal Strip, acquired from the Republic of Panama in 1904.

I. *Arizona, New Mexico.*[2] These two Territories have substantially the same form of government. The executive power in each is vested in a governor appointed by the President of the United States for a term of four years. The duties of the governor correspond very closely to those of a governor of a State. The President also appoints for each Territory a secretary, who acts as governor in case of the absence or disability of that officer, and who performs such duties as are usually performed by the secretary of a State (p. 172).

The legislative department of these Territories consists of a popularly elected legislature of two houses, the members of both of which are elected for a term of two years. The powers of the territorial legislature are almost as wide in their scope as those of a State legislature (p. 163) and extend to all rightful subjects. A law of a Territory, however, may be vetoed by the governor or may be annulled by Congress.

The judicial department consists of a system of superior courts whose judges are appointed by the President, and of certain inferior courts whose judges are either elected by the people or appointed by territorial authority. The inferior courts are the probate court, the justice's court, and the municipal police court. The functions of the territorial courts are almost identical with those of the State courts. Territorial courts are not provided for in the Con-

[1] The portion of the District granted by Virginia was afterwards retroceded to that State by the United States.

[2] See page 70.

stitution nor do they belong to the regular federal judiciary. They are simply judicial organs created by Congress to assist in the governing of Territories. The judges of territorial courts, since they are not in a strict sense federal judges, may be removed by the President.

Besides the executive officers appointed by the President each Territory has such other officers as are necessary for the proper administration of its affairs. For example, Arizona has a Territorial Superintendent of Instruction, a Territorial Treasurer, and a Territorial Attorney-General. Each Territory is divided into counties and has its own peculiar system of local and municipal governments.

The political tie which binds the Territory to the federal government is the Delegate. The territorial delegate is elected every two years by popular vote. He has a right to a seat in the House of Representatives, and receives the same salary as other members of Congress. He serves on committees and may speak on all questions pertaining to his Territory, but he has no vote.

II. *Indian Reservations and National Parks.* In the management of the territory that has been under its control the national government has from time to time marked off and reserved certain lands for the use of the Indians. Scattered over the country there are in all about 160 of these Indian reservations. Some of them have a very large area. The Navaho reservation in Arizona has an area considerably larger than the State of Maryland. An Indian reservation is a kind of Dependency of the United States. The tribes living on a reservation are under the control of Congress. The national government protects the Indians on the reservation against injustice at the hands of the white man, gives them food supplies, and supports schools among them.

In the management of its public domain the national government has also set off several large tracts of land to be used as parks. These national parks are in some instances of vast

extent. The Yellowstone National Park has an area nearly half as great as that of Massachusetts.

III. *Alaska.* After neglecting this region for a long time Congress at last, in 1900, provided for it a code of laws and a suitable form of government. The officers of government are a governor, a surveyor-general (who also acts as secretary), a district-attorney and three judges, all appointed by the President. There is no legislative body. Provision is made in the code for local self-government in the larger towns. Alaska has a territorial delegate in the House of Representatives.

IV. *The District of Columbia.*[1] The government of the District of Columbia, by the Constitution, is vested exclusively in Congress (**61**). Several methods of governing the District had been tried when in 1878 Congress established the present form of government,—a form as simple as anything known to American politics. The District is governed by a board of three commissioners appointed by the President. Two of the commissioners must be appointed from civil life, and one must be an officer of the army. This board exercises not only the executive power, but acts in many respects as a legislature. Its reasonable regulations in respect to matters affecting the life, health and comfort of the people have the force of laws. Although Washington—the District of Columbia is but another name for the city of Washington—has no distinct legislature of its own, it nevertheless enjoys the services of the greatest legislative body of the country, for Congress keeps its eye upon the affairs of the District and devotes certain days to the consideration of District business. When legislating for the District, Congress acts as a city council, and visitors to the Capitol may hear senators and representatives discussing such topics of local government as the repairing of the streets or the regu-

[1] Strictly speaking the District of Columbia is neither a Territory nor a Dependency; it is simply a "municipal corporation with such powers as are common to municipal corporations in general."

lation of trolley lines or the adjustment of teachers' salaries.

The judicial system of the District consists of a court of appeals, a regular trial court called the supreme court, and a police court for the trial of petty offenses and municipal regulations. Justices of the peace are provided for the trial of certain kinds of civil cases. All these judicial officers are appointed by the President.

The District of Columbia has no delegate in Congress.

V. *The Panama Canal Strip.* This consists of a zone of land of the width of ten miles, extending to the distance of five miles on each side of the central line of the route of the Panama Canal. The region has been placed under the authority of the War Department, which may make such rules as are needful for the government of the zone.

Insular Territories and Dependencies. These are: Hawaii, annexed by a joint resolution of Congress in 1898 (July 7); Porto Rico, occupied July 25, 1898 by military forces of the United States under General Miles; the Philippine Islands, occupied August 13, 1898, by military forces under Admiral Dewey; Guam, seized by the United States navy during the war with Spain in 1898; certain islands of the Samoan group acquired by treaty in 1900.[1]

I. *Hawaii.* The Hawaiian Islands are governed under the name of "The Territory of Hawaii" by an act of Congress passed in 1900. This act provides for a territorial government almost precisely like those of Arizona, New Mexico and Oklahoma. It ought to be noted, however, that in the case of Hawaii, Congress, besides providing for a governor and a secretary, also provides for an attorney-general, a treasurer, a commissioner of public lands, a superintendent of public works, a superintendent of public

[1] Wake Island, Midway or Broad Island, Howland and Baker islands and the Guano islands officially belong to the United States, but since they are practically uninhabited they have not been provided with governments.

instruction, a surveyor and an auditor. These additional officers are to be appointed by the governor of the Territory and confirmed by the territorial senate. The act annexing Hawaii conferred upon the citizens of Hawaii the rights of citizens of the United States.

II. *Porto Rico.* The organic act establishing a government for this island was passed in April, 1900. It provides for the appointment by the President of a governor, a secretary, an attorney-general, a treasurer, an auditor, a commissioner of the interior and a commissioner of education. All these officers hold their positions for four years.

The legislature of Porto Rico is bicameral. The upper house, known as the executive council, consists of the executive officers mentioned above (not including the governor), and of five other persons, native inhabitants of Porto Rico, appointed by the President of the United States. This branch of the legislature is therefore not constituted in accordance with American ideas of representation, for it is not elected by the people. The lower branch consists of delegates elected by the voters of the island for the term of two years. The governor can veto the act of the legislature.

The judicial system of the island consists of a Supreme Court composed of judges appointed for life or good behavior by the President; of district courts presided over by judges appointed by the governor; and of municipal courts whose judges are elected by the people.

The organic act for Porto Rico provides that the voters of the island every two years shall elect a commissioner, who shall be entitled to official recognition as such by all the departments at Washington. This commissioner in the intention of the law is plainly not a delegate, yet by the grace of the House of Representatives he has been accorded the right to speak in that body and to serve on its committees. For all practical purposes, therefore, he is in reality a territorial delegate, although Porto Rico can hardly be said to be a Territory, for it is not a part

of the United States. Its inhabitants are citizens of Porto Rico and are entitled to the protection of the United States, but they are not American citizens.

III. *The Philippine Islands.* In February, 1899, after the Philippine Islands had been ceded to the United States by the treaty of Paris, the following resolution was passed by Congress:

Resolved, etc., That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently annex said islands as an integral part of the territory of the United States; but it is the intention of the United States to establish in said islands a government suitable to the wants and conditions of the inhabitants of said islands to prepare them for self-government, and in due time to make such disposition of said islands as will best promote the interests of the citizens of the United States and the inhabitants of said islands.

In accordance with the spirit of the above resolution, Congress has given to the Filipinos the form of government which has seemed best suited to their needs, changing the form from time to time as conditions on the islands have changed. At present (1909) the executive department of the Philippine Islands consists of a Governor-General, a secretary of the interior, a secretary of commerce and police, a secretary of justice and finance, and a secretary of public instruction, all appointed by the President and confirmed by the Senate. The legislative department consists of a lower house elected by the people and of an upper house composed of the executive officers named above and four members appointed by the President. It will be observed that the government of the Philippine Islands closely resembles the government of Porto Rico. The Filipinos are not citizens of the United States, but they enjoy many of the rights of American citizenship.

The Philippine Islands have no delegate in Congress, yet they are permitted to send to Washington two commissioners who appear before the committees of Congress and represent the interests of the islands.

The judicial system of the Islands includes a supreme court, consisting of a chief justice and six associate justices, courts of general trial for the provinces, and justices' courts for the municipalities. The judges of the supreme court are appointed by the President of the United States, but the judges of the provincial courts and the justices of the peace are appointed by the governor of the island. Cases may be carried by appeal from the supreme court of the island to the Supreme Court of the United States.

The archipelago is divided for governmental purposes into provinces, and the provinces into municipalities. Each province has a governor, a secretary, a treasurer and a supervisor of public buildings, roads, bridges and ferries. The provincial officers, with the exception of the governor, are appointed by the commission. The municipality has a mayor and a body of municipal councillors elected by the qualified voters of the municipality. These municipal councillors elect the governor of the province. In respect to local affairs government in the Philippines is of the centralized type, for the commission has large control over the province and the province has large control over the municipality.

IV. *Guam and Samoa* (*Tutuila*). Governmental power in these islands is vested in the naval officers who happen to be in command of the naval station. As a matter of fact the inhabitants of the islands in a large degree govern themselves. At times, however, it is necessary for the naval officer to interpose his authority, and upon such occasions his orders have the force of laws.

The Attitude of the United States toward Dependencies. The extension of our political influence into Porto Rico and the Philippines was perhaps an unavoidable incident

in our growth as a nation. Certainly for good or for evil we have made these islands our wards, and our duty in respect to them ought to be clear: we ought to administer their affairs, not with a view to *our own* advancement, but with a view to *their* advancement and profit. Such a policy is in accordance with the American spirit. The United States has always been the possessor of large regions of dependent territory, but it has never oppressed its dependencies, and has never regarded them as fields to be exploited for the sole benefit of citizens at home. It has always promoted the welfare of its wards and accorded to them as large a measure of self-government as was practicable. This has been our policy in the past, is our avowed policy now, and will continue to be our policy as long as we are true to our best political instincts.

QUESTIONS ON THE TEXT

1. In what two respects does a Territory differ from a Dependency?
2. To what extent has Congress power over Territories and Dependencies? How has it used this power?
3. Name the Territories and Dependencies on the American Continent.
4. Describe the government of Arizona; of Indian "Territory"; of the District of Columbia; of Alaska; of the Panama Canal Strip.
5. Name the Insular Territories and Dependencies.
6. Describe the government of Hawaii; of Porto Rico; of the Philippine Islands; of Guam and Samoa.
7. Describe the attitude maintained by the United States toward its dependencies.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Name the Territories properly so called; name the Dependencies.
2. Prepare a table showing the population and area of each of the Territories and Dependencies and give the totals.
3. Name the Territories in the order in which they are likely to be admitted as States.
4. Name the five Indian Tribes of Indian "Territory."
5. What does the Constitution say about Indians?
6. Why was the capital of the United States placed under the exclusive control of Congress?
7. Prepare a paper about the city of Washington, giving the munici-

pal history of the city, and describing its public buildings, its monuments, and its environs.

8. What measures are usually taken by Congress for the admission of a Territory into the Union? (See p. 66.)

Topics for Special Work.—The Territories: 2, 397–402. The Transmarine Possessions: 2, 402–409. For a full account of our Territories and Dependencies see "Territories and Dependencies of the United States" by W. F. Willoughby.

XXVI

THE COUNTY

The Importance of Local Government. Most of the everyday work of government rests upon the localities,—upon cities, villages, counties, townships. It requires about five times as much money to support local government as it does to support the State government. This means that the former renders about five times as much service as the latter. The federal government and the State government are far away; the local government is at one's back door and front door. The larger governments may act inefficiently or corruptly without immediate inconvenience to the citizen, but if the local government neglects the roads and streets, or manages the schools unwisely, or wastes money, the results of its evil course are felt at once. Because it touches one at so many points, and is so near to one, local government is a subject which may rightly demand a liberal share of our attention. We have already considered local government in its broad aspects, and in respect to its relations to the higher State government. We shall now study the organization of the several kinds of local government beginning with the county.

The County in the South and Southwest. The county as a unit of local government is the most widely established of American political institutions. Excepting the inhabitants of the cities of Washington, St. Louis and Baltimore, everybody in the United States lives in a county, for every State and Territory is divided into counties. Altogether there are about three thousand counties in the United States.

County government in America had its origin in the colony of Virginia. Very early the settlers of Virginia felt the necessity of some kind of local government, and they chose the English shire or county as the form most suitable to prevailing conditions.

The Virginia county was suitable to the civilization of the other southern colonies, and it was adopted by them as a unit of local government. Later, when the southwestern regions were organized, they were divided into counties of the Virginia type. That type, of course, has changed with changed conditions, and, since the county is a creation of the State, the type varies from State to State, yet looking at the subject broadly we may say that the following States have modeled their counties on the Virginia plan: Maryland, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Louisiana, Arkansas, Texas, Colorado, Oregon, Oklahoma, New Mexico and Arizona. In these States practically all the services of local government are performed by the county, for, excepting the chartered municipalities, there is no other local government in existence. It is true that in these States the county is usually divided into minor districts, into beats or wards or election precincts, or the like, but these divisions are simply convenient areas for voting or performing some public service regulated and controlled by county authority. In the States named above the county government, and it alone, is the agency through which the people outside of municipalities manage their local affairs, and in these States local government centers around the county court-house.

The County of the Middle States and the West. Beginning with New York, New Jersey and Pennsylvania and passing westward, keeping north of Mason's and Dixon's line (40th parallel of latitude), in nearly all the States there have been established within the county inferior local governments known as townships (p. 210). These townships perform many local services that in the South and

Southwest are performed by the county. The functions of the county government in the Middle States and in the West are therefore not so numerous as they are in the South and Southwest, and the county is not so highly organized. Moreover, in New York, and in several of the western States the governing body of the county—the county board of supervisors—consists not of representatives of the people, as in most States, but of representatives of the townships, a peculiarity of organization that will be noticed more fully in the chapter on townships.

The County in New England. When we turn to New England we find that the county is not a very important factor in the business of local government. This is because of the presence of the "town." This characteristic institution of New England, as we shall see, takes to itself nearly the whole burden of local government and leaves little for the county to do. The county in New England exists principally for judicial purposes—in Rhode Island it exists for no other purpose. Nevertheless, it has a few officers and exercises a few powers similar to those exercised by the county in other States. It has (except in Rhode Island) a board of county commissioners which has charge of the county buildings, controls the erection of those bridges which extend from one town to another, and manages other matters of an inter-town nature. There are also a county register of deeds, a high sheriff of the county, a county clerk of the court and a probate judge, but these are really a part of the judicial outfit.

The Organization of a Typical County Government. Although county government differs as we go from State to State there is nevertheless a certain uniformity in the organization of counties throughout the Union. The official outfit of a typical county is as follows:[1]

[1] In no State has the county all these officers, yet every officer mentioned in the list is a typical county official.

I. *The Board of County Commissioners or Supervisors.*[1] This is the governing body of the county. It consists usually of three or more members who serve for a term varying from one to six years. It holds its sessions at the county-seat, where all the county officials have offices. Like most of the other county officers the commissioners are elected by the people. The county commissioners usually do the following things:

(1) They fix the rate of taxation for the county.

(2) They appoint tax assessors, tax collectors, road supervisors, and other subordinate officials.

(3) They make contracts for repairing old roads and opening new ones, and also for building and repairing bridges.

(4) They make contracts for building and repairing public buildings, such as court-houses, jails and almshouses.

(5) They appropriate money for the support of schools, for the support of the poor, for the payment of the salaries of county officers, for the maintenance of the roads, and for all necessary expenses of county government.

(6) They represent the county when it is sued for damages. (All local governments are corporations in some respect and can be brought into court to defend a suit as if they were persons.)

II. *The Sheriff.* In England, anciently, the sheriff was the most powerful officer in the county. In modern times, however, his power is not so great either in England or in this country. Nevertheless, he is still an important officer. He has been called the "arm of the judge." If the judge orders a man to be taken to prison, or orders property to be sold, or sentences a man to be hanged, the sheriff executes the command. It is his duty also to preserve peace and order, and when necessary he may call to his aid *deputies.* In times of great danger or disturb-

[1] Still called the county court in some of the Southern States; in several States it is called the levy court.

ance he may call to his aid the *posse comitatus,* which includes every able-bodied man in the county (p. 253). The sheriff usually lives at the county-seat and has charge of the county jail and its prisoners.

III. *The Clerk of the Circuit, or District Court.* Any court above a police court, or above that of a justice of the peace, is a "court of record"; that is, its proceedings are enrolled in permanent form. In every county there is a court of record, and the keeper of its records is the *clerk of the court,* or *prothonotary.* This officer often keeps a record of deeds and mortgages given in the county, issues marriage certificates, and records all births and deaths.

IV. *The Probate Court—the Orphans' Court.* It is the business of this court to examine the wills of deceased persons and decide whether they have been made as wills by law ought to be made. When a person dies without having made a will, and leaves no one to take charge of his estate, the probate court will appoint an *administrator* to take charge of it. When a child is left without father or mother, the probate court will appoint a guardian, who will manage the estate until the child comes of age. In general, the business of the probate court is to see that the property of the dead falls into rightful hands. In some States the probate court is called the orphans' court. In New York it is called the surrogate's court.

V. *The Recorder* keeps a record of mortgages, deeds and leases.

VI. *Tax Collectors* and *Assessors* (p. 282).

VII. *The County Treasurer* pays out as well as receives all money raised by taxation.

VIII. *The Auditor.* Sometimes the county elects an *auditor,* whose duty it is to examine the books of the treasurer and other officers and report whether the public accounts are properly and honestly kept. In some States he has a check upon payments from the county treasury.

IX. *The Coroner.* When a person is murdered, or is found dead, or dies mysteriously, this officer takes charge

of the corpse and inquires at once into the cause of the death. If he thinks there has been foul play, he summons six or twelve men to act as a jury and holds a "coroner's inquest." Witnesses are summoned, and the jury, after hearing evidence, states the probable cause of the death.

X. *The State's Attorney* is a lawyer whose duty is to give legal advice to county officers, and to appear in court at the trial of one who is charged with crime and present the side of the State. This officer is sometimes called a district attorney or prosecuting attorney; sometimes he is called the solicitor.

XI. *The School Board* has the general management of the schools of the county. It regulates in whole or in part the salaries of teachers; it grants certificates to those who are competent to teach; it sometimes makes out the course of study that pupils are to pursue; it provides for the health and comfort of teachers and pupils.

XII. *The Superintendent of Schools* is the executive officer of the school board. He sets the examinations for teachers, visits the different schools of the county, and reports their work to the school board; he grades the work of the schools and devotes his time to improving them in every way he can (p. 354).

XIII. *The Overseers of the Poor* attend to the needs of paupers and other unfortunates (p. 386).

XIV. *The Surveyor* makes surveys of land when the county has need of such.

The Citizen and His County. Practically every American citizen is directly and closely interested in the administration of the affairs of some county, but citizens are by no means everywhere as watchful of their county government as they ought to be. They allow the management of county affairs to fall into the hands of a "court-house ring," and this too often means mismanagement and corruption. Where the county government is bad roads are

bad, bridges are unsafe, schools are inefficient, crime is unpunished and taxes are high.

County affairs are often neglected because they are regarded as too commonplace for serious attention. The citizen in his interest in the greater affairs of the State and nation overlooks the small politics of the locality. Such oversight is one of the most dangerous errors of citizenship. The county is one of the political units which go to make up the State, just as the State is one of the units of which the nation is composed. Keep the government of all the counties pure and good and good government in State and nation will almost certainly follow.

QUESTIONS ON THE TEXT

1. Why is local government so important?
2. Give an account of county government in colonial times.
3. In what States does the county perform most of the services of government?
4. How does the county of the Middle and Western States differ from the southern county?
5. Describe the New England county.
6. Name the duties of the county commissioners.
7. Name the typical county officers and name the duties of each.
8. Why is the county government of great importance?

SUGGESTIVE QUESTIONS AND EXERCISES

1. What are the provisions in the constitution of this State relating to the government of counties? Do these provisions restrict the power of the legislature in reference to counties, or do they leave that body free to govern counties pretty much as it pleases? Can the legislature of this State pass special laws as to counties?

2. How many counties in this State? Are their boundaries artificial or natural? Have their names any historical significance?

3. Bound the county in which you live and give its area and population. What is the distance of the county-seat from the most remote point in the county? In what year was this county organized?

4. Prepare a list of the county officers of this State and compare it with the list given in the text. (In those States in which county is the predominant type of local government the two lists will probably resemble each other closely; in other States there may be a considerable difference between them.)

5. State the powers of the county board of commissioners in this State. Is the board a legislative or an executive body?

6. What are the constitutional provisions relating to the term of the several county officials, the manner of their election or appointment, and their salaries?

7. Are the representatives in the legislature of this State apportioned by counties? If so, state the rule by which they are apportioned. Is the rule agreeable to the principle, "so many people, so many representatives?"

8. Is this county well governed? State particulars.

9. Of the functions of local government mentioned on p. 72 name those that are not exercised by county officials in this State.

10. What is the name of the smaller political divisions into which counties in this State are divided?

Topics for Special Work.—General Characteristics of County Government: **18**, 57–74. The County Board: **18**, 75–94. The Sheriff, **18**, 106–112; County Districts in the South and West: **18**, 186–199.

XXVII

THE TOWN

The Origin and Character of the Early New England Town. At the time when the planters of Virginia were organizing newly settled communities into counties, the colonists of New England were developing a system of local government that differed widely in form and spirit from the southern type. The English shire that served for the model for the Virginia county did not suit the conditions of the earliest Puritan settlements. The tillable land of the New England country was divided by nature into small areas marked off by bold hills and troublesome streams; the settlements were constantly harassed by Indians; the settlers themselves were bound together by personal as well as social and religious experiences. These circumstances led the Puritans to build their houses as close together as possible and to settle in compact villages rather than to spread out on large plantations.

The form of government adopted for these thickly settled communities was one that had almost perished from the earth. The old town- (*tun*) or village-meeting (p. 17) that the Anglo-Saxons had brought with them to England a thousand years before and that had been so changed by the influences of feudalism that it was no longer recognizable, was revived, unconsciously perhaps, in its ancient form and vigor, and the town instead of the county was established.

The early New England town was a pure democracy, in

which all the male adult inhabitants who attended church —and everybody was required by law to attend church— participated in the management of public affairs—a strong contrast to the Virginia county, which was for a long time a close corporation,[1] and was practically an aristocracy of large land-holders.

The deep religious nature of the Puritans affected their civil institutions, and for a long time their religion and politics were completely blended. Political life in Virginia centered around the county court-house; in New England it centered around the church or meeting-house, which was situated in the center of the town. A glance at the proceedings of one of the early town-meetings will illustrate how intimately civil and religious matters were mingled. Thus the people of Dorchester, Massachusetts, in town-meeting assembled, in 1666 voted that the "men's seats in the body of the meeting-house be enlarged to the women's seats, and that the space between Judge Jamison's heirs and Lieut. Stearn's pew be divided and added to their pews, they consenting, and that the doors to their pews be made to come out into the hind alley, and that men and women be placed in each of these pews by the committee for seating the meeting-house." In these days this would seem to be strange business for government to be engaged in, but we must remember that church and state were as yet united in all parts of the world, although Rhode Island, under the leadership of Roger Williams, was making efforts about this time to separate them.

The town was chosen as an agency for local government throughout all New England, and under its stimulating and healthful influence there was developed a citizenship that has received the admiration of the world. The religious features of the town organization and control have disappeared; church membership is no longer a qualification for voting; citizens are no longer compelled to

[1] A close corporation is one in which vacancies are filled by the votes of the members of the corporation.

attend divine worship; the church and the minister are no longer supported by the public money. Excepting the fact that it is no longer concerned with matters of religion the New England town of to-day remains what it was in the early days.

The Town-meeting. The central fact of local government in New England is the town-meeting, the old village *moot* or *tungemot* of the Teutons. Once a year all the qualified voters of the town meet together to discuss measures relating to town affairs, and to take action thereon. The meeting is no longer held in church, but in the town-house, or town-hall. When the people have assembled, the town clerk calls them to order, and states the purpose for which the meeting is called. A *moderator* is then chosen to preside over the meeting, and business proceeds according to parliamentary rules. In a town-meeting we see democracy in its purest form. Instead of sending men to conduct affairs for them, as in a representative government, the people are there in person. Young and old, rich and poor, take part in the proceedings, and any citizen present may exert the full force of his character and influence. Every measure that is brought before the meeting is discussed and criticized. Those in favor of the measure state their argument for it; those opposed to it state their objections. When the discussion is at an end a vote is taken, and whatever the results may be, all present feel that the will of the people has been expressed. Thus the town-meeting settles all matters relating to the public affairs of the town. The most important things done are these:

(1) The *rate of taxation* is fixed. Money is appropriated for the schools, for the care of the roads, for the support of the poor, for the salaries of officers, and for other necessary expenses.

(2) *By-laws* are passed for the regulation of local matters. The word *by* originally meant *town;* hence a by-law is a town law. A law passed in town-meeting forbidding

the use of the sidewalks of the town for bicycling is an example of a by-law.

(3) Town *officers* are elected. It would be impossible for all the people of a town to meet together every day for the transaction of public business. For this reason, at the annual town-meeting, officers are elected to manage the affairs of the town in the name of the people for one year.

Town Officers:

(1) *The Selectmen.* The general management of town affairs during the year is placed in the hands of three or five or seven or nine citizens, called selectmen. These officers carry into effect the measures passed at the town-meeting. They supervise the laying out of roads; they grant licenses; they care for the poor; they take measures to abate nuisances, check the advance of contagious disease, and otherwise preserve the health of the town; they listen to complaints against the management of town affairs; they represent the town in court when it is sued; they make out the warrant when a special town-meeting is to be called. The town-meeting is the legislature of the town, and the selectmen are its chief executive officers.

(2) *The Town Clerk.* This officer has numerous duties. We have seen that it is he who calls the town-meeting to order. He must always be present at a town-meeting, and keep a record of the proceedings. In addition to this he keeps a record of the births, marriages and deaths in the town, and grants certificates to those wishing to marry. In fact, most matters of town record are in his keeping, including sometimes the recording of deeds and conveyances.

(3) *Assessors* (p. 282).

(4) *Tax Collectors* (p. 284).

(5) *A Town Treasurer.*

(6) *Overseers of the Poor.* These officers have charge of the town almshouse and give relief to the deserving poor.

(7) *The School Committee,*[1] *or Board of Education.* (p. 354).

(8) *Constables.* These are peace officers, and every town has one or more of them. They arrest for crime, and assist the selectmen in executing the law. In some towns the constable serves as tax collector.

(9) *Surveyors of Highways.* These officers inspect roads and bridges, and are responsible for keeping them in repair.

(10) *Fence Viewers.* These officers settle disputes that may arise between neighbors about partition fences or walls.

(11) *Field Drivers.* When cows or horses or other animals are found wandering about the town the field driver puts them into a pound, and keeps them until their rightful owner is found.

This list of officers is not complete; yet it is long enough to show that a great many people take part in the government of a town. It is quite possible that there are towns in which there is not one intelligent citizen of advanced years who has not at some time in his life held public office. It is this general participation in the business of government that makes the people of New England such a wide-awake and progressive body of citizens.

The Town as a Factor in the Civic Life in New England. It is difficult for one not residing in New England to understand how powerfully its system of local government influences its civic life. Every voter of a town is a lawmaker, and almost every one either has been, is, or very reasonably expects to be, a town officer of some kind. This direct contact with government keeps public spirit keyed up to a high pitch. If the town affairs during the year are managed unwisely or corruptly there is sure to be a speedy exposure in town-meeting by merciless

[1] In many towns a school committee manages the schools of a district, which forms only a part of the town. When this is the case school affairs are separated from town affairs.

critics. If improvements are needed, or if the town lags behind its neighbors in progressiveness, the discussions in the folkmoot are sure to be directed towards a remedy, and when a remedy is found it usually proves to be wise and effective. The keen, vigilant citizenship fostered by these little New England democracies awakened the admiration of Thomas Jefferson and led him to pronounce them to be the "wisest invention ever devised by the wit of men for the perfect exercise of self-government and for its preservation."

Town Government outside of New England. In those Western States which were settled largely by emigrants from New England local government is modeled to some degree on the plan of the New England town. This is especially true of Michigan, Illinois, Wisconsin, Minnesota, North Dakota, South Dakota and Nebraska. In Michigan the voters of the townships, after electing the local officers, assemble in town-meeting and after voting the taxes for township purposes make regulations concerning such matters as the licensing of dogs, the vaccination of children, the purchase of books for the library. In certain parts of Illinois also the voters hold a town-meeting after the election of officers has been held.

The town-meetings of the Western States may resemble the New England town-meeting in form, but they lack the spirit of the original type. It is doubtful whether an institution like the New England town can be successfully transplanted. Certainly the efforts that have been made to establish local governments in the West after the New England pattern have not been attended with marked success. Local government in the West has been strongly influenced by New England ideas, but town government in its pure form has never flourished outside of New England.

QUESTIONS ON THE TEXT

1. What circumstances led the Puritan settlers to choose a form of local government different from that chosen by the Virginians?

2. Describe the early New England town.

3. Illustrate how the affairs of church and state were blended in the early days of New England history.

4. Describe a New England town-meeting.

5. What are the powers of a New England town?

6. Name the officers of the New England town and state their duties.

7. What influence does town government have upon civic life in New England?

8. To what extent has town government of the New England type been adopted in other States?

SUGGESTIVE QUESTIONS AND EXERCISES

(FOR STUDENTS IN NEW ENGLAND)

1. Examine the constitution of your State for provisions respecting the government of towns and state these provisions.

2. Of the services of local government mentioned on page 72, which are performed by your town government?

3. Bound the town in which you live and tell when it was organized. Name all the towns in the county in which you live. Have these names historical interest? Name the boroughs or cities, if any, located within the borders of your town.

4. Make out a list of the officers of your town. Which one of these plays a most important part in town government? (Elect a committee to wait upon some town officer and invite him to give the class a talk upon town government.)

5. How may a special town meeting be called?

6. What influences are at work to make town government a less important feature of New England life than it has been in the past?

7. How many representatives has your town in the legislature? Has this apportionment been made according to the population of the town?

8. Is the town meeting a legislative or an executive body?

9. Are women and children represented in town government?

10. In what matters does the government of your town excel? In what respect is your town excelled by its neighbors?

11. How many towns in this State? What is the population of the largest town? of the smallest town? Is the largest too large for a pure democracy? Is the smallest too small for self-government?

Topics for Special Work.—New England Towns: 18, 141–146. The Town Meeting: 18, 147–163.

XXVIII

THE TOWNSHIP

The County-township System. We have learned that in the Middle States and in most of the States in the West the county shares the business of local government with a minor civil division known as the township.[1] The presence of townships in the county results in a compromise system of local government often called the county-township system. Under this system the county government attends to those affairs which interest the whole body of the people of the county, while the township administers the affairs of a small area. The township, like the New England town, provides a government for a neighborhood.

The Two Types of the County-township System. County-township government has had two sources, and has developed into two distinct types—the New York type and the Pennsylvania type. In New York, as in New England, small self-governing communities known as towns (townships) appeared at a very early date in the history of the colony. These towns had their town-meetings and elected a full set of officers, but their powers were at no time so great as those of the New England town. In 1703 the colonial assembly of New York passed a law that has had far-reaching influence upon local government in the United States. This law provided for the annual election by each township of an officer to be known as the *supervisor* of

[1] In Delaware, townships are called *hundreds*, a name that has come down from the Anglo-Saxon period of English history.

the township, and further provided that the supervisors of the several townships should meet at the county-seat as a Board of County Supervisors (p. 197). Here was a reproduction of the old hundred-village system of early England, when the representatives of the village met in shire moot (p. 18). Following this law of 1703, there have been evolved in New York strongly democratic local governments of small area, conveniently classed as townships, and along with these a strong county government, whose chief administrative body—the Board of County Supervisors—consists of representatives of townships. Villages and the wards of cities are also represented on the board of county supervisors. This type of the county-township system, known as the *supervisor plan,* has served as the pattern for local government in those new States that were settled largely by emigrants from New York. This is true of Michigan, Illinois and Wisconsin.

In the early days of Pennsylvania the prevailing form of local government was the county organized on the Virginia plan. Gradually the officers of the county came to be elected by the people, and when the township made its appearance the county was too strong to suffer encroachments upon its organization. It retained its board of county commissioners elected by the people of the county. Thus the townships in Pennsylvania were not allowed to conduct the business of the county through their representatives, as in New York. Moreover, the people of the townships in Pennsylvania did not hold their annual town-meetings and participate directly in the management of their local affairs, as in New York; they elected their local officers annually, and with the act of election their power was at an end. In other words, the township in Pennsylvania was a representative government.

The county-township system of Pennsylvania naturally spread to Ohio, and thence to Indiana. Later it was adopted by Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, and Oklahoma.

Local government in Illinois has had an instructive experience. When this State was admitted into the Union its people were largely of Southern origin and, consequently, local government of the pure county type was established. As time went on, the northern part of the State filled up with people from the North. These desired the county-township plan, and in 1848 the new constitution gave the people of the county the right to determine whether they wished townships or not. Taking advantage of this right, more than five sixths of the counties of Illinois have decided for townships, and are now under the county-township system.

Michigan furnishes another excellent illustration of how the character and habits of the people influence the form of government. In Michigan, at first, the county-township system of the Pennsylvania kind was established, but as emigrants from New York and New England moved into the State and changed the character of the population, the people became more and more dissatisfied with their local government, and finally changed it to the supervisor or New York plan. Such experiences teach that local government must above all things be acceptable to the people who are immediately affected by it and who must personally conduct it.

The Powers of the Township. Why have so many States found it desirable to erect within the county another fully organized government? Because the township has been found to be an institution of great convenience. For a sparsely settled society the county is, perhaps, the only practicable form of government; but as population increases the needs of the neighborhood multiply, and many of these needs are such as can be attended to by the people directly interested if they only have the power granted to them. It is not necessary to travel twenty miles to the county-seat to see an officer about the repair of a wash-

out in a road, or about the purchase of a stove for a school-house, when we can have a government near at hand to attend to such things. The township has been introduced as an agency by which the needs of the immediate locality may be attended to.

Especially has the public *school* been a factor in the development of the township system. Local government in the South developed around a court-house, and in New England around a church; in the Middle States and in the West it developed around a school-house. Then, too, the care of the *roads,* and the support of the *poor* are services that may most conveniently be rendered by the government of the neighborhood.

The powers of the township vary slightly in the different States, but as a rule where the county-township system prevails the township (1) supports the public schools, (2) cares for the roads and (3) helps the poor, leaving other matters of local government to the county. The taxes necessary for doing these things are levied by township authority.

The Organization of the Township. The names of the officers of the township are not the same in all the States, but its organization is practically the same and may be indicated as follows:

1. *The Supervisors* (sometimes called *Trustees*) resemble the selectmen of the New England town, only their powers are not so great. Their duty is to take care of the roads and bridges, erect and keep in repair guide-posts and watering-troughs, and plant shade trees along the roadside. They may build and keep in repair a town house, in which elections may be held and officers of the town may transact the public business.

2. *School Directors* or *School Trustees* have control of the public schools within the township. In some States the directors of all the townships in a county meet every second or third year and elect a superintendent of schools

for the county; in other States the township supervisor or trustees are also the school directors.

3. *The Township Clerk* keeps the records and accounts of the township.

4. *The Assessors.*

5. *The Tax Collector.*

6. *The Auditors.* These officers examine the accounts of the township to see that all money has been properly and honestly expended.

7. *The Justice of the Peace.*

8. *The Constable.*

9. *Overseers of the Poor.*

10. *Election Officers* (p. 345).

The Township a School for Good Citizenship. When we consider that in some of the States there are as many as fifteen hundred townships officered perhaps by fifteen thousand citizens we can see how great is the influence of the little local governments upon the civic life of the State. Like the New England town, the township is the training-school where citizens learn the principles of civil liberty and the art of self-government. Thus while it might be possible to dispense with the township yet to do so would be to incur a heavy political loss. There is no likelihood, however, that this valuable institution will decay. The township is making its way into many States that have heretofore adhered to the pure county system. As the rural population in a State becomes denser the necessity of a government of smaller area than the county will always be keenly felt, and sooner or later such a government will be established. Among the various types that may be selected the township bids fair to remain the favorite. A high authority says: "The Western method of local government (the county-township system) for simplicity, symmetry, flexibility and administrative efficiency is superior to any other system which the Teuton mind has yet produced." (*Howard.*)

QUESTIONS ON THE TEXT

1. What is meant by the county-township system?
2. Name the two types of the county-township system and describe each.
3. Name the States that have the New York type of the county-township system; the States that have the Pennsylvania type.
4. Give an account of the development of local government in Illinois; in Michigan.
5. What are the usual functions of the township?
6. Name the typical township officers and state the duties of each.
7. Describe the effect that township government has upon civic life.

SUGGESTIVE QUESTIONS AND EXERCISES

(FOR STUDENTS WHERE THE COUNTY-TOWNSHIPS SYSTEM PREVAILS)

1. What is said in the constitution of this State concerning the organization and powers of townships?
2. Name the officers of this township. What are the duties of each of these officers? For what length of term does each one serve?
3. Do townships of this State belong to the Pennsylvania or to the New York type?
4. What functions does the township in this State perform? Would it be wise to give it more power? Why?
5. How many townships in this county? Name them. Bound the one in which you live.
6. Are there any villages or towns within this township? If any, how are they governed? (p. 218.)
7. May women vote for township officers in this State? May they serve as township officers? For what offices are women especially fitted?
8. Compare the merits of the supervisor plan with those of the commissioner plan.
9. Are the people of this township proud of the manner in which local affairs are conducted? If so, why? If not, why not?
10. Compute the number of township officers in this county. Estimate the number of such offices in the entire State. Describe the effect that would be produced upon the citizenship of the State if the township government were abolished.
11. Is a love of locality inconsistent with love of country?

Topics for Special Work.—Townships in the Central States: 18, 164–185.

XXIX

MUNICIPALITIES

The Necessity for Municipal Incorporations. Thus far we have described those forms of local government that are most efficient when administering to the needs of rural and sparsely settled communities. For thickly settled communities, for the thousands of villages and towns[1] and cities which have sprung up within the boundaries of counties and towns and townships, a distinct type of local government is provided. It is plain that a large number of people living closely together, say a thousand persons upon a square mile of territory, has special needs and, therefore, should have a government with special powers. Such a densely settled community needs street-lights, sidewalks, sewers, waterworks, fire engines, and the government of the township, or county or town within which it is located cannot furnish these things conveniently. It also needs special officers of government clothed with special powers. As long as it is governed precisely as the thinly settled region around it, it will suffer. Its taxes will be greater than the benefits which it receives in return; its citizens will often act without regard to the public welfare or comfort; its sidewalks will be unpaved, its streets will be unlighted; its offenses against the health and the peace and the good order of the community will be

[1] The word "town" is frequently used to denote simply a collection of houses and in this sense it is used here. The New England town is sometimes a purely agricultural area without so much as a considerable cluster of houses within its borders.

committed, and there will be neither law nor officers to hinder. The State, as we have seen, comes to the relief of such a community and confers upon it the privilege of a municipal corporation. Nearly one half of the people of the United States live under some form of municipal government.

The Two Classes of Municipalities. Municipal corporations, for convenience of treatment, may be divided into two classes. In the first class may be included all those chartered communities that have a simple form of organization, limited local powers, and a small population, although population of itself is an untrustworthy guide for their classification. Such communities bear different names in different parts of the country. In Connecticut, New Jersey and Pennsylvania they are called *boroughs.* In the Southern States they are generally called *towns,*[1] while in the West they are usually known as villages. The number of municipalities of this class in the United States is considerably more than ten thousand.

The second class of municipalities is the *cities.* A city is almost always an enlarged town or village, and in outward appearance it is sometimes difficult to distinguish a small city from a large town, although between the governments of the two there is a sharp difference. The government of the city is more complex than that of the town, its powers are greater, its officers are more numerous, and its local independence is more clearly defined. At what point in its growth a town or village shall cast off its simple organization and assume the dignity of cityhood depends upon State law. In many States a place must have ten thousand or more inhabitants before it is entitled to the privileges of a city, while in other States we find cities with less than three thousand inhabitants. Altogether there are in the United States about one thousand cities.

[1] In Indiana they are called towns.

Villages, Boroughs, Towns. It is customary to give a community a municipal charter whenever its population becomes large enough and dense enough to justify a separate organization. In many States when a district of less than a square mile in extent comes to have as many as three hundred inhabitants it is entitled under a general law to a village or town charter, and this it usually obtains from a judge of a court, or from a secretary of state. In a few States, however, there are no general laws in reference to municipal corporations, and in these the legislature grants special charters giving to each municipality such a charter as it (the legislature) thinks it ought to have.

The organization and powers of a village (or town, or borough) do not differ widely in the different States. Most of the officers are elected by the voters of the village. The governing body consists of a president, or mayor, or chief burgess, and a body of three or more trustees or burgesses or commissioners. In addition to these there is always a clerk, and frequently a treasurer, tax collector, a constable, a justice of the peace and a board of street commissioners. The village government usually renders the following services:

(1) It keeps the peace.

(2) It holds a court for the trial of minor civil and criminal cases.

(3) It keeps the streets in order and provides good sidewalks.

(4) It lights the streets.

(5) It furnishes a supply of water.

(6) It supports the public schools.

(7) It cares for the public health.

(8) It purchases apparatus for the extinguishing of fires.

The Organization of Cities. Since cities are controlled by the State legislature there are not only great differences in their organization in different parts of the Union, but even

in the same State it is sometimes impossible to find two cities with the same form of government. It is difficult, therefore, to give a general description of a city that is satisfactory. If a certain city be selected as a type and described, it may be that by the time the description appears in print the city will have an entirely new government, and one that is in no wise typical, for a city to-day may have a government in which power is distributed among a number of officials after the manner of a State government (p. 170) and to-morrow its charter may be changed and all executive power be placed in the hands of one man.

Notwithstanding this diversity and instability, most of our cities in the outlines of their organization follow the historic type: most of them have a legislature which generally bears the name of city council, and most of them have an executive department at the head of which stands a mayor.

I. *The City Council.* This body is the original governing body of the city. In recent years it has undergone many changes, and at present both its form or organization and its powers are as variable as the temper of legislatures, or as the theories of municipal reformers.

The following statements in reference to the organization of the city council apply to most cities:

(1) It is a representative body, its members being elected from municipal divisions called *wards.*

(2) In large cities it consists of two divisions or houses, sometimes called the first and second branches, sometimes the board of aldermen and the board of councilmen. In a few large cities the council consists of a single body.

(3) The term of office of a councilman may be as short as one year, but is never longer than four years.

(4) The members of the lower branch have a shorter term of office than those of the upper branch.

(5) The upper branch is considerably smaller than the lower branch.

The council as the legislature of the city regulates the almost innumerable activities of the city government. A persual of its proceedings as reported in the daily newspaper will show how closely its actions are connected with the daily life of the urban resident. Its laws, called *ordinances,* affect profoundly the health, safety, peace, comfort, prosperity, intelligence and morality of the city.

II. *The Mayor.* The organization of the excutive department of the city resembles that of the State. At the head is the mayor elected by the people for a term varying from one to four years. The powers and duties of the mayor within the city are comparable to those of the governor within the State. There is a tendency just at present to place in the mayor's hands far greater power than he has ever heretofore possessed. The supremacy that is generally supposed to belong to legislative bodies is passing from the council and is being lodged with the executive.

The most noticeable loss of power which the council suffers where the policy of a strong mayoralty prevails is connected with the all-important subject of taxation. It has long been the custom for the charter or a special law of the State legislature to state the kind of taxes a city may raise, and to name a rate beyond which it may not go (p. 286), but within these limitations municipal taxation has always been entrusted to the council. Under several recent charters the taxing power has been virtually taken from the council and bestowed upon the mayor. This has been done by creating a *Board of Estimates* of which the mayor is a member and over which he may exert a controlling influence if he chooses, for he appoints a majority of the members. This board makes estimates of the money that is required to conduct the city government and submits these to the city council. The council may lower the estimates but it cannot exceed them. This is a plain encroachment of the executive upon the legislative department; it gives to the board the positive power of making the law in reference to taxation and leaves to the council a negative power that may be compared to the veto.

III. *Municipal Executive Departments.* Associated with the mayor in the executive branch there are numerous

heads of departments and boards. Some of these are elected by the people, others are appointed by the mayor; in a few States some of them (for example, the police and health commissioners) are appointed by the governor, or by the State legislature. Serving under these chiefs and boards are assistants and employees, the number of whom increases with the size of the city, and sometimes consists of many thousands. A well organized city will usually have such departments and officers and boards as are indicated by the following outline:

(1) Department of Finance: comptroller, board of estimates, collector of taxes.

(2) Department of law: city solicitor, or attorney.

(3) Department of Public Safety: board of fire commissioners, commissioner of health, inspector of buildings, commissioner of streets.

(4) Department of Public Improvement: city engineer, water board, inspector of boilers.

(5) Department of Parks and Squares: board of park commissioners.

(6) Department of Education: board of school commissioners.

(7) Department of Charities and Correction: trustees of the poor, supervisors of city charities.

(8) Department of Taxes and Assessment: court of taxes and assessment.

(9) Board of Police Commissioners.

(10) Miscellaneous; city librarian, superintendent of lamps and lighting, surveyor, constables, superintendent of public buildings, public printer.

IV. *City Courts.* In every large city there is a system of courts extending from the police or magistrate court up to a supreme court, but the judges of these courts, although they may be elected by the people of the city, are not strictly officers of the municipal government. Justice is administered in the name of the State, and the judicial department of a city is merely a portion of the State ju-

diciary acting within the borders of the city. Appeals from courts of the city are taken to the supreme court of the State.

The "Commission" System of Municipal Government. In some of the cities of some of the States much of the elaborate machinery described above has been done away with and the "commission" system adopted. Under this system the entire responsibility for the government of the city is centered in a small group of men, usually five in number. One member of the commission (council) is the mayor. In the governing of the city there is no separation of the executive from the legislative power; the mayor and the other members of the commission act together both in the making of ordinances and in the execution of them. In the election of the commission ward lines are disregarded—each member being voted for by the city at large. This system has been adopted by Houston, Texas, Des Moines, Iowa, Haverhill, Massachusetts, and in many other important cities.

The Sphere of Municipal Activity. In the early days of our history the powers granted by a charter were such as were necessary to satisfy special local needs and these referred chiefly to the preservation of law and order. As the cities grew larger it became necessary for municipal government to render additional services. When it was learned that as an agency for the suppression of crime one street lamp was worth two policemen, cities generally undertook the business of street lighting, and when it was discovered that an engine for the extinguishment of fire was worth many times its cost, they began to purchase fire engines and other apparatus for the volunteer fire department.

During the last fifty years the percentage of our urban population has grown with astonishing rapidity, and with the increase in the number and size of cities municipal government has become more and more complex, and the range of municipal activity has widened. It would be

difficult to enumerate all the things done by a progressive municipality of to-day. The city government furnishes police protection, supports fire brigades, provides water supplies, lights the streets with gas or electricity, and paves and cleans them, constructs sewers, helps the poor and unfortunate, maintains a system of elementary and high schools, preserves the public health, abates nuisances, inspects food, removes garbage, supports parks, libraries, hospitals, cemeteries, fosters music and literature and art, provides and equips playgrounds for children, and does a score of other things that would have amazed our forefathers.

QUESTIONS ON THE TEXT

1. Under what circumstances does government under a municipal incorporation become necessary?
2. Into what two classes may municipal incorporations be divided?
3. Describe the organization of the village or borough. What are the services of municipalities of this class?
4. Why is it quite impossible to give a satisfactory general description of the government of a city?
5. Give an account of the organization and power of the city council.
6. What are the powers and duties of the mayor?
7. Name the usual municipal executive departments.
8. What is the relation of the city courts to the municipality?
9. Describe the "Commission" System.
10. What are some of the things done by the modern municipality?

SUGGESTIVE QUESTIONS AND EXERCISES

(FOR STUDENTS IN THE SMALLER MUNICIPALITIES)

I

1. Secure, if possible, a copy of your municipal charter and learn the boundaries, the titles of the officers, and the powers of your municipality.
2. Secure the names of the officers who are now serving in the offices of your town. Which of these are serving without pay?
3. What can you say of the condition of the streets of your town? of the efficiency of your fire department? of the efficiency of your police department? of the success of your school system?
4. Look around you and discover something that you as pupils may do to improve your town. (Let each student mention *one* thing.)
5. You have discovered a few things which you as students may do

for the betterment of town affairs. Now organize as a civic club and set about doing these things.

6. Would you vote for a town officer regardless of the political party to which he belongs? Give reasons for your answer.

7. Name all the chartered municipalities situated in the county in which you live.

8. To what extent is your town under county government?

II

(FOR STUDENTS LIVING IN CITIES)

1. Compare the organization of your city with the one outlined in the text. As your city increases in population what changes will have to be made in its government?

2. What is the length of the mayor's term of office? What is his salary? What officers and boards does he appoint?

3. Describe the organization of your city council. What is the method of representation in this council? Do you know the name of the person who represents your ward in the council? Bound the ward in which you live.

4. (See exercise 5 above, substituting "city" for "town.")

5. (See suggestion 6 above.)

6. A citizen of a city said: "I always vote at State and national elections, but I never vote at municipal elections." In what particular was this citizen neglecting his personal interest? What special qualities of citizenship are necessary in a city?

7. Make out a list of the services performed by the national, State and municipal governments respectively.

8. Name a few of the influences that make for bad city government. Can any of these be overcome?

9. What agencies are now at work in your city for the improvement of its government?

Topics for Special Work.—The City Council: 14, 137–176. The City Beautiful: 15, 239–248. The City for the People: 15, 280–299. Popular Responsibility: 17, 244–274. Civic Education: 17, 91–120. Home Rule for Cities: 30, 336–344. The "Commission" System: 30, 356–360. The City the Battle-Ground of Democracy: 30, 503–506.

XXX

PARTY ORGANIZATION

The Nomination of Candidates. One of the most important of the services performed by a political party is to nominate candidates for office. A person may announce himself as a candidate and secure votes for himself without being named as the candidate of a party, but it seldom happens that any one is elected to an important office in this way. Before one can hope for success at the polls one must first receive the endorsement of a political party. A nomination by a party is an announcement to voters from a responsible source that the candidate named possesses personal fitness for the office to which he aspires, and that his political views agree with the doctrines professed by the party. In a great democracy intelligent voting is almost impossible unless candidates are agreed upon before election day.

The Development of Party Organization. A history of presidential elections would be a history of party organization. The early presidential elections were conducted without the aid of elaborate party machinery. In 1804 the democratic members of Congress assembled as a caucus and nominated a candidate for the presidency. In making this nomination they acted as private citizens and not, of course, as members of Congress. Presidential candidates continued to be named by the congressional caucus for several elections, although dissatisfaction with the method soon began to show itself. The people were not content

that their candidate for the presidency should be named by members of Congress, and they soon began to clamor for the privilege of making their own nominations. In 1823 the people of Blount County, Tennessee, at a mass meeting nominated Andrew Jackson for President. From this time on nominating influences began at the bottom instead of at the top. Mass meetings, State legislatures and State conventions began to express their views as to presidential candidates, and by 1832 the congressional caucus had disappeared and a national convention consisting of party delegates from all the States had begun to name the party candidate for President and Vice-President.

Along with the popular method of naming the presidential candidates there was established the custom of electing the presidential electors by the direct vote of the people. At the beginning of the nineteenth century, in a majority of the States, the electors were chosen by the legislature, but by 1832 all the States but one (South Carolina) were electing the electors by a popular vote. This change was made necessary by the requirements of party organization. If a presidential election was to be a party affair and a popular affair, the party must not only name the presidential candidates, but it must also elect the electors who were to choose the President.

Thus party organization in the United States was built up while men were finding a way to nominate a candidate for the presidency, and the presidential nomination is still the central subject of party activity. Since this is so, we may most conveniently study the subject of party organization by following the workings of a party in a presidential year.

Permanent Party Organization. The work of a political party does not end on election night when the ballots have been counted. The life of a party must be supported from one election to the next, and this is done by means of a *permanent organization,* which is maintained throughout

the length and breadth of the land. In almost every township, village, election district, and city ward, each of the great parties has its permanent local committee of management. Likewise it has its permanent county, city and State committees. Above all these it has a permanent *National Committee,* consisting of one member from each of the States and Territories.

These permanent committees do the heavy work of politics. Indeed, they do *all* the work of politics except voting. They issue calls for the nominating conventions to be described below; they organize political clubs; they arrange for political mass meetings and processions; they solicit funds for conducting campaigns; they urge voters to be registered, and then urge them to come to the polls; in many other ways they promote and defend the interests of the party, through good and ill report, after defeat as well as after success.

The members of these party committees are generally experienced politicians, and they know how to organize and control men. They are skillful in determining what the rank and file of the party desire, and they are quick to respond to the commands of public opinion. Their services are generally performed without compensation. In many instances, however, in the event of party success, they expect either to hold office themselves or to assist their friends to office, or to profit personally in some other way.

Party Conventions. The chief work of the permanent committees is to keep the nominating machinery in motion. This consists of a series of party conventions which in a presidential year are all called into action. These conventions, beginning with the lowest of the series, will now be described:

I. *The Primary.* In the spring of a presidential year the permanent local committees of the lowest grade, in response to an order which has come down to them through

the State committee from the National Committee, call together the voters of the party within the town or election precinct or ward to confer and act upon party matters—especially upon matters relating to the nomination of a candidate for President—in a *primary* meeting.[1] At the primary two things at least are likely to be done: (1) the permanent local committee is either reëlected, or a new one is chosen, and (2) delegates to a county (or city) convention are elected.

These primary meetings are quite in the nature of pure democracies. Sometimes they are held in a hall and are so conducted that any voter, in addition to voting, may express his opinion in discussion. They are the meetings where the voting masses of the party have a direct voice in the management of the party's affairs. They can be controlled by the voters of the party, and if they are controlled by the party managers (the permanent committee) it is the fault of the voters.

After the people have expressed themselves at the primaries they have nothing further to do with party management. Everything henceforth is in the hands of the delegates and managers chosen in the primaries. It is only natural that the permanent organization should seek to control the primaries, for if they can do this they can name the delegates to the higher conventions, and thus control the nominations for all the higher offices, and can secure for themselves and friends appointments to office. If the voters of a party do not like the nominations which are made they can, of course, vote against the candidates at the polls, but voters are loath to do this. It seems to be much easier to neglect one's duties at the primaries than it is to rebuke the party management on election day.

The primary, like the entire party organization, be it remembered, is an *extra-legal,* voluntary institution. It is controlled by rules made by party managers, and whe-

[1] Sometimes called a caucus.

ther it is conducted honestly or otherwise is not an affair of the government. If at the primary election there is cheating or irregularities no one can be punished.

Several States are now making the experiment of placing primaries under control of the law and having them conducted as regularly and as honestly as other elections p. 345) are conducted. It will be the part of good citizenship to give these primary election laws the heartiest support, for the primaries are the springs in which the great stream of politics rises, and that stream will be pure or impure according as the source is pure or impure.

II. *The County* (*or City*) *Convention.* We left the primary sending delegates to the county convention in a presidential year. These delegates may be *instructed* at the primary to act in the interest of a certain man as the party candidate for President, and to support certain political measures, or they may go to the convention free to act as their judgments direct. In a short time after the primary election they assemble (usually at the county-seat) as the *county convention* of the party which they represent. This body, consisting perhaps of forty or fifty men, elects three or four or five delegates to represent the party in a State convention. If the county convention is in favor of a certain man for President it may instruct these delegates for this man in the State convention.

III. *The State Convention.* A few weeks after the county convention, delegates from all the counties (and cities[1]) assemble at some convenient place as the State convention of the party. This body, consisting sometimes of several hundred men, passes resolutions expressing the political views of the party in the State, names its choice for presidential candidate—if it happens to have a choice—and elects delegates to a National Convention, the number of delegates allotted to each State being twice the

[1] In a city each ward in primary meeting sends delegates to a city convention and this body elects delegates to the State convention to meet with the delegates from the counties.

number of its representatives in both Houses of Congress.[1] Sometimes it also selects candidates for presidential electors. Although the men in this convention are several degrees removed from the voting mass, yet if the sentiment at the primaries was pronounced and definite it will find expression in the State convention. If, on the other hand, the voters at the primaries gave no direct indication of their will the delegates in the higher conventions must act according to their judgment.

IV. *The National Convention.* In June or July, all the State conventions having been held, the delegates from the States (and Territories) assemble as the great *National Convention.* This body, consisting of more than a thousand men, meets in some convenient city, and after several days of discussion, expresses the views of the party upon public questions in the shape of a *platform* and chooses candidates for President and Vice-President.

The Presidential Campaign. After all the political parties have named their candidates the struggle for election begins. Political meetings are held, the claims of the candidates are urged, the platforms are explained and defended, and everything that can be done to influence voters is done.

The campaign, with all its faults, is a most wholesome element in our public life. It is the school-time of democracy. By it, men's attention is strongly attracted to public affairs, civic spirit is awakened, and voters are educated. The greatest objection to lengthening the presidential term is that to do so would be to deprive the people of the great educational advantage of frequent presidential campaigns.

[1] In many States the State convention elects only four delegates (called delegates at large) to the National Convention, the other delegates being elected at congressional district conventions, two delegates being chosen from each district. Where this is the practice the district convention selects a candidate for presidential electors.

The Election of the President. The campaign continues until the election day in November, when the voters render their decision. They do not vote for a President directly, but for electors as the Constitution provides (**146**). Since these electors are nominated and elected by a party they are morally bound to vote for the candidate of the party which elected them, and no elector has ever proved unfaithful to the party that elected him. The President is, therefore, really elected at the polls.

The electors chosen in November meet in their respective States in January and vote for President and Vice-President. The results of this vote are despatched from the several States to the President of the Senate at Washington and on the second Wednesday in February Congress meets to count the votes. The person receiving the majority of the votes cast for President is declared to be elected, and the person receiving the majority of the votes cast for Vice-President is declared to be elected. When no person receives a majority of all the electoral votes, the Constitution provides that the House of Representatives shall choose a President and the Senate a Vice-President, and states precisely how the election shall be conducted (**148**).

Direct Nominations. In many States the convention system of nominating candidates has been abandoned and nominations are made by a direct vote of all the voters of the party. Under the plan of direct nominations the voters "go to a primary meeting, which is managed in practically the same way as a regular election, and vote directly for the candidates whom they wish to represent their party at the next election." In other words, under the direct system the voters select their own candidates; they do not entrust the selection to party representatives.

QUESTIONS ON THE TEXT

1. What services do political parties render when they nominate candidates for office?

2. Give an account of the development of party organization in the United States.

3. Describe the permanent organization of a political party.

4. Give an account of the primary meeting and point out the importance of the meeting.

5. Describe the party conventions above the primary meeting.

6. Give an account of a presidential campaign.

7. What is the duty of a presidential elector?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Are primaries in this State legalized? If they are not is there a strong sentiment in favor of legalizing them?

2. Are the politicians whom you personally know better or worse than their neighbors? (Avoid using or suggesting any names.)

3. How many electoral votes has this State?

4. What Presidents were elected by Congress?

5. Show that it is possible for a man to be elected President without receiving a majority of the votes cast.

6. Show that it is possible for a single vote at the polls to decide a presidential contest.

Topics for Special Work.—The Nomination of Candidates: 25, 34–78. Presidential Leadership: 12, 25–41. Party Finance: 12, 218–229. The National Convention: 2, 473–485. For the subject of Direct Nomination see "Primary Elections" by C. E. Merriam. What the Party Machine Has to Do: 30, 373–378.

PART III

THE FUNCTIONS OF THE AMERICAN GOVERNMENT: ITS SERVICES

XXXI

THE FUNCTIONS OF GOVERNMENT

Introductory. In the first part of this treatise the great principles and fundamental ideas of the American political system were considered, and in the second part the formal organization of the several grades of government which are included in that system were studied. In this, the third part, we shall be concerned with the functions, or, as we may say, the services, of our government; but before we take up the particular topics of this division of our work it will be best to glance at the subject of governmental functions in general.

The Scope of Governmental Activity. The services rendered by the different governments of the earth vary with the racial instincts and the character of the civilization of the people whom the governments serve. As a general rule Teutonic and Anglo-Saxon peoples who are true to their political instincts are jealous of governmental authority, and are inclined to be chary of increasing the governmental functions, while Latin and Oriental peoples regard government with kindlier feelings, and are lavish in according power to it. The functions of government vary not only from country to country, but they also change in the same country from year to year. It follows, therefore, that any enumeration of the functions of government must be more or less typical in character. Such an enumeration is nevertheless useful, for it gives a general notion of the scope and nature of governmental activity. A typical progressive government does the following things:

(1) It makes new laws to meet the ever changing conditions of society.

(2) It renders justice between man and man, and between man and the State.

(3) It provides a defense against foes.

(4) It protects and promotes its international interests.

(5) It supports itself by means of taxation.

(6) It borrows money in time of stress.

(7) It coins money and establishes standard weights and measures.

(8) It regulates commerce, domestic and foreign.

(9) It maintains a postal system and provides thoroughfares for travel and transportation.

(10) It conducts the election of public officers.

(11) It preserves the family as an institution of society.

(12) It provides for the education of the young.

(13) It regulates commerce and industry.

(14) It defines and punishes crime.

(15) It helps the poor and incapable.

(16) It cares for the morality, health, comfort and convenience of citizens.

Nearly every modern civilized government does all the above things, and some governments do much more. In most of the countries of Europe the railroads, the telephone and telegraph systems, and, in some instances, the mines, are operated by the government. In many of the cities of Europe the scope of governmental authority is still further enlarged, embracing not only such functions as the supplying of gas and water, but extending to such services as the maintenance of public baths, laundries, pawnshops, savings-banks and lodging-houses. In London the city government has gone so far as to supply sanitary milk to the poorer classes.

Government and the Individual. The functions of government in all progressive countries are increasing and must continue to increase. Civilization is growing more complex, human interests are multiplying and conflicting with

each other as never before, population is increasing with startling rapidity and is crowding into the cities, inventions and processes of manufacture and methods of business are changing the face of the industrial world. The circumstances of this modern life do not permit the large individual freedom of former days. In order to make the proper social adjustments under the new conditions government must step in and do things that it has not done before, and that in a past age it would not have ventured to do, and with each new function added to government personal liberty is to some degree curtailed. The individual withers as the state grows more and more.

But government in a democracy cannot assume an additional function without the consent of the voters. The voter, therefore, is constantly called upon to determine the proper limits of governmental activity. Shall the government operate the railroads, or shall individuals continue to operate them? Shall the municipal government furnish the people with ice as it furnishes them with water, or shall the ice be furnished by private enterprise? Shall the government carry telegraphic messages as it carries letters, or shall the telegraph business remain in private hands? Shall the municipality provide a free lunch for school children as it provides free text-books, or shall parents attend to the lunches? Shall government regulate the hours of labor, or shall each man be permitted to work as many hours or as few hours as he pleases? In all such questions the voter must decide either in favor of the individual or in favor of the state.

Political science cannot point out to the voter precisely what government should do and what it should not do, for the sphere of government cannot be circumscribed "by the ring fence of a definition," but political science can sound a note of warning. The most judicious of all men who have written on the subject of human liberty, John Stuart Mill, has sounded this note in the clearest tones.[1]

[1] Mill, "Political Economy," Vol. II, p. 560.

"Whatever theory," he says, "we may adopt respecting the foundation of the social union, and under whatever political institutions we live, there is a circle around every individual human being which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep; there is a part of the life of every person who has come to years of discretion within which the individuality of that person ought to reign uncontrolled either by any individual or by the public collectively. This reserved territory ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example." Here is a test that should be applied to every proposed extension of governmental authority. When government is permitted to invade one's private life and make regulations in respect to matters that do not directly and closely and powerfully affect the outer social world, human liberty suffers a loss for which no governmental service however great is likely to be a full compensation.

Besides the broad principle stated above, there are several other considerations that should always have weight when the extension of governmental authority is proposed: (1) The more we give government to do, the more habitually will we look to government to help in the solution of the difficulties of life, and the habit of looking to the state as the great deliverer and provider tends to dwarf the faculties of self-reliance and self-help. (2) The more the government has to do the greater the army of government officials and the greater the danger of a bureaucracy, which is another word for official tyranny. (3) If the government is not doing well what it is now undertaking to do it is hardly probable that an extension of its functions would result in success. (4) When a private enterprise is rendering a certain service to society in a way that is generally satisfactory, it would be unwise to burden government with that service.

Individualism, Liberalism and Socialism. In the field of practical politics we find men differing widely in their views as to the proper sphere of government. Some would limit the province of government strictly to the defense of the nation against foreign foes, and to the protection of persons and property against fraud and violence, leaving all other social interests to be attended to by private enterprise and effort. Those who believe in this let-alone (laisser-faire) policy may be styled the individualists of politics. They now form but a small part of the voting population of any free country.

Next to the individualists may be classed those who would add to the merely protective functions of government certain others, such as the management of the post-office, the establishment of public schools, the improvement of rivers and harbors, the maintenance of thoroughfares —social services that can without doubt be performed by the state better than by the individual. Those who favor this moderate extension of the functions may be called liberalists. They constitute by far the largest class of voters in almost every country of the world.

Lastly, there are the socialists who believe in an enormous increase in the functions of government. Under socialism the state would own and control not only all the means of transportation and communication, railroads, steamboats, canals, telegraph and telephone lines, but it would also own and control all the means and instruments of production, the mines and forests and farming lands, and shops and factories and mills. Under such a program individual enterprise would disappear almost entirely, and there would be substituted in its place the collective effort of society. The state would be a great joint stock company whose membership would comprise the whole body of citizens, and whose object would be to provide for the material wants of its membership. Of course if the state should be the sole producer it follows that it would also make a distribution of the products, giving to each person (each

member of the joint stock company) his just portion of the goods produced. What the portion of a given individual would be would depend upon the quantity and quality of the labor which the individual performed. If a person able to work performed no labor at all he would get no portion at all, and would consequently starve to death. Under the socialist program everybody able to work would be compelled to work. Socialism is exceedingly strong in some of the countries of Europe, especially in Germany, where the socialist party outnumbers any other political group. In the United States the socialists are organized as a political party and are increasing in numbers.

QUESTIONS ON THE TEXT

1. Enumerate the functions of a typical progressive government.
2. What circumstances of modern life tend to strengthen the state at the expense of the individual.
3. What rule does Mill give in respect to the limitation of governmental authority?
4. What four considerations should have weight when deciding for or against a proposed addition to the functions of government?
5. What is meant by individualism in politics?
6. Who are the liberalists in politics?
7. What is meant by socialism?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Enumerate the functions of your town or city government. Is it doing anything that could be better done by private enterprise? What things are now being done by private enterprise that could be better done by the municipal government?
2. Where is there more individual liberty, in the city or in the country?
3. Prepare a ten-minute paper on, "The Municipal Functions of Glasgow." (Consult Shaw's "Municipal Government in Great Britain".)
4. Determine in which of the following instances there would be a violation of the rule laid down by Mill and given in the text: The Government—(*a*) compels everybody to be vaccinated; (*b*) forbids the reading of certain books; (*c*) forbids the sale of certain books; (*d*) furnishes the milk that must be drunk; (*e*) furnishes the virus that

must be used in vaccination; (*f*) compels everybody to attend church; (*g*) compels everybody to attend a certain church; (*h*) forbids the sale of oleomargarin; (*i*) compels dealers to label oleomargarin as such; (*j*) forbids the use of oleomargarin altogether; (*k*) compels parents to send their children to school; (*l*) compels parents to send their children to certain schools.

5. Of the following enterprises name one, if there is one, which should be undertaken by government in this country: (*a*) The operation of telegraph lines; (*b*) the operation of railroads; (*c*) the operation of trolley lines in cities; (*d*) the operation of coal mines; (*e*) the manufacture and sale of gunpowder; (*f*) the manufacture and sale of illuminating gas; (*g*) the manufacture and sale of ice.

6. If government should undertake the enterprises named above to which of the several grades of government, local, State or federal, would each enterprise be assigned?

Topics for Special Work.—The Functions of Government: 21, 514–528. Socialism: 21, 500–512. Outlines of the Socialist State: 24, 277–323. Personal Liberty *vs.* Governmental Authority: 30, 392–397. Governmental Enterprise in the Non-Essentials: 30, 402–410.

XXXII

LAWS

Introductory. A constant service of a popular government is to make laws suitable to the ever changing conditions of society. Since the American voter is indirectly a law-maker—frequently he is a direct law-maker—he ought to have clear and just notions respecting the nature of laws. He ought to know what law is, what are the different kinds of laws, what are the characteristic features of a law, and above all he ought to have sound ideas in respect to what law can do and what it cannot do. In this chapter we shall consider those phases of the subject of law which are of practical interest to the voter.

What a Law is; the Different Kinds of Laws. A law is a formal expression of the will of society in respect to some matter of social concern: it is a rule of action made by government and enforced by the sovereign authority of the state. A rule of action that cannot invoke for its enforcement the whole power of the state is not a law in the sense in which the word is here used.

A satisfactory classification of the thousands of laws that are now in operation is difficult to make. A lawyer classifies laws in one way, a political scientist in another. The broadest classification of laws is made when they are divided into *public laws* and *private laws*. All laws may be regarded as defining and protecting the rights of persons, and persons may be regarded as either public or private. By a "public person" is meant either the state

or a body holding authority under it; by a "private person" is meant the individual citizen. A public law is one which regulates rights where one of the persons concerned is a public person, that is to say, the state, and a private law is one which regulates rights where both of the parties concerned are private persons. "The punishment, for instance, of a traitor is a matter of public law. The right violated by him is a public right, because the person in whom it resides is the state. The state has a right not to be conspired against. . . . If, on the other hand, a carrier damages my goods, the question raised is one of private law. My right to have my goods safely carried is a private right because both the carrier and myself are private individuals."[1]

Another useful classification of American laws may be made by considering their origin and grouping them according to the sources from which they have emanated. Such a classification gives us the following groups of laws.

1. *Constitutions.* These include the federal and State constitutions. Laws of this class are direct expressions of the popular will, and are fundamental in character.

2. *Statutory Laws.* These are the laws that have been formally passed and promulgated by a legislative body. They include the treaties made by the United States, the statutes of Congress and of the State legislatures, the ordinances of municipal councils and the by-laws of town-meetings. There must be placed in this class also those laws of the colonial assemblies, and of the British Parliament that were in force in the colonies at the time of the Revolution and that have never been repealed.

3. *The Common Law.* A third class of laws consists of a set of rules and principles which have not been promulgated by a legislature, but which have grown out of custom and usage and have been gathered from judicial decisions (p. 181) and from the opinions of jurists. These

[1] See Holland, "Jurisprudence," p. 101.

rules and principles constitute the *common law.* Constitutional laws and statutory laws are written, but the common law may be said to be unwritten, for its rules are not formulated in written documents. Most of the rules of the common law have come to us from England, but custom is making laws in America all the time, and when an American custom has hardened into a law that law is to be classified as belonging to the common law. The rules of the common law are so fundamental and so important that they are often called the "great body of the law"—the vital principles of all law.

Some of the Characteristic Features of Law. Among the characteristic features of a law there are several that frequently have a practical bearing upon daily conduct: (1) All laws are equally binding. If a law has originated from a rightful source and conflicts with no higher law it is binding, whatever may be its origin. A by-law of a town-meeting is as relentless in its operations as a law of Congress, and if necessary armies and fleets will assist in its enforcement. (2) The law is no respecter of persons. Everybody, rich or poor, high or low, who comes within the scope of the authority of a law must obey it. (3) Ignorance of the law excuses no one. When a law is passed means are sometimes taken to give it publicity by advertising it in newspapers, but government does not undertake to inform everybody of every law that is passed. It is assumed that citizens are able to learn what the law is, and the maxim is that to be able to know is the same as to know. This rule sometimes works hardships, but it could not safely be changed. (4) A law remains in force until it is repealed. "Laws sometimes sleep, but never die." In a case tried recently in the District of Columbia the judge recognized as binding a statute passed by the British Parliament in the reign of Richard II (1372–1399), and decided the case in accordance with the ancient and almost forgotten statute.

Law-making and Public Opinion. For the regulation of the varied interests and activities of our busy and progressive life thousands of laws have been made and thousands more are making. This production of laws cannot cease. As a community develops the laws must keep pace with the new conditions. Steam has called forth hundreds of laws, and electricity is constantly presenting problems for the consideration of the law-maker. Not only must new laws be made, but old ones must be repealed or amended. The ideas of men concerning right and justice change, and it is the business of the legislature to make the law conform to existing views. To meet the demand for new legislation the energies of our legislatures, municipal, State and federal, are taxed to the utmost. Frequently more than a thousand laws are passed at a single session of a State legislature, and it has been estimated that the output of Congress and of all the State legislatures is more than ten thousand laws every year.

In this hurly-burly of law-making the voter takes a part; he chooses the representatives who make the laws, and in this way is brought very close to the actual work of legislation. When considering a proposed law there is one rule the voter should keep in mind, and that rule is this: A law should not be enacted if public opinion is strong against it. Public opinion is the moral force which at a given time sways and controls a community. This force may be low or it may be elevated, but it is always a controlling force. In an absolute monarchy, as well as in a republic, successful resistance to public opinion is quite impossible. If people are ruled by a despot, it is because they desire to be ruled in that way; the despotism falls as soon as public opinion is hurled against it. Laws as well as other things must bend to this irresistible power. Indeed, we may say that a good and useful law should always be enacted by public opinion before it is passed through the legislature.

We cannot always tell on which side of the question public opinion really stands, and cannot for this reason

always determine in advance whether a proposed law will receive its support or not. We may not be able to tell what public opinion *will* do, but there are several things we may confidently predict it will *not* do:

(1) *It will not support laws that require for their enforcement a much higher average of morality than that which already exists.* A member of a State legislature introduced a bill enacting the ten commandments and the golden rule into laws. If the people of the State at the time were generally obeying the commandments and the golden rule his bill was not altogether absurd, but if they were considerably below this grade of morality his bill was as preposterous as it would have been if it had provided that all men should be happy, and that rivers should flow with milk and honey. Legislation may punish law-breakers, but it cannot make men good.

(2) *It will not support laws that provide for a wide departure from present habits and customs.* Men are creatures of habit, they are prone to act to-day as they acted yesterday; and when a law demands a sudden and radical change in deeply rooted customs it does violence to human nature. Englishmen are accustomed to say that there is nothing which their Parliament cannot do. There is doubtless one thing it cannot do: it cannot make the people of England abandon their clumsy custom of reckoning money in pounds, shillings and pence.

(3) *It will not support ideal schemes of government.* Society is a mixture of good and evil, and while the majority of men in a state are never utterly base, neither is the majority ever supremely good. Laws, therefore, which are framed upon the assumption that men are ideal creatures will not secure the support of public opinion. Here is where well-meaning people often err. They plan for a state in which there is no selfishness or injustice or wrongdoing. They construct ideal commonwealths, apparently forgetful of the fact that they themselves would not be willing to live for six months under one of their

own creations. Many ideal commonwealths have been proposed, but no sane man ever yearned to live in one of them. Public opinion will support laws that make for the betterment of social conditions—it is constantly doing this—but it will ruthlessly shatter the fabrications of dreamers.

(4) *It will not support arbitrary or whimsical laws.* Very often the law has attempted to regulate things that ought to be left to regulate themselves. Thus laws have been passed limiting the number of dishes to be served at a dinner, and prescribing the kind of jewelry that might be worn. A Scottish parliament was rash enough to attempt to regulate the amount of money that women should spend for dress. Regulations of this kind are called sumptuary laws. They have nearly always failed to receive the support of public opinion.

Obedience to Law. Laws which do not receive the support of public opinion are sure to be violated, while the violators go unpunished. This is the great mischief of such laws. A law is made to be obeyed. We may not like a law, we may think a law foolish or harsh or unjust, yet as long as it is a law we should obey it. To obey a bad law might work some temporary inconveniences, but these would not be so regrettable as would be the habit of violating the law with impunity. Obedience to the law is an essential feature of good citizenship under any form of government. Especially is this true in a democracy, where all laws flow from the people, and where the citizen looks to law and not to a monarch, not to a person, for the protection of his rights. When citizens in a democracy begin to lose their respect and reverence for the law and to disregard its commands they are preparing a way for anarchy, and anarchy leads to despotism. Society can exist only where the laws are obeyed, and it is sure society must and *will* exist. If the people will not obey their own laws the tyrant will come forward and impose his laws upon them and compel

obedience. The man on horseback, the man of blood and iron, is better than social chaos.

QUESTIONS ON THE TEXT

1. What is a law? Define *private law; public law.*
2. Classify the laws with respect to the sources from which they have emanated. What is the *common law?*
3. What are the several characteristic features of a law?
4. What connection is there between voting and law-making?
5. Define "public opinion."
6. Name the kinds of laws public opinion is not likely to support.
7. What would be the result of a general disregard of the laws?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Name some new inventions which will be likely to call forth new laws.
2. "A law passed to-day ought not to bind future generations. A law ought to repeal itself after it has been in force for twenty-five years." What would be the disadvantages of limiting the binding force of all laws to a brief period?
3. Would you vote for a law which provided that no child under twelve years of age should appear on the streets alone after nine o'clock in the evening? for a law which forbade ladies to wear the feathers of birds in their hats? for a law which forbade boys to smoke cigarettes? for a law which forbade girls to chew gum? for a law which compelled street-car companies to furnish seats to all passengers? for a law which forbade the ringing of church bells? for a law which provided that pupils should always know their lessons? Give reasons for each of your answers.
4. "The best way to get a bad law repealed is to enforce it." Is it better for judges to enforce a bad law and thus hasten its formal repeal by a legislature or to allow violators of it to go unpunished?
5. Name a few of the social and intellectual forces which go to make up public opinion.
6. What will be the course of a true statesman who finds that his opinion does not agree with public opinion?
7. Define *statute, by-law, ordinance, constitution.*
8. Watch the proceedings of the State legislature and of Congress and report important legislation. (Your representative in Congress will furnish you with the "Congressional Record.")
9. Does the constitution of this State say anything about the common law?

Topic for Special Work.—How Public Opinion Rules in America: 2, 486–498.

XXXIII

DEFENSE

Defense an Indispensable Function of Government. A nation must provide a defense against public foes. Here is a function of government that is indispensable. Every nation has its enemies, external and internal. A foreign power impelled by avarice or ambition or revenge or envy may wage war upon us, or a lawless element at home may threaten the security of life and property. The principle of self-preservation requires that a nation be prepared to resist the attacks of both these classes of foes, and self-respect demands that resistance be actually offered when offense is given. The doctrine that we should passively fold our arms and not resist an attack upon our persons or an invasion of our country is contrary to the teachings of experience and to the facts of human nature. Haste the day when war and lawlessness shall cease, but until they shall cease nations must be prepared to meet force with force.

National Defense. The defense of a nation is complete when it can hurl its entire strength against an enemy. In order to secure the strength which comes from unity and harmony the Constitution gives to the federal government the power of raising and supporting armies and navies (**56, 57**), and of making rules for their control (**58**). A State may not engage in war with a foreign power, except in case of actual invasion (**77**). The responsibility of declaring war rests with Congress (**55**). In giving to Con-

gress the power to declare war instead of vesting the power with the President, the framers departed from the usual practice of governments. The declaration of war hitherto had been a prerogative of the executive, but the members of the Convention of 1787 were not disposed to make the executive strong at the expense of the legislature.

The instruments of national defense are the army and navy.

I. *The Army.* The Department of War and the office of the Secretary of War were created by an act of Congress in 1789. The regular army established by the new government consisted of only a few thousand men—a force just sufficient to keep the Indians in order. The policy of maintaining a small standing army, inaugurated in the beginning of our history, has been continued to the present time.[1] In time of war we have put into the field as many as a million of men, but in times of peace our army has always been small, ridiculously small when compared with the standing armies of the great powers of Europe.

The policy of supporting a regular army no larger than is consistent with national safety is undoubtedly sound. The army is always under the control of the executive (**92**), and if it were overwhelmingly large it might be used—as in the history of nations it often has been used—to crush out popular rights and establish a tyranny. Moreover, a large standing army is maintained at an enormous cost. The army of Russia consists of more than a million of men. These men produce nothing themselves, yet they consume a large portion of that which is produced by others. Congress may provide for a large army or a small one as it sees fit, but this provision cannot last longer than two years (**56**). In placing this limitation upon Congress the Constitution makes it impossible for a large

[1] Under the Act of 1901 the regular army of the United States is to consist of not less than 57,000 nor more than 100,000 soldiers. The regular army of France is more than 500,000; of Germany nearly 600,000; of Austria-Hungary nearly 400,000; of Italy nearly 300,000; of Great Britain, 250,000.

standing army to be imposed permanently upon the people without their consent.

In an emergency, when the regular army is too small for the needs of the hour, the federal government may call the *militia* to its assistance. The militia consists of practically all the able-bodied men in the United States between the ages of eighteen and forty-five. The full strength of the militia is quite twelve million men, but only a small part of it (about one hundred thousand men) is organized and ready for fighting. For the purposes named in the Constitution (**59**) the President calls the militia into service, specifying the number of militiamen each State is to furnish. If a State should neglect to furnish its quota, the required number of men may be enrolled under the authority of the President. When in the service of the United States the militia is subject to the rules and discipline of the regular army (**60**), although the officers of the militia are appointed by State authority.

When troops additional to the regular army are needed, and when the purposes for which they are needed are not such as would under the Constitution justify the calling out of the militia, the President calls for *volunteers,* requesting from each State a number apportioned to its population. During the Civil War more than half a million men responded to the President's call for volunteers, and during the war with Spain (1898) two hundred thousand men were enrolled as volunteers. When the militia is not available, and volunteers cannot be obtained, there must be a *draft;* the names of those fit for military service are secured, and from these the required number is *drawn,* usually by lot.

The President is officially Commander-in-chief of the regular army and of the militia when it is in the service of the United States (**92**). A President has never personally directed the movements of armies in the field. The real management of a war falls upon the Secretary of War, the head of the War Department. This officer has super-

vision of the army in times of war as well as in times of peace. He acts through the chief of a staff of trained officers who have direct control of the troops. A most important duty of the Secretary of War is to care for the material welfare of the army. In this he is assisted by the quartermaster-general, who attends to the clothing and the transportation of troops; by the commissary-general, who supplies the food; by the chief of ordnance, who supplies the arms; by the surgeon-general, who provides medicine and assistance for the sick and wounded; by the adjutant-general, who conducts the correspondence of the War Department.

It is estimated that ten per cent. of the population and wealth of the United States is situated on the sea-coast, exposed to destruction by hostile naval forces. The defense of this life and property is the duty of the War Department. The great seaports are defended by land batteries, consisting usually of powerful guns which rise from a pit, discharge their shells, and disappear to be reloaded. The waters in the neighborhood of a seaport may be sown with torpedoes which may be exploded by an electric spark produced by an operator on shore. The difficulty of defending a seaport is very great, for a modern battle-ship can shell a city if it is allowed to approach within ten miles of it. Nevertheless we have along our coast guns that can hurl projectiles the distance of twenty miles.

II. *The Navy.* The affairs of the navy were managed by the War Department until 1798, when Congress established the Department of the Navy, and created the office of Secretary of the Navy. The President is commander-in-chief of the navy, as he is of the army, but he delegates his authority to the Secretary of the Navy. Of course the actual fighting is done by trained seamen.

Although the people of the United States do not distrust a powerful navy as they do a large standing army, nevertheless it is only in recent years that systematic efforts have been put forth to build up a strong navy. About

twenty-five years ago Congress began the policy of increasing the efficiency of the navy by adding to the number of fighting vessels and providing for a thorough training of the men. The war with Spain showed that the efforts of our statesmen to improve the navy have not been in vain. We have a navy upon which we may rely. Our ships have endurance and speed, and our guns fire quick and straight. In its fighting strength our navy ranks second among the navies of the world.

State Defense. For the defense of life and property within its borders the State relies upon its citizen soldiers, its militia. The right of the State to support a militia is guaranteed by the Constitution (**134**). In a few States the *organized* militia consists of several hundred men; in most States it consists of several thousand men. In times of war, as we have seen, the militia is under the control of the President, but in times of peace it is subject to the orders of the governor. When the laws of the State are resisted and the local authorities are unable to suppress the lawlessness, the governor sends the militia to the assistance of the local forces. If the militia is unable to suppress the law-breakers, the State legislature, or the governor, may make application for aid to the President (**121**), who, if the case seems to warrant it, will send troops of the regular army to the scene of disorder. If the lawlessness interferes with the operation of the federal government, as with the carrying of its mails, or if it obstructs interstate commerce, the President may send federal troops and suppress the law-breakers without waiting for an application from the State authorities.

Local Defense. Besides the militia there are two other upholders of law and order within the State. These are the sheriff and his posse, and the local police force. The posse (*posse comitatus*, the county force) consists of all the able-bodied men in a county (or city). These the

sheriff may call to his aid at any time to suppress violence, although men who have not been drilled and disciplined are not likely to render efficient service. The local policemen and constables, of whom there are nearly one hundred thousand in the United States, are the every-day guardians of the public peace. They are "the eyes and ears as well as the hands of the body politic; not only the means of governmental apprehension, but of discovery; the agents of prevention as well as of cure."

Civil Government and Martial Law. It should be noticed that in the United States those who wield the sword are under the control of civil officers. The general obeys the President, the officers of the militia take their orders from the governor, the police are controlled by a board of civilians. This subordination of the military to the civil power accords strictly with American notions of government. We have no place in our system for martial law—law which is administered by soldiers, and which is at variance with the principles of civil liberty. By suspending the writ of habeas corpus citizens may be temporarily deprived of their civil rights and placed under martial law, but this can be done only in the name of the public safety (**64**). A State cannot maintain armed troops in time of peace and thus threaten the permanency of civil rights (**76**). Neither can the federal government in times of peace harass the people by quartering soldiers in the homes of citizens without their consent (**135**), and even in times of war such quartering must be done under the authority of civil and not under the authority of military law. Thus, while we make ample provision for the defense of the nation and the State, we have taken every precaution to prevent the instruments of defense from themselves becoming a menace to civil government and to civil liberty.

QUESTIONS ON THE TEXT

1. What causes compel a nation to provide a defense against possible foes?

2. What military powers does the Constitution give to Congress?

3. What has been the policy of the United States in reference to a standing army? What are the disadvantages of a large standing army?

4. What does the Constitution provide in reference to the militia?

5. What are volunteers? What is a draft?

6. Name the principal officers who conduct a war and state their duties. How is the sea-coast defended?

7. What has been the policy of the United States in reference to its navy?

8. Describe the militia system of a State.

9. What is a *posse comitatus?* What are the functions of the local police?

10. Explain how the military is kept subordinate to the civil authority of the United States.

SUGGESTIVE QUESTIONS AND EXERCISES

1. What have been the most fruitful causes of war in the past?

2. In which century in the history of the world have the greatest wars occurred?

3. Name five great military heroes. Should the incomparable honor which is accorded to military heroes be set down as one of the causes of war?

4. What does the United States spend each year upon its army and navy? What is this State's share of this amount? Compare this with the amount spent by the State for its public schools.

5. Why should Iowa as well as New Jersey contribute to the support of the navy?

6. Name a war which has been a blessing to mankind. Explain.

7. What is said in the constitution of this State in reference to a militia? In reference to the subordination of the military to the civil power?

8. Of how many men does the entire militia of this state consist? Of how many does the organized militia consist?

9. What services has the militia of this State rendered in recent years?

10. Which could we more safely dispense with, school-houses or battle-ships? Could we have one without the other?

11. Contrast the evils attending war with its beneficent features.

12. Do you sincerely wish that there will never be another war? What things can you as an individual do to help the cause of peace?

Topics for Special Work.—The Problem of War: 4, 232–247. War: 8, 266–279. The Department of War: 16, 133–151. The Department of the Navy: 16, 152–164.

XXXIV

INTERNATIONAL RELATIONS

International Affairs Regulated by the Federal Government. The management of international affairs is a service of the highest importance, and the power to direct foreign relations is a sovereign power. In the United States all power in respect to matters of an international character is lodged in the federal government, the organ of our national sovereignty. International affairs have never been regulated by the State. Under the Articles of Confederation negotiations with foreign countries were conducted by the Congress; under the Constitution States are expressly forbidden to enter into political relations with foreign countries (**72**), and the management of international affairs is given to the President and Senate (**95**).

International Law. Progressive nations have not isolated themselves from other nations. Ancient Egypt refused to defile itself by contact with other peoples and its civilization soon perished. The Greeks and Romans, on the other hand, went among strangers, traded with them, learned from them, made leagues of friendship with them, and thus developed a civilization which became the inheritance of all succeeding ages. The states of Europe, which were built upon the ruins of the Roman Empire, could not live wholly to themselves. In spiritual matters they were one; their universities were places whither *all* might repair, and students from England found their way to Salerno, and scholars from Italy wandered to Oxford;

their commerce caused cities so far apart as Riga and London to unite for mutual protection; above all, their incessant wars made a policy of seclusion impossible.

Out of this intercourse between the countries of Europe there gradually came into existence a body of rules which states in their dealings with each other recognized as binding. In modern times these rules have received the name of *international law,*[1] and have been accepted as binding by all the civilized nations of the world. A few of the most important of these international rules are the following:

(1) A state must protect the aliens within its borders from violence to person and property.

(2) Ambassadors and ministers are exempt from arrest and their persons are sacred. The buildings they occupy are extra-territorial.

(3) The high seas must be regarded as belonging to no nation.

(4) The territory of a maritime state must be regarded as including the sea to the distance of three miles along the coast.

(5) A state is sovereign in its own territory and must be permitted to manage its internal affairs in its own way.

(6) A neutral state (one not engaged in war) must prohibit belligerent operations within its territory.

(7) Property taken in warfare belongs to the state, not to the individual captor.

(8) A belligerent may station ships at the ports of an enemy and forbid the egress and ingress of neutral vessels. (Blockade.)

(9) An enemy's goods upon a neutral vessel must be spared unless the goods are "contraband of war."

(10) If possible, enemies must be taken prisoners rather than killed.

(11) Non-combatants and private property are privileged.

(12) Weapons causing needless pain are not to be used.

The above rules are not positive laws, for they have not emanated from a legislative source. They have sprung from centuries of custom, from numerous agreements between nation and nation, and from the moral judgment of

[1] International law may be defined as the rules which determine the conduct of the general body of civilized states in their dealings with each other.—*Lawrence.*

mankind. A rule of international law does not have the sanction of a state behind it, but it has that which is stronger: it has the compelling power of the public opinion of the world. If a state should refuse to obey one of the laws of nations it would have to face the protest and indignation of the civilized globe, and if it should be persistent in its refusal it would be "thrown out of the pale of civilized comity, just as you and I would be expelled from the social pale if we offended against the unwritten law of society."

Ambassadors, Ministers and Consuls. The international political affairs of a state are conducted by its diplomatic representatives, of whom the *ambassador* is the highest in rank. The ambassador represents the *person* of the executive of the country from which he comes, and he receives for this reason the highest personal respect and consideration. A *minister,* who is next to the ambassador in rank, represents the government from which he comes, but not the personality of the executive. In foreign courts an ambassador, being a personal representative of a ruler, is admitted to an audience with officials ahead of a minister. For a long time a minister was the highest diplomatic representative of the United States, but when it was found that under the rules of precedence in favor of ambassadors a minister of the United States was sometimes kept waiting for an official audience while the ambassador of some petty kingdom was being received, Congress (in 1893) created the rank of ambassador. The United States now has ambassadors for Great Britain, Germany, France, Italy, Austria, Mexico, Russia, Brazil, Japan and Turkey. In other countries we are represented by ministers.

Ambassadors and ministers, their property and their households, are exempt from the laws of the country to which they are accredited.. The residence of a foreign minister is, according to international law, a little patch of territory under the dominion of the country which

the minister represents. If the Chinese minister at Washington should commit a crime, Chinese and not American authorities must try the case and administer the punishment. If a case should arise where a judicial decision affecting diplomatic agents is necessary, it must be taken direct to the Supreme Court, no matter how trivial it may be (**110**).

The duties of a diplomatic representative depend upon the powers which his government has conferred upon him and upon the relations which exist between his government and the one to which he is sent. In general, he represents and defends the interests of his country. He keeps the home government informed upon topics of public interest, especially upon political topics, but he must not interfere in any way with the politics of the country where he resides. When a citizen of his own country has been injured by a violation of a rule of international law he seeks a remedy from a foreign government, and when a treaty is made he usually serves as the channel of negotiation.

A *consul* is a business agent of a government sent to a seaport or inland city to look after the welfare of citizens of his own country. He does not represent a government, he is not a diplomatic agent, and he does not enjoy the honors and immunities of a minister. Sometimes a *consul-general* is appointed to supervise all the consuls in the country to which he is sent.

The first duty of the consul is to aid his countrymen in securing their commercial rights. Among his other duties are the following: He places the consular seal upon official acts of the foreign government; he certifies to marriages, births and deaths among his countrymen in his consular district; he certifies invoices; he administers on the personal property of deceased persons when there is no representative at hand. The consul receives applications for passports, and, when specifically authorized to do so, grants them. He also grants passports in the absence of the regular diplomatic representatives.

In the United States, ambassadors, ministers, consuls and other representatives in foreign countries are appointed by the President and confirmed by the Senate (**96**). When the President concludes that a diplomatic agent of a certain rank should be sent to a country he may appoint one, even though Congress has made no provision for such an official. The President, however, cannot abuse his power in this direction, for the appointment must be confirmed by the Senate, and the money for the salary must be appropriated by Congress (**69**). Through the Secretary of State, who stands at the head of foreign affairs, the President receives the ambassadors and ministers of other countries upon their arrival in Washington (**102**). The President may also send a foreign minister out of the country, if his presence should for any reason be no longer desirable.

Treaties. When two or more states are at war and desire peace, or if in times of peace their commercial or monetary systems require adjustment, or if their boundaries need to be defined, or if in any way their international affairs are to be regulated, they may accomplish any of these objects by entering into a solemn compact or agreement called a *treaty*. A treaty, when made by sovereign states and signed by the proper diplomatic agents, and ratified by the governments of the signatory powers, becomes the law for all the states entering into the compact. In the United States a treaty concluded by the federal government is the supreme law of the land (**126**), and any State law in conflict with a treaty is null and void. Since a treaty is simply a law, Congress may repeal a treaty by passing a law contrary to its provisions, or an existing law may be repealed by the terms of a new treaty. A treaty which is contrary to the Constitution is void.

If a citizen violates a treaty his government will punish him as the violator of a law; but suppose the state itself should violate one of its treaties, is there a power to punish

the state? There is no power but the sword of the aggrieved country. The violation of treaty obligation is universally regarded as a just cause of war. But suppose a powerful state violates a compact which it has made with a puny state? In such a case punishment through war is out of the question and the weak state must rely upon the natural operation of the law of nations. "In the eye of international law treaties are made to be kept," and if a powerful nation persistently and perversely breaks its treaties it will incur the hostility of its neighbors and sooner or later these will combine and force it to abide by the rules of international law.

The President, acting through the Secretary of State and diplomatic agents, negotiates treaties with foreign powers. After a treaty has been framed, if it meets with the approval of the President, it is sent to the Senate, where it must be ratified by a two-thirds vote (**95**). If it is successful in the Senate it is sent to the foreign government for ratification. When it has been ratified by the foreign power the treaty is law for all the states whose governments have signed it.

Suppose the President and the Senate should conclude a treaty which required an outlay of money, would their action bind the House of Representatives? This question arose in 1794, when ninety thousand dollars was needed for carrying Jay's Treaty into effect. The House voted the money, but passed a resolution declaring its right to deliberate upon any regulation of a treaty which was placed by the Constitution under its control. Treaties requiring money for their execution have been concluded again and again, and the House has always made the necessary appropriation. It has never, however, acknowledged its obligation to do so.

Arbitration. A treaty provides for the peaceful intercourse of two or more nations in the future. How shall questions and disputes arising out of past transactions be

settled? One nation has wounded the pride of another, or has trespassed upon its boundaries, or damaged its commerce, or maltreated its citizens; how shall the injured nations find redress without declaring war? Nations which are capable of a humane and enlightened policy may find a peaceful exit from the most exasperating situations: they may submit their differences to a court of *arbitration,* just as private citizens often submit their differences to arbitration in order to avoid a battle in the courts of law.

Nations wishing to settle a dispute by arbitration enter into a preliminary treaty, and agree upon a method of selecting the members of the arbitration board, appoint a time and place for the meeting of the board, and define precisely the question to be settled. The arbitrators, like impartial judges, listen to the claims of the several states, investigate and weigh the facts pertaining to the case, and render a decision in accordance with the facts and the principles of justice. When the decision of a board of arbitration has been fairly obtained, all the nations affected by it are under the most solemn obligations to acquiesce in it.

During the nineteenth century international disputes were settled by arbitration more frequently than ever before, and in the number of cases submitted to arbitration the United States led the nations of the world. The increasing success of arbitration, and the expressed desire of many of the great powers to adopt it as a substitute for war, have encouraged lovers of peace to look forward to a time when the countries of the earth shall agree to submit all differences to a permanent board of international arbitration. If such a tribunal shall be constituted and its decisions obeyed, peace may be permanent and much of the money and talents and energy that are devoted to the support of war will be devoted to commerce and industry.

QUESTIONS ON THE TEXT

1. Where is power in respect to foreign affairs lodged? Define international law. Name five of the most important of the laws of nations? How are the laws of nations enforced?

2. What is the difference between an ambassador and a minister? What is the legal position of an ambassador resident in a foreign country?

3. What are the duties of an ambassador or minister?

4. What is a consul? a consul-general? What are the duties of a consul?

5. How do the diplomatic representatives of the United States receive their positions?

6. What is a treaty? How are treaties made? How are they enforced?

7. What is the attitude of Congress respecting treaties which call for the outlay of money?

8. What are the duties of a court of arbitration? What has been the example of the United States in respect to arbitration?

9. How may the permanent peace of the world be secured?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Name some of the great men who have represented this country at foreign courts. Who is our ambassador to Great Britain? to Germany? to France?

2. What is a *chargé d'affaires?* an envoy extraordinary?

3. Name the most celebrated treaties which the government of this country has entered into and state the leading terms of each. By what treaty has this country profited most?

4. What is the difference between a "convention" and a treaty?

5. Of the international rules mentioned in the text state one (if there is such a one) which is contrary to justice; one which is contrary to the interests of mankind; one which is contrary to natural law.

6. Upon what occasion and for what causes have ministers of foreign countries been requested to leave the United States?

7. Name the principal questions which the United States have submitted to arbitration. Give an account of the Alabama claims.

8. Could the decisions of a permanent international court of arbitration be enforced if all the nations should disarm?

9. What was the object of the Hague conference? What did that conference accomplish? For answers to these questions, see Report of the Hague Peace Meeting.

10. What influences are now at work tending to bring about universal peace? What influences are at work tending to destroy peace?

11. Give an account of the "Monroe Doctrine."

12. A secretary of the British ambassador was arrested, brought before the judge of a New England town court, and fined for running an automobile too fast: Did the judge have the right to impose the fine?

Topics for Special Work.—Treaties: 6, 270–273; 8, 280–292. The Department of State: 16, 77–91.

XXXV

TAXATION

Introductory. We now come to the function of *taxation,* or the orderly collection of revenue for the support of government. The science which treats of public expenditures and of the means of securing them is called *public finance.* Since under our dual system of government taxation is a concurrent function (p. 49) exercised with sovereign power by the State as well as by the federal government, and since each government determines its own expenditures, public finance in the United States is resolved into two sharply defined systems—national finance and State finance.

An adequate study of the taxing function requires the consideration of the following topics: (1) Taxation in its General Aspects, (2) National Finance, (3) State Finance, (4) Public Debt, and (5) Problems of Taxation. In this chapter we shall dispose of the first of these topics.

The Cost of Government. It is plain that expenditures for government in the United States must be very heavy, for there are three highly organized governments to be supported: the federal government with its army and navy and courts of law and high officials and thousands upon thousands of employees; the State governments with their numerous departments; the local governments with their school system and charitable institutions and highway improvements and police and sanitary service. The federal government spends about $800,000,000 a year, State and

Territorial government about $200,000,000, local government about $1,000,000,000, making a total public expenditure of $2,000,000,000 a year. These numbers[1] in themselves mean nothing—they are too large for the mind to grasp—but comparison enables us to comprehend their significance. $2,000,000,000 is about one twelfth of the combined annual earnings of every man, woman and child in the United States. The people, therefore, contribute to government in a year about as much as they earn in a month.

The Source of the Taxing Power. How does government get the revenue for its support? Which of its departments is vested with authority to take money from private citizens for public purposes? We have seen that this question arose between King John and his barons, and that Magna Carta declared that no contributions for the support of government should be made except by the consent of the general council of the realm. The same question arose between Charles I and Parliament and was settled by a declaration in the Petition of Right to the effect that the king could not take money from his subjects without the consent of the representatives of the people in Parliament. One of the greatest results of that mighty movement known as the French Revolution, which was also called into being by oppressive and arbitrary taxation at the hands of the king, was to take the taxing power from the executive and give it to a representative legislature. The outcome of the American Revolution, which also hinged upon the subject of taxation, confirmed the principle that in America there can be no taxation without either the personal consent of the people or the consent of their representatives in the legislature. Here is the cardinal fact of taxation: government must receive its revenue through the consent of the legislature.

The Different Kinds of Taxes. When the legislature makes a general call upon the citizens for contributions for the

[1] Estimated on the basis of a census report of 1904.

support of government, it is said to tax them. When the levy or call is properly made the contribution is compulsory and cannot be escaped. A *tax,* therefore, may be defined as an enforced contribution of money levied by the legislature on persons, property or income, for the support of government. Property is the thing universally taxed. If any property escapes taxation, it is not as a rule the fault of the law, for legislators attempt to tax almost everything upon which a tax can possibly be laid. For the sake of system they divide property and other subjects of taxation into classes and name the tax according to the class upon which it is levied. The kinds of taxes which are usually collected are the following:

1. The *general property tax,* levied (*a*) on *real property,* which includes lands and buildings and other things erected on land, and (*b*) on *personal property,* which includes such things as household furniture, money, goods, bonds, notes of promise, stocks, mortgages, jewelry, horses, carriages, and farming implements.

2. The *income tax,* levied upon income from wages or salary or profits upon business.

3. The *inheritance tax,* levied upon property acquired by inheritance or will. Sometimes this tax is regarded as an income tax, an inheritance or legacy being considered as nothing more than a part of the yearly income. Inheritance taxes are collected in three-fourths of the States.

4. The *corporation tax,* levied upon private corporations. This tax sometimes takes the form of an income tax levied upon the corporation regarded as a person; sometimes it is levied upon the bonds and stock of the corporation. In a few States it is levied upon the earnings of the corporation.

5. The *franchise tax,* levied upon a privilege granted by government. When a city council confers upon a corporation the right to operate a trolley line upon a certain street, the right conferred is a franchise, and upon the value of this right the franchise tax is laid. Though franchises are

not material, visible property they have nevertheless been declared by the Supreme Court of the United States to be property. Sometimes franchises have an enormous value. For example, while the tangible property, the rolling stock, rails, wires and power-houses of a trolley company may be worth only a million dollars, the right to use the street (the franchise) would not be sold for a sum several times as great. Sometimes a corporation is compelled to pay both a franchise tax and a property tax on its material possessions.

6. The *poll* or *capitation tax* is a sum ranging from one to four dollars levied as a personal tax. It is a tax on the person as a person, and not as a possessor of property.

7. *Customs duties,* levied upon articles imported from a foreign country. In some countries customs duties are levied upon exported articles.

8. *Excises* or *internal revenue taxes,* levied upon goods manufactured within the country. The articles which yield most of the internal revenue are: distilled spirits, beer, ale and tobacco. The corporation tax is also regarded as an excise.

9. *License taxes,* collected from merchants, peddlers, hack-drivers, showmen, saloon-keepers, and others, for the privilege of transacting business. The license tax resembles the franchise tax.

10. *Fees and special assessments,* collected as a partial payment for services rendered by the government. The charge for issuing a marriage certificate is an example of a fee, while a charge made for connecting a private drain with a public sewer is an example of a special assessment. Fees and special assessments are not always taxes properly so called.

Direct and Indirect Taxation. When a tax is levied upon the very person who is likely to bear the burden, it is said to be *direct.* The general property tax, the income tax, the inheritance tax, the corporation tax, the franchise tax, and the capitation tax are direct taxes. When a person

pays one of these taxes he cannot easily shift it to another: the burden remains where it is first placed. When a tax collected from one person is transferred in whole or in part by that person to another, it is said to be *indirect*.

When an importer of silk pays a customs duty of one dollar on a yard of silk, he expects to add a dollar to the price of the silk, and thus transfer the tax to his customer. When a manufacturer of cigars pays an excise tax of a dollar on a box of cigars he adds a dollar to the price of the cigars. The customs duties and the internal revenue tax are therefore indirect taxes. Many fees and licenses may also properly be classed with indirect taxes.

We may tell whether a tax is direct or indirect by considering the manner in which it is levied. "Direct taxes are those levied on permanent and recurring occasions, and are assessed according to some list or roll of persons. The taxpayer is regarded as definitely and permanently ascript to the treasury. Indirect taxes, on the other hand, are levied according to a tariff on the occurrence of transactions and events which are not properly ascertainable as regards particular persons. The amount of a direct tax assessed in this way is certain and regular, while an indirect tax is uncertain and irregular, as regards individuals." (*Nicholson.*)

The Principles which should Govern in the Levying of Taxes. Four rules or maxims have been laid down for the guidance of the law-maker in matters of taxation. They are as follows:

I. (Equality.) Citizens should contribute toward the support of government as nearly as possible in proportion to their respective abilities.

II. (Certainty.) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor and to every other person.

III. (Convenience.) Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient to the contributor to pay it.

IV. (Economy.) Every tax ought to be so contrived as both to take out and keep out of the pockets of people as little as possible over and above what it brings into the public treasury.

The above maxims were stated by Adam Smith (1776), and they have acquired almost universal authority. Legislators always keep them in mind, and follow them with more or less fidelity. Sometimes, however, in order to avoid the resentment or opposition of the people they ignore the maxims and follow the rule of expediency. In accordance with the policy of a celebrated Frenchman (Colbert), they so pluck the goose (the people) as to procure the largest amount of feathers with the least possible amount of squawking.

QUESTIONS ON THE TEXT

1. What is taxation? What is public finance?
2. Give an account of the cost of government in the United States.
3. Where does the power to tax reside?
4. Name and describe each of the ten different kinds of taxes.
5. What is a direct tax? an indirect tax? What rule will assist in distinguishing between a direct and an indirect tax?
6. State Adam Smith's four maxims of taxation.
7. What was Colbert's maxim of taxation?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Show that taxation played an important part in each of the following events: (*a*) Wat Tyler's Rebellion; (*b*) The American Revolution; (*c*) The French Revolution.
2. Look about you and see what government does for the people, itemize these services and decide whether they are worth the labor of all the people for one month in the year.
3. Is it just that all citizens should pay taxes? Do all citizens have to pay taxes? (Do not be too sure of your answer to this question.)
4. For what do people pay taxes most cheerfully?
5. Of the several kinds of taxes mentioned in the text name the one which is easiest to collect; name the one which is easiest to be paid; name the one which is most objectionable.

6. If government lays an income tax, is it right that incomes below a certain amount, say $1,000, should escape the tax?

7. Should the expenses of a Fourth of July celebration be paid out of the public funds?

8. "Suppose you own a farm worth $5,000 and owe $4,000 toward the purchase price; how much are you worth? On how much should you pay taxes—$1,000, $5,000, or $9,000?"

9. State the evils of parsimony in public expenditures; the evils of extravagance. Which are the more dangerous? Read Prov. xi, 24.

10. Does the constitution of this State declare any general principle in reference to taxation?

Topics for Special Work.—Popular Taxation: 4, 293–318. Excises: 19, 169–181. Customs Duties: 19, 182–207. Municipal Franchises: 30, 456–463.

XXXVI

NATIONAL FINANCE

The Extent of the Federal Taxing Power. Nowhere else does the nature of the relation between the State and the federal government appear more clearly than in their power in reference to taxation. Recognizing that revenue is the life-blood of government, the framers of the Constitution gave to Congress an almost unlimited power to tax (**44**), and at the same time reserved to the States the power of raising their own revenues in their own way in such amounts and for such purposes as they might deem wise and proper. They restricted the taxing power of Congress in only three particulars: they provided (1) that duties and excises must be uniform throughout the United States (**45**); (2) that direct and capitation taxes must be apportioned among the States according to population (**66**); and (3) that duties cannot be laid on articles exported from any State (**67**). Except only as it is limited by these three provisions, Congress is free to levy any kind of tax it may see fit for any amount it may desire.

National Expenditures. At the opening of every regular session, Congress receives the report and recommendations of the Secretary of the Treasury, containing detailed estimates of the sums necessary for the support of the national government. With these estimates one may begin the study of national finance. They are prepared by the heads of the several departments, each stating the amount of money which he thinks his department will need during

the next fiscal year.[1] The estimates of expenditure for the fiscal year 1910 will give an idea of the magnitude of national finance:

ESTIMATES OF EXPENDITURES FOR 1910

Objects	Amount
Legislative establishment	$7,316,190.75
Executive establishment	38,806,355.00
Judicial establishment	972,160.00
Foreign intercourse	3,880,194.72
Military establishment	104,844,635.88
Naval establishment	121,847,472.47
Indian affairs	11,451,576.05
Pensions	161,018,000.00
Public works	137,154,931.35
Miscellaneous	77,021,349.27
Permanent annual appropriations	160,096,082.52
Grand Total	$824,408,918.01

Though the Secretary of the Treasury presents to Congress the "Book of Estimates" containing the details of these enormous estimates, not a dollar of the estimates can be raised constitutionally without the consent of the Congress (69). As a matter of practice, the consideration of the estimated expenditures begins in the House of Representatives, where the recommendations found in the Book of Estimates are referred by the Speaker to the proper committees.

The committees virtually control federal expenditures. There is no limitation upon their power of appropriation, except that any appropriation for the support of the army shall not be made for more than two years (56). They take the estimates submitted by the Secretary of the Treasury and do with them as they please. Sometimes they accept them, sometimes they modify them, but often they ignore them altogether. It is their function to prepare

[1] The fiscal or financial year begins July 1 and extends to July 1 of the following year.

bills providing for the expenses of the government; and in this exercise of their duty they are entirely independent of executive authority. Quite often they invite treasury officials to assist them and advise them, but they are under no constitutional obligation to do so. The committees express their judgments in reference to the proper expenditures in the form of appropriation bills. These, like all other bills, must run the gauntlet of legislation. They must pass both houses and receive the signature of the President. When they have received the signature of the President and have become laws, the first step in national finance has been taken: it has been determined how much money shall be spent for the support of the federal government.

Federal Taxation—(Indirect). The second step in national finance is taken when Congress passes the laws for raising the money which it has decided to spend. While private individuals ordinarily estimate their income first and then decide upon their expenditures, governments are accustomed to estimate their expenditures first and to attend to the matter of income afterward. Bills for raising national revenue must originate in the House of Representatives (**36**), because the House directly represents the people. Post-office bills and bills relating to the mints and to the sale of public lands may originate in the Senate, and any revenue bill whatever may be modified to almost any extent in the Senate. The House Committee of Ways and Means has exclusive control of bills for raising revenue. Since this committee prepares the tax bill for the nation, it is justly regarded as the most important committee in Congress.

In the beginning of its history the federal government adopted the policy of raising its revenue by *indirect* taxation, and only in times of war has it departed from its original plan. The first Congress (1789) established a *tariff* (p. 329)—a law imposing customs duties on imports —and all succeeding Congresses have followed its example.

Tariff or customs duties are collected, by government officials, at ports of entry, from the importers of foreign goods. The duties are *ad valorem* when they are levied at a certain rate per cent. on the money value of the goods at the original place of shipment. They are *specific* when levied on articles according to quantity or number. For example, if the duty on gloves is forty per cent. *ad valorem,* a box containing six dozen pairs of gloves worth fifteen dollars a dozen produces a tax of thirty-six dollars. If the duty on gloves is *specific,* at eight dollars per dozen, the box of gloves in question produces a tax of forty-eight dollars.

The customs tax yields more than half of the national revenue, and more than half of the customs duties are collected at the port of New York. The customs tax is levied upon several hundred articles, but most of the tariff revenues are collected from manufactures of wool, cotton, silk, iron, copper and tin, and from sugar, fruit, liquor, wines, cigars, drugs and chemicals (p. 333). Among the articles admitted free of duty are: coffee, tea, anthracite coal, books over twenty years old, dyewoods and fertilizers.

Federal revenues not raised by duties on foreign goods are for the most part derived from excises—taxes on articles produced in the United States—and from a corporation tax, which is regarded as an excise. For a long time in our history excises were unpopular and were seldom levied. At the outbreak of the Civil War, however, when large sums had to be speedily raised, internal taxes became necessary, and almost every article, trade and profession was taxed. When the war was over the excise was made much lighter. At present only such articles as alcoholic liquors, tobacco, cigars, cigarettes, snuff, oleomargarin and playing-cards are subject to the internal revenue tax.

The Collection of Federal Taxes. Customs taxes are collected at about one hundred and twenty ports of entry by United States treasury officials known as collectors of customs. When the customs for any reason are not paid

the goods are held in the custody of the collector until the tax is forthcoming.

For the purpose of collecting the internal revenue the country is divided into districts. For example, Pennsylvania is divided into four internal revenue districts, in each of which there is a federal collector of internal revenue, assisted by a corps of deputies. The deputies visit the distilleries and breweries and cigar and tobacco manufactories in the district and bring all taxable goods under the workings of the law.

The federal government collects its revenue in an economical manner. The cost of collecting the customs is only about three per cent. of the amount collected, while the cost of collecting the internal revenue is even less.

The method by which the federal taxes are collected is popular as well as economical. Collectors receive the taxes in factories and custom-houses and do not attract the attention of the public. If they should come directly to individuals to demand the taxes they would doubtless be unwelcome visitors. The direct collection yearly of forty-five dollars—the approximate amount per voter that is required to support the government—might seem to a man in Texas or in Maine to be a very heavy tax for the support of the government in Washington, and might be accompanied by difficulties.

Direct Federal Taxes. Although federal taxation is mainly indirect, direct taxes may nevertheless be laid. In fact, the federal government has upon five occasions (1798, 1813, 1815, 1816, 1861) levied direct taxes. Decisions of the Supreme Court have determined that the capitation or poll-tax and the tax on land are direct taxes within the meaning of the Constitution (**66**).

The workings of a direct federal tax may be made plain by an illustration. Suppose the federal government wishes to raise eighty million dollars from a land tax. It must

apportion this amount to the several States according to their population. New York with a population of eight millions, or one tenth of the entire population of the United States, would pay one tenth of the tax, or eight million dollars; Missouri, with a population of four millions, would pay one twentieth, or four million dollars. Missouri would therefore pay one half as much as New York. This would not be just, for the reason that the total value of the land in Missouri is not half the total value of the land in New York. Because the constitutional provision no longer permits an equitable distribution of a direct tax, it is not likely that the federal government will again resort to this form of taxation.

When a direct tax is laid by the federal government, the proper sum is apportioned to each State, which is allowed to collect its share in its own way. If a State should refuse to pay its part, the federal government would send its collectors to distrain upon and sell the property of such taxpayers as refused payment.

Here is seen the difference between government under the Constitution and under the Articles of Confederation. The Congress of the Confederation could ask a State for money, but could do no more; the federal government under the Constitution can ask, and, if necessary, may sell property to get the money.

In 1894 Congress passed a law levying a tax on incomes; but the Supreme Court of the United States practically nullified the law by declaring that an income tax is a direct tax and must be apportioned among the States according to population. The effect of this decision is to restrict the federal government to excises and customs as the main source of revenue.[1] A just and equitable direct tax will not be possible until the Constitution is amended.

[1] Mr. H. C. Adams suggests that if the necessity should arise the federal government should increase its revenue by means of a tax on inland and interstate commerce. See his "Finance," p. 296.

QUESTIONS ON THE TEXT

1. What are the powers of the federal government and what are the powers of the State in reference to taxation?
2. What three restrictions does the Constitution place upon the taxing power of Congress?
3. What is the "Estimate of Expenditures"? Name some of the items in this estimate.
4. To what extent does the executive department determine appropriations?
5. In which House do bills for raising revenue originate? Why?
6. What is a tariff? What is the difference between *ad valorem* and specific duties?
7. What articles yield the greater part of the federal revenue? What articles are admitted free of duty?
8. What articles are subject to the internal revenue tax?
9. How are the federal taxes collected?
10. What are the advantages of indirect taxation for federal purposes.
11. What kind of taxes are *direct* within the meaning of the Constitution?
12. Illustrate the workings of a direct federal tax.
13. How are direct federal taxes collected?
14. Can the federal government levy an income tax?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Estimate how much this State contributes to the support of the federal government, assuming that it contributes according to its population? Is this sum greater or less than the amount raised for the purposes of the State government?
2. Do the people who live at a port of entry pay all the taxes that are collected at the custom-house?
3. An orator wishing to illustrate the generosity and patriotism of his people pointed out the fact that three times as much of the internal revenue tax was paid in his State as in any other State. Point out the fallacy of the illustration.
4. Collect all the provisions of the Constitution that bear on the subject of taxation. Compare the Constitution with the Articles of Confederation in respect to taxation.
5. Which would you prefer to pay, direct or indirect taxes?
6. What is meant by smuggling? What articles are easily smuggled? Should taxes on these articles be light or heavy?
7. Name the principal ports of entry in the United States? What is done with the money which is collected at these ports?
8. How much per voter does it cost to support the national government?

9. Is the money you pay for a postage-stamp a tax?

10. Of the articles which are mentioned in the text as being taxed are there any which should go on the free list?

11. Under the Constitution can the Senate originate a bill to revise the tariff?

12. What is the difference between an appropriation bill and a revenue bill?

Topics for Special Work.—Taxation in the United States: **21**, 550–558. Customs Administration: **16**, 97–105. Internal Revenue Service: **16**, 105–112. Collection of the Revenue: **30**, 448–452.

XXXVII

STATE FINANCE

The Taxing Power of the State. In the days of the Confederation the power of the State to tax was full and complete, but by the adoption of the Constitution the taxing power of the State was to some degree restricted and abridged. Since one of the chief objects of the Constitution was to secure easy trade relations between the States, taxation on exports and imports was prohibited to the States and placed under the control of Congress (**74**). With the view of further protecting the freedom of commerce, the Constitution forbids any State to levy without the consent of Congress any tonnage duty, that is, any tax on the carrying capacity of a vessel (**76**)—a prohibition which applies to all instruments of commerce. A State cannot impose a tax on "tonnage passing through, from or to a State or foreign country, be it on railway, canal, river, or otherwise." Moreover, since "the power to tax is the power to destroy," a State cannot tax the agencies by means of which the federal government is enabled to exercise its functions: it cannot tax the bonds (p. 288) of the federal government, or its property, such as its lighthouses and post-office buildings, or the salaries of its officers, or the public money in its treasuries, or the metals in its mints. Aside from these restrictions, the State is free to tax all taxable objects within its borders.

The Authority for State Expenditures. Although they may differ somewhat in detail, the financial system of the

States are quite uniform in their workings. Authority for all public expenditures within each State flows directly or indirectly from its constitution and its legislature. Expenses of the State government are estimated and levied directly by the legislature, and are usually comparatively light. In some States the constitution limits the amount which can be levied in one year.[1]

The heavy expenses of local government are met by taxation imposed by the minor legislative bodies, by the municipal council, or board of county commissioners—a legislative body as far as taxation is concerned—or town-meeting, or the township supervisors or trustees. Since the greater part of the sum paid for taxes is levied by local authority with the almost direct sanction of the voters themselves, it can almost be said that the people *are not taxed*—for they really tax themselves.

Taxation in the State. It has been seen that federal taxation is a very simple matter. Congress determines the tariff and excise rates, and the Treasury Department places its collectors of customs at the various seaports to collect the duties on foreign goods as they come into the harbors, and sends its collectors of internal revenue into the distilleries and tobacco establishments to collect the excises on liquors and tobacco as they are manufactured—and that is substantially the story of federal taxation. The account of State taxation must be somewhat more complex, for it involves the consideration of more processes and more governmental machinery.

I. *The General Property Tax.* While national taxation is almost wholly indirect, State taxation is almost wholly direct. In the State the general property tax is the great source of revenue. This tax reaches all property, real and personal, located within the boundaries of the State. When

[1] The constitution of New York places no limit upon the legislature's power to tax, but it requires that every law imposing a tax shall state the purpose to which it is to be applied.

the owner of property resides outside the State, he does not for that reason escape taxation.

In the payment of the general property tax the taxpayer should bear a burden proportioned to his wealth; all the property of every person should contribute according to its true value. This, as has been seen, is a fundamental principle of taxation. In order to realize this principle of equality and justice when levying the general property tax the government must set in motion an elaborate taxing machinery, and must carefully control all the processes of taxation. Its officers must discover all the property of every person, and must place thereon a fair valuation; it must provide agencies for correcting unjust and unfair valuations; it must have officers for collecting the taxes and means of enforcing payment; finally, it must, in the name of public policy, exempt certain classes of property from the payment of taxes.

An account of the operation of the general property tax includes the consideration of the following topics: (1) Assessment; (2) Equalization; (3) Collection; (4) Delinquencies; (5) Exemptions.

1. *Assessment.* The administration of the general property tax begins with the placing of a valuation upon all property, real and personal. This official valuation is called an assessment. The officers of assessment, known as assessors, in some States are elected by the people; in other States they receive their office by appointment.

The assessors of a local division—of a city, or town, or township[1]—after personally inspecting the property of the taxpayer and making a series of inquiries in reference to it, place a value upon it. This is done in respect to the property of every taxpayer. The sum of all the valuations of property thus made is the assessment of the local division. The tax rate of the local division is found by dividing the expenditures determined upon by the assessment.

[1] In some States the county is the smallest local division for purposes of assessment.

If the assessment is fifty million dollars, and the expenses of the local government are five hundred thousand dollars, the tax rate is one hundredth or one per cent. Every taxpayer, therefore, must pay local taxes amounting to one per cent. of the assessed valuation of his property.

But this local division, even if it be a large city, most probably is located in a county [1] in which there are additional expenses of county government. The local division must bear its share of these expenses, and this will increase the rate of the taxpayer. The county rate is found by dividing the county expenditures by the county assessment, which is the sum of the assessments of all the local divisions of the county.[2] Again, the county as a part of the State must contribute its share to the support of the general State government. The State rate[3] is found by dividing the State expenditures by the State assessment (the sum of the county assessments). This rate added to the local and county rates gives the tax rate of the local taxpayer.

2. *Equalization.* In levying the general property tax the individual assessments must be just. If A's house is assessed at one thousand dollars, when it is worth two thousand dollars, and B's house is assessed at three thousand dollars when it is worth two thousand dollars, B will pay three times as much in taxes as A, whereas, in justice, he ought to pay only as much as A. In most of the States means are provided for correcting unfair assessments. Very often there is a local board of equalization to which taxpayers may appeal when they think they have not been treated fairly at the hands of the assessors. Sometimes such complaints are taken to an appeal tax court, or to the board of county commissioners. When the board

[1] All cities in the United States excepting Baltimore, St. Louis, Washington, D. C., and some cities in Virginia, are located in counties.

[2] The valuation put upon property in the local assessment is usually regarded as its proper valuation for purposes of county and State taxation.

[3] In several States there is no general property tax for State purposes, the revenue for the general State government being obtained chiefly from corporation taxes and from licenses.

of equalization or other body to which appeal is made finds that there has been an unjust assessment, it will order a new one made.

Frequently evils arise from uneven assessments among localities. For example, in one county the assessors may place the valuation of all property too low, while in another county the property may be assessed at its true value. As far as the county tax is concerned, undervaluation, if uniform as among the individuals of the county, works no harm, but it works harm in connection with the State tax, for the taxpayers of a county in which there is under-assessment contribute less than their just share to the State expenses. State boards of equalization have been established in many States to correct evils growing out of uneven assessments among localities. These State boards, however, have not in all cases been able to apply a remedy for wrongs occasioned by improper local assessments. Where all the local divisions in the State assess property according to the same principle, and assess it honestly, there is no trouble; but where original local assessments are made in a haphazard manner, or with a view to escape just burdens, the whole taxing system of the State is vitiated, and a remedy is almost impossible. The goodness or badness of the administration of the general property tax, therefore, depends upon the work of the local assessors.

3. *Collection.* The general property tax is gathered by local officers. Usually tax-collectors are elected or appointed for the sole purpose of collecting taxes, but in some States the collection is made by a constable or selectman, township supervisor, or other local officer. In the performance of his duties the collector is guided solely by the tax list prepared by the assessors. The same collector usually collects State, county and local taxes. When this is the case a distribution is made, the local division, the county and the State each receiving its proper share.

4. *Delinquency.* When the taxpayer fails to pay his tax-bill promptly the property upon which the tax is levied

is said to be delinquent, and is liable to be sold to satisfy the claim. If the property sold for taxes should bring more than the amount of the tax the excess is given to the owner. Moreover, the owner usually has the right to buy back his property at the price for which it is sold. This right of redemption, however, continues for only a limited period, usually two years.

5. *Exemption.* State constitutions almost always specify the kinds of property that may be exempt from taxation, and the legislature is usually forbidden to exempt any other kind. A clause from the constitution of Minnesota will illustrate the practice in reference to exemption: "Public burying grounds, public school-houses, public hospitals, academies, colleges, universities and all seminaries of learning, all churches, church property used for religious purposes, and houses of worship, institutions of purely public charity, public property used for public purposes, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall by general laws be exempt from taxation." Many States are careful to exempt household furniture to a certain value. Thus the constitution of Texas provides that two hundred and fifty dollars' worth of household and kitchen furniture shall be exempt from taxation.

II. *Miscellaneous Taxes.* In the raising of revenues the State and the local governments are by no means confined to the general property tax. Large sums are realized from fees, licenses, and franchises. The opportunity for revenue in the way of licenses is seen in the following clause of one of the State constitutions: "The legislature shall have power to tax peddlers, auctioneers, brokers, bankers, commission merchants, showmen, jugglers, innkeepers, liquor dealers, . . . venders of patents, in such manner as it shall direct by general law, uniform as to the class upon which it operates." The franchise tax levied upon the franchises (p. 267) of railroads and other corporations is also proving to be a source of much revenue in some States.

Incomes are taxed in a few States; inheritances in many. Poll or capitation taxes are very common, and in some States yield considerable revenue. In cities large sums are collected as water rents, and special assessments for the payment (in whole or in part) for street improvements to abutting property. Water rents and special assessments, however, are not in the strict sense taxes; they are rather payments for social services which the government has chosen to perform. Fines also add materially to the public funds, but they can in no sense be regarded as taxes.

Local Taxation. In matters of taxation cities and counties and other minor civil divisions are strictly under the control of the State government, and the limits of their power to tax are usually defined by the higher authority. In some States the limitations are fixed by the legislature, in others by the constitution. In about one third of the States counties are not allowed to tax beyond a certain per cent. of the assessed valuation of property. Municipalities, in the matter of taxation, are often restricted by the terms of their charters. Taking the country over, however, the localities are quite free to tax themselves as they see fit. The most that the legislature or the constitution undertakes to do is to throw around the local taxing power such safeguards as will prevent bankruptcy.

QUESTIONS ON THE TEXT

1. What restrictions are placed upon the power of the State to tax? By what authority are taxes levied for the support of the State government? for the support of local government?
2. What is the rule for levying the general property tax?
3. Explain the work of assessors. What is the assessment? How is the local tax rate determined? the county rate? the State rate?
4. What is the duty of the board of equalization?
5. What is done with delinquent property?
6. What kinds of property are exempt from taxation?
7. Name several kinds of taxes besides the general property tax which are accustomed to be levied in the State.
8. What regulations are made in respect to the taxing power of localities?

SUGGESTIVE QUESTIONS AND EXERCISES

1. "The power to tax is the power to destroy." Why would it not be wise for the federal government to have the power to tax the property of the State and the salaries of its officers?

2. What are the general provisions of the constitution of this State in reference to taxation? What restrictions are placed upon the taxing power of counties? of townships? of cities?

3. Does the right to vote in this State depend in any way upon the payment of any kind of taxes? Ought it to so depend? Do all who pay taxes in this State have a right to vote?

4. Of the several kinds of taxes mentioned in the text, which are levied in this State?

5. Are mortgages taxed in this State? If so, who pays this tax? Are incomes taxed in this State? If so, who pays this tax?

6. What are the several kinds of property exempt from taxation in this State? (See the constitution.)

7. If you owed a man a just debt and saw an opportunity of escaping payment, would you avail yourself of the opportunity? If you owned property which should pay taxes and saw an opportunity to hide the property from the assessors and thus escape the payment of the tax, would you avail yourself of the opportunity?

8. If a man should send you a bill for three dollars when you knew you owed him five dollars, would you call his attention to the mistake? If the assessor should assess your house at $5,000 when it is worth $3,000 what would you do? If he should assess it at $3,000 when it is worth $5,000, what would you do? Do you believe men are disposed to deal as honestly with the government as they are with their neighbors?

9. What is the tax rate of this municipality? of this county? of this State?

10. Under what circumstances would there be no grumbling about taxes?

Topics for Special Work.—Taxation in the States: 21, 559–587. State and Local Taxes: 5, 586–592. State Supervision of Taxation: 18, 249–255.

XXXVIII

PUBLIC DEBT

Public Debt a Necessity. A most important topic of public finance is *public debt.* The necessity of incurring debt in the conduct of public affairs is perhaps stronger than it is in the management of private business. Governments cannot accumulate money; they must confine taxation to such amounts as are necessary to meet expenses for the current year. At the end of the fiscal year the treasury is supposed to be virtually empty. This is unquestionably the correct policy. A government is sorely tempted to be extravagant when it has more money on hand than it needs. It has been said with some truth that the way to keep governments pure is to keep them poor.

Since it cannot save for a rainy day, when the rainy day comes, and large sums of money must be had at once, government must borrow. Increased taxation cannot be relied upon to supply the necessary revenue. In 1863 the federal government used its taxing power to the utmost to raise the money for the support of its war operations (p. 275), yet it could not collect by taxation one sixth of what it spent during the year. More than five sixths of its expenses had to be met by borrowing.

How Government Borrows Money. When a government wishes to raise money by borrowing, it usually sells its *bonds* to *voluntary* buyers. A government bond resembles a promissory note given to an individual who borrows money. In the bond are stated the amount owed by the

government, the date of payment, and the rate of interest. A bond may be for a small sum or for many thousands of dollars. The amount received by a government for a bond depends upon (1) the confidence which lenders have in the government's ability to redeem the bond, that is, to pay the debt, (2) the rate of interest offered, and (3) the length of time the debt is to run. Sometimes the conditions of borrowing are so favorable that government receives as much as one hundred and twenty dollars for a bond of one hundred dollars.

Besides raising money by issuing bonds the national government issued (in 1862–3) paper money and declared this "lawful money and a legal tender in payment of all debts, public and private, except duties on imports and interest on bonds and notes of the United States." This money was printed by the government and paid out to its creditors. Those who received it could compel others to take it in payment of debts. This paper money issue of 1862–3 will be discussed more fully hereafter (p. 322). It is mentioned here because it furnishes an illustration of a method by which government may borrow money. Money secured in this way may be regarded as a *forced* loan.

The National Debt. The Constitution gives to Congress unlimited power to borrow money (**46**); it imposes no restriction as to time, or amount, or security, or interest. Congress may not, however, pay any debt incurred in aid of rebellion against the United States (**157**). The debts contracted by the United States under the confederation were made valid as against the new government (**125**). Alexander Hamilton, the first Secretary of the Treasury, and the greatest financier perhaps in our history, wished to make the credit of the national government so good that no one would ever hesitate to lend it money. He urged Congress to pay not only the regularly contracted debt of the confederation (foreign, $12,000,000; domestic, $42,000,000), but also to assume the war debt ($21,000,000) in-

curred by the States during the War of the Revolution. After a long debate the policy of assumption was adopted, and the new government began its career with a debt of about $75,000,000.

Hamilton was inclined to regard a public debt as a source of strength to a government. By scattering the government's bonds among the people, he contended, you create an interest in its stability. Men will always rally to the support of a government which owes them money. Hamilton's financiering, therefore, did not tend to pay off the national debt as rapidly as possible. When his political rival, Jefferson, who was not deeply concerned about the strength of the central government, came into power, a policy of paying off the debt as fast as possible was pursued, and its amount steadily fell until the War of 1812, when it rose to nearly $125,000,000. After the War of 1812 the policy of reducing the debt continued, and by 1836 the national debt was practically extinguished, and the treasury had on hand about $40,000,000 for which it had no use. The greater part of this surplus was actually distributed among the States according to population.

After 1836 the government began again to incur small debts, and during the Mexican War it borrowed considerable sums. At no time, however, did it become very large until the outbreak of the Civil War, when it jumped from less than $65,000,000 in 1860 to more than $500,000,000 in 1862. After 1862 the debt steadily mounted until 1866, when it approached $3,000,000,000. Since 1866 it has steadily declined, and the interest-bearing debt is now (1909) about $1,000,000,000,[1] a sum which is less than one per cent. of the total wealth of the United States.

State Debt. A State must not assume a debt incurred in aid of insurrection or rebellion against the United States

[1] The public debt of the German Empire in 1901 was $1,000,000,000; of England, $3,455,000,000; of France, $6,000,000,000; of Russia, $3,-640,000,000.

(158). This is the only federal restriction upon the State as to its debts. The constitutions of most States, however, forbid the unlimited borrowing of money, although the restrictions do not extend to borrowing for purposes of public defense. To defend itself against invasion, or to suppress insurrections, the State may borrow to an unlimited extent, upon the principle that the public safety is above every other consideration. In most of the States a deficit can be met by borrowing, but the constitutions usually specify how large a deficit may be met in this way. In some of the States the amount that may be borrowed to cover a deficit must not exceed $50,000, in others it may be as large as $1,000,000. In the constitutions of a number of the States it is provided that money cannot be borrowed unless the law authorizing the loan is first submitted to the people and their assent to it secured.

Generally speaking, the finances of the State governments in respect to debt are in a healthy condition. In no State is the debt very large; in some States it is so small as to be inappreciable; in Illinois, Iowa, Michigan, Ohio, Nebraska, South Dakota, Oregon and West Virginia, there is no debt at all. This praiseworthy condition of affairs is due in part to constitutional provisions, in part to the great resources of the State governments, in part to the wisdom and self-restraint of the State legislatures.

The Debts of Local Governments. Restrictions upon local governments in reference to borrowing are found in almost every State. If the restrictions do not appear in the constitution, they appear in the laws of the legislature or in the municipal charters. Most of the State constitutions fix the rate of indebtedness which the local government may incur. Frequently this rate is five per cent. of the total valuation of the property within the civil division which borrows the money. Sometimes before money can be borrowed by a local government the question must be referred to the people.

Notwithstanding the restrictions placed upon the borrowing power of local governments, they are everywhere throughout the United States heavily in debt. Especially is this true of municipalities. The combined municipal debt is three times as large as the combined debt of the States. The debt of New York city alone is much larger than the total debt of the forty-six States, and the debts of many other cities are proportionally as large as that of the metropolis.

The debts of cities have been incurred for the building of water-works, city halls, school-houses, and for the paving of streets and the construction of sewers. These improvements have necessitated the outlay of large sums in a short period of time, and it has not been possible to collect sufficient money by taxation to pay for them as they have been made. The rapid growth of American cities has sometimes caused the expenditures to increase at an alarming rate. In some instances sewers and water-works have been constructed on a scale suitable for a city of a hundred thousand people, and, behold, the population has increased to four times that number! This increase has rendered the old improvements worthless and made necessary the construction of new ones at an enormous expense. Besides, it is generally confessed that the management of the finances of cities has been bad the country over. In the awarding of contracts for public works larger sums of money have been paid to contractors than the work has been worth. Franchises have been granted to corporations for a song, when they ought to have realized large sums. Temporary or floating debts caused by deficits have not been paid promptly by means of taxation, but have been added to the bonded debt.

The management of the finances of cities has called forth various schemes of reform. One of these is the plan of taking away from the city council some of its financial powers and lodging them with the board of estimate (p. 220). Another remedy proposed is to prescribe a prop-

erty qualification for voters, when financial questions are involved. This plan is both impracticable and unwise: impracticable, because voters will not consent to it; unwise, because it would be an unnecessary assault upon the principle of democracy. The corrupt bargains which are made in the management of the finances of a city are made by those who possess property, not by those who have no property. A property qualification would not exclude the corruptionists from taking a part in city affairs, but it would exclude many honest men from taking part, and it is to honest men, after all, that we must look for genuine reform. The possession or non-possession of property has really very little to do with the matter. Good municipal government is purely and simply a question of honesty.

How Public Debts are Paid. Public debts of course must be paid by taxation. Indeed, they are often called *anticipatory* taxes, from the fact that government, in borrowing a sum of money, anticipates a certain revenue which it expects to receive by taxation. A State cannot be compelled by federal authority to pay a debt to a citizen, for, without the consent of the State a citizen cannot bring his suit into a federal court (**145**) and establish his claim. The United States cannot be compelled to pay a debt, for you cannot compel a sovereign power to do anything against its will.

It is customary in the United States for a government, national, State and local, to prepare for the payment of a debt at the time it is incurred, according to the doctrine of Hamilton, who held that the "creation of a debt ought to be accompanied with means of its extinguishment." This preparation usually consists in the creation of a *sinking fund.* Under the sinking fund plan the law which provides for the borrowing of money also provides for the raising by taxation of a certain sum annually which shall be set aside for the "sinking" or the paying of the bonds when they shall become due. The sum raised for the sink-

ing fund is inviolate and can be used for no other purpose, unless for public defense.

The United States may borrow money without creating at the same time a sinking fund for its payment, but the constitutions of many States provide that all debts, whether State or municipal, shall be accompanied by means of extinguishment, and the means adopted is usually the sinking fund arrangement.

QUESTIONS ON THE TEXT

1. How does the necessity of public debt originate?

2. Under what circumstances is the government justified in borrowing?

3. Describe a government bond. Upon what does the value of a government bond depend?

4. In what way may governments sometimes make a *forced* loan?

5. What are the provisions of the Constitution in respect to borrowing? What was Hamilton's doctrine concerning a public debt? What was Jefferson's policy in respect to the public debt?

6. Sketch the history of the debt of the United States.

7. What restriction upon the borrowing power of a State is in the federal Constitution? What restriction upon borrowing is usually found in a State constitution?

8. What can be said of the condition of the finances of State governments?

9. What restrictions are placed upon the borrowing power of municipalities? For what purposes have the debts of municipalities been incurred? Why have these debts become so large?

10. What remedies have been proposed for the betterment of city government?

11. Why cannot the United States be compelled to pay its debt? Why cannot a State be compelled to pay its debt?

12. Explain the sinking fund arrangement.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Compare graphically[1] the *per capita* debt of the United States with that of each of the following countries: England, Germany, France, Italy, Russia, Austria.

[1] For example, let the per capita debt of the United States be represented by a square inch of surface and the per capita debts of the other countries by squares proportionally large.

2. If the term for which a bond is issued is long, how will that fact affect the price paid for it?

3. Is it right for this generation to contract public debts which must be paid by the next generation? Give reasons for your answer.

4. ''Public debt is a public blessing.'' ''Public debt is a public curse.'' Point out the truth and falsity which are contained in both the preceding statements.

5. How much per voter does the United States government owe?

6. What sum does this State owe? this county? this municipality? State the purposes for which these debts were contracted.

7. What provisions does the constitution of this State make in reference to the debt of the State? to the debt of counties? to the debt of cities? What are the advantages and disadvantages of these provisions?

8. Did you ever see a bond that was issued by a government? If possible, bring a government bond to the class to be examined and studied.

9. Do rents in cities rise and fall with the tax rate? Ask a dealer in real estate about this.

10. Show how the tax rate may be kept low for a while by borrowing. What is the final result of such a system of financiering?

11. Is a large public debt necessary to make a government strong in the hour of its need. Answer this from our own history.

Topics for Special Work.—Forms of Public Debt: 19, 293–310. Funding our National Indebtedness: 22, 331–356. Municipal Finance: 30, 452–456.

XXXIX

PROBLEMS OF TAXATION

The Difficulties of Taxation. A little consideration will show that a just and fair system of taxation is difficult to devise. To be sure, if all men would come forward with a truthful statement of the amount of their property, just taxation would be a simple affair; but experience teaches that all men will not do this. Though it is easy to say that every one ought to pay taxes according to his ability—that is, according to his income, or according to the value of the property from which he derives his income—it is very difficult to discover the amount of a man's income, or to determine the true value of his property. Before property can be taxed the officers of the law must point to its existence, and it is not always possible to do this. In these days, if they choose to do so, men can conceal from the eyes of the tax-gatherer a great deal of property that ought justly to bear a share of the public burden. In his iron safe a man may have bonds, or stocks, or notes of promise, which, though they yield him a handsome income, do not appear on the tax-books as property. The concealment of such property presents one of the greatest of the difficulties which surround the subject of taxation.

Another great difficulty is connected with the overlapping of jurisdictions. A railroad running through several States pays taxes in all; a man residing in one State and holding personal property in another is liable to be taxed on that personal property in both States; a person living

in one State, owning property in another and carrying on business in a third is subject to the tax laws of three States. This overlapping of authority is inherent in our political system, and is bound at times to result in entanglements, and in wrong or unjust taxation.

A third great difficulty connected with the levying of a tax is to foresee its final *incidence*, that is, to foresee the person upon whom the burden of the tax will finally fall. For a tax will not always remain where it has been laid, but will be shifted from one person to another until it at last falls upon a person who cannot shift it. For example: In California there is a tax on mortgages amounting to about one and three quarters per cent. of the sum loaned. The rate of interest on untaxed loans in and around San Francisco is about six per cent.; but men, on account of the tax, will not lend money on mortgages for less than eight per cent. Here the mortgagee[1] pays the tax of one and three quarters per cent., but includes it and a little more in the interest which he demands of the mortgagor. In other words, the mortgagee shifts the tax, and its incidence is on the mortgagor. If the mortgagor rents the property, he may be able to shift the tax again and let it fall upon the tenant in the shape of a higher rent. Whether the incidence is upon the mortgagor or upon his tenant, it is not upon the mortgagee, as the law-maker intended it should be.[2]

To overcome such difficulties as those mentioned above, and to provide remedies for certain inequalities and injustices which are found in our system of taxation, economists and legislators have come forward with various schemes of reform. The most important of these schemes will now receive attention and will be treated under the following

[1] When the owner of property borrows money and gives a *mortgage*—a written pledge that if the money is not paid the borrower will surrender the property to the lender—the borrower of the money is called the *mortgagor*, and the lender the *mortgagee*.

[2] The above is an adaptation of an illustration given by Mr. C. C. Plehn in his "Public Finance," p. 249.

headings: (1) Corporation Taxes; (2) the Income Tax; (3) the Graduated or Progressive Tax; and (4) the Single Tax.

The Corporation Tax. The measures of reform that appeal most strongly to the public refer to corporation taxes. Private corporations (p. 360) control fully half the wealth of the country, but they do not bear half the burdens, and many States are making efforts to tax corporate property as it should be taxed.

The corporations receiving the most serious attention of tax reformers are the railroads. The taxation of the property of a railroad must always be a perplexing problem. Upon what principle shall the property be assessed? Shall the valuation be placed upon the market value of its bonds and stocks, or upon the value of its tangible property? Shall the value of the franchise be assessed? If the road does an interstate business, how shall the tax which it is to pay in each State be determined? How shall the rolling stock which passes through a dozen States be taxed? These are some of the questions for which tax reformers are trying to find satisfactory answers. Forty-six States are working upon the problems of railway taxation, each approaching the task in its own way. The plans of reform, therefore, are too numerous to be stated here in detail, but the direction in which legislation on this subject is moving may be indicated:

(1) *The Valuation of the Tangible Property of Railroads.* Nearly all the States have adopted the plan of assessing the entire tangible property of the roads within their respective boundaries. As a rule, this assessment is made by State officials, the local government collecting the taxes on the property within their respective jurisdictions. In assessing the property of an interstate road the board follows the "unit" rule: It determines the value of the property of the railroad considered as a unit, including in the valuation all property tangible and intangible and wherever located, and makes an assessment

according to the ratio which the mileage of line within the State bears to the company's total mileage.

(2) *The Valuation of the Intangible Property of Railways.* An increasing number of States are requiring the railroads to pay a franchise tax (p. 267) in addition to the tax on tangible property. The value of the franchise may be estimated in various ways, but the fairest method seems to be this: From the combined market value of the stocks and bonds of the road subtract the value of the tangible property; the remainder is the value of the franchise. This rule of estimating a franchise is looked upon with favor by the Supreme Court of the United States.

There can be no doubt that reforms in the methods of taxing corporate property are needed. An official inquiry made in Wisconsin showed that if the railroads in that State had been taxed the same as other property they would have paid into the State treasury in 1899 nearly a million dollars more than they actually paid. An inquiry in Michigan showed similar results. And what is true of individual States is true of the country taken as a whole. According to the report of the Interstate Commerce Commission the railroads are paying yearly something like fifty millions of dollars in taxes on a capitalization of about twelve billions of dollars. If they paid taxes at the rate paid by other forms of property they would pay fully one hundred millions of dollars yearly.

The Income Tax. As a means of tax reform the income tax is receiving serious consideration. Seven States in their constitutions permit an income tax, but only four have imposed a tax of this kind.

The income tax is proposed to meet changed conditions in the commercial and industrial world. With the development of the corporation method of transacting business (p. 362) a vast amount of wealth has assumed the form of stocks, bonds and mortgages, and these can easily escape taxation, for they can be concealed from the assessor's

eye. Severe laws have been passed with the view of reaching these forms of wealth; assessors have been given an inquisitorial power; taxpayers have been subjected to the most searching questions in reference to their property. But law has not been able to make men their own assessors. Taxpayers are so slow in coming forward with a full and fair account of all their stocks and bonds that those who do so are often regarded as good-natured oddities.

With the successful concealment of so much wealth in stocks and bonds and mortgages the personal property tax has failed to give satisfaction, and in the opinion of able economists has failed utterly. "Personal property," says Seligman, "nowhere bears its just proportion of the burdens; and it is in precisely those localities, *i.e.*, the large cities, where its extent and importance are the greatest, its assessment is the least. The taxation of personal property is in inverse ratio to its quantity: the more it increases the less it pays."

As a partial substitute for the personal property tax, a general income tax is proposed. That is, by the admission of all, a just and sensible tax—one based upon ability to pay, and not liable to be shifted.

But there are serious difficulties connected with levying this tax. (*a*) Though the States have the power to levy it, and some actually have levied it, they may thereby cause the possessors of large incomes to remove into States that do not tax incomes. This difficulty could be overcome only by a uniform course of action by all the States, which would leave no place of refuge for tax dodgers. (*b*) Again, it is not easy to determine just what should be regarded as a man's income for taxing purposes. Where the general property tax exists side by side with the income tax, that portion of a man's income which flows from his taxable property, and which ought not to be taxed, is not easily separated from the whole income. Yet such a separation must be made to prevent the infliction of double taxation. (*c*) As far as a federal income tax is concerned the diffi-

culties are insurmountable under the Constitution as it now stands, for the Supreme Court of the United States has declared that the income tax is a direct tax, and must therefore be apportioned among the States according to population. Since a federal income tax laid according to this ruling would be neither just (p. 277) nor practicable, the federal government for the present must be content with other forms of taxation.

Graduated or Progressive Taxation. It is sometimes contended that one's duty in respect to the payment of taxes should be measured, not by ability, but by sacrifice. According to this view a tax is burdensome, not in proportion to what is paid, but to what is left. To equalize the sacrifice of taxpayers a graduated or progressive tax has been proposed. Under the workings of this tax the rate increases with the amount of property. For example, if A, B, C and D are worth respectively $10,000, $20,000, $30,000 and $40,000, a scheme of progressive taxation might impose upon A a rate of one per cent., upon B a rate of two per cent., upon C a rate of three per cent., and upon D a rate of four per cent. D's property is only four times as great as A's, yet it pays sixteen times as much in taxes.

In eighteen States the constitutions provide that taxation shall be in exact proportion to the value of the property taxed. In these States progressive taxation would doubtless be adjudged unconstitutional. The other States would, perhaps, be permitted to apply the progressive principle. Congress has levied a progressive inheritance tax, and the validity of the progressive principle has been sustained by the Supreme Court of the United States. South Carolina has a progressive income tax, and several States have tax laws with progressive features.

The Single Tax. The most radical of tax reforms is the plan by which all revenues, federal, State and local, are to be raised from a single tax imposed on land. According

to this plan, men should contribute to the support of government, not in proportion to what they produce or accumulate, but in proportion to the value of the natural opportunities they hold; and it is contended that the landholder is the great monopolist of natural opportunities. The single tax would be laid upon land as such, and not upon the improvements upon land. The tax upon a vacant lot, provided it were as favorably located, would be as heavy as the tax upon a lot improved by a magnificent structure. The fundamental principle of the single tax is this: The individual should get the advantage of all improvements upon land, while the government (society) should get the advantage of favorable location, and of the increased values that accrue to land in a community which is progressive and which is increasing in population.

QUESTIONS ON THE TEXT

1. State three great difficulties that lie in the way of a just system of taxation.
2. What reforms are being made in respect to the taxation of railroads?
3. What is the rule for the assessment of interstate railway property?
4. What is the rule for determining the value of a corporation's franchise?
5. What are the advantages and disadvantages of a general income tax?
6. Explain the operation of a progressive or graduated tax.
7. What is the single tax?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Is there an income tax in this State? If so, explain its nature and workings.
2. Is it just that a man who owns a little property should be taxed and that a man who receives a large salary and who owns no property should escape taxation?
3. Are there any progressive taxes in this State? If so, give an account of them.
4. Discuss progressive taxation in reference (*a*) to its justice, (*b*) to its expediency, (*c*) to its effect upon fortune building.

5. Prepare a five-minute paper on "The Single Tax." Consult Shearman's "Natural Taxation."

6. Compare the system of segregating taxes as proposed by Mr. Adams with the system actually in force in this State.

7. What reforms in taxation are needed in this State? How may these reforms be accomplished?

Topics for Special Work.—The Incidence of Taxation: **19**, 248–258. The Income Tax: **21**, 577–582; **19**, 239–247. Corporation Taxes: **21**, 569–573.

XL

MONEY

Introductory. Closely related to the financial function of government is the function of regulating the monetary system. Indeed, the subject of money is regarded by many writers as only one of the divisions of the subject of public finance. In the United States the money function belongs solely to the federal government.

The Different Kinds of Money. The early colonists brought with them but little money, and they were therefore placed in conditions quite similar to those which existed in the earliest times when there was no money, and when exchange of goods had to be effected by *barter;* that is to say, when one commodity had to be exchanged for another directly, corn for fish, a horse for a cow. Exchange by pure barter, however, is too clumsy to be practiced long. An intelligent people will always find some commodity which will pass from man to man as money and thus make exchange easy.

The colonists in Virginia chose *tobacco* as a substitute for the silver and gold coins which they lacked. Tobacco was in universal demand. The Indians prized it highly, the colonists themselves used it freely, and the merchants were always ready to purchase it when it was brought down to the ships which traded with the new world. Men, therefore, would accept tobacco in exchange for a commodity, not because they wanted tobacco themselves, but because they knew that that commodity was so generally

desirable that they would have no trouble in exchanging it for any other commodity which they might wish.

There were other reasons why tobacco could be exchanged for any other kind of goods. A small bulk of it contained a great deal of value: a pound, in the early days of the colony, being worth three shillings in England. Again, tobacco could be easily divided and subdivided, and articles of small value as well as of great could be exchanged for it. One pound of tobacco usually represented about the same value as another. These characteristics of tobacco, joined with the universal demand for it, led to its use as money.

In New England, in the early days when coin was scarce, corn was used as a substitute, although it proved to be a poor substitute. In New York, Indian wampum or polished clam shells passed as money among the settlers. Each colony adopted as money the commodity which would circulate the most readily. "We find that the various colonies at one time or another authorized the payment of public or private debts in wheat, oats, barley, peas, bacon, pork, beef, fish, flax, wood, sugar, brandy and even musket-balls."[1] A Harvard student in 1649 paid his college bill with an "old cow."

It would be difficult to name a commodity of general use which has not at some time or another in some part of the world passed as money. Metals especially have been held in high esteem as instruments of exchange. Iron, lead, tin, copper, bronze, as well as silver and gold, have been used as money. There is, therefore, no natural universal money. A nation will use as its money that commodity which is most suitable to its own civilization.

Silver and Gold. As industries in the colonies multiplied, and trade and wealth increased, gold and silver became

[1] Bullock, "Monetary History of the United States," p. 10. We are informed on the same page of this book that gopher tails were employed as money in some sections of Dakota as late as 1885!

more abundant, and the use of the cruder kinds of money was abandoned. This was to be expected. No other commodity performs the functions of money so well as these metals. The reason why the *precious metals*—as silver and gold are called—are everywhere used to the exclusion of other metals may be summed up as follows:

1. They possess much value in little weight and bulk, and can therefore be carried easily from place to place, and can easily be concealed and guarded.

2. They can be easily divided and manufactured into small pieces as well as into large ones, and can thus be made suitable for the payment of sums varying in amount.

3. Time does not destroy their value, and the wear and tear of handling is very small.

4. They do not vary in quality. "There is no such thing as inferior gold or inferior silver."

5. They have a value of their own apart from their usefulness as money, for they are used in the manufacture of many expensive articles of commerce.

The Coinage of Money. When a farmer takes eggs to a store and exchanges them for sugar, a certain quantity of sugar is weighed in the scales. If metallic money is desired in exchange for the eggs, if the farmer wishes to buy money with his eggs, a certain weight of gold or silver is given to him, but the scales are not brought into the transaction. The pieces of money have been weighed in the government's mint, and the farmer is satisfied as to their weight and fineness.

In ancient times scales were employed in transactions like the above. Gold and silver, like sugar, were weighed when they passed from man to man as money. Since accurate weighing and testing were difficult processes, it became the custom to stamp upon a bar or ring of the precious metal its weight and fineness. The bar or ring thus stamped became a *coin* and did not need further weigh-

ing. The processes of coining were originally conducted by private individuals, usually by goldsmiths, but experience showed that private coinage led to fraud, and governments were compelled to take the matter into their own hands. Coinage is now everywhere recognized as a proper function of government.

During the colonial period there was but little coining of money in America. In 1652 Massachusetts established a mint at which shillings and sixpences continued to be coined for a period of thirty-four years. This seems to be the only notable instance of coinage in America before the Revolution. Under the "Articles of Confederation" Congress had the power to coin money, but it had not the bullion (uncoined gold and silver) to coin. The little money which was coined during the period of the Confederation was struck off by private parties under the authority of the individual States. The framers of the Constitution took the right of coinage away from the States (**72**) and lodged the power entirely with the federal government (**49**).

Paper Money. Every one of the kinds of money thus far mentioned has an *intrinsic* value, an inherent, essential value arising out of its usefulness as a commodity and separate from its character as money. Tobacco is desirable as a means of gratifying a certain appetite, and when it ceased to be used as money it was still valuable; silver and gold are highly prized as articles of commerce, and coins made of these metals are valuable even after they have been melted and have lost their form as money.

There is another kind of money which has played an important part in the history of the American people. This is *paper money,* which may be defined as money which neither possesses nor represents intrinsic value. Paper money may be printed and issued by a government with the promise that it will be redeemed for intrinsic money, or it may be issued by a bank as a promissory note payable in intrinsic money, but it is never intrinsic money itself.

Paper money is usually made a *legal tender,* that is, the holder of it may tender, or offer, it in payment of a debt, and the creditor must receive it as lawful money. Paper money is sometimes called *fiat* money, because government makes or attempts to make it worth so much.

There were extensive issues of paper money by the colonies. Massachusetts in 1690 issued *bills of credit*—as paper money is often called—to defray the cost of an expedition against Canada, and her example was followed by other colonies at various times, when there was not enough gold and silver at hand to meet expenses. The paper money issued by the colonies invariably *depreciated* in value; that is to say, its purchasing power fell below its nominal or face value. Thus in 1749 a bill of credit issued by Massachusetts with a nominal value of ten shillings would not purchase as much of any useful commodity as could be purchased by one shilling of silver.

The Continental Congress of 1775 issued two million dollars of bills of credit based upon the credit of the States. As the war progressed issues became larger and more frequent, and by 1779 more than two hundred million dollars of the paper money was in circulation. In addition to this sum the individual States issued about two hundred million dollars of paper money. During the first part of the war the notes were accepted willingly and circulated freely at their face value, but in 1777 they began to decline in value, and in January, 1779, eight dollars of the paper money were worth only one dollar in silver. Congress did not formally make the Continental paper a legal tender, but it enacted that the man who refused to take it was an enemy of his country. People, however, could not be compelled to receive it. It depreciated until it took one thousand dollars of the paper money to purchase as much as could be purchased by one dollar of silver. Finally the Continental money became absolutely worthless—"not worth a continental." Barber shops were papered in jest with the bills; sailors, on returning from their cruises, be-

ing paid off in bundles of the worthless money, had suits of clothes made of it.

In 1785 and 1786 there were extensive issues of paper money by the individual States. These proved to be the cause of much confusion and injustice, and when the framers of the Constitution came to the subject of paper money they took from the States altogether the right of issuing bills of credit, and of making anything but gold and silver coin a legal tender in payment of debts (**73**).

Representative Money. Paper money must not be confused with *money paper* or *representative* money. When tobacco was used as money in the colonies, it was customary to store large quantities of the weed in warehouses and give the depositor a receipt for the amount deposited. This warehouse receipt passed from hand to hand as money. It was not paper money, for it could be redeemed for intrinsic money—tobacco. A very large part of the money now in circulation among us resembles those tobacco receipts, and consists of printed *certificates* stating that there has been deposited in the treasury of the United States a certain quantity of gold or silver which the holder of the certificate may obtain by presenting the certificate at the treasury for redemption. Representative money has been invented to save the trouble of carrying and handling the real money.

QUESTIONS ON THE TEXT

1. What is the meaning of barter? Name some of the inconveniences of barter.
2. Why did the colonists of Virginia use tobacco as money? What other commodities were used by the colonists as money?
3. Give the reasons why silver and gold are universally used as money.
4. Give an account of coinage in America during the colonial period. What is the provision in the Constitution in respect to coinage?
5. Give a definition of paper money. What is legal tender?
6. What was the experience of the colonists with paper money? What is a bill of credit? Give an account of paper money issued during the Revolution?

7. What does the Constitution say about the issue of paper money?

8. What is representative money? Contrast representative money with paper money.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Let us suppose that in 1615 a pound of tobacco in Virginia would purchase a bushel of corn; if five years later a pound of tobacco could be raised with half the labor that it formerly took, while a bushel of corn required the same amount of labor, how much corn could be purchased in 1620 for a pound of tobacco? Why would a pound of tobacco in 1620 have less purchasing power than in 1615? Is the purchasing power of a piece of money proportional to the labor that has been spent in obtaining it?

2. A man went to Klondike and secured enough gold dust to make $5,000 in coin. Describe the travel, the hardships, the labor which the money represented.

3. If a gold-mine as rich as Klondike should be discovered in every State how could the production of gold be affected? Would prices be higher or lower after the discovery? What relation exists between prices and the amount of money in circulation? If iron were used as money would prices be high or low?

4. What properties have diamonds that would make them suitable as a medium of exchange? What properties do they lack?

5. In what places is gold produced in large quantities? Where are the largest silver-mines?

6. Do gold and silver fluctuate in value like cotton and sugar? Compare the price of wheat, silver, cotton, beef and sugar during the last ten years and determine in which commodity there have been the greatest variations in value.

7. Does the laborer buy money with his labor? Does the capitalist buy labor with his money? Does the farmer buy money with his wheat?

8. Would you accept a ten-dollar gold piece upon the condition that you were not to use it as money? Would it be worth while to accept a ten-dollar bill upon similar conditions?

9. Is legal-tender paper money worth more or less than the paper upon which it is printed?

10. Name all the different kinds of money you have seen.

Topics for Special Work.—Money as a Tool in Exchange: 20, 98–107. Development of Metallic Money: 21, 224–233.

XLI

METALLIC CURRENCY

Definition of "Currency." The term *currency* includes all money, whether metallic or paper, which circulates at its face value. Mexican silver dollars are money, but they are not currency in the United States, for they do not circulate here unless at a discount. The currency of the United States consists at present of gold coin, certificates representing gold, silver dollars, certificates representing silver, subsidiary silver—coins of bronze and nickel, United States notes (greenbacks), and national bank notes. It will be the purpose of this chapter to give an account of that portion of our currency which consists of metal or certificates representing metal.

Coinage before 1873. We have seen that the experience of the Americans with paper money previous to the formation of the Constitution had been very unsatisfactory, and that after the adoption of that instrument a State was no longer permitted to issue paper money. The new Government was strongly inclined to a metallic currency, and in 1792, when establishing a mint, enacted a coinage law providing:

"That it shall be lawful for any person or persons to bring to the said mint gold or silver bullion in order to their being coined . . . free of expense to the person or persons by whom the same shall have been brought. And as soon as the said bullion shall have been coined the person or persons by whom the same shall have been delivered,

shall upon demand receive in lieu thereof coins of the same species of bullion which shall have been so delivered, weight for weight, of pure gold or silver therein contained.

"That all gold and silver coins which shall have been struck (stamped) and issued from said mint shall be a *lawful tender* in all payments whatsoever."[1]

The relation which was to exist between the value of gold and that of silver was stated in these words: "Every fifteen pounds weight of pure silver shall be equal value in all payments with one pound of pure gold." The law of 1792 thus provided for *free coinage* of gold and silver at the ratio of fifteen to one. A dollar of gold contained 24.75 grains of pure metal, and a dollar of silver 371.25 (15×24.75) grains.

The mint continued to coin the precious metals at the ratio of fifteen to one until the year 1834, when it was found that fifteen pounds of silver was not worth one pound of gold. About this time one pound of gold in foreign markets was worth nearly sixteen pounds of silver. The holders of gold, therefore, were not willing to pay it out in the United States, where it was worth but fifteen pounds of silver, just as farmers would not be willing to exchange a bushel of wheat for seventy-five cents in the home market when they could get eighty cents elsewhere. As a result of the overvaluation of silver (or the undervaluation of gold) there came into operation a monetary principle which is known as "Gresham's Law," and which is usually stated as follows: "Bad money tends to drive out good money, but good money cannot drive out bad." This law does not mean that either silver or gold is of itself either good or bad. It means that people will pay their debts and purchase articles with the cheapest money available, and that they will either hoard or send abroad the dearer money. Under the law in force before 1834 silver was driving gold from circulation, because everybody who could do so was holding back his gold and paying his debts and making his purchases in silver.

[1] Statutes at Large, p. 246.

In order to bring gold back into circulation, Congress in 1834 reduced the weight of the gold dollar to 23.22 grains of pure metal, allowing the silver dollar to remain 371.25 grains. The ratio thus established was (nearly) sixteen to one—a ratio at which the two metals have ever since been coined. Under this law the free coinage of both metals continued as before.

It was soon found that the new ratio of sixteen to one overvalued gold, and ''Gresham's Law'' again came into operation. This time, since gold was the cheaper money, silver was driven from circulation. In 1850 a silver dollar was worth $1.02 in gold, and after the discovery of gold in California the relative value of silver was still higher. As a consequence, between 1837 and 1873 but little silver, except in the form of subsidiary coins (see below), was coined.

Coinage since 1873. In 1873—an important date in our monetary history—Congress discontinued the free coinage of silver,[1] and established as the unit of value the gold dollar of the weight of 23.22 grains of fine gold with one tenth of alloy to prevent abrasion. In the same year Germany withdrew large quantities of silver from circulation, and in the following year several other European countries began to restrict the coinage of silver. About this time immense deposits of silver were discovered in Nevada, and cheaper methods of extracting the metal from the ore were invented. The production of silver increased, and the demand for it at mints decreased. The result was that in the years following 1873 there was a marked decline in the value of silver as compared with gold.

The unpopularity of the demonetization of silver (i.e., the refusal of the government to coin the metal into

[1] The act which discontinued the coinage of the regular silver dollar provided for the coinage of a ''trade dollar'' of 420 grains of silver. This coin was intended for circulation in China. It was legal tender to the amount of five dollars until 1876, when Congress took away its legal tender character altogether and in 1878 ceased to coin it. It has entirely disappeared from circulation.

money) caused Congress in 1878 to pass the "Bland-Allison Act," which provided "that the government should buy not less than two million dollars' worth, and not more than four million dollars' worth of silver bullion each month, and coin it into silver dollars, these to be full legal tender." Under this act a great deal of silver was coined, but there was not unlimited free coinage as there had been prior to 1873. The law of 1878 continued in force for twelve years, and under its workings $378,166,793 in silver was coined. Of this sum $57,000,000 entered circulation as metallic silver dollars. The remainder was deposited in the vaults of the treasury and *silver certificates* (representative money) were issued against it.

In 1890 the "Bland-Allison Act" was repealed and the law known as the "Sherman Act" was passed. This law provided that the Secretary of the Treasury should purchase at its market value 4,500,000 ounces of silver each month and pay for the same with *treasury notes.* Under this law 168,000,000 ounces of silver were bought, 36,000,000 silver dollars coined and $156,000,000 of treasury notes issued. These treasury notes of 1890 were legal tender and could be presented by the holder to the Secretary of the Treasury and be redeemed either in silver or gold at the discretion of that officer.

In 1893 the government of India demonetized silver, an act which lowered its price all over the world. In the same year the gold reserve—a sum of $100,000,000 which the government kept on hand to redeem the treasury notes and the greenbacks (p. 322) with—began to diminish day by day. These and other discouraging facts produced the impression that the Secretary of the Treasury would not long be able to redeem the treasury notes and greenbacks in gold, and the holders of these kinds of currency, becoming alarmed, presented them in large sums for redemption, always demanding gold. The treasury faithfully redeemed in gold, but the fear that the reserve would be exhausted and that silver, a dollar of which was

worth only sixty-seven cents, would be the only money available for redemption purposes, led to a panic in the financial world, and this led to the repeal of the *purchasing clause* of the "Sherman Act," and thus the issue of treasury notes ceased.

Since 1893 coinage has been on a gold basis. No silver bullion has been purchased at the mints since that date, although a considerable portion of that which was bought under the Sherman Act has been coined as Congress has from time to time directed. Under a law of 1900 gold was made the standard unit of value and no provision was made for the coinage of silver [1] other than that which was already in stock. Silver dollars and silver certificates, however, are still legal tender, and it is the declared policy of the government to keep them on a parity with gold, that is to say, when silver certificates are presented to the treasury for redemption it is the policy of the government to redeem them in gold at their face value, and if silver dollars are presented for exchange they will be exchanged for gold, dollar for dollar. The coinage of gold is free.

Subsidiary Coinage. The account of the coinage which has been given has referred to coins of a denomination of one dollar and upwards. Silver coins of a denomination of less than a dollar have been issued ever since the establishment of the mint. These are known as *subsidiary coins* or fractional currency, and consist of the familiar half-dollar, quarter-dollar and dime. These are legal tender to the amount of ten dollars. In the half-dollar there are 173.61 grains of pure metal, and proportional weights in the quarter-dollar and dime. Below the subsidiary silver are the minor coins of base metal, the five, three and one cent piece, which are legal tender to the amount of twenty-five cents.

[1] The government still purchases silver for subsidiary coinage and for coins used in the Philippine Islands.

Bimetallism and Monometallism. The demonetization of silver has been the cause of fierce political controversy. Many people called bimetallists believe that the United States should permit free and unlimited coinage of both gold and silver at a ratio fixed by law. It is contended by the bimetallists:

1. That there is not enough gold produced in the world to supply the requirements of business.

2. That a double standard prevents prices from fluctuating; that when one metal begins to be scarce and its purchasing power begins to rise the other metal will take its place and restore prices to a level.

3. That the low price of silver is due to legislation; that if the free coinage of silver should begin again its price would rise.

4. That under gold monometallism there has been a general fall of prices, and that this fall has imposed unjust burdens upon the debtor classes.

The monometallists, or those who believe in the single gold standard, reply:

1. That the supply of gold is increasing fully as rapidly as the demands of trade.

2. That bimetallism is impossible; that even if you coin the two metals, one of them will always be the standard, and that one the cheaper; that Gresham's Law is unalterable.

3. That legislation cannot regulate the price of silver or of any other commodity; that silver is cheap because the supply is large and the demand small.

4. That the fall in prices is due not to the scarcity of money, but to the improvements in methods of production; furthermore, that in making contracts we are bound to incur risks, and that sometimes the debtor class profits by the change in price and sometimes the creditor class profits thereby.

International Bimetallism. Many people who believe in the principle of bimetallism do not think it would be

wise for the United States to throw its mints open to the free coinage of silver unless the great nations of the world should do likewise. These usually advocate *international bimetallism,* a scheme under which the principal governments of the earth are to agree to make both metals legal tender at a fixed ratio and allow free coinage of both. The champions of this policy argue that if the law should everywhere recognize so much silver as being worth so much gold it would be possible to keep both metals in circulation, for there would be no inducement either to hoard or send abroad either metal. The further arguments of the international bimetallists are those of the national bimetallists stated in the preceding section.

Several monetary conferences consisting of representatives of the leading nations have endeavored to agree upon a plan by which silver may be remonetized and international bimetallism accomplished, but the efforts of these conferences have not been rewarded. The currency law of 1900 while making gold the single standard declares that nothing in the law shall be construed as unfavorable to international bimetallism.

QUESTIONS ON THE TEXT

1. What is meant by the term "currency"? Illustrate.
2. State the provisions of the coinage law of 1792. What do you understand by the *free coinage* of a metal?
3. Explain "Gresham's Law." Illustrate its workings in our monetary history.
4. What led to the depreciation of silver after 1873? What were the "trade dollars"?
5. What were the provisions of the "Bland-Allison Act"?
6. What were the provisions of the "Sherman Act"?
7. What circumstances led to the repeal of the "Sherman Act"?
8. What is the law at present in respect to coinage?
9. What are the subsidiary coins? What is the number of grains of silver in a quarter? in a dime?
10. What is meant by *bimetallism?* State the arguments for and against this policy.
11. What is meant by *international bimetallism?* What are the arguments of those who favor this policy?

SUGGESTIVE QUESTIONS AND EXERCISES

1. The law of 1792 quoted in the lesson says: "Every 15 lbs. weight of pure silver shall have equal value in all payments with one lb. of pure gold." Why 15 to 1? Why not 10 to 1, or 20 to 1?

2. If a government should open its mints to the free coinage of silver and copper, what ratio would be established between the two metals? (Use the market quotations found in the newspaper.)

3. If under the bimetallic scheme suggested in 2 the copper-mines should be suddenly exhausted, how would "Gresham's Law" operate?

4. What was the "crime of '73"?

5. How many grains of silver in a silver half-dollar? Are two silver half-dollars worth one silver dollar? Do they contain as much silver as a silver dollar?

6. If you are worth your weight in gold how many dollars are you worth?

7. Which do you see more frequently—gold or silver certificates? What was the smallest amount for which you ever saw a gold certificate? the largest amount? What was the smallest amount for which you ever saw a silver certificate? the largest amount?

8. How many grains of gold is the silver in a silver dollar worth? (See market price of silver.) Why is it that a silver dollar readily exchanges for a gold dollar?

9. Is the amount of gold produced annually increasing or decreasing? Does this fact favor the monometallist or the bimetallist? What facts favor the position of the monometallist? What facts favor the position of the bimetallist?

10. Procure, if possible, a gold certificate, a silver certificate and a treasury note of 1890 [1] and bring them to class for the purpose of study. According to the language on its face what metal would you get for the gold certificate if you should present it at the treasury for redemption? What metal would you get for the silver certificate? Suppose you knew you could get gold for your treasury note if you asked for gold, would you regard it as good as a gold certificate? Suppose you understood that the government's supply of gold for redemption purposes was running low, what would you be inclined to do with your treasury note? Suppose you should burn your gold certificate, would the government gain or lose?

Topics for Special Work.—Bimetallism: 21, 303–313. The Demonetization of Silver: 22, 403–413.

[1] Under the currency law of 1900 treasury notes are being withdrawn from circulation and silver certificates are being issued in their place. It may be difficult, therefore, to procure a treasury note.

XLII

PAPER CURRENCY

Bank Notes and Government Notes. In addition to the metallic currency described in the last chapter we have in circulation a large volume of paper currency. This consists of *bank notes* and *United States notes*. A bank note is a promissory note, payable on demand, made and issued by a bank and intended to circulate as money. Whether a bank note will circulate as money or not ordinarily depends upon the reputation of the bank and upon its ability to pay the note when presented for payment. If those persons to whom the note is offered have no faith in the bank's promise they will not receive the note, and its circulation is thereby made impossible. A United States note (greenback) is a form of paper money issued by the federal government and based upon the credit and good faith of the country. It is a legal tender for all debts public and private.

The United States Banks. The financial plans of Hamilton included the organization of a bank in which the new federal government should have a direct interest. Such a bank, he claimed, would make it easier for the government to obtain loans, would make it more convenient for the individual to pay his taxes to the government, and would furnish a safe depository for the government's funds. But could the federal government, under the Constitution, establish banks? Hamilton contended that it could, claiming authority under the "elastic clause." Madison contended that the scheme for a government bank was "con-

demned by the silence of the Constitution; was condemned by the rules of interpretation arising out of the Constitution; was condemned by its tendency to destroy the main characteristics of the Constitution."[1] Jefferson also bitterly opposed the bank scheme, but Hamilton was victorious in Congress and in 1791 the first Bank of the United States was chartered for a period of twenty years. Its capital was $10,000,000, of which sum the government subscribed $2,000,000, becoming thereby an active partner in the banking business. The notes issued by the bank were receivable in payment for all debts due to the United States. The bank was prosperous, but when its charter expired in 1811 its enemies were too strong for it and it failed to secure a renewal of its charter. The notes (paper money) which the first bank issued amounted to $5,000,000, but when the bank closed they were paid and cancelled and thus passed out of existence.

In 1817 Congress, recognizing the assistance which a government bank might give in financing the war debt of 1812, chartered the second Bank of the United States for a term of twenty years, contributing one fifth of the $35,000,000 of capital. Andrew Jackson opposed this bank with all his might and succeeded in preventing a renewal of its charter, which expired in 1837. The notes of this bank, like those of the first, were redeemable in coin and were a legal tender for all debts due to the government. The charter permitted a circulation of $35,000,000 in notes, but the largest amount issued was $25,000,000. The notes of this second bank did not always pass at their face value, but in the end they were all redeemed and removed from circulation. Since 1837 the federal government has not been interested as a partner in any bank.

State Banks. The real enemies of the Bank of the United States were the banks which were chartered by State au-

[1] In 1820 the Supreme Court of the United States decided that the federal government has the right to establish banks.

thority. There were three of these in existence at the time of the establishment of the government, and in 1837, when the Bank of the United States was crushed, there were nearly eight hundred. The State banks issued bank notes, but these could not be legal tender, the Constitution providing that no State can make anything but gold and silver a legal tender (**73**). The notes of the State banks were like the promissory notes of an individual, one could accept them or not as one pleased. After the downfall of the Bank of the United States in 1837 a very large part of the currency of the country consisted of the notes of the State banks. In some States the banks were kept under strict control and were compelled to keep on hand sufficient specie with which to redeem their notes, but in a number of States there were no such safeguards and "wild-cat" banks issued notes regardless of their ability to redeem them. The outstanding notes of State banks in 1860 amounted to over $200,000,000.

In 1865 Congress passed a law imposing a tax of ten per cent. on the circulation of State banks. The purpose of this tax was to strengthen the new national bank system (see below) by driving the notes of the State banks out of circulation. The law succeeded in its purpose. "The power to tax is the power to destroy." State banks redeemed and cancelled their outstanding notes and ceased to issue new ones. We still have State banks,[1] but they do not issue bank notes, because they cannot afford to pay the tax.

National Banks. The Civil War was not far advanced before it was plain that the State banks could not meet the financial demands of the hour. In 1861 the New York banks *suspended*—ceased to redeem their notes in specie—and the national government could no longer borrow gold from them. Accordingly, in 1863 Congress created a system of

[1] It is estimated that there are about 7000 private and State banks in the United States.

national banks, which became the basis of our banking system as it exists at present. The national banking law of 1863 has been modified from time to time, but its essential features have remained unchanged. Our national banking system as it is to-day may be described as follows:

(1) National banks with a capital of $25,000 may be organized in towns of less than 3000 inhabitants; in towns of more than 3000 and less than 6000 inhabitants the capital must be $50,000; in places of more than 6000 and less than 50,000 inhabitants it must be $100,000; in places of more than 50,000 it must be $200,000.

(2) The organizers of a bank (not less than five in number) must purchase United States bonds equal in amount to at least one fourth of the capital of the bank and deposit these bonds with the comptroller of the currency at Washington. The bank remains the owner of these bonds and receives interest from them.

(3) The bank receives from the comptroller *national bank notes* equal in amount to the par value of the bonds deposited. These bank notes are not legal tender; they are promises to pay—like the old notes of the State banks; like any bank note, in fact.

(4) The bank notes are secured by the bonds in the possession of the Treasurer of the United States. If a bank should fail in business and be unable to redeem its notes in legal tender money, the comptroller will sell the bonds and get the money with which to redeem the notes. A bank note is thus as good as a government bond, as good as the government itself. Banks frequently fail, but the holders of their notes have never lost a dollar by reason of the failure.[1]

United States Notes. We come now to the paper currency issued by the government.[2] It has been seen that during

[1] Under the national banking laws nearly 7000 banks have organized with a total issue of about $700,000,000 in bank notes.

[2] During the War of 1812 the federal government issued $36,000,000 in interest-bearing treasury notes, but these were not legal tender. They were all redeemed after the war closed.

the Civil War the federal government issued large quantities of inconvertible paper money, making the same a legal tender (p. 308). The notes thus issued are officially known as *United States notes,* but they are popularly called *greenbacks,* a name given to them on account of the green color of their backs. These greenbacks have played an important part in our financial and political history during the past forty years.

In all $449,000,000 in greenbacks was issued. When the war was over the government began to destroy them when they came into the treasury, just as one destroys a promissory note when it is paid. The policy of *retirement* (destruction) of the greenbacks continued until 1868, when the people demanded that the retirement should cease; they said the greenbacks were needed in business. Congress obeyed the demand and ceased to retire the greenbacks.

Now that the greenbacks were to remain in circulation it was necessary to make them as good as gold. During the war and the years immediately following it they had been below par; a dollar in greenbacks could not be exchanged for a dollar (23.22 grains of gold). In 1875 Congress passed a measure, the purpose of which was to make the greenbacks as good as gold. This was the *Redemption Act,* which provided that after January 1, 1879, the Secretary of the Treasury should resume specie payments, or, in other words, should redeem greenbacks in gold, dollar for dollar, whenever they should be presented at the treasury for redemption. To enable him to do this he was permitted to sell bonds for gold and keep this gold in the treasury as a *reserve* set apart especially for redemption purposes. The result was that greenbacks began to circulate at par. When redemption day arrived the Secretary had on hand more than $100,000,000 of gold, but no greenbacks were presented. The knowledge that they were as good as gold satisfied everybody and no gold was demanded.

What was to be done with the greenbacks after they were

redeemed? Congress in 1878 answered this question by providing that when a greenback was redeemed in specie it "should not be retired, cancelled or destroyed, but should be re-issued and paid out again and kept in circulation."[1] The greenbacks in circulation at this time amounted to $346,000,000, and this amount has never been materially decreased.

Under the Sherman Act of 1890 (p. 314) the treasury notes as well as the greenbacks could be presented for redemption. In 1893 there were $150,000,000 of these notes, and the sum was increasing. Here was $500,000,000 of paper money, greenbacks and treasury notes together, and only $100,000,000 of gold with which to redeem it. As we have seen (p. 314), this condition of affairs alarmed the financial world and there was a rush to the treasury with greenbacks and treasury notes. The reserve fell rapidly, and the Secretary (in 1894–1895) was compelled to sell bonds (borrow money) to the amount of $262,000,000, in order to keep the gold reserve at the $100,000,000 mark. Under the currency law of 1900 the gold reserve must be $150,000,000, and United States notes are redeemable at the treasury in gold.

Why have not the greenbacks been retired as they have been redeemed? The friends of the greenbacks answer that to retire them would contract the currency, would make money scarce, and thus lower prices; that we need *more* money, not *less* money. The enemies of the greenbacks say that they ought to have been retired long ago, and that under a sound system of financiering they would have been retired; that they have already cost more than their face value, and that they will be a source of danger as long as they exist.

Another question: Did Congress have the right under the Constitution to issue paper money as legal tender? The Supreme Court of the United States in 1884 answered this when it declared that "Congress has the

[1] 20 Statutes at Large, p. 87.

constitutional power to make the treasury notes of the United States a legal tender in payment of public and private debts in time of peace as well as in times of war.'' This power, the court averred, was incident to the power of Congress to borrow money, and was a power which any sovereign government could lawfully exercise.

Emergency Currency. The Aldrich Law passed in 1908 provides for an emergency currency to be issued in time of panic or extraordinary financial depression. This law authorizes the organization of banking associations throughout the country and permits these associations to deposit with the Treasurer of the United States, State, municipal, and county bonds, and receive therefor bank notes amounting to ninety per cent. of the value of the bonds deposited. The emergency money issued in this way must not exceed $500,000,000 at any particular time. In order that it may be driven out of circulation as soon as the panic has passed, the emergency currency is taxed at the rate of five per cent. per annum for the first month, six per cent. per annum for the second month, and so on, the tax increasing month by month until it amounts to ten per cent. per annum. The Aldrich Law expires in June, 1914.

The Essential Facts of our Monetary System. We are now prepared to understand the following summary of our monetary system:

(1) The federal government has complete control of all currency issues and may issue legal tender paper money as well as gold and silver currency.

(2) The gold dollar of 23.22 grains is the unit of monetary value, and the coinage of gold is free. The amount of gold coined from year to year is wholly a matter of private initiative. Government does not regulate it. The amount is regulated by supply and demand—the supply of gold bullion and the demand for gold coin.

(3) Silver dollars and silver certificates, the treasury

notes of 1890, and United States notes (greenbacks) are exchangeable for gold at their face value upon presentation at the treasury of the United States.

(4) This redemption is made possible by the reserve fund of $150,000,000 in gold which the government keeps in its vaults.

(5) The paper money, when redeemed with gold, is again used by the government in the payment of its debts, and thus again finds its way into circulation.

(6) The volume of money in circulation is increased by the coinage of gold at the mints and by the notes issued by banks, and, in times of great financial stringency, by the banking associations established by the Aldrich Law.

(7) Bank notes are as good as gold because the government bonds, and other approved bonds which secure them are as good as gold.

The Amounts of the Several Kinds of Currency. The following table prepared by the comptroller of the treasury shows the general stock of money in the United States, April 1, 1909:

Gold	$1,645,422,056
Silver	563,861,812
Subsidiary silver	153,845,035
Treasury notes of 1890	4,398,000
United States notes	346,681,016
National bank notes	684,407,615
Total	$3,398,615,534

QUESTIONS ON THE TEXT

1. What is a bank note? a government note?
2. For what purposes did Hamilton establish a government bank? Give an account of the first and second banks of the United States.
3. Give an account of State banks prior to the Civil War.
4. In what matters did the State banks fail to meet the financial needs of the government during the Civil War?
5. Describe the present national bank system.
6. Give an account of the paper money issued during the Civil War.
7. Give an account of the resumption of specie payments.

8. What was done with the greenbacks when they were redeemed?
9. Give an account of the drain on the gold reserve in 1893.
10. Why are the greenbacks not destroyed as fast as they are redeemed? What are the arguments for and against retirement?
11. What was the decision of the Supreme Court in reference to the right of Congress to issue paper money?
12. What are the provisions of the Aldrich Law?
13. What are the essential features of our monetary system?

SUGGESTIVE QUESTIONS AND EXERCISES

1. If you had $100 in a bank and owed a man living at a distance $26.87, how would you be likely to pay the debt? Is a bank check currency? Does it take the place of currency? A, B and C meet. A owes B $5, B owes C $5, and C owes A $5. A draws a check for $5 and pays B; B pays C with the check; C pays A with the check. After the transaction is finished and each has a receipt A remembers that he had no money in the bank. Can a debt be paid without money?

2. Draw a promissory note. Compare the language of the note with that found on a national bank note. Under what conditions would you accept the promissory note in payment of a debt? How is a bank note secured?

3. Study what is printed on a bank note and answer the following questions: Is it legal tender for all debts? What is the penalty for counterfeiting it? When and where was it issued? Where was it printed?

4. Suppose a bank note which you hold should be destroyed, would the bank gain by reason of the accident?

5. Study what is printed on a United States note and answer the following questions: In what year did Congress authorize it to be issued? Is it a legal tender? What is the punishment for counterfeiting it? It says: "will pay the bearer five dollars": What did these words mean at the time the note was issued? What do they mean now?

6. How much currency *per capita* is in circulation in the United States? How much per voter?

7. How is the volume of currency increased as more is needed?

Topics for Special Work.—Government Paper Money: 21, 263–269. Greenbacks and Resumption: 22, 359–378. The National Banks and the Panic of 1907: 30, 467–469.

XLIII

FOREIGN COMMERCE

Introductory. Commerce is the exchange of goods, merchandise, or property of any kind. All governments find it necessary to regulate commerce. In the United States power in respect to commerce is divided between the State and the federal government. Foreign commerce, interstate commerce and commerce with Indian tribes (**47**) are regulated by Congress, while the regulation of commerce carried on wholly within the boundaries of a State is the function of the State government. The subject of the regulation of commerce, therefore, may be treated appropriately under three heads: (1) Foreign Commerce, (2) Interstate Commerce and (3) Intrastate Commerce. In this chapter the first of these topics receives attention.

The Power of Congress over Foreign Commerce. Under the Confederation commerce with foreign nations was in a confused and disordered condition. Each State had its own custom-house and levied such duties on imports as it deemed expedient. There was no uniformity in the customs rates and the commercial warfare between the several ports along the coast was destructive. To remedy these evils the Convention of 1787 placed the regulation of foreign commerce wholly in the hands of the national government. Of course it was asking a great deal of a port like New York to give up its custom-house receipts, yet patriotism in the Convention prevailed, and the States gave up their power to collect customs duties (**74**).

The power of Congress over foreign commerce is limited in only two particulars: (1) It must deal fairly with all the ports of the country, and not give one port a preference over another (68); and (2) it must not lay any tax or duty on articles exported from any State (67).

The power of government to regulate commerce is construed very broadly and extends not only to the goods exchanged and to the agencies of transportation, but to the movement of persons as well. Congress, therefore, in the exercise of its constitutional power can do much to influence the character of our foreign commerce and to shape its course. Indeed, Congress can prohibit foreign commerce altogether, as was illustrated by the non-importation act of 1806, and by the embargo act of 1807. Under the non-importation act foreign goods could not be brought into the country, and under the embargo act vessels could not leave the harbors of the United States.

Of the many regulations of Congress in respect to foreign commerce the most important refer to the tariff, to shipping, and to immigration.

The Tariff; Free Trade and Protection. As heretofore stated, it has always been the policy of the United States to raise a large part of the national revenue by means of a tariff or duty laid on imported goods (p. 274). On what principle shall the tariff be laid? Shall every imported article be taxed at the same rate, or shall some be taxed at a high rate and others at a low rate? Shall some kinds of goods be allowed to come in free?

From the beginning of our national history to the present time two distinct policies have been advanced in reference to foreign goods: (1) the free-trade policy and (2) the policy of protection. The adherents of the free-trade policy, regarding free commercial intercourse between nations as a good thing in itself, contend that taxes on foreign goods should be levied, not with the view of keeping the goods out of the country, but with the view of raising the neces-

sary revenue, and with that view only. The adherents of the protective policy, desiring to protect home producers from competition with foreign goods, would levy the customs, not so much with the view of raising revenue, as with the view of at least discouraging importations.

The essence of the free-trade argument is that, under normal conditions of production and competition, a country will satisfy its needs with the least possible effort. Those things that can be produced with the greatest economy at home will be so produced, and any surplus will be exchanged abroad for what other nations can produce with less of effort. Commerce between two countries, each of which produces according to its natural resources, is always profitable to both countries, the free-traders contend, for each country exchanges that which it wants less for that which it wants more. The argument of the protectionist is that by imposing high import duties upon certain classes of goods and thereby partly or wholly keeping them out of the country you encourage the production of those goods at home, and this encouragement results in new occupations and in a diversified industry at home. The additional producers thus called into being by the protective tariff are also consumers, and they buy at least a part of the country's surplus. Another argument for protection is based upon the difference in the standards of comfort and rates of wages in different countries. If there were no tariff hindrances the lower standard and the lower wage would be given the advantage in competition and workmen would suffer as a result.

Tariff Legislation in the United States. The first act that was passed by Congress relating to foreign commerce (p. 274) imposed moderate duties on the commerce of all nations. Its main object was to raise revenue, although it had mild protective features. The active principle of protection was first seen in a law passed in 1816. After the War of 1812 the English manufacturers rushed into

our markets with their goods "as if to the attack of a fortress." To shut out some of these goods and protect American manufactures a duty of twenty-five per cent. was placed upon woolen and cotton goods, and thirty per cent. upon certain other goods, notably upon carriages, shoes and paper. These high duties were not imposed for the sole purpose of raising more revenue; they were imposed for the protection of the home market.

By 1824 a change had taken place in the attitude of the different sections of the country in respect to the tariff. The South had become an important producer of cotton, and it felt that the tariff interfered with the profits of the trade in cotton exports. The South, therefore, was opposed to a protective tariff. The West, on the other hand, was anxious for manufacturing centers in which to dispose of agricultural products and favored a protective tariff. The growth of manufactures in New England and the increase of the iron business in Pennsylvania gave a firmer hold to the protective policy in those quarters. As a result of these various interests the tariff rates were increased in 1824 to an average of thirty-seven per cent.

Political considerations had entered into the tariff act of 1824. In 1828, when Congress passed a new tariff act, complications arising out of the presidential fight gave the bill a still more distinct political complexion. The act as passed increased the tariff on manufactures to an average of forty per cent. and increased considerably the duty on raw materials. The tariff of 1828 was bitterly opposed in the Southern States, because in those States there were few manufacturing interests to be protected, and because it was to the interest of the South to have free trade with England, the principal customer for Southern cotton, hemp and tobacco. The tariff of 1828—the Tariff of Abominations it was called—was accordingly overhauled in 1832. Rates were reduced, and the attempt was made to conciliate the South by reductions on goods needed on the plantations. The duty on cotton goods remained the same

as before, and the rate on woolen goods was increased to fifty per cent. There was still a distinct adherence to the protective principle.

The South was by no means appeased. South Carolina even threatened secession from the Union. To allay this intense opposition Clay came forward and pushed through Congress the compromise tariff of 1832. This bill provided for a gradual reduction of the tariff, so that by 1842 the average duty had become reduced to twenty per cent. This rate did not produce enough revenue, and in 1842 duties were increased to the level of the tariff of 1832.

In 1846, when the revenues were more than were needed, Robert L. Walker, the Secretary of the Treasury, proposed and had carried through Congress a bill which brought a general reduction in the tariff rates. Cotton goods, woolen goods and iron were affected chiefly by the reduction. A tariff bill in 1857 reduced the tariff ratio to a point lower than it had been since the inauguration of the protective system in 1816. The panic of 1857 brought about a falling off in the revenues of the country. In 1861 the Morrill bill was passed to remedy this difficulty, although the chief motive back of this bill was protection to manufactures.

The Civil War brought frequent increases in the duties. The climax of tariff legislation appeared in the act of 1864. This act was intended to increase the revenues and to establish the protective system more firmly than ever. The average rate of duties was increased to 47.06 per cent. Between 1864 and 1890 various attacks were made upon the protective policy, but without marked success.

The McKinley bill, which Congress passed in 1890, carried the protective principle beyond any of the preceding acts. A slight reaction came in 1893 when the Democratic party was restored to power, but the resulting tariff bill (the Wilson bill, 1894) introduced only one striking innovation—the removal of the duty on wool. In 1897 the Republican party returned to power and passed the Dingley

bill, which in some directions went further with the protective principle than the McKinley bill went.[1]

The above sketch shows four things: (1) the protective principle, in the long run, has gained ground, (2) the tariff has always been an important issue in politics, (3) it is exceedingly difficult to frame a tariff law that is satisfactory to all sections, (4) our tariff policy has been a fluctuating one.

It is regrettable that our tariff regulations are not more stable. Commercial interests doubtless suffer more from repeated changes in the tariff than they would from a permanently high tariff or from a permanently low tariff.

Regulations of Foreign Shipping. In its regulations affecting vessels engaged in foreign trade Congress has always aimed to protect and promote American shipping interests. Only vessels built within the United States and wholly belonging to citizens thereof can be registered as American,

[1] In 1909 the Payne Tariff slightly reduced some of the schedules of the Dingley Law. The operation of the present tariff may be fairly well learned from the following table prepared by the Bureau of Statistics.

Articles	Value	Duties collected	Ad valorem rate
Sugar	$101,435,108.04	$57,024,675.34	56%
Wool and woolen goods	70,736,936.98	41,900,692.95	59%
Cotton manufactures	67,938,880.18	38,076,761.07	56%
Fibers and goods made of fibers	61,440,741.37	22,427,670.18	36%
Iron and steel manufactures	37,548,287.71	12,375,245.99	33%
Silk manufactures	33,083,666.91	17,675,021.40	53%
Tobacco manufactures	30,481,468.84	24,124,339.21	79%
Chemicals, drugs and dyes	30,934,400.55	7,346,884.01	23%
Spirits, wines and liquors	23,896,157.83	17,572,334.56	74%
Fruits and nuts	21,223,009.68	8,438,755.54	40%
Lumber	23,768,077.11	2,070,641.13	9%
All other dutiable articles	283,828,502.12	77,305,584.08	27%
Total dutiable	$786,315,237.32	$326,238,605.46	41%

The table shows the customs revenue for the fiscal year 1910. The eleven classes of articles enumerated in the table paid about three fourths of the entire customs duties.

unless by a special act of Congress. Moreover, unless a vessel is officered by Americans it cannot fly the American flag. Vessels engaged in foreign commerce must as a rule pay into the federal treasury an annual tonnage tax—a tax on the carrying capacity estimated in tons—but this tax is made to fall more heavily on foreign vessels than on those registered as American. Foreign vessels cannot engage in the coasting trade, or in trade between the United States and its insular possessions. For the benefit of commerce as well as for the saving of human life the federal government supports the life-saving service which patrols the coast and sends out life-boats and throws out life-lines to save the passengers and cargoes of vessels in distress.

The Regulation of Immigration. Since passengers as well as goods are included in the term commerce, immigration is regulated by Congress. During the greater part of our history we encouraged immigration, for in the development of our country we needed all the brain and muscle we could get. Had it not been for the millions of immigrants who have come to us from England, Ireland, Scotland, Germany, Norway, Sweden, France, Italy, a large part of our country would still be a wilderness.

About 1880 Americans began to feel that immigration on a large scale was no longer desirable, and demanded that restraints be placed upon the admission of foreigners. First the Chinese were excluded. In 1882 Congress, in defiance of a treaty with China, prohibited Chinese laborers from coming into the United States, and but few of these people have entered since the exclusion law was passed. In the same year Congress ordered that the character of all immigrants be looked into and commanded that convicts, lunatics, idiots and other persons not able to take care of themselves should not be admitted into the United States, but should be sent back at the expense of the owners of the vessels upon which they came. By

a law of 1885 it is made unlawful for certain classes of laborers to enter the United States, if they have previously entered into a contract to perform labor here, and any person brought here under a contract to perform labor can be sent back at the expense of the vessel which brings him here. As a further hindrance to immigration the tax imposed on immigrants has been increased from fifty cents per head to four dollars per head. These restrictive laws have had the effect of checking immigration to some extent, but they have by no means solved the immigration problem: they have by no means been successful in keeping out all undesirable foreigners and letting in only those whose presence is beneficial.

QUESTIONS ON THE TEXT

1. How is power in respect to commerce divided?
2. What is the extent of the power which Congress has over foreign commerce?
3. What is meant by free trade? by protection? Give the leading argument for free trade; for protection.
4. Sketch the course of tariff legislation in the United States.
5. What may be learned from the history of our tariff?
6. What regulation has Congress made in respect to foreign shipping?
7. Give an account of our immigration policy.

SUGGESTIVE QUESTIONS AND EXERCISES

1. Name the articles of commerce which can be easily produced in the United States. Name those articles which cannot be easily produced.
2. Compare graphically the volume of the commerce of the United States with that of each of the leading countries of the world. (See "Review of World's Commerce" issued by the Bureau of Foreign Commerce; also "Statesman's Year Book.")
3. What class of business men suffer when the tariff is suddenly raised? when it is suddenly reduced?
4. What is meant by reciprocity? What are subsidies? bounties?
5. To what four countries do we sell the most? From what four countries do we buy the most?

6. What do you think should be the policy of the United States in reference to immigration?

7. What is the present policy of each of the political parties in reference to the tariff?

8. In what way will the Panama Canal be likely to benefit the foreign commerce of the United States?

Topics for Special Work.—The Protective Tariff: 20, 491–503. Restriction on International Trade: 21, 387–410. Immigration: 27, 68–111. The Payne-Aldrich Tariff: 30, 441–448.

XLIV

DOMESTIC COMMERCE

Interstate and Intrastate Commerce. Domestic commerce is that which is carried on within the United States, and consists of interstate commerce and intrastate commerce. It is not easy to draw clearly the line which separates interstate from intrastate commerce. Broadly speaking, when a commercial transaction begins in one State and ends in another, that transaction is a subject of interstate commerce, but when a commercial transaction begins and ends in the same State it is a subject of intrastate commerce. When a merchant ships his goods to a point within a State he engages in intrastate commerce; when he ships them to a point outside of the State he is engaged in interstate commerce. A railroad which has its termini and the whole length of its tracks within the State cannot be regarded as being engaged in interstate commerce, but a railroad which has its termini in different States must be so regarded. A river lying wholly within a State and having no connection with bodies of water extending beyond the boundaries of the State—a thing which rarely ever occurs—is an instrument of intrastate commerce, but a river wholly within a State connecting with navigable waters that extend beyond the boundaries of the State is regarded as an instrument of interstate commerce. Does a certain commercial act or a certain instrument of commerce, a river, a canal, a railroad, concern one State or more than one? If it concerns one State only it is an affair

of intrastate commerce; if it concerns more than one State it is an affair of interstate commerce.

The Regulation of Interstate Commerce. During the period of the Confederation, commerce between the States was subjected to many inconveniences and burdens. Goods brought into one State from another were treated as if they were goods from a foreign country. When the New Jersey farmer carried his produce to New York he was met by the tax-collector and compelled to pay a tax upon what he had to sell. When a vessel from Baltimore sailed into the harbor of Boston its master was liable to be called upon to pay tonnage before unloading his cargo. We have seen (p. 46) that it was unsatisfactory trade relations between Virginia and Maryland that led to the calling of the Annapolis Convention, and that this led to the calling of the Constitutional Convention of 1787.

The men of the convention treated the whole subject of commerce with a firm hand. They gave to Congress complete power to regulate commerce between the States (47). They forbade a State to lay tonnage (**76**) or any export or import duty without the consent of Congress (74). Within its borders a State can regulate its commerce in its own way, but goods and passengers that are on their way from one State to another are placed under the regulation of the federal government.

The power of Congress over interstate commerce is comprehensive and far-reaching. It extends to the instruments of commerce,—to canals and vessels and railways and telegraph lines, and to the persons engaged in it, as well as to the articles of commerce themselves. Under the provisions of the interstate commerce clause a State is not permitted to discriminate by taxation or otherwise against residents of other States, or against business carried on by them in the State. A State can interfere with interstate traffic only so far as it may be necessary to exercise its police power (p. 390).

The Interstate Commerce Commission. With the view of remedying evils that had been creeping into interstate commerce, Congress in 1887 established the Interstate Commerce Commission (p. 143) and clothed it with some substantial powers in reference to the regulations of railroads. The law which created this commission requires that freight and passenger rates shall be just and reasonable, that there shall be no discrimination between persons and localities; it provides that there shall be proper facilities for the interchange of traffic between connecting lines; it forbids the issuance of free interstate passes; it requires that railroads print and make public their freight and passenger rates. A supplemental law (the Elkins law, passed in 1903) forbids rebates and provides that rates lower than those published shall not be charged. It is the duty of the Interstate Commerce Commission to carry these provisions into effect.

In 1906 Congress gave the Commission, upon the complaint of an interstate shipper (or passenger), the power to do away with a rate which it regards as unjust or unreasonable, and to fix a new rate which it regards as just and reasonable. In 1910 Congress went a step further and empowered the Commission to make investigations of its own motion, and when it finds certain rates unreasonable and unjust, to change them, even though there has been no complaint whatever. Moreover, by the law of 1910 new rates may be suspended in their operation by the order of the Commission, and if they are found by that body to be unjust and unreasonable they cannot go into operation at all. The railroads, however, may appeal to the Court of Commerce.

Intrastate Commerce. The power of the State over commerce which concerns only the people within its borders is unlimited. It is the custom of all the States to permit great freedom in commercial transactions and to foster the growth of commerce. For the encouragement of commerce the State, or the locality acting for it, maintains high-

ways,[1] improves rivers and harbors,[2] constructs canals, and in rare instances builds and operates railroads. The great Erie Canal owned and operated by the State of New York is the most remarkable instance of State canal building, although many other States, notably Ohio, Indiana, Illinois and Michigan, have aided their commerce by constructing canals.

The most important factor of commerce is transportation, and transportation for the most part begins upon a common highway, upon a paved street or upon a country road. The construction of roads and streets and bridges is almost everywhere a function of the local government, the township or county or municipality. In a few States the highways are being taken out of the hands of local authorities, and are being placed under the control of the State government. This is the case in Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, and Delaware. Roads in these States are constructed in part at least under the supervision of State road commissioners, and the cost is apportioned to the State, the county and the local district. The State-aid policy in reference to highways is also meeting with favor in several of the States of the Middle West.

Next to the highways, steam railroads and electric-car lines are the most important instruments of State commerce. Railroads ordinarily receive their charters from the State, although several transcontinental lines have been chartered by Congress. Sometimes the State not only charters the railroad, but also assists with money in its construction. As a rule, however, the States have kept out of the railroad business, and have allowed the railroads to

[1] The old Cumberland road extending from Cumberland, Maryland, to Wheeling, West Virginia, and thence through Columbus, Ohio, to Vandalia, Illinois, was built by the federal government (1806–1818), but its operation was left to the States through which it passed.

[2] The improvement of rivers and harbors is a function of the federal government also, and Congress habitually appropriates large sums for this purpose.

be constructed by private enterprise. Nevertheless, railroads demand a large share of attention upon the part of the State, and in two thirds of the States there are State railroad commissions. These State railroad commissions perform for intrastate commerce services similar to those performed for interstate commerce by the Interstate Commerce Commission: they see that the railroads do not favor one locality or one individual at the expense of another, that they publish their rates, and that they conform generally to the constitution and the laws of the State. In several States the railroad commission determines where stations are to be located, and supervises the construction of crossings.

The Transmission of Intelligence. Closely allied to the subject of commerce is the transmission of intelligence. The transmission of intelligence by the telegraph (or telephone) is an affair of State control when the message is not sent outside of the State, but a telegraphic message sent from one State to another is an affair of interstate commerce and comes under federal regulation.

The universal instrument of transmitting intelligence is the post-office, the right hand of commerce, and one of the greatest forces of civilization. In colonial times there was a regular system of postal communication between the colonies, and the old Congress of the Confederation maintained a line of posts that extended from New Hampshire to Georgia. The Convention of 1787 placed the postal system under the control of the federal government (**51**), and in 1794 Congress established the Post-office Department as one of the great executive branches.

In addition to the transmission of intelligence the post-office renders several other valuable services. It maintains a registry system which reaches every post-office in the world and which insures the safe transit and delivery of letters and packages; it conducts a money-order system by which money may be transmitted to all parts of the

world cheaply and with safety; it hastens the delivery of mail by means of a special delivery system; it sends by a "parcels post" packages (weighing less than eleven pounds) to twenty-three designated foreign countries; and it manages a system of postal savings-banks.

QUESTIONS ON THE TEXT

1. Distinguish between interstate and intrastate commerce.
2. What were the hindrances to interstate commerce during the period of the Confederation?
3. What are the powers of Congress in reference to interstate commerce?
4. Give an account of the powers and duties of the Interstate Commerce Commission. In what respect are the powers of this commission insufficient?
5. What are the powers of the State in respect to intrastate commerce?
6. To what government is the construction of roads usually assigned? In what States does the State government assist in the construction of roads?
7. How does the State usually treat the subject of railroads?
8. Give an account of the services of the post-office department.

SUGGESTIVE QUESTIONS AND EXERCISES

1. What does the constitution of this State say about commerce?
2. What are the constitutional provisions in this State in reference to railroads? in reference to roads?
3. Prepare a five-minute paper on The Value of Good Roads.
4. Does this community suffer on account of bad roads? If so, in what way does it suffer?
5. Prepare a five-minute paper on The Commerce of Your State, naming the principal articles of its commerce, describing its commercial centers, its highways, its railways and its waterways.
6. Name six great railway systems engaged in interstate commerce.
7. Do you think the federal government should assist in road building?
8. How much money did the federal government spend last year on the improvements of rivers and harbors? What share of this money did this State receive?
9. What effect has the Erie Canal had on the commerce of the United States?
10. Examine the map of the United States and determine where canals beneficial to commerce might be constructed. What would be the

probable effect on commerce of a canal connecting the Mississippi River and the southern waters of Lake Michigan? From what quarter would opposition to such a canal come?

11. Name the great inland centers of commerce in the United States. Describe how the commerce of each may have been influenced (1) by rivers, (2) by canals, (3) by roads, (4) by railroads.

12. Debate this question: The telegraph business should be conducted by the post-office department.

Topics for Special Work.—Government Control of Railroads: **21**, 361–372. The Post-Office Department: **16**, 176–187. The Public Nature of Railroads: **20**, 534–543. Origin of the American Railway: **26**, 13–23. The Power of Congress to Control Interstate Commerce: **30**, 483–485. The Court of Commerce and the Federal Incorporation Law: **30**, 497–502.

XLV

ELECTIONS

The Importance of Elections. The holding of elections is plainly a proper function of government, for it is through the election that the people express their will, and whatever passes as an expression of the popular will should have upon it the stamp of government. In a democracy there is no task of government that requires a more faithful and honest performance than the holding of elections, for on election day popular government is on trial. In the polling-booth the people either justify their right to rule or declare democracy a failure. For this reason the election should be the purest of political institutions. Election officers should be men of the highest character, and election laws should be the embodiment of justice and fairness. Corrupt practices at elections should be punished with the greatest severity, for a fraud upon the ballot-box is treason to democracy, and should incur a penalty suitable to so great a crime.

Elections Conducted by State Authority. We have learned that the right of suffrage and the qualifications of voters are determined by State authority (p. 103). The holding of elections is also almost entirely an affair of the State. The only instance of the power of the federal government to participate in the management of elections is seen in the right of Congress to make regulations concerning the elections held for choosing representatives (24). Under this clause of the Constitution Congress could doubtless

provide for an almost complete control of the election of representatives, but it has refrained from using its power to the fullest extent. It has been content merely to appoint a day (p. 124) on which the elections of representatives shall be held, and to require the division of the State into districts, leaving all other matters to the State. This accords with the American principle of a decentralized government.

Registration. The real work of preparation for election day is accomplished by the voluntary action of political parties. One step in the work of preparation, however, is taken under the direction of government. This is the registration of voters.

All the States but four provide for a system of registration,[1] by which the qualifications of those who wish to vote are ascertained several weeks before election day. When a person who has been duly registered presents himself at the polls as a voter, the election officials, with the registration book before them, have little trouble in satisfying themselves of his right to vote. There is no doubt that registration is a great enemy of fraudulent voting.

The Casting and Counting of the Ballots. In nearly every State the first Tuesday after the first Monday in November is general election day. On this day the voters repair to the polls to elect whatever officers are to be elected, and to vote upon any questions that may be referred to the people. For convenience the counties and cities are subdivided into election districts or precincts, a precinct usually containing several hundred voters. The election is conducted by the election officers of the district, judges

[1] Registration is required in New York in villages and cities of 5,000 inhabitants and upward; in Iowa in cities of over 3,500; in Nebraska in cities of over 7,000; in Kentucky in cities and towns of over 3,000; in Ohio and Kansas in cities of first and second class; in Missouri in cities of over 100,000; in Wisconsin in villages of over 2,000; in Texas in cities of over 10,000. In Arkansas, Indiana, New Hampshire, and West Virginia registration is not required.

(moderators) and clerks, who are either elected by popular vote, or are appointed by a duly constituted authority.

The voting goes on during the hours of daylight, and in most of the States is conducted according to the Australian system. The voter enters a little booth and prepares his ballot while alone.[1] He makes a cross mark opposite each of the names of the candidates for whom he wishes to vote, folds his ballot in such a way that no one can see how he has voted, and, emerging from the booth, hands the ballot to an election officer who, in the presence of the other officers, and in the presence of the voter, drops it into the ballot-box. Thus the voter, if he desires to do so, can cast his ballot in perfect secrecy.

The counting of the votes begins in the evening immediately after the polls are closed. The results of the election in the several precincts are sent to certain county (or city) officers, who determine the results of the vote in the entire county and issue certificates of election to the successful candidates. When State officers, or congressmen, or circuit judges, or presidential electors are voted for, county authorities send the results of the vote in the several counties to State officers, who determine the general result and issue certificates to the successful candidates.

The Advantages and Disadvantages of Secret Elections. The secret ballot, as we have it to-day, is an invention of recent years. Men of middle age remember when it was the universal custom to cast the ballot openly, and when election officers and bystanders could readily tell how a man voted. Under the open ballot system, bribery was simple and easy. The bribe-giver personally conducted the bribe-taker to the ballot-box and saw that he voted the way he was paid to vote. The open ballot also invited intimidation. Employers could inform their employees

[1] In ten States voting machines have made their appearance and are used to a limited extent.

as to how it was desirable that they should vote, and could keep watch at the polls, and if an employee voted contrary to the wishes of an employer he was liable to suffer for his independence. To check bribery and intimidation the Australian or secret system of voting has been adopted.

It cannot be denied that the secret ballot makes intimidation and bribery more difficult than they were under the older plan, and due praise must be accorded to a system that decreases these evils. Nevertheless it must be acknowledged that secret voting is not an unmixed blessing. It tends to discourage a spirited, aggressive citizenship. A man who knows that if he will guard his tongue well his neighbor will not be able to tell for what candidate or for what party he intends to vote is tempted to conceal his political opinions in order to escape any disagreeable consequences that might attend an expression of them. In other words, secret voting tends to smother and deaden rather than to awaken and strengthen a public spirit in the individual. Again, the secret ballot may be used to work revenge or to express personal dislike or to vent personal spleen or to give effect to some other unworthy motive of a private nature. In the secrecy of the polling-booth private considerations will often induce a man to deal mean little blows that he would be ashamed to deal if the light of publicity were beating upon his actions.

Bribery. The most persistent and dangerous enemy of honest elections is the bribe-giver. Bribery is as old as selfishness and ambition. Because the sons of Samuel took bribes (B.C. 1100) ancient Israel was hurried into monarchy. Pretorian guards of Rome, seduced by gold, raised a usurper to the imperial throne (193 A.D.), and at once the glory of the greatest empire the world has seen began to grow less. In England bribery increased with the growth of representative government, and in Shakspere's time it was causing the hands of Englishmen "to shrink up like withered shrubs." Parliament enacted laws against bri-

bery at an early date, but the laws were outwitted. Homely verses written nearly two hundred years ago declare the truth, that mere legislation will not prevent bribery:

> The Laws against Bribery provision may make,
> Yet means will be found both to give and to take;
> While charms are in flattery, and power in gold,
> Men will be corrupt and Liberty sold.

In America, as in England, bribery has been fought in all the ways known to law-makers. In some States penalties against bribery are stated in the constitution, in others stringent acts for the prevention of corrupt practices at elections have been enacted. In all the States bribery is punishable as a crime, and in a few States the bribe-giver is made equally criminal with the bribe-taker. A civil officer of the United States convicted of bribery is removed from office (104).

Besides the opposition which government has directed against it, bribery is the object of much moral crusading. Anti-bribery societies exist for the purpose of prosecuting and convicting bribe-givers and bribe-takers; candidates offer themselves for election on anti-bribery platforms; the pulpit denounces bribery as bitterly as it was denounced by the prophets of old; the press exposes bribery and heaps scorn upon the guilty.

The fact that bribery thrives here and there in spite of law and public sentiment should not discourage the opponents of the evil. Bribery, like some other kinds of crime, is an ever present foe, and the fight against it must go on and on. We must not make the mistake of thinking that legislation and denunciation and opposition are of no use, for they are of the greatest use. If it were not for anti-bribery laws and anti-bribery movements, if it were not for the ceaseless fight against bribery, the electorate would suffer an undermining by the hands of the bribe-giver that would doubtless lead to our downfall. We are

not doing a vain thing when we fight bribery, but a very necessary and a very useful thing.

The Usefulness of Frequent Elections. Under representative government the election is the all-important institution; all that is good and all that is bad in our political life flows through the ballot-box. To be present at the polls on election day, if possible, is the first duty of citizenship. We hear people complain of the frequency of elections. They tire of politics and grudge the time it takes to vote, and they wish officers were elected for longer terms so that election day would not come around so soon. Such people advance a most dangerous doctrine. If elections occurred only at long intervals, the people, absorbed in their private affairs, would gradually come to know and think and care less and less about their government, and they would grow more and more willing that responsibility for its management should pass out of their hands. This would be the straight road to despotism. Frequent elections, on the other hand, keep the minds of the people fixed upon their officials and upon the doings of government, and in this way citizenship is kept vigilant and strong. It is politically wholesome to vote at least once a year. A long interval between elections would mean the decay of representative government.

QUESTIONS ON THE TEXT

1. Why is the holding of elections a highly important function of government?
2. Under what authority are elections held? To what extent does the federal government have authority over elections?
3. What are the purposes of registration?
4. Describe the method of casting and counting ballots.
5. What are the advantages and disadvantages of the secret ballot?
6. What can you say of the persistence of bribery in the history of politics?
7. What forces operate to check the evil of bribery?
8. Why should the practice of holding elections at short intervals be continued?

SUGGESTIVE QUESTIONS AND EXERCISES

1. What does the constitution of this State say about elections? What does it say about bribery?

2. If there is a corrupt practices act in force in this State bring a copy of it into the class for examination. If such an act is not in force frame one.

3. Should candidates for public office be compelled to give an account of their election expenses?

4. How much better is the bribe-taker than the bribe-giver?

5. Bring into the class for examination a ballot used at a recent election.

6. Name something that you as an individual can do to assist in preventing bribery.

7. Who said: ''Where annual elections end tyranny begins''? What do these words mean?

8. What are the regulations in this State in reference to registration? Does the constitution of the State say anything about registration?

Topics for Special Work.—Bribery: 25, 138–161. Voting on Election Day: 25, 80–119. The Short Ballot: 30, 384–391. A Corrupt Practices Act: 30, 513–518. Primary Election Legislation: 30, 378–384.

XLVI

EDUCATION

Education a Function of Government. The school as a social institution is almost as important as the family. Indeed, the school is simply an extension of the family. Parents, instead of educating their children themselves, place them under the care of teachers to whom they transfer during school hours the parental authority. In all enlightened countries governments have found it wise either to supervise more or less closely or to control the education of youth. So generally is this true that we are justified in calling education a function of government. No government, however, assumes complete control in matters of education; no just government denies to the parent the right to educate the child in the home, but it is a proper function of government to require that the child receive a certain minimum of instruction somewhere, either in the home or in the school.

Education and Democracy. In a democracy the very life of the State is dependent upon the intelligence of the masses. Since an ignorant electorate is the most dangerous of foes, school-houses in America are as important as a means of defense as are armies and navies. The truth that the safety of a nation is to be sought in the virtue and intelligence of its citizens has been recognized by statesmen at every stage of development of American institutions, although practical measures for the general diffusion of knowledge have often been unduly postponed.

The growth of the public-school system in the United States has been coincident with the growth of democracy. During the colonial period, in several of the colonies encouragement and aid were given to public schools, but the masses of children were not reached. It was not till the people began to come forward as the real masters of government that provision was made for the education of all the children of a community. As democracy grew stronger public schools became more numerous, and at last it became the policy of every State to furnish free of charge an elementary education to every child within its borders. The movement for the education of the masses has met with astonishing success. There are to-day in the public schools of this land more than sixteen millions of children preparing for the duties of citizenship under the guidance of nearly half a million of teachers at an annual expense of more than a quarter of a billion of dollars.

Public Education Controlled by the State. Nothing is said in the Constitution about education. The States reserved to themselves the management of their schools. In the constitution of each State provision is made for a public-school system. This provision is usually made in the broadest terms. The constitution of Massachusetts, which was adopted in 1780, and which is the oldest written constitution in the world now in force, declares that "wisdom and knowledge as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties, and as these depend upon the opportunities and advantages of education, . . . it shall be the duty of the legislature and magistrates in all future periods of this commonwealth to cherish the interests of literature and the sciences and all the seminaries of them; especially the University at Cambridge, public schools and grammar schools in the towns." Upon this broad constitutional foundation a magnificent and elaborate public-school system has been slowly reared. The more

recent constitutions are occasionally somewhat specific in reference to education, yet as a rule their language is broad and general, like that of the constitution of Massachusetts. It is a settled policy to leave the details of education to the legislature.

Education a Local Affair. As it has been the custom of constitutions to leave the details of educational policy to the legislature, so it has been the custom of the legislature to leave the details of school management to the local government. The legislature usually passes a general school law which provides for the election or appointment of certain school officers, and states in general terms the powers and duties of these officers. The State law may further specify the manner in which text-books shall be furnished to pupils, the branches which shall be taught, the limits of the tax which may be levied for school purposes, the ages between which children may attend school, and the qualifications of teachers. Further than this the legislatures usually do not choose to go in their control of the schools; they are content to leave many things to be attended to by the local authority.

In most of the States school management is a separate and distinct branch of public service. School officers are independent of other public officers, school elections are held on special days, school taxes are levied and collected distinct from other taxes. This is not always the case, but, speaking generally, school government is decentralized and local. Each community is permitted to manage its schools in pretty much its own way.

The School District. The school systems of no two States are precisely alike, and even within the same State there are sometimes several plans of school government in operation. Everywhere, however, there is a unit of school government which we may conveniently designate as the *school district.* This district may be a small rural area,

within which there is but one school-house and one teacher; it may be a township with several schools; it may be a city with numerous schools. In each district there is a governing body known by different names in different States, but most frequently called the school board.

The local board usually has large powers of control. It appoints teachers, locates and erects school buildings, makes rules for the guidance of teachers and pupils, selects the text-books, and sometimes prescribes a course of study. In many States the officers of the district fix the rate of taxation which is levied for school purposes. In the exercise of these important functions they are limited and restrained at certain points by State law, but very frequently these limitations and restraints do not bear heavily upon them.

School Supervision. In the county there is usually a supervising school official known as the County Superintendent.[1] The duties of this officer have been stated (p. 200). A large town or city frequently has its own superintendent of schools, and when this is the case the supervision of the county superintendent does not extend to the schools of the town or city. The State Superintendent, who is in a sense a supervising officer, and the State Board of Education, which has a few supervising powers, have received notice heretofore (p. 173).

Under the regulations of a few States, school supervision means a control that is quite close and complete; often, however, the superintendent has only a shadow of authority. The superintendent of a single district, as of a city, frequently exercises real power, but a superintendent of a large area consisting of a number of districts, or embracing perhaps an entire State, seldom can do more than suggest or advise. The spirit of local self-government, which is so strong when manifesting itself in school matters, makes it difficult for a superintendent from the outside to

[1] In New York and Michigan the officer is called a commissioner.

manage affairs within the district. Indeed, it is only in a few States that the law gives substantial authority to any officer outside the district.

The Support of the Public Schools. The local features of school government extend to the matter of taxation for their support. Nearly three fourths of the vast sum expended upon public education in the United States is raised by local taxation. This means that the people of a community vote to take from their own pockets money for the support of the schools of the community. This fact alone would explain the affection in which the public schools are held. The people feel that the schools are their own because they contribute directly to their support.

Public school revenues which are not raised by local taxation are derived from various sources. One important source is the State school tax, so frequently levied.[1] The operation of this tax is as follows: The legislature levies a tax on all property of a certain class within the State, and when this has been collected it is distributed to the counties or districts throughout the State according to a certain rule, usually according to the number of children of a school age. Under the workings of the State school tax, money is collected from all parts of the State, each locality contributing according to its ability; the money is then diffused over the entire State, each locality receiving according to its needs. In this way the wealthier communities help the poorer ones.

In most of the States an important school revenue consists of interest derived from permanent State funds which have been acquired by the sale of public lands. In the original States the revenue derived in this way is not large, but in the admitted States the public lands have been the life-giving principle of the public-school

[1] In several States the legislature appropriates a lump sum and distributes this to the several school districts. Pennsylvania distributes annually $7,500,000 in this way.

system. It will be remembered that one of the clauses of the Ordinance of 1787 declared that "schools and the means of education should be forever encouraged" (p. 65). In conformity with the spirit of the ordinance, whenever a new State was admitted, Congress, which had control of public lands, set aside section No. 16 in every township[1] as belonging to the public schools. Since 1848 whenever a new State has been admitted section No. 36 has also been dedicated to educational purposes. These lands have been given to the State legislatures for the use of the schools, and when they have been sold to private purchasers the proceeds have been invested. The interest accruing from the investments is distributed among the schools annually.

Common Schools, High Schools, Universities and Normal Schools. The State first provides for a system of *common schools,* in which the fundamental branches may be taught. The curriculum of these schools includes reading, spelling, writing, arithmetic, grammar, geography and history. Above the common schools almost every State supports a system of *high schools,* in which pupils may receive instruction in the natural sciences, in literature, history and civics, in the higher mathematics, and in the ancient and modern languages. To crown its educational system the State frequently maintains a *university* which its youth may attend without charges for tuition. To provide a supply of competent teachers for its common schools the State usually supports one or more *normal schools.*

The Educational Activities of the Federal Government. Under its power to provide for an efficient army and navy

[1] A township in the West usually consists of a tract of land 6 miles square. Each square mile is a section. There are, therefore, in a township 36 sections. These are numbered as indicated in the accompanying figure.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

the federal government supports and controls two great training-schools, the Military Academy at West Point and the Naval Academy at Annapolis.[1]

Each congressional district in the United States (also each Territory and the District of Columbia), is entitled to send one cadet to the Military Academy. In addition to these, each State is entitled to two cadets at large and the United States, forty cadets at large. The appointment of a cadet from a congressional district is made upon the recommendation of the congressman from the district; cadets from the State at large are recommended by the senators of the State, and those from the United States at large are appointed by the President. The midshipmen at the Naval Academy are apportioned and appointed in the same way as the cadets, except that the United States has only five naval cadets at large.

Candidates for both these schools must be physically sound and of robust condition. Candidates for the Military Academy must not be under 17 nor over 21 years of age and must undergo an examination in the common branches, algebra through quadratic equations, physical geography, the outlines of general history and physiology and hygiene. The pay of a military cadet is $709.50 a year. Candidates for the Naval Academy must not be under 16 nor over 20 years of age and must undergo an examination similar to that set for applicants for entrance to the Military Academy. The pay of a naval cadet is $600 a year. The course of the military cadet is four years; that of naval cadets six years.

We have seen how great has been the liberality of the federal government in granting lands to the common schools. It has been equally generous in its encouragement of higher education in the new States. It is estimated that more than twenty million acres of the federal public lands have been devoted to the support of colleges of agriculture and the mechanic arts. Congress appropriates annually the sum of twenty-five thousand dollars to each State (or Territory) for the benefit of an agricultural college.

The chief educational officer of the federal government is the *Commissioner of Education*, who has charge of the Bureau of Education, a

[1] In addition to these schools the federal government supports and controls certain Indian schools. It also maintains a system of elementary schools in our insular possessions.

subdivision of the Department of the Interior. Owing to the complete separation of the State and federal governments in respect to education, the duties of this national officer are confined to the collection of educational statistics and to the publication of these and other matters of interest to school people. This bureau has charge of public education in Alaska.

QUESTIONS ON THE TEXT

1. To what extent is education a function of government?
2. What can be said of the importance of education in a democracy? Trace the growth of popular education in the United States.
3. Where is the authority for public education located? How do State constitutions usually treat the subject of education?
4. What is the attitude of the legislature toward the management of the schools? To what extent does the legislature control the schools?
5. What is meant by the school district? What are the powers of the officers of the district?
6. Name the several supervising officers of a school system. When does the superintendent really control in school affairs?
7. From what source is the greater part of school revenues derived? Explain the State school tax. Give an account of the revenues derived from the sale of public lands.
8. Describe each of the several grades of schools supported by the State.
9. Give an account of the educational activities of the federal government. What are the duties of the United States Commissioner of Education?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Does the constitution of this State provide for free schools? Does it specify in reference to taxation for the support of schools? in reference to the length of the school term? in reference to the subjects to be taught? in reference to the age of children who may attend?
2. Are children in this State compelled by law to attend school? If so, state whether the law is effective or not. If there is no compulsory law state the reasons for and against the enactment of such a law.
3. Is a State school tax levied in this State? If so, how much revenue does it yield? How much per pupil is expended on education in this State? Compare this with the amount expended in adjoining States.
4. What is the governing body of this school district called? How is it chosen? What are the names of its members? Make out a list of its powers.
5. Bound this school district. How many pupils are within it? How much money is expended for education within this district? How much

is this per pupil? Is this above or below the average in this State? Do the people of the district elect the school officers? Do they contribute the greater part of the taxes which go to the support of the schools?

6. What does the school do for you as an individual? What does it do for society? What does it do for government?

7. Make out a list of the duties which pupils owe to a school; a list of the duties which the teacher owes to the school; a list of the duties which the school officers owe to the school.

8. (In some schools the faculty makes the rules, decides who has broken a rule and punishes the offender. Government in these schools resembles a despotism. In other schools the students organize as a commonwealth, electing from their number (1) a *council* which makes the rules,(2) a *court* which decides when a pupil has violated a rule, and (3) a *governor* who executes the order of the court. In these schools government resembles a democracy.) Draw up a constitution for the government of a school by its students, providing for the three departments, the election of officers and the distribution of powers. Should the terms of the student officers be for short or for long periods? What rules would be wise for the council to make in reference to tardiness? to whispering? to absence? to truancy? to cheating? to rudeness?

9. What advantages does a school derive from governing itself?

10. Does government in the school prepare for citizenship outside of the school?

Topics for Special Work.—The Education for a Democracy: 4, 379–393. State Supervision of Schools: 18, 215–223. Civic Education: 17, 97–117.

XLVII

CORPORATIONS

Introductory. We have already learned what a corporation is and what are the characteristics of a corporation (p. 75). We have also learned that corporations are either public or private, and our study of municipalities was a study of the public or political corporation. We shall now study the private corporation.

Corporations Created by State Authority. The charters under which corporations conduct business are nearly always granted by State authority. The Constitution of the United States has no specific provisions in reference to corporations, yet Congress can and does grant charters to corporations organized for carrying on enterprises which come within the range of federal authority. For example, Congress under its power to regulate the currency has granted charters to national banks; under its power to regulate interstate commerce it has granted charters to transcontinental railway companies. As a rule, however, the creation and regulation of corporations are State functions. How important these functions are may be seen in the State constitutions, where the article on corporations sometimes requires as much space as is given to one of the three great departments. "Formerly," says Justice Brewer, "there were two factors, the individual and the State; now there are three, the individual, the State and the corporation."

The Corporation in Modern Life. The private corporation, although it is of ancient origin, was not an important factor in society until the middle of the last century. To-day it is one of the most important factors of civilization. Private corporations spin and weave the clothes we wear; they control the manufacture and sale of much of the food we eat; they supply the furniture in our houses, the dishes on our table, the utensils in our kitchens, the books in our libraries, the tools in our shops, the implements on our farms; they lend us money and they invest our money for us; they carry us from place to place on trolley-lines and railroads and steamboats. In whatever direction we turn in the financial or commercial or industrial world we meet the private corporations.

The Evolution of Corporate Industry. The great private corporation of to-day is the outcome of changes which have been occurring in commerce and industry during the last two centuries. Before the eighteenth century commerce and industry were organized on the basis of individual effort. Cloth was woven in a shop in which there was but one loom, and the operator of the loom was its owner. The man who ground the grain was the owner of the mill. Shoes were made by the owner of the shop. Passengers were conveyed from town to town in a coach owned by its driver. And so it was in all the trades and occupations: they were all organized and conducted on the basis of individual enterprise.

About the middle of the eighteenth century a great change began to come over the face of industry. In 1733 John Kay invented the flying shuttle and thereby doubled the efficiency of the loom. A few years later water-power was applied to the loom. One man could now operate two looms, and could weave four times as much cloth as could be woven before. In 1769 Arkwright brought out his wonderful spinning-machine, and in the same year Watt patented his condensing steam-engine. These inventions

reorganized the textile industry. Instead of the little shop with its single loom and weaver, there appeared the great factory with its hundreds of looms and scores of operators. As it was with weaving, so it was with other industries: inventions and improved machinery caused nearly all of them to be conducted on a new plan.

I. *The Partnership.* How was this reorganization accomplished? How were the humble shops of the seventeenth century transformed into the huge factories of the eighteenth century? By a combination of the wealth and services of individuals. The single craftsman did not have enough money to build a factory and equip it with machinery, so several persons combined their capital and formed a *partnership.* The partnership as a legal form of business association is almost as old as recorded history, yet it had never before been brought into such frequent use as during the industrial revolution of the eighteenth century. The two important legal characteristics of a partnership are: (1) the partners are individually liable for the debts of the partnership; (2) the death of one of the partners brings the partnership to an end. A partner is liable, therefore, to lose his entire fortune in paying the debts of the partnership, and the partnership is liable to be brought to an end at any moment.

II. *The Corporation.* The colossal enterprises which were inspired by the appearance of the steamboat and the locomotive and the telegraph in the first half of the nineteenth century could not be satisfactorily conducted under the partnership form of association. Here was a railroad to be built at a cost of five million dollars. The people of the region through which the road was to pass favored the enterprise and were ready to invest their funds in it, but men with money were loath to enter into a partnership for building the road because they feared they might be ruined by the debts of the partnership, and besides they could not tell when the enterprise would be brought to an end by the death of a partner. To meet these objec-

tions of investors the corporation was brought into use. The corporation does not die with the death of a member (p. 75), but lives on for the period given to it by law, if that is for a thousand years. This immortality of the corporation gives time for the accomplishment of great things. Another advantage of the corporation over the partnership is that the shareholders in a corporation are not individually liable for the entire debt of the company. Furthermore, the shares in a corporation can be easily transferred and sold when the holder wishes to dispose of them. Through the agency of the corporation the building of the coveted railroad was made possible. To raise the money fifty thousand shares of one hundred dollars each were offered to the farmers and merchants and mechanics and capitalists of the communities to be benefited by the road, and shares were taken according to each one's ability and willingness to invest, some taking a single share, others ten shares, others a hundred shares. In this way thousands of people assisted in the building of the road and in the development of the country, and thousands shared in the profits. As it was with the railroad, so it was with many other undertakings: about the middle of the nineteenth century the corporation began to be brought into general use in the organization of industry and commerce.

III. *Corporate Combinations.* Before the end of the nineteenth century a new form of organization began to appear in the industrial world. About 1880 the great corporations began to devise methods of protecting themselves against the ravages of competition. While competition gives life to trade it at the same time plays havoc with profits. Especially is this true in these times, when a salesman with the aid of the telephone and telegraph can do as much higgling and bargaining in an hour as could be done a hundred years ago in a month, and when new inventions and processes are constantly reducing the cost of production.

(a) *The Pool.* The first attempts of corporations to stifle competition were made when they began to *pool* their interests. Several corporations engaged in the same business would place the marketing of their products under a central management and would agree upon a uniform scale of prices, and upon the amount of goods that each separate corporation was to produce and sell. Under this arrangement there was no higgling of the market; the buyer was held strictly to the prices fixed by the pool. The intention of the pool was plainly to kill competition and establish a virtual monopoly.[1] Now monopoly is not only contrary to the constitutions of most of the States, but it is also contrary to the instincts of the American people. So the pool was declared illegal, and combinations of this kind were dissolved.

(b) *The Trust-Agreement.* The corporations next resorted to the trust-agreement. The combining companies deposited their stocks with a central board of trustees and received in exchange trust certificates. The trustees managed the business of the uniting companies, fixing prices and controlling the output of each constituent corporation. For certain kinds of transactions the trust-agreement is historic and strictly legal, but as an industrial combination it was only the pool in disguise. It was monopoly, and was so declared by the courts. Moreover, the Sherman Anti-trust Act of 1890 declared against all combinations which are in restraint of trade. Under this act trust-agreements affecting interstate commerce were rapidly driven from the industrial world.

(c) *Trusts.* The trust-agreement disappeared, but it handed on its name to the next and last form of corporate combination—the *trust.* After the courts dissolved the trust-agreement, the corporations still continued their efforts to avoid competition by means of combination. A

[1] A monopoly is an exclusive privilege to deal in or control the sale of certain things. Congress grants a monopoly to authors and inventors (52).

corporation could not combine outright with another corporation within the same State, for nearly all the States forbid such a combination. Corporations in different States could not combine without the consent of each of the States in which it was desired to effect the combination, and this consent could not be obtained. How then could the corporations combine? A law of New Jersey passed in 1889 provided a way. This law permits the formation in New Jersey of corporations which shall have the power of purchasing the stock and property of any other corporation engaged in any kind of business in any State (excepting New Jersey) or in any country. Here was the opportunity the corporations were seeking. A corporation, by organizing in New Jersey and securing the stocks of the corporations which it wished to bring into a combination, could become the owner of those corporations, and could then, of course, control both the prices of their goods and the amount of goods produced. And this was what was done. Corporations which wished to combine merged and blended their interests into one giant holding corporation, a corporation of corporations, a trust, so called.

Other States[1] followed New Jersey in granting liberal charters to corporations, and under the new laws the combination of corporations has proceeded on a scale startling in its proportions. During the last ten years nearly one third of the total production of all industries, excluding that of agriculture, has been brought under the control of trusts. There is one trust that controls seventy-five per cent. of the steel industry; another that sells ninety per cent. of the sugar output; another that controls ninety per cent. of the tin business; another that refines seventy-five per cent. of the oil; another that makes seventy-five per cent. of the paper. And the consolidation continues.

The Trust Problem. The chief advantage of combination lies in the direction of economy in production. Under the

[1] Notably Maine, New York, Delaware and West Virginia.

trust system only the best-equipped establishments are kept running; plants are located with the view of reducing freight expenses; only the most desirable patents and brands are made use of; the division of labor is carried to the most effective point; there is great saving in office expenses. That the trust reduces the cost of production to the lowest possible figure cannot be denied.

Neither can it be denied that there are many evils connected with trusts. The trust reduces the number of employees, especially the number of travelling salesmen; it drives small competitors out of business by selling at a temporary loss; it gains exclusive control of certain commodities and then, in some instances, raises the price to a profit in excess of that possible under competition. Then the trusts often over-capitalize: they authorize stock far in excess of the cash value of their property. One trust over-capitalized—"watered" its stock—to the amount of nearly a billion dollars, and then asked the public to buy. The thousands of investors who purchased the stock at fifty dollars a share, and afterwards saw its value fall to ten dollars a share, appreciate the danger of over-capitalization. Over-capitalization works injury in another direction: the attempt of the trust to continue in hard times the dividend upon a large bulk of "watered" stock places an unnecessary burden upon consumers and laborers; upon consumers in the form of higher prices, upon the laborer in the form of lower wages.

The report of the Industrial Commission (1901) in its volume on Trusts catalogues the various remedies for trust evils as follows: (1) The let alone policy; (2) the suppression of monopolies; (3) the prohibition of destructive competition; and (4) publicity.

(1) Those advocating the "let alone policy" contend that competition will suffice to keep trusts within bounds, and that government should keep hands off, because self-interest in the long run will do less harm than legislative interference.

(2) Those advocating the suppression of monopolies would suppress directly by national and State legislation all combinations seeking to restrain trade or control prices.

(3) Some would deny to combinations the right to sell below cost for the purpose of driving competitors out of a local market, and then to restore prices to a point where they could readily recoup themselves for any loss incurred.

(4) Publicity receives the most general approval. All the doings of trusts, it is generally held, ought to be exposed to the public gaze. This, it is contended, would prevent any unfair raising of prices, because of competition that would be thus invited, and would sufficiently publish the affairs of the concern to enable investors to escape the snares of unscrupulous organizers. The Bureau of Corporations established in 1903 has for its most important function the collection of facts relating to trusts, and it is hoped that through this bureau all desirable information will be obtained.

Both the State and the federal government may assist in applying the remedies for trust evils. The State possesses the power to incorporate and can therefore determine precisely the privileges a corporation is to enjoy within the State; the federal government under its power to regulate interstate commerce can regulate the privileges of corporations trading between the States. Here would seem to be authority enough. If all the States and the federal government would work together the trust problem might not be so difficult of solution.

But the States do not work together; the corporation laws of one State set at naught the laws of another State. Thirty-two States have attempted by legislation to control trusts, but their efforts have been thwarted by the action of sister States. Within the region of its authority the federal government has been active and to a certain degree successful in combating trust evils. Under the anti-trust law passed by Congress in 1890 corporations consisting of a combination of corporations have been compelled to

dissolve, on the ground that they were formed in restraint of trade between the States.

This victory of the law over giant corporations is full of hope. It shows that the law is still supreme. We need not fear the trusts as long as we know they can be compelled to obey law. Keep government strong enough to apply remedies, and remedies in good time will doubtless be found.

QUESTIONS ON THE TEXT

1. From what source do corporations receive their power?
2. Give an account of the part played by the corporation in modern society.
3. How was industry organized before the eighteenth century? What causes led to a change in this organization?
4. What is a partnership? What advantage had the corporation over the partnership?
5. What caused corporations to combine?
6. What was the pool? the trust-agreement?
7. How was the so-called trust made possible? To what extent is industry controlled by trusts?
8. What are the advantages and disadvantages of trusts?
9. What remedies have been proposed for the evils connected with trusts?
10. To what extent have trust evils been checked by government?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Give illustrations of partnerships existing in this community; of corporations; of trusts.
2. A local tinner charges 25 cents for a pan which you can buy from a trust for 23 cents: would you buy your pan from the local tinner or from the trust?
3. What does the constitution of this State say about corporations? about trusts?
4. If it were shown that the trusts benefit society in material things but dwarf individuality, what would be your attitude toward trusts? Does society exist for your benefit, or do you exist for the benefit of society?
5. Name five of the largest industrial organizations in the United States. What effect have these combinations had upon the prices of the articles they produce?
6. Has this State passed an anti-trust law? If so, has this law accomplished its purpose?

Topics for Special Work.—Growth of Large Industries: 20, 312–322. Corporations: 21, 155–159. Federal Control of Trusts: 30, 492–497.

XLVIII

LABOR

The Growth of Labor Organizations. Workingmen's associations or trade unions, such as we have to-day, had no existence before the latter part of the eighteenth century. In the days when industry was in its simple form of organization, when almost every workman was a proprietor, there were few who could be classed as employees. A German scholar [1] informs us that in 1784 in the duchy of Magdeburg there were 27,050 independent masters and only 4,285 assistants and apprentices, and that about the same time in the principality of Würzburg there were 13,762 masters with 2,176 assistants and apprentices. That is to say, in more than five sixths of the industrial establishments of these two places the master carried on his work single-handed. As it was in Germany, so it was in England and America before the industrial revolution (p. 361): the number of employees was extremely small. When it is remembered that apprentices and assistants usually lived in the home of the master and were treated as members of the family, it becomes still more evident that under the old order of things there was no distinct line of cleavage between employers as a class and employees as a class.

The factory system brought about a complete change in the industrial condition of the workman. A craftsman was now the owner neither of the tools with which he worked nor of the articles which his craft fashioned; he

[1] Karl Bücher, "Industrial Evolution," p. 188.

was a hired man, an employee whose chief industrial interest was his wage. It was to be expected that employees would unite to advance their interests, and it was not long before workmen began to meet for the discussion of such subjects as wages and hours of labor. At first government handled these meetings with a severe hand. In 1799 the English Parliament passed a law making it a criminal offense to attend a meeting the purpose of which was to secure an advance in wages or to shorten the hours of labor. In 1817 under this act ten calico-printers in the town of Bolton were imprisoned for three months for simply *intending* to attend a meeting at which the subject of wages was to be discussed. Such injustice, however, was inconsistent with the spirit of democracy which was at that time beginning to guide the conduct of statesmen, and in 1824 the harsh law of 1799 was repealed, and workingmen were henceforth permitted to combine for the promotion of their interests.

Workingmen now began to combine, not only for the purpose of putting up wages and shortening the working day, but for the advancement of all their interests. Those engaged in the same trade, or allied trades, united in a permanent association, called a trade union, the abiding purpose of which was to promote in every lawful way the general welfare of the associated members. Trade unions in England at first did not have smooth sailing, for rulers were at heart against them; but they steadily prospered, and in 1871 were formally recognized by an act of Parliament as legal organizations. This recognition caused them to flourish as never before, and to-day England is the strongest center of trade unionism in the world.

The trade-union movement in America began about the same time that it began in England, but it did not meet the same fierce opposition. Its progress, however, was not altogether peaceful and undisputed. For many years the courts were inclined to regard the movement with distrust, and in more than one decision a combination that aimed

to raise wages was pronounced to be an unlawful conspiracy. But trade unions were only one of the outgrowths of democracy and were bound to wax strong with the growing strength of the people. In 1870 New York, by statute, legalized the trade union, and in recent years the right of workingmen to combine has not been seriously questioned anywhere in the United States. In America, law and public opinion have been almost uniformly on the side of the trade union, and it has prospered here as in no other country, England alone excepted. More than two million workingmen in the United States are enrolled in trade unions, one union alone having the enormous membership of three hundred thousand.

Government and the Workingman. The aims of labor organizations are usually clear and well defined. They strive for the social and intellectual as well as for the economic betterment of the working classes. They want the workingman to receive a wage that will enable him to buy a fair share of the good things of life, and they want the working day to be of a length that will give leisure for the enjoyment of the benefits of education, culture and refinement. They advocate the abolition of child labor, because they want the children to attend school. They demand that work in factories and mines be done under sanitary conditions, because they regard the health of workingmen as a matter of supreme importance. In brief, they favor all movements that tend to elevate labor and resist all movements that tend to degrade it. For the accomplishment of many of their purposes labor organizations have invoked the assistance of government.

The Constitution is silent on the subject of labor. The relations of employer and employed are to be regulated by the State, and labor problems must be solved by the State. The federal government fixes the wages of its employees, prescribes the length of their working day (eight hours), investigates the conditions of the laboring classes,

and collects labor statistics. Further than this it cannot go.[1] When the President of the United States a few years ago intervened to bring about a settlement of a strike, he acted as a private citizen, not as an official vested with the authority of the federal government.

The earlier State constitutions contain nothing about labor, because when they were framed there were no labor organizations and no labor problems. In recent years the constitutions are inserting clauses pertaining to labor. The constitution of Wyoming declares: "The rights of labor shall have just protection through law calculated to secure to the laborer proper rewards for his service and to promote the industrial welfare of the State." The constitutions of California and Idaho forbid the employment of Chinese laborers upon State or municipal public works. The constitution of North Dakota declares that every citizen of the State shall be free to obtain employment wherever possible, and forbids the exchange of blacklists[2] between corporations. In Louisiana the constitution forbids the passage of any law fixing the wages of manual labor. Numerous other illustrations might be given to show that the States are beginning to introduce the subject of labor into their constitutions.

It is in the field of State legislation that we may best learn how deeply government is concerned in the affairs of the workingman. In more than two thirds of the States the employment of children under fourteen years of age is forbidden by law; in more than half of the States women may not work in factories more than ten hours a day; in thirty-one States women working in shops must be provided with seats; in nearly half the States the working day of State and municipal employees is limited to eight hours; in twenty-four States there is official inspection of factories and mines; in two thirds of the States there are

[1] Of course Congress can regulate labor matters in the Territories and in the District of Columbia.

[2] Lists of persons objectionable to employers.

bureaus of labor for collecting and giving out information on labor topics. The most remarkable instance of legislation regarding labor comes from Utah, where the law prohibits grown men from working more than eight hours a day in mines. It was thought that this law was unconstitutional, because it virtually denies to adults freedom of contract, but the Supreme Court of the United States declared that it was constitutional on the ground that working in mines is a matter that comes under the police power (p. 392) of the State.

The recognition of labor organizations by government is becoming quite general. Most of the States provide for the incorporation of trade unions, and a federal law permits national trade unions to be incorporated, provided they have two or more branches in every State, and maintain headquarters in the District of Columbia. Besides giving them power to incorporate, several States have lately attempted to protect trade unions by making it a misdemeanor for an employer to discharge an employee for belonging to a labor organization. It is doubtful, however, whether statutes which interfere in this harsh manner with the freedom of contract will receive the full support of public opinion. Two States have enacted laws that certain public work shall be performed only by labor unions—as full a recognition of labor organizations as it is possible, perhaps, for government to give.

The Settlement of Labor Disputes. The chief function of the labor unions is to enable workingmen to avail themselves of the strength of organization when they are bargaining with their employers for wages and hours of labor. When a single workman in an establishment employing hundreds asks for higher wages he is not likely to receive as much consideration as would be shown to a similar request coming from all the workmen united in a compact body. Under the trade-union system, instead of individual bargaining between employer and employee, there is col-

lective bargaining: representatives of the labor organization meet the employer and there is higgling as to the price that shall be paid for labor, and when a bargain is struck it binds all parties, including every member of the organization. In some instances this collective bargaining is conducted on a vast scale, affecting not only a single establishment but whole industries.[1]

As long as collective bargaining is possible there is industrial peace, but when it fails, when employer and organized employees fail to come to an agreement, there is industrial war. In this warfare the chief weapons of the employer are the lockout[2] and the blacklist, and the weapons of the employees are the strike and the boycott. Society is feeling the effects of industrial war more and more keenly. In the morning paper which lies on my desk I read that the leader of a powerful labor union threatens to inflict a meat famine upon the people of the United States if the demands of his union are not acceded to. We may not have a famine as the result of this proclamation, but all parts of the country will doubtless be inconvenienced if a strike is declared.

So vast have been the losses occasioned by strikes,[3] and so seriously have they disturbed business, that government has been moved to provide means for their settlement. About half the States have established *boards of arbitration,* before which the disputes of employers and employees may be settled. These arbitration boards can inquire into the causes of a strike and render a judgment as to the merits of a dispute, but in no State can such a judgment be enforced; in no State is there compulsory arbitration. Boards of arbitration, therefore, must depend upon the power of public opinion to give their decisions weight. Arbitration in several States has met with a mea-

[1] See Gilman's "Method of Industrial Peace," pp. 93–114.

[2] "A refusal on the part of the employer to furnish work to his employees in a body."

[3] Estimated at $500,000,000 for the last twenty years.

sure of success, but in most of the States in which it has been tried it has not amounted to much.

The Labor Problem. How shall government in its efforts to maintain industrial peace so deal with the labor organizations as to protect them in their rights, and at the same time not infringe upon the rights of the individual workman? This is the labor problem stated in its broadest terms. It is the trust problem over again. The giant labor unions and the giant corporations have been produced by the same industrial forces, have the same aim—the avoidance of the evils of competition—and offer to government the same kind of problem to solve.

We cannot attempt here even to indicate precise methods by which the great labor problem can be solved, but there are two facts that ought to be kept in mind by all. First, the law must be kept supreme. There must not arise within the State a power that is greater than the government. It is as important that government be able to bring the largest labor union to terms as it is that it be able to bring the largest corporation to terms. Second, the liberty of the individual must be maintained. Government ought not to insist on driving workingmen into unions against their will. On the contrary, it ought to let workingmen understand that they will be protected to the fullest in their right to remain out of the union, when they choose to assert that right. There is no freedom if any organization outside of government itself can go to the individual and enforce its rules upon him: government, and government only, can coerce an American citizen.

QUESTIONS ON THE TEXT

1. Give an account of the growth of labor organizations in England; in America.
2. For what purposes do workingmen combine?
3. In what relation does the federal government stand to labor organizations?

4. To what extent is the subject of labor introduced into State constitutions?

5. Give an account of the legislation of the several States in reference to labor matters?

6. What is collective bargaining?

7. What is industrial war? How does war of this kind affect the social welfare?

8. In what way have the States attempted to settle labor disputes?

9. In what respect does the labor problem resemble the trust problem? In the solution of the labor problem what two principles should guide?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Does the constitution of this State say anything about labor or labor organizations? about strikes or lockouts? about boycotts or blacklists?

2. At what age may children be employed in the factories in this State? What is the length of a day's labor for one employed upon public work in this State?

3. Is there a bureau of labor statistics in this State? If so, secure a copy of the last report of its chief officer and find answers to the following questions: What strikes have occurred in this State during the past year? What per cent. of these were successful? Were any of the strikes settled by arbitration? What is the average daily wages of workmen in this State? Is this average increasing or decreasing? What does the commissioner of the bureau recommend in the way of legislation bearing upon labor problems?

4. Is there a board of arbitration in this State? If so, secure a copy of its report and ascertain what it is doing in the way of settling labor disputes.

5. In about one third of the States it is against the law for an employer to exact, as a condition of employment, an agreement from an employee not to become a member of a labor organization. Is it against the law in this State for an employer to exact such an agreement?

6. Show how a strike sometimes affects a great many more people than the strikers and their employers. Show how a great strike affects the business of the entire world.

7. Prepare a paper on Compulsory Workingmen's Insurance. See fourth special report of the United States Commissioner of Labor. This is a very important topic.

8. If you were an employer of labor, do you believe you would be willing to sacrifice a little money for the sake of the happiness and comfort of your employees? Is it likely that the labor problem will ever be satisfactorily solved as long as both capitalists and laborers ignore moral considerations in their dealings with each other?

Topics for Special Work.—The Labor Unions: 4, 349–367. Trade Unions: 20, 245–256. Labor Organizations: 21, 476–485.

XLIX

CRIME

The Definition of Crime. In the simplest and rudest stages of society wrong-doing was regarded as a private matter, and the wrong-doer was punished by private hands. The murderer was delivered over to the vengeance of the family of which the slain was a member; the thief was punished by the person from whom the goods were stolen. As society grew more highly organized, and as the power of the state increased, private vengeance was gradually disallowed, and the definition and the punishment of crime became strictly a function of government.

The first task of government in respect to crime is to define crime, to declare what actions are criminal. A crime is an act injurious to society and punishable by law, but before an act can be regarded as a crime it must be stamped as such by government. An act may be vicious or sinful, and yet if it is not named by law as a punishable offense it is not a crime.

As society becomes more complex the offenses designated by law as crimes become more numerous.[1] The telegraph

[1] The following table shows the nature of the offenses for which criminals in the United States are convicted and gives the percentage which each class of crimes bears to the whole number committed:

Crimes against government, as treason, counterfeiting, anarchy	2.2 %
Crimes against society, as disturbance of the peace, drunkenness	22 %
Crimes against the person, as murder, assault, mayhem	21.9 %
Crimes against property, as burglary, arson, theft	45.8 %
Miscellaneous crimes	8.1 %
Total	100.00 %

has brought the crime of tapping wires and stealing electricity; railroads have brought the crime of train wrecking; corporate combinations have caused penalties to be pronounced against an undue restraint of trade; the factory has called forth penalties against the criminal neglect of the safety of workingmen. "All changes in social organization, in custom, in political control, import changes in the criminal law." Society is constantly defending itself against new dangers, and whenever an act of omission or commission is seen to be clearly hurtful to the public it is designated by law as a crime.

The Punishment of Crime. When the law defines an act as a crime it usually at the same time provides a punishment. In the olden times punishment followed the law of retaliation: a life for a life, an eye for an eye, a tooth for a tooth. For the crime of murder this rule still prevails in most countries, although in several States capital punishment has been abandoned. By modern usage punishments for crime are assigned without any purpose of retaliation. The criminal is punished for the benefit of society, and not for the sake of private or public vengeance. What the punishment for a crime shall be is a question of expediency for the law to determine. In ordaining a punishment, however, it is the rule to make its severity correspond in some degree to the heinousness of the offense committed. When the form of punishment is not death it is usually either a fine in money or imprisonment for a definite period of time. Excessive fines or cruel or unusual punishments cannot be inflicted by the federal government (**142**), but the State can provide such punishments as it deems proper, even if these seem to be cruel or unusual.

Crime and the State Government. In the United States the duty of defining crimes and affixing penalties and of punishing offenders belongs almost entirely to the State government. The constitution of the State generally allows

the legislatures to deal with crime in their own way. In those States which have adopted the rules of the common law certain deeds are punishable as crimes without special legislative action. These are the common law crimes, and include treason, murder, manslaughter, arson, larceny, burglary, kidnapping, assault, perjury, embezzlement. A few States have not adopted the rules of the common law in reference to crime, and in these before an act can be punished as criminal it must first be designated as such by a statute. Several years ago in a western State which does not recognize the rules of common law in reference to crime a boy was kidnapped, and when the subject of the punishment of the kidnapper arose it was found that the laws of the State in which the act was committed said nothing about kidnapping. The perpetrator of the deed was not discovered, but it was generally acknowledged that even if he had been captured it would not have been possible to punish him. The federal government could not have touched the case, and the State government had not yet made the offense a crime.

Since each State deals with crime in its own way, criminals fare differently in different States. "The criminal code in one State in 1879 provided for the punishment of one hundred and fifty offenses as crimes, only one hundred and eight of which were recognized as crimes by the code of another State. . . . The penalty for perjury in one State is a fine limited between a minimum of five hundred dollars and a maximum of two thousand dollars; in others five years' imprisonment; in still others imprisonment for life; and in one death, if the crime causes the execution of an innocent person. . . . The penalty for arson varies from imprisonment for from one to ten years to death."[1] In one State murder may be punishable by death and horse stealing by imprisonment for life; in an adjoining State horse stealing may be punishable by death, and murder by imprisonment for life.

[1] H. M. Boies, "The Science of Penology," p. 83.

While this diversity in the laws of the different States in respect to crime may seem regrettable, we must not jump to the conclusion that the definition and punishment of crime should be given to the federal government. In dealing with crime, government is fighting with one of the foes of society, and the principle of local self-government, and the principle that a law to be effective must harmonize with the morality and sentiment of the community in which it is to be executed, both sustain the policy of letting each State fight its foes in its own way.

Crime and the Federal Government. While the State government is the chief agent for suppressing crime, the federal government has a part in the work. Congress as well as the State legislature is constantly designating new crimes. Under the authority of the Constitution Congress may define and punish crimes in the District of Columbia, in the Territories and in other places wholly within the jurisdiction of the federal government; it provides punishment for offenses relating to the post-office, to interstate commerce, to the currency, to federal elections, and to all other matters which come within the scope of the federal jurisdiction. Congress also defines and punishes piracies committed on the high seas and offenses against the laws of nations (**54**).

There are no common law crimes against the United States: only acts designated as crimes by Congress are punishable in federal courts. A person charged with violating a federal statute must be tried in the State in which the act was committed (**139**) and is entitled to a speedy trial by a jury consisting of citizens of the State.

Punishment for counterfeiting the securities and current coins of the United States is fixed by Congress (**50**). By ''securities'' is meant the government's bonds, its stamps and other representatives of value. For counterfeiting gold and silver coin the punishment is a fine of not more than five thousand dollars, or imprisonment at hard labor

for not more than ten years. For counterfeiting paper currency the punishment is still more severe.

The highest crime known to the law is treason, which may be broadly defined as an attack upon government itself. Under this broad definition in England and in other countries much injustice has been wrought. Men who have committed no crime other than to earn the displeasure of rulers have been charged with treason and put to death. To guard against evils of this sort the framers of the Constitution took the precaution of precisely defining what acts should be regarded as treasonable. To commit treason against the United States one must wage war against them (**112**) or give aid or comfort to their enemies.[1] If there be an actual assemblage of men whose purpose is to proceed with force against the authority or property of the United States each member of such an assemblage may be adjudged a traitor. If a citizen—and no one but a citizen can be a traitor—sells a public enemy provisions or arms, he gives that enemy aid and comfort and is guilty of treason. As an additional safeguard against the abuse of power the Constitution provides that at least two witnesses must testify to the treasonable act of which the accused is charged (**113**). The punishment of treason against the United States (**114**) is death, or, at the discretion of the court, five years of hard labor and a fine of not less than ten thousand dollars. A civil officer of the United States found guilty of treason by the process of impeachment is deprived of his office.

The Prevention of Crime and the Treatment of Criminals. Crime in the United States costs the government about two hundred million dollars annually—an amount almost as large as that expended for education, and quite as large as that expended upon the army and navy. The financial

[1] Treason against a State is defined in the State constitutions, and the definition is usually identical with that given in the Constitution of the United States.

loss which criminals inflict upon society is estimated to be four hundred million dollars. The total cost of crime is, therefore, six hundred million dollars annually, and the burden is not growing lighter. The criminal class consists of more than one per cent. of the population, and it cannot be shown that this proportion is decreasing; indeed, able authorities assert that the proportion is increasing. This small but persevering and dangerous class has been present in all ages and in all countries and governments have tried in vain to extirpate it. Law-makers, appealing to the emotion of fear, for a long time endeavored to decrease crime by making punishments for all kinds of offenses extremely severe, but they found that severity of penalty would not solve the problem. Then the law-makers attempted to apply the principle of justice in the punishment of criminals; they adapted the punishment to the crime, affixing a slight penalty to a petty offense and ordaining a more severe punishment for a more flagrant deed. Still this did not solve the problem; no scheme of punishments, however nicely adjusted, has as yet had the effect of decreasing crime.

In recent years we have been trying to prevent crime by removing its causes. It is recognized that crime is due in a large measure to an unfavorable environment, to bad company, to poverty, to the enervating influence of wealth and luxury, to crowded tenements, to the evil influences of cities, and philanthropists and statesmen are bending their efforts toward improving the environment which is responsible for crime.

Furthermore, the mental attitude of the public toward criminals is changing. Formerly it was the universal opinion that a criminal was a foe to society, and that in meting out punishment to this foe the welfare of society alone should be regarded. Now in the adjustment of punishments there is a disposition to regard the welfare of the criminal as well as the welfare of society. It is contended that a criminal is a person who is afflicted with a disease,

the disease of criminality, and that government ought to heal this disease if it can do so. If the criminal cannot be healed government must prevent him from running at large. If, however, the criminal is curable he must be restored to society as soon as he recovers. A penitentiary, according to this doctrine, is simply a moral hospital where criminals are confined until they are cured of the disease of criminality. In conformity with this view industrial schools, reformatories and asylums are, for many offenses, taking the place of jails and penitentiaries, and *indeterminate* sentences—sentences which detain the criminal only so long as he remains unreformed—are being substituted for commitments for arbitrary definite periods. Whether the new methods are better calculated to diminish crime than were the old can be determined only by experience.

QUESTIONS ON THE TEXT

1. How was crime punished in the earlier stages of social development?
2. Why is it necessary that the law should be constantly designating new crimes?
3. When affixing a punishment to a crime what purpose does the lawmaker have in view? What are the usual forms of punishment?
4. Give an account of the functions of the State government in reference to crime. What are common law crimes?
5. Illustrate how punishment for crime varies from State to State.
6. What crimes are punishable by the federal government? What is treason? How is it punished?
7. What is the money cost of crime in the United States?
8. What are some of the causes of crime?
9. What new policy is being adopted in reference to the treatment of criminals?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Arrange the following causes of crime according to the percentage of criminals produced by each: *bad company, drink, poverty, temper, lack of moral principle, mental incapacity.* If you are unable to secure the statistics use your judgment as to an arrangement.
2. How much would be saved in money per voter in the United States if everybody would do right?

3. Are you inclined to support the doctrine that the State in dealing with a criminal should entertain no idea of punishment; that it should simply treat the criminal as a sick person? Give reasons for your answer.

4. Does the constitution of this State say anything about crime? about punishments? What does the Constitution of the United States say about punishments (142)? Are those who have been convicted of crime in this State permitted to vote?

5. What industrial schools, reformatories and asylums are supported in this State? What is a juvenile court?

6. What notable persons have been accused of treason in the United States? Has there ever been a conviction for treason?

7. Prepare a five-minute paper on The Elmira Reformatory.

Topics for Special Work.—The Treatment of Crime: 4, 130–147. Causes of Crime: 29, 237–261.

L

CHARITIES

Charity a Function of Government. Society always has its poor and unfortunate, and the problem of dealing with poverty is hardly less perplexing than the problem of dealing with crime. Poverty and crime are often found together, but they are not related as cause and effect, for pauperism may decrease while crime is increasing, and *vice versa.* The causes of poverty, like the causes of crime, are to be sought largely in social and economic conditions, and the true cure for poverty consists in the betterment of those conditions.

That it is the function of government to care for the dependent class has long been recognized. Among the ancients a portion of the tithes was by law devoted to the poor. In ancient Rome corn-laws provided for the distribution of grain from the public granaries to those who could not afford to buy. Throughout the middle ages charity was for the most part administered by the church, but in the sixteenth and seventeenth centuries the governments of Europe began to legislate for the poor. In the reign of Elizabeth England passed a law requiring each parish to support its own poor, and this law served as a model for poor-laws in the colonies, and later was imitated by the several States.

The Care of the Poor a Function of Local Government. The federal government has no charitable functions. It maintains homes for its worn-out sailors and soldiers, and

pays vast sums as pensions to those who have served in its wars; but what it spends in this way is regarded not as a gift, but as a debt. Congress sometimes extends quick relief to communities which have been visited by fire or flood, but such assistance cannot properly be called charity.

Power for public almsgiving flows from the State. In the more recently adopted constitutions provision is broadly made for the subject of pauperism, just as provision is made for the subject of crime. The legislature usually imposes upon each locality the burden of caring for its own poor. Charity thus begins at home. The State government seldom dispenses aid directly to the dependent poor.

The civil division which most frequently has charge of public charity is the county. There are often county directors or overseers of the poor (p. 200), and these have charge of the county almshouse and of the distribution of funds to the needy. In States where there is a vigorous township government, the township, and not the county, administers the charities, and likewise in a well-organized city a department of charities often relieves the county of its charitable function.

Outdoor and Indoor Relief. There are two historic methods of helping the poor, the method of outdoor relief and indoor relief. Outdoor relief is the relief of the poor in their homes; indoor relief is given to the poor who have become inmates of almshouses. In most of the States the two methods are employed side by side. The applicant for aid sometimes receives a small sum of money to be spent by himself in his home; sometimes he must go to the almshouse for food, clothing and shelter. Whether aid shall be given indoors or outdoors is a question which the authorities of the locality decide, each case being judged according to the circumstances attending it.

The reasons for outdoor relief are these: (1) it is kindly, since the recipient is not separated from his friends and

family; (2) it is economical, since it costs less on an average to assist a person in his home than it does to support him in an almshouse; (3) it would be impossible to accommodate in almshouses all who apply for aid.

The reasons against outdoor relief are: (1) it increases the number of applicants, because it is less disgraceful than the indoor system; (2) it corrupts politics by tempting the authorities to extend aid in return for votes; (3) it reduces the rate of wages, because its recipients can afford to work for less than their self-supporting competitors.[1]

The Defective Classes. Government extends its aid to the defective classes as well as to the dependent and helpless poor. A century ago paupers, defectives and criminals were often huddled together within the same walls and subjected to treatment that was sometimes barbarous. Now there are separate institutions for each class. Moreover, the defectives are also divided into classes and are cared for in separate institutions. Thus we have institutions for the blind, for the deaf and dumb, for the insane, for the feeble-minded, for the epileptic, for the deformed.

As a rule, the expense of caring for the defective classes is too heavy to be borne wholly by the local government, and it becomes necessary for the State to care for them. In almost every State the central government provides hospitals for the insane, schools for the deaf and dumb, schools for the blind, and reformatory schools for juvenile offenders. These State institutions for defectives are supported in part by State revenues, in part by contributions from the local government.

State Boards of Charities. In about half the States there have been established State boards of charities. The duties of these boards vary, but usually the State board of charities exercises a close supervision over all the State reformatories and institutions for the defective classes, and inspects

[1] See A. G. Warner, "American Charities."

the charitable work of the localities and makes a report thereon to the governor or to the legislature. In several instances this board possesses a very substantial power. Thus in New York the State board of charities visits, inspects and maintains a general supervision of all institutions, societies or associations of a charitable, corrective or reformatory character, whether State, municipal or unincorporated, and it can enforce in these institutions a humane and wise administration.

Organized Charity. Of course government is not the only almsgiver. We give to the beggar whom we pass on the street; well-to-do people often make it a point to extend regular assistance to certain destitute families; churches of every denomination engage in charity work; societies and associations for the relief of the poor abound in every community.

Until quite recently private charities as well as public were indiscriminate and unorganized, and the results of the haphazard giving were often unfortunate and sometimes ludicrous. Alms unwisely extended sometimes converted a person who was simply needy into a professional beggar, and the abundant sources of aid often invited the lazy to quit work and live entirely upon charity. This was possible when by a little diplomacy and cunning one could exploit the benevolence of perhaps a half-dozen churches and as many societies.

In 1869 in England, and a little later in America, a movement was begun to organize charity work, and the results which followed were so satisfactory that charity organization societies were rapidly formed. Societies of this kind, known as associated charities or united charities or the bureau of charities, exist in nearly two hundred cities in the United States.

Organized charity aims:

1. To secure coöperation and unity of action among all charitable agencies, public and private.

2. To learn the facts connected with every application for aid.

3. To extend quick relief to all who are actually in need.

4. To expose impostors.

5. To find work for all who are able and willing to work.

6. To establish relations of personal interest and sympathy between the poor and the well-to-do.

QUESTIONS ON THE TEXT

1. To what extent has charity in the past been regarded as a function of government?
2. To what grade of government has the charitable function in the United States been assigned?
3. What is meant by outdoor relief? indoor relief? What reasons may be given for and against outdoor relief?
4. What provision is made for the defective classes?
5. What is the duty of the State board of charities?
6. What evils attend unorganized and unsystematic charity work?
7. What are the aims of organized charity work?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Does the constitution of this State say anything about charity? anything about pauperism? Are paupers permitted to vote in this State?
2. What provision is made in this State for the defective classes, the deaf, the blind, the insane, the feeble-minded?
3. Arrange the following causes of poverty according to the percentage of paupers made by each: *lack of employment, sickness, accident, insufficient earnings, intemperance, shiftlessness, physical defects.* If you are not able to secure the facts use your judgment in making an arrangement.
4. Name the charitable institutions of which you have knowledge. Are most of these supported by private liberality?
5. If a street beggar should ask you for money would you give him any? What is "scientific charity"?

Topics for Special Work.—The Problem of Pauperism: 4, 148–157. Causes of Poverty: 23, 32–65. Conditions of Living among the Poor: Send for Bulletin 64, Bureau of Labor, Washington, D. C.

LI

THE POLICE POWER OF THE STATES

The Police Power Defined. In its broad sense the term "police power" may refer to the entire system of regulations by which government preserves peace and order and prevents violations of law. In its narrower sense, in the sense in which it is used in this chapter, the police power is the system of internal regulations by which a State seeks "to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others":[1] or, it is the "power which constrains the inhabitants of a State to conform their general behavior, like members of a well-governed family, to the rules of propriety, and to be decent, industrious and inoffensive in their respective stations." The police power properly extends to the regulation of matters which affect the *health, safety* and *morality* of society.

The police power rests on the principle that one must use his own in such a way as not to injure another. I must make such use of my rights, my freedom, my property, as will not interfere with my neighbor in the lawful enjoyment of his rights and freedom and property. If a man, in order to strengthen his lungs, shouts lustily in an open field where no one can hear him, government will not

[1] Cooley, "Constitutional Limitations," p. 572.

check him, but if his shouting is done where people are disturbed by it the police power may be interposed to silence him. A maker of dangerous explosives may ply his trade in an isolated building and government may not interfere, but if he undertakes to make such explosives where the lives and property of others are thereby put in jeopardy, the police power will be invoked to prevent the manufacture. From its nature "the police power will always have a wider field of action in a city than in a village, and in a village than in a farming neighborhood."

The Police Power Exercised by the State. In the division of the powers between the States and the federal government the police power was left entirely to the States. The federal government may exercise this power whenever in the discharge of its regular functions it seems necessary, but it is rare that it does this. The spirit of our government is to leave the police power in its integrity to the States. Several attempts have been made to amend the Constitution by bestowing upon it powers of this nature, but all such movements have failed.

The Public Health. The State avails itself of the police power to preserve and protect the public health. In most of the States there is a *State Board of Health* which exercises a general supervision over sanitary affairs, and coöperates with and gives suggestions to the health officers of the county. One of the most important duties of the State Board is to prevent the spread of contagious diseases. In order to accomplish this it provides for the compulsory vaccination of citizens, and for the disinfection and destruction of places exposed to infectious and contagious diseases. It also may isolate those stricken with contagious maladies, and assist in the enforcement of quarantine laws.

In a few States the State Board of Health is clothed with substantial powers, and exercises a real control over

local sanitation, but in most of the States the actual care of the public health rests with the local government. In cities, where proper sanitary conditions are of the highest importance, a municipal board of health wages constant warfare against conditions which produce disease. In the discharge of their duties health officers are often compelled to intrude upon the private rights of the citizen. If some one in a house is suffering with a contagious disease the house may be quarantined; if there is an epidemic of smallpox in a community, the citizens, willing or unwilling, may be compelled to be vaccinated; if the water in a private well contains disease-bearing germs the well may be condemned and filled up by command of the health officers; if wearing apparel has been exposed to contagious disease it may be destroyed by officers of the law. In the name of the public health and by virtue of the police power which it possesses, the State makes these invasions upon private rights.

The Public Safety. The State, or the local government acting for it, uses the police power freely to protect the public from unusual dangers. It compels railroad companies to fence their tracks and build them above or below grade at public crossings; it requires engineers to ring the bell and blow the whistle at all places on the railroad where the approach of the train may be dangerous to travel; it regulates the speed of trains; it limits the number of passengers a steamboat may carry; it compels the construction of fire-escapes for tall buildings; it permits the destruction of property to prevent the spread of fire; it throws safeguards around the sale of explosives and poisonous drugs; it commands the muzzling of dangerous dogs; it orders the demolition of buildings that threaten to fall and destroy life or property; it abates nuisances which interfere with the comfort and convenience of society. In a hundred ways the citizen is reminded that the interests and desires of the individual are brushed aside when these happen to be hostile to the safety of society.

The Public Morality. For centuries governments sought by legislation to mold the character of individuals. They subjected the private conduct of the citizen to official regulations and restraints with the view of making him a better man. Experience slowly taught the truth that a man cannot be legislated into morality, and governments gradually changed their attitude. Instead of seeking to improve the morals of the individual they framed their laws with the view of preserving the morals of the state. In America the State uses the police power to protect the public morality, but in doing this it does not enter into the conscience and intention of the individual and pronounce certain acts immoral; it simply declares that certain external acts come under the police power for regulation or suppression because they corrupt the morals of the public and thus strike a blow at the general welfare. Among these acts are excessive drinking of intoxicating liquors, gambling and inflicting cruelty upon animals. The first of these requires particular notice.

Intemperance is as old as history and efforts to suppress it by governmental action are almost as old. A thousand years before the Christian era an emperor in China, in order to put an end to drunkenness, ordered all the vines in the kingdom to be uprooted, a reform which was imitated later (800 B.C.) by Lycurgus of Greece. During the middle ages the church struggled with intemperance, but at the end of the period Bacon was compelled to say that all the crimes on earth did not destroy so many lives or alienate so much property as drunkenness. In the seventeenth and eighteenth centuries the English government undertook to deal with the liquor traffic, but it did not go about the matter in the right way. The consumption of liquor increased and drunkenness continued to be the prevailing vice in all classes of society. In the American colonies the evil was widespread.

In the early years of the nineteenth century temperance societies in England and the United States began a crusade in favor of total abstinence from intoxicating liquors.

and about the middle of the century the influence of these societies began to be felt in legislation. In 1851 Maine passed a law prohibiting the sale and manufacture of intoxicating liquors except for medicinal and mechanical purposes, and in that State the prohibition law has been retained and enforced. Other States have passed the famous "Maine law," but not all have retained it. At present the prohibition policy prevails in Maine, Kansas, North Dakota, Oklahoma, Georgia and North Carolina.

In a number of States a policy of local option prevails in reference to the matter of selling liquor. The voters of a city or county or town vote upon the question whether the saloons shall be licensed or not. If the vote is in favor of no license the prohibition law is applied to the particular civil division. The plan of local prohibition is followed in about three fourths of the States.

Are prohibition laws effective? They are where there is a strong public sentiment behind them. Where judges and juries and law officers and the best citizenship of a community are in earnest, and are determined that intoxicating liquors shall not be sold, a prohibition law, whether local or general, is as successful in that community as other laws. As a matter of fact, prohibition laws affecting the whole State have not often accomplished their purpose in all parts of the State, but the plan of local option has usually given satisfaction to the friends of prohibition.

A great many advocates of temperance reform believe that absolute prohibition is impossible and are content that the liquor traffic should be regulated. One form of regulation is to require of those who sell liquors an unusually *high license*. In the States where the high license policy has been adopted the license varies from three hundred dollars to twelve hundred dollars. Thus in some States every saloon supports a school. The advocates of high license claim that it does away with objectionable saloons; that it confines the traffic to responsible dealers; that it dimin-

ishes the number of saloons and thereby decreases the power which the saloon may have in politics.

Do prohibition laws and dispensary laws interfere with interstate commerce? The Supreme Court in 1890 decided that the State law could not prevent the sale in *original packages or kegs unbroken and unopened* of liquors manufactured and brought from any other State. This decision made it impossible for a State to execute a prohibition law. Congress, however, came to the relief of the State and passed a law giving the State the right to exercise the police power over liquors brought within its borders from another State, whether in original packages or otherwise. In other words, Congress concluded that it would not use its power to regulate commerce in such a way as to deprive the State of its police power.

QUESTIONS ON THE TEXT

1. What is meant by ''police power'' as the term is used in this chapter? To what matters does the police power extend? On what fundamental principle does the police power rest?

2. By which of the governments is the police power usually exercised? When does the federal government exercise this power?

3. What are the duties of the State Board of Health. Give illustrations of the way health officers exercise the police power.

4. What are some of the uses made of the police power to protect the public safety?

5. What actions are regulated or suppressed because they corrupt public morality?

6. What measures have governments taken in reference to temperance? What has been the history of temperance legislation in the United States?

7. Describe two forms of prohibition. When are prohibition laws effective?

8. Describe two methods of regulating the liquor traffic.

9. What has been the history of prohibition laws in reference to interstate commerce?

SUGGESTIVE QUESTIONS AND EXERCISES

1. Give reasons why the police power should not be exercised by the federal government.

2. Does the constitution of the State say anything about the police power?

3. Is there a State board of health in this State? How is it chosen? What are some of its powers?

4. Is there a local board of health in this municipality? How is it chosen? What is it doing for the public health?

5. Name some uses of the police power not stated in the text.

6. Are you aware of any unwarranted use of the police power in this State? If so, how may the abuse be corrected?

7. On what grounds would you justify a law or ordinance which forbids: the firing of Chinese crackers on the Fourth of July? the tooting of horns on Christmas Eve? the wearing of feathers in ladies' hats? the running of trains on Sunday? the selling of cigarettes to boys? the building of wooden houses in the center of cities?

8. Does the constitution of this State say anything about the sale of intoxicating liquors?

9. Are the laws of this State in reference to the sale of liquor regulative or prohibitive? Are they effective laws?

10. Is the violation of a police law always a crime? What is the difference between a crime and a misdemeanor? between a crime and a sin?

Topics for Special Work.—The Maine Law of 1851: 28, 22–96.

APPENDIX A

[THE CONSTITUTION

OF THE

UNITED STATES OF AMERICA]

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, 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. 1

ARTICLE I

SECTION 1. 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. 2

SECTION 2. 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. 3 4

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. 5 6

Representatives and direct Taxes shall be apportioned among the several States which may be included within this
7 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
8 Years, and excluding Indians not taxed, *three fifths of all other Persons.*[1] The actual Enumeration shall be made within three Years after the first Meeting of the Congress
9 of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.
10 The Number of Representatives 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
11 chuse 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.

12 When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

13 The House of Representatives shall chuse their Speaker
14 and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be com-
15 posed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

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

[1] The clause in italics superseded by the 13th and 14th amendments.

the sixth Year, so that one third may be chosen every 16
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 Ap-
pointments until the next Meeting of the Legislature, which 17
shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained
to the age of thirty Years, and been nine Years a citizen 18
of the United States, and who shall not, when elected,
be an Inhabitant of that State for which he shall be 19
chosen.

The Vice President of the United States shall be Presi-
dent of the Senate, but shall have no Vote, unless they be 20
equally divided.

The Senate shall chuse their other Officers, and also a
President pro tempore, in the Absence of the Vice Presi- 21
dent, or when he shall exercise the Office of President of
the United States.

The Senate shall have the sole Power to try all Impeach-
ments. 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 Per- 22
son shall be convicted without the Concurrence of two
thirds of the Members present.

Judgment in Cases of Impeachment shall not extend fur-
ther 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 neverthe- 23
less be liable and subject to indictment, Trial, Judgment
and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elec-
tions for Senators and Representatives, shall be prescribed
in each State by the Legislature thereof; but the Congress 24
may at any time by Law make or alter such Regulations,
except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year,

25 and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

26 SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Ma-
27 jority 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.

28 Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the
29 Concurrence of two thirds, expel a Member.

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
30 shall, at the desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall,
31 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 6. The Senators and Representatives shall receive
32 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
33 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.

No Senator or Representative shall, during the Time for
34 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 en-

creased 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. 35

SECTION 7. 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. 36

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. 37 38 39 40 41

Every Order, Resolution,[1] 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. 42 43

[1] Resolutions of Congress proposing amendments to the Constitution do not require the assent of the President.

44 SECTION 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts
45 and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

46 To borrow money on the credit of the United States;

47 To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

48 To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies [1] throughout the United States;

49 To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

50 To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

51 To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by
52 securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries; [2]

53 To constitute Tribunals inferior to the supreme Court;

54 To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

55 To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[1] A bankrupt law enables a person who is unable to pay all his debts to divide what property he has among his creditors proportionately and to be discharged from legal obligation to make further payment. Congress has absolute power in the matter of bankruptcy but it has not exercised this power continuously. The present bankrupt law was passed in 1898. In the absence of legislation by Congress the State regulates the subject of bankruptcy.

[2] An author may secure a copyright on a book by sending to the librarian of Congress at Washington a copy of the title-page and two copies of the book on or before the day of publication. The copyright gives an exclusive right to sell for twenty-eight years, a period which upon application may be extended fourteen years. A patent secures to an inventor the exclusive right to manufacture and sell his invention for seventeen years. Patents are secured by sending to the Commissioner of Patents at Washington a working model of the thing invented.

[56] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[57] To provide and maintain a Navy;

[58] To make Rules for the Government and Regulation of the land and naval Forces;

[59] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

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 [60] discipline prescribed by Congress;

[61] 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 and of the United States, and to exercise like Authority over [62] 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, dock-Yards, and other needful Buildings;—And

[63] 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.

[SECTION 9. 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.][1]

[1] This clause has no longer any significance.

64 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.

65 No Bill of Attainder or ex post facto Law shall be passed.

66 No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

67 No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Com-
68 merce 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.

69 No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular
70 Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

71 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.

72 SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts;
73 pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay
74 any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection
75 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 Controul of Congress.

No State shall, without the Consent of Congress, lay any
Duty of Tonnage, keep Troops, or Ships of War in time 76
of Peace, enter into any Agreement or Compact with an-
other State, or with a foreign Power, or engage in War 77
unless actually invaded, or in such imminent Danger as
will not admit of delay.

ARTICLE II

SECTION 1. The executive Power shall be vested in a Presi- 78
dent of the United States of America. He shall hold his
Office during the Term of four Years, and, together with 79
the Vice President, chosen for the same Term, be elected,
as follows

Each State shall appoint, in such Manner as the Legisla- 80
ture thereof may direct, a Number of Electors, equal to the
whole Number of Senators and Representatives to which 81
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.

[The Electors shall meet in their respective States, and
vote by ballot for two Persons, of whom one at least shall 82
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 83
Number of Electors appointed; and if there be more than
one who have such a Majority, and have an equal Number
of Votes, then the House of Representatives shall immedi-

ately chuse 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 chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having
84 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
85 shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.][1]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of
86 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
87 have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the
88 Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law pro-
89 vide 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.

The President shall, at stated Times, receive for his Ser-
90 vices, a Compensation which shall neither be encreased 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.

[1] This paragraph has been superseded by the 12th amendment.

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." 91

Section 2. 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 Offences against the United States, except in Cases of Impeachment. 92 93 94

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. 95 96 97 98

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. 99

Section 3. 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 neces-

100 sary 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
101 Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other
102 public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

103 SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office
104 on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III

SECTION 1. The judicial Power of the United States, shall
105 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,
106 shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office.

SECTION 2. 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 affect-
107 ing Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to
108 Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between
109 a State and Citizens of another State;[1]—between Citizens of different States;—between Citizens of the same State

[1] This clause was modified by the 11th amendment (p. 153).

claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be 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. 110

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. 111

SECTION 3. 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 on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court. 112 113

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. 114

ARTICLE IV

SECTION 1. 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. 115

116 SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, 117 or other Crime, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to remove to the State having Jurisdiction of the Crime.

[No Person held to Service or Labour 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 Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.][1]

118 SECTION 3. 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.

119 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.

120 SECTION 4. 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 121 Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

[1] Since the abolition of slavery this clause has had no significance.

ARTICLE V

The Congress, whenever two thirds of both Houses shall 122 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 123 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 124 of its equal Suffrage in the Senate.

ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid 125 against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties 126 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, any 127 Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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 Affir-
128 mation, 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

129 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 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
130 America the Twelfth **In Witness** whereof We have hereunto subscribed our Names,

G°: WASHINGTON—*Presidt.*
and deputy from Virginia

Attest WILLIAM JACKSON *Secretary*

New Hampshire { JOHN LANGDON, NICHOLAS GILMAN }

Massachusetts { NATHANIEL GORHAM, RUFUS KING }

Connecticut { WM. SAML. JOHNSON, ROGER SHERMAN }

New York . . . . ALEXANDER HAMILTON

New Jersey { WIL: LIVINGSTON, DAVID BREARLEY, WM. PATERSON, JONA: DAYTON }

Pennsylvania	B. Franklin Thomas Mifflin Robt. Morris Geo. Clymer Thos. Fitz Simons Jared Ingersoll James Wilson Gouv Morris
Delaware	Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom
Maryland	James McHenry Dan of St Thos. Jenifer Danl Carroll
Virginia	John Blair— James Madison Jr.
North Carolina	Wm: Blount Richd. Dobbs Spaight Hu Williamson
South Carolina	J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler
Georgia	William Few Abr Baldwin

ARTICLES

IN

ADDITION TO, AND AMENDMENT OF

THE

CONSTITUTION OF THE UNITED STATES OF AMERICA [1]

PROPOSED BY CONGRESS AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES, PURSUANT TO THE FIFTH ARTICLE OF THE CONSTITUTION

ARTICLE I

131 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or
132 abridging the freedom of speech, or of the press; or the
133 right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II

134 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.

[1] The first ten amendments were adopted in 1791.

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. 135

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. 136

ARTICLE V

No person should 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 the time of War or public danger; nor shall any person be subject for the same offence 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. 137 138

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 district wherein the crime shall have been 139

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
140 against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE VII

141 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 re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII

142 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

143 The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X

144 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]

145 The Judicial power of the United States shall not be construed to extend to any suit in law or equity, com-

[1] Adopted in 1798.

menced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII [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 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 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.

146

147

148

[1] Adopted in 1804.

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. 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]

149 SECTION 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.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV[2]

SECTION 1. All persons born or naturalized in the 150 United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they 151 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 152 life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among 153 the several States according to their respective numbers, counting the whole number of persons in each State, ex-

[1] Adopted in 1865. [2] Adopted in 1868.

cluding 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 154 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.

SECTION 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 155 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.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for 156 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 157 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.

SECTION 5. The Congress shall have power to en- 158 force, by appropriate legislation, the provisions of this article.

ARTICLE XV [1]

159 Section 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.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

[1] Adopted in 1870.

APPENDIX B

THE FIRST WRITTEN CONSTITUTION

(The Fundamental Orders of Connecticut. 1639)

Forasmuch as it hath pleased the Allmighty God by the wise disposition of his diuyne pruidence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Harteford and Wethersfield are now cohabiting and dwelling in and vppon the River of Conectecotte and the Lands thereunto adioyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouerment established according to God, to order and dispose of the affaryes of the people at all seasons as occation shall require; doe therefore assotiate and conioyne our selues to be as one Publike State or Comonwelth; . . . to be guided and gouerned according to such Lawes, Rules, Orders and decrees as shall be made, ordered & decreed, as followeth:—

1. It is Ordered, sentenced and decreed, that there shall be yerely two generall Assemblies or Courts, the on the second thursday in April, the other the second thursday in September, following; the first shall be called the Courte of Election, wherein shall be yerely Chosen from tyme to tyme soe many Magestrats and other publike Officers as shall be found requisitte: Whereof one to be chosen Gouernour for the yeare ensueing and vntill another be chosen, and noe Magestrate to be chosen for more than one yeare; pruided allwayes there be sixe chosen besides the Gouer-

nour; wch being chosen and sworne according to an Oath recorded for that purpose shall haue power to administer iustice according to the Lawes here established, and for want thereof according to the rule of the word of God; wch choise shall be made by all that are admitted freemen and haue taken the Oath of Fidellity, and doe cohabitte wthin this Jurisdiction, (hauing beene admitted Inhabitants by the maior prt of the Towne wherein they liue,) or the mayor prte of such as shall be then prsent.

2. It is Ordered, sentensed and decreed, that the Election of the aforesaid Magestrats shall be on this manner: euery prson prsent and quallified for choyse shall bring in (to the prsons deputed to receaue them) one single papr wth the name of him written in yt whom he desires to haue Gouernour, and he that hath the greatest number of papers shall be Gouernour for that yeare. And the rest of the Magestrats or publike Officers to be chosen in this manner: The Secretary for the tyme being shall first read the names of all that are to be put to choise and then shall seuerally nominate them distinctly, and euery one that would haue the prson nominated to be chosen shall bring in one single paper written vppon, and he that would not haue him chosen shall bring in a blanke; and euery one that hath more written papers than blanks shall be Magistrat for that yeare; wch papers shall be receaued and told by one or more that shall be then chosen by the court and sworne to be faythfull therein; but in case there should not be sixe chosen as aforesaid, besids the Gouernor, out of those wch are nominated, then he or they wch haue the most written papers shall be a Magestrate or Magestrats for the ensueing yeare, to make vp the aforesaid number.

3. It is Ordered, sentenced and decreed, that the Secretary shall not nominate any prson, nor shall any prson be chosen newly into the Magestracy wch was not prpownded in some Generall Courte before, to be nominated the next Election; and to that end yt shall be lawful for ech of the Townes aforesaid by their deputyes to nominate any two

whom they conceaue fitte to be put to election; and the Courte may ad so many more as they judge requisitt.

4. It is Ordered, sentenced and decreed that noe prson be chosen Gouernor aboue once in two yeares, and that Gouernor be always a member of some approved congregation, and formerly of the Magestracy wthin this Jurisdiction; and all the Magestrats Freemen of this Commonwelth and that no Magestrate or other publike officer shall execute any prte of his or their Office before they are seuerally sworne, wch shall be done in the face of the Courte if they be prsent, and in case of absence by some deputed for that purpose.

5. It is Ordered, sentenced and decreed, that to the aforesaid Courte of Election the seurall Townes shall send their deputyes, and when the Elections are ended they may prceed in any publike searuice as at other Courts. Also the other Generall Court in September shall be for makeing of lawes, and any other publike occation, wch conserns the good of the Commonwelth.

6. It is Ordered, sentenced and decreed, that the Gouernor shall, ether by himself of by the secretary, send out sumons to the Constables of euery Towne for the cauleing of these two standing Courts, on month at lest before their seuerall tymes: And also if the Gouernor and the greatest prt of the Magestrats see cause vppon any spetiall occation to call a generall Courte, they may giue order to the secretary soe to doe wthin fowerteene dayes warneing; and if vrgent necessity so require, vppon a shorter notice, giueing sufficient grownds for yt to the deputyes when they meete, or els be questioned for the same; And if the Gouernor and Mayor prte of Magestrats shall ether neglect or refuse to call the two Generall standing Courts or ether of them, as also at other tymes when the occations of the Commonwelth require, the Freemen thereof, or the Mayor prte of them shall petition to them soe to doe: if then yt be ether denyed or neglected the said Freemen or the Major prte of them shall haue power to giue order to the Constables of the

seuerall Townes to doe the same, and so may meete together, and chuse to themselues a Moderator, and may prceed to do any Acte of power, wch any other Generall Courte may.

7. It is Ordered, sentenced and decreed that after there are warrants giuen out for any of the said General Courts, the Constable or Constables of ech Towne shall forthwth give notice distinctly to the inhabitants of the same, in some publike Assembly or by goeing or sending from howse to howse, that at a place and tyme by him or them lymited and sett, they meet and assemble them selues togather to elect and chuse certain deputyes to be att the General Courte then following to agitate the afayres of the commonwelth; wch said Deputyes shall be chosen by all that are admitted Inhabitants in the seuerall Townes and haue taken the oath of fidelity; pruided that non be chosen a Deputy for any Generall Courte wch is not a Freeman of this Commonwelth.

8. It is Ordered, sentenced and decreed, that Wyndsor, Hartford and Wethersfield shall haue power, ech Towne, to send fower of their freemen as deputyes to euery Generall Courte; and whatsoeuer other Townes shall be hereafter added to this Jurisdiction, they shall send so many deputyes as the Courte shall judge meete, a resonable prportion to the number of Freemen that are in the said Townes being to be attended therein; wch deputyes shall have the power of the whole Towne to giue their voats and alowance to all such lawes and orders as may be for the publike good, and unto wch the said Townes are to be bownd.

9. It is ordered and decreed, that the deputyes thus chosen shall haue power and liberty to appoynt a tyme and a place of meeting togather before any Generall Courte to aduise and consult of all such things as may concerne the good of the publike, as also to examine their owne Elections, whether according to the order, and if they or the gretest prte of them find any election to be illegall they

may seclud such for prsent from their meeting, and returne the same and their resons to the Courte; and if yt proue true, the Courte may fyne the prty or prtyes so intruding and the Towne, if they see cause, and giue out a warrant to goe to a newe election in a legall way, either in prte or in whole. Also the said deputyes shall haue power to fyne any that shall be disorderly at their meetings, or for not coming in due tyme or place according to appoyntment; and they may returne the said fynes into the Courte if yt be refused to be paid, and the treasurer to take notice of yt, and to estreete or levy the same as he doth other fynes.

10. It is Ordered, sentenced and decreed, that euery Generall Courte, except such as through neglecte of the Gouernor and the greatest prte of Magestrats the Freemen themselves doe call, shall consist of the Gouernor, or some one chosen to moderate the Court, and 4 other Magestrats at lest, wth the mayor prte of the deputyes of the seuerall Townes legally chosen; and in case the Freemen or mayor prte of them, through neglect or refusall of the Gouernor and mayor prte of the magestrats, shall call a Courte, yt shall consist of the mayor prte of Freemen that are prsent or their deputyes, wth a Moderator chosen by them: In wch said Generall Courts shall consist the supreme power of the Comonwelth, and they only shall haue power to make laws or repeale them, to graunt leuyes, to admitt of Freemen, dispose of lands vndisposed of, to seuerall Townes or prsons, and also shall haue power to call ether Courte or Magestrate or any other prson whatsoeuer into question for any misdemeanour, and may for just causes displace or deale otherwise according to the nature of the offence; and also may deale in any other matter that concerns the good of this comonwelth, excepte election of Magestrats, wch shall be done by the whole boddy of Freemen.

In wch Courte the Gouernour or Moderator shall haue power to order the Courte to giue liberty of spech, and silence vnceasonable and disorderly speakeings, to put all

things to voate, and in case the vote be equall to haue the casting voice. But non of these Courts shall be adiorned or dissolued wthout the consent of the maior prte of the Court.

11. It is ordered, sentenced and decreed, that when any Generall Courte vppon the occations of the Comonwelth haue agreed vppon any sume or somes of money to be leuyed vppon the seuerall Townes wthin this Jurisdiction, that a Comittee be chosen to sett out and appoynt wt shall be the prportion of euery Towne to pay of the said leuy, prvided the Committees be made vp of an equall number out of each Towne.

APPENDIX C

THE ORDINANCE OF 1787

Be it ordained by the United States in Congress assembled, That the said territory [the Northwest Territory], for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That there shall be appointed, from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1000 acres of land, while in the exercise of his office.

There shall be appointed, from time to time, by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his Executive department; and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of them to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the

exercise of their offices; and their commissions shall continue in force during good behavior.

The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but, afterwards, the legislature shall have authority to alter them as they shall think fit.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the General Assembly shall be organized, the powers and duties of the magistrates and other civil officers, shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be 5000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place,

to elect representatives from their counties or townships to represent them in the General Assembly: *Provided,* That, for every 500 free male inhabitants, there shall be one representative, and so on progressively, with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to 25; after which, the number and proportion of representatives shall be regulated by the legislature: *Provided,* That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, 200 acres of land within the same: *Provided, also,* That a freehold of 50 acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

The General Assembly, or Legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in 500 acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, when-

ever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the General Assembly, when, in his opinion, it shall be expedient.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the President of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not of voting during this temporary government.

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall

be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early period as may be consistent with the general interest:

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

Art. 1st. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

Art. 2nd. The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus,* and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the 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 shall be inflicted. No man shall be deprived of his liberty or property, 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 the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

Art. 3rd. 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 Congress; but laws founded in justice and humanity, shall, from time to time, be made preventing wrongs being done to them, and for preserving peace and friendship with them.

Art. 4th. The said territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes, for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other

States that may be admitted into the Confederacy, without tax, impost, or duty, therefor.

Art. 5th. There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The Western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash rivers; a direct line drawn from the Wabash and Post St. Vincent's, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincent's, to the Ohio; by the Ohio, by a direct line, drawn due North from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The Eastern Shore shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however,* and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies North of an East and West line drawn through the Southerly bend or extreme of lake Michigan. And, whenever any of the said States shall have 60,000 free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than 60,000.

Art. 6th. There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

APPENDIX D

HOME RULE FOR CITIES

(A Clause in the Constitution of California)

Sec. 8. Any city containing a population of more than three thousand five hundred inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board, or a majority of them, and returned, one copy to the Mayor thereof, or other chief executive officer of such city, and the other to the Recorder of the county. Such proposed charter shall then be published in two daily newspapers of general circulation in such city, for at least twenty days, and the first publication shall be made within twenty days after the completion of the charter; *provided,* that in cities containing a population of not more than ten thousand inhabitants such proposed charter shall be published in one such daily newspaper; and within not less than thirty days after such publication it shall be submitted to the qualified electors of said city at a general or special election and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole,

without power of alteration or amendment. Such approval may be made by concurrent resolution, and if approved by a majority vote of the members elected to each house it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter, and all amendments thereof, and all laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall, after the approval of such charter by the Legislature, be made in duplicate, and deposited, one in the office of the Secretary of State, and the other, after being recorded in said Recorder's office, shall be deposited in the archives of the city, and thereafter all courts shall take judicial notice of said charter. The charter, so ratified, may be amended, at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof, at a general or special election, held at least forty days after the publication of such proposals for twenty days in a daily newspaper of general circulation in such city, and ratified by a majority of the electors voting thereon, and approved by the Legislature as herein provided for the approval of the charter. Whenever fifteen per cent. of the qualified voters of the city shall petition the legislative authority thereof to submit any proposed amendment or amendments to said charter to the qualified voters thereof for approval, the legislative authority thereof must submit the same. In submitting any such charter, or amendments thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. (This clause was amended in 1911, but the text as it stands shows how home rule may be secured.)

LIST OF BOOKS TO WHICH REFERENCES ARE MADE

1 "The Rights of Man." Lyman Abbott.
2 "The American Commonwealth" (Abridged Edition). James Bryce.
3 "The American Republic." J. A. Woodburn.
4 "The Spirit of Democracy." C. F. Dole.
5 "The American Federal State." R. L. Ashley.
6 "The American Government." A. B. Hinsdale.
7 "American Legislature and Legislative Methods." Paul S. Reinsch.
8 "The American Executive." J. H. Finley and J. F. Sanderson.
9 "The American Constitutional System." W. W. Willoughby.
10 "The American Judiciary." Simeon E. Baldwin.
11 "Territories and Dependencies." W. F. Willoughby.
12 "Party Organization and Machinery." Jesse Macy.
13 "Proportional Representation." J. R. Commons.
14 "City Government in the United States." Frank J. Goodnow.
15 "The City, the Hope of Democracy." Frederic C. Howe.
16 "The National Administration of the United States." J. A. Fairlie.
17 "The American City." D. F. Wilcox.
18 "Local Government in Counties, Towns, and Villages." J. A. Fairlie.
19 "Introduction to Public Finance." Carl C. Plehn.
20 "The Principles of Economics." Frank A. Fetter.
21 "Introduction to the Study of Economics." Charles J. Bullock.
22 "Financial History of the United States." D. R. Dewey.
23 "American Charities." A. G. Warner.
24 "Socialism. A Summary and Interpretation of Socialistic Principles." John Spargo.
25 "Government by the People." Robert H. Fuller.
26 "American Railway Transportation." Emory R. Johnson.
27 "Labor Problems." T. S. Adams and Helen L. Sumner.
28 "The Liquor Problem." F. H. Wines and John Koren.
29 "Dependents, Defectives, Delinquents." C. R. Henderson.
30 "Readings in Civil Government." P. L. Kaye.

NOTE. Dr. Kaye's "Readings in Civil Government" is arranged in accordance with the plan of the "Advanced Civics," and it is strongly recommended as a most useful supplementary volume. (535 pp. $1.20 net. The Century Co., New York.)

These pages have been left blank for the convenience of teachers who wish to dictate to their classes supplementary statements in reference to State and local government.

INDEX

INDEX

A

Abbott, Lyman, *Rights of Man*, 16
Adams, T. S., *Labor Problems*, 376
Admission of new States, 63
Agriculture, Department of, 142
Alabama, admission of, 67; local government in, 196; regulation of sale of liquor in, 395
Alaska, government of, 188
Albany, convention at, 40
Aldrich Law, 325
Aliens, 96
Alliances, 38
Ambassadors, received by President, 134; duties of, 258
Amendment, of State constitutions, 35; of the Constitution of the United States, 53
American Government, complexity of the, 39; the characteristic features of, 108; the spirit of, 109
Anglo-Saxon, 17
Annapolis, convention at, 46; Naval Academy at, 357
Anti-Trust Law, 364, 367
Apportionment of Representatives, 118
Arbitration, International, 262; of labor disputes, 374
Aristocracy, defined, 6; not permitted under the Constitution, 58
Arizona, the government of, 186
Arkansas, admission of, 68; local government in, 196; registration in, 345
Army, commander-in-chief of, 134; support and management of, 250–252; standing, 251; appropriation for, 250
Articles of Confederation, adopted, 41; provisions of, 42
Assembly, the popular, 5
Assessments, special, 268; of property, 282
Assessors, 199, 282
Attainder, Bills of, 50
Attorney-General, of the United States, 141; of a State, 173
Auditor, State, 173; county, 199
Australian Ballot system, 346

B

Ballot, casting and counting of, 345; the secret, 346
Baltimore, not in a county, 195
Banking Associations, 325
Bankruptcy, 402
Banks of the United States, 319; State, 320; national, 321
Bill of Rights, 34; in constitutions, 97
Bills, passage of, in Congress, 124–129; in State legislatures, 163–165
Bimetallism, 316; international, 317
Blacklists, 372
Bland-Allison Act, 314
Boards of Health, 391
Bonds, 288
Boroughs, 218
Bryce, *The American Commonwealth*, 16
Bullock, C. J., *Introduction to the Study of Economics*, 318
By-laws, 205

C

Cabinet, 139
California, admission of, 69; municipal home rule in, 76; discovery of gold in, 313; labor clause in constitution of, 372
Campaign, the presidential, 230
Canals, the construction of, by States, 340
Capitation tax, 268
Census, 118
Chancery Courts, 181
Charity, a function of local government, 385; State boards of, 387; organization, 388
Charter, the Great, 88
Charters, colonial, 31; changed to constitutions, 33; of cities, 76; of corporations, 360
Chinese, cannot become citizens, 96; exclusion of, 334
Chisholm *vs.* Georgia, 153
Circuit Court of Appeals, organization of, 149; jurisdiction of, 156
Circuit Courts (federal), organization of, 149; jurisdiction of, 156
Circuit Courts (State), 178
Cities, the nurseries of democracy, 11; how governed, 76; rights of, 77; organization of, 218–222; finances of, 292
Citizens, who are, 95
Citizenship, origin of, 6; interstate, 59; rights and duties of, 95–100; the civil rights of State, 96; the civil rights of federal, 98; duties of, 100
City Council, 219
City-state, the, 6
Civil cases, 155
Civil liberty, 87–93; growth of, 88–92; preservation of, 93
Civil Service, the national, 143; reform, 144
Civil Service Commission, 143
Clay, Henry, 81
Cleveland, F. A., *Growth of Democracy*, 16
Coinage, a function of government, 307; in colonial times, 307; of gold and silver, 311–317; ratio of silver to gold, 312; subsidiary, 315
Collection of taxes, federal, 275; State, 284
Collective Bargaining, 374
Colorado, admission of, 68; woman's suffrage in, 105; local government in, 196
Combination, corporate, development of, 361–365
Commerce, attempts to regulate, 46; regulation of, 129; foreign, 328–335; interstate and intrastate defined, 337; foreign regulated by Congress, 328; regulation of interstate, 338; intrastate, 339; Court of, 154, 339
Commerce and Labor, department of, 142
"Commission" system of municipal government, 222
Commissioner of Education, 357
Committees, of Congress, 125; of State Legislatures, 163
Common law, State recognition of, 55; its origin and nature, 243
Common Schools, 356
Comptroller, duties of State, 173
Concurrent powers, 49
Confederation, 38; Articles of, 41; its weaknesses, 43; efforts to strengthen, 46
Congress (Continental). See Continental Congress
Congress (of the Confederation), its powers, 42; enacts Ordinance of 1787, 65
Congress (of the United States), powers of, 129; admits new States, 63; reënacts Ordinance of 1787, 65; its place in American politics, 120; organization of, 115–120; the assembling and adjournment of, 123; sessions of, 124; and the executive department, 136; determines jurisdiction of federal courts, 155; controls Territories and Dependencies, 184; declares war, 249; the treaty power of, 260; its

power in respect to taxation, 272; its power in respect to money, 307; charters banks, 320; regulates foreign commerce, 328; and the representation of States, 104; regulates interstate commerce, 338; appropriates money for rivers and harbors, 340; charters transcontinental railways, 360; controls the post-office, 341; the police power of, 395; enumeration of the powers of, 402; resolutions of, 401

Connecticut, frames the first written constitution, 32; in the convention of 1787, 117; road commissioners in, 340; text of the first constitution of (Appendix B)

Constable, 207

Constitutional government, 31–36

Constitution (of the United States), its authority given by the people, 9; a fundamental law, 33; framing and ratification of, 47; a distinct creation, 48; nature and extent of its powers, 49–52; how amended, 53; federal and State relations maintained by, 60; bill of rights in, 92; and the Supreme Court, 157–159

Constitutions, the first written, 32; general features of, 34; ratified by the people, 35; supplant the colonial charters, 33; the safeguard of liberty, 36, 92

Constitutions (State), origin of, 32; how ratified and amended, 36; bills of rights in, 97; should not be codes of laws, 166; provisions in respect to labor, 372

Consuls, 258

Continental Congress, meets in Philadelphia, 40; its activities, 41; issues of paper money by, 308

Convention of 1787, meets in Philadelphia, 47; frames a Constitution, 48; how it distributed the power of government, 49–51; provides for a federal legislature, 116; creates a strong executive, 132; establishes an independent judiciary, 147; gives the taxing power to Congress, 272; gives Congress the power to regulate commerce, 328

Conventions of political parties, 227–230

Copyright, 364, 402

Coroner, 199

Corporation defined, 75

Corporation tax, defined, 267; reform in the, 298

Corporations, two forms of, 75

Corporations (municipal), 75; two classes of, 217; organization of, 218–222; sphere of their activities, 222

Corporations (private), created by State authority, 360; great importance of, 361; evolution of, 362; Bureau of, 367; the problem of, 365–368

Council, the King's, 5

County, the organization of, 197–200; in the south and southwest, 195; in the middle States and the west, 196; in New England, 197; commissioners of, 198; the citizen and his, 200

County-Township system, 210

Courtesy, senatorial, 130

Court of Claims, 150

Courts (federal), four grades of, 149–150; kinds of cases tried in, 151; jurisdiction of the four grades of, 155; their relation to State courts, 181

Courts (State), organization of, 177–180; their relation to federal judiciary, 181; their powers, 181

Courts of Appeal (State), 180

Crime, 377–383; proportioned to the offense, 88; definition of, 377; punishment of, 378; State defines and punishes, 379; crime and the federal government, 380; prevalence of, 381; prevention of, 382

Criminal cases, 155
Criminality, 383
Criminals, surrender of, 59
Currency, metallic, 311–317; paper, 319; amount of, in the United States, 326
Customs Duties, defined, 268; a source of revenue, 275; amount collected, 333

D

Debt. See Public Debt
Declaration of Independence, 41; its principles, 91
Defectives, 387
Defense, 249–254; a function of government, 249; national defense, 249–253; State, 253; local, 253
Delaware, hundred in, 210; road commissioners in, 340
Delinquent property, 284
Demagogues, 14
Democracy, ancient, 7; in the United States, 12; growth of, 10–12; pure, 10; checked by feudalism, 11; supported in cities, 11; and the individual, 15; and education, 351
Democratic Party, 81
Demonetization of silver, 313
Department, organization of a federal executive, 142
Departments, the three, 24–29; in England, 25; in the United States, 25; the independence of, 28
Dependencies, how they differ from Territories, 184; government of, 184–193; education in, 357
Dingley Bill, 332
Direct nominations, 231
Dispensary system, 395
District Courts (federal), organization of, 148, 150; jurisdiction of, 156
District Courts (State), 178–180
District of Columbia, government of, 188; courts in, 151

E

Education, encouraged by Ordinance of 1787, 65; the State superintendent of, 173; county superintendent of, 200; school directors, 213; a function of government, 351; and democracy, 351; a local affair, 353; supported by local taxation, 354; supervision in, 354; educational activities of federal government, 356
Election of representatives, 119
Elections, 344–349; importance of, 344; held under State authority, 344; casting and counting of ballots, 345; secret, 346; bribery at, 347; should be frequent, 349
Elective franchise, 103
Electorate, the American, 105
Electors, presidential, 132, 231
Elkins Law, 339
Embargo, 329
Emergency Currency, 325
England, representative government in, 18; the three-department system in, 25; Trade Unions in, 370
Equalization of taxes, 283
Equity Cases, 155; courts, 181
Erie Canal, 340
Estimates, Board of, 220
Excises, defined, 268; source of federal revenue, 275
Executive, the, 28
Exemption from taxation, 285
Expansion, of the Union, 63–70; spirit of federal, 70
Expenditures, national, 265, 272–275; State, 266, 280; local, 280, 286, 291–293
Ex post facto laws, 50

F

Family, the ancient, 4
Federal government. See Government (federal)
Federalist Party, 81
Fees, 268

Feudalism, 10
Finance, public, 265. See Taxation
Florida, admission of, 67; local government in, 196
Franchise, elective, 103. See Suffrage
Franchise tax, 267
Franklin, Benjamin, his Plan of Union, 40; submits plan of confederation, 41; efforts to strengthen the Union, 46; supports the Connecticut compromise, 117
Free Trade and Protection, 329
French Revolution, 12, 266

G

Georgia, early legislature of, 162; election of judges in, 177; local government in, 196; sale of liquor in, 395
Gerrymandering, 119
Gold, monetary properties of, 306; coinage of, 311, 315
Government, defined, 4; the several types of, 6; classification of, 7; and the individual, 15; separation of the powers of, 24; the complexity of the American, 39; ideal schemes of, 246; how it borrows, 288
Government, civil, and martial law, 254
Government, constitutional, 31–37
Government (federal), 38; growth of American, 39–49; its exclusive powers, 49; powers prohibited to, 50; implied powers, 51; relation of, to the State, 57; expansive principle of, 70; its relation to commerce, 329; and elections, 344; and education, 357; and corporations, 360; and labor, 371; and charity, 385; and crime, 380
Government (local), the functions of, 72; its relation to the State, 74; decentralization of, 74; its dependence, 77; guaranteed by Magna Carta, 89; importance of, 195; the debts of, 291–293; controls education, 353; dispenses charity, 385
Government (popular), 9–15; defined, 9; growth of, 10–12; in the United States, 12; why it is the best, 12; the dangers of, 13; responsibility under, 15, 109; in New England, 19
Government (representative), 17–22; defined, 17; beginning of, 18; growth of, 18; in the United States, 19; principles of representation, 19
Governor, the duties of, 171; strengthening the power of, 174
Grand jury, 179
Greenback party, 82
Greenbacks. See United States notes
Gresham 's Law, 312
Guam, the government of, 192

H

Habeas Corpus, 89, 98
Hamilton, Alexander, efforts to strengthen the Union, 46; his doctrine of resulting powers, 52; author of *The Federalist*, 62; leader of the Federalist party, 81; and public debt, 289; and the United States bank, 319
Hawaii, its government, 189
Health, 391
High license, 394
High Schools, 356
House of Representatives, organization of, 115–119; legislation in, 124–127; revenue bills originate in, 274; its attitude in reference to treaties, 261
Hundred, the, in Anglo-Saxon times, 18; in Delaware, 210

I

Idaho, admission of, 69; woman suffrage in, 105; labor clause in constitution of, 372
Illinois, admission of, 66; minority

representation in, 21; canal construction in, 340; intermediate courts of appeal in, 180; township government in, 212; town government in, 208; debt of, 291
Immigration, regulation of, 334
Impeachment, 129
Incidence of taxation, 297
Income tax, 267; a direct tax, 277; discussed, 299
Independence, Declaration of, 41, 91
Indeterminate sentences, 383
Indiana, admission of, 66; townships in, 211; canal construction in, 340; registration in, 345
Indians, treatment of, 65; when citizens, 96; commerce with, 328; schools for, 357
Indian "Territory," government of, 187
Indifference, 13
Individualism, 239
Industrial commission, its remedies for the trusts, 366
Industrial revolution, 361
Inheritance tax, 267
Initiative and Referendum, 167
Injunction, writ of, 182
Intelligence, transmission of, 341
Intemperance, 393-395
Interior, Department of, 142
Internal revenue taxes, 268, 275
International bimetallism, 316
International law, defined, 257; rules of, 257
International relations, 256-262
Interstate commerce, 337-339
Interstate Commerce Commission, organization of, 143; its powers, 339
Interstate relation, 58
Iowa, admission of, 68; revision of constitution in, 36; townships in, 211; registration in, 345; debt of, 291

J

Jackson, Andrew, his use of the veto, 135; opposes United States banks, 320
Jay, John, quoted, 152; Jay's Treaty, 261
Jefferson, Thomas, his strict construction views, 52; leader of Democratic Party, 81; reduces national debt, 290; opposes banks of the United States, 320
Judiciary, its powers, 27
Judiciary Act of 1789, 148
Judiciary (the federal), 147-160; the independence of, 147; organization of, 148-151; jurisdiction of, 155-160
Judiciary (State), 177-182
Jurisdiction, the several kinds of, 155
Jury, trial by, 89, 155, 179
Justice, Department of, 141
Justices of the Peace, 178

K

Kansas, admission of, 68; township government in, 211; registration in, 345; prohibition in, 394
Kentucky, admission of, 64; local government in, 196; registration in, 345

L

Labor, 369-375; growth of labor organizations, 369-371; laws concerning, 372; settlement of labor disputes, 373; arbitration of labor disputes, 375; problems of, 375
Law, 242-248; definition of, 242; classification of laws, 243; public law, 242; private law, 243; common law, 243; characteristic features of law, 244; and public opinion, 245-247; sumptuary, 247; obedience to, 247; martial, 254
Legislature, its powers, 26; the bicameral, 27
Legislature (State), organization of, 162-167; its control of municipalities, 76; general features

of, 163; its importance, 165; should be trusted, 166
Liberalism, 239
Liberty, safeguarded by constitutions, 36, 92
Library of Congress, 143
Lieber, Francis, *Civil Liberty*, 94
Lieutenant-Governor, 172
Lilly, W. S., quoted, 15
Lincoln, Abraham, 82
Local option, 394
Lockouts, 374
Louisiana, admission of, 67; courts of, 180; local government in, 196; labor clause in constitution of, 372
Louisiana Purchase, 67

M

McKinley Bill, 332
Madison, James, joint author of *The Federalist*, 62; opposes United States banks, 319
Magna Carta, 88
Maine, admission of, 67; referendum in, 167; road commissioners in, 340; prohibition laws in, 394
Majority, rule of, 9
Marbury *vs.* Madison, 159
Marshall, John, quoted, 53; his interpretation of the Constitution, 159
Marshal of federal courts, 151
Martial law, 254
Maryland, local government in, 196; sends commissioners to Mount Vernon, 46; building of roads in, 340
Massachusetts, permits Maine to withdraw, 67; coinage in colonial times, 307; road commissioners in, 340; public-school system, 352
Mayor, duties of, 220
Message of the President, 134
Michigan, admission of, 66; minority representation in, 21; township government in, 212; town government in, 208; canals in, 340; debt of, 291
Militia, 253
Mill, J. S., quoted, 237
Ministers, 258
Minnesota, admission of, 68; municipal home rule in, 76; township government in, 211; town government in, 208
Minority representation of, 20
Mississippi, admission of, 66; local government in, 196
Missouri, admission of, 67; municipal home rule in, 76; courts of, 180; township government in, 211; referendum in, 167; registration in, 345
Monarchy, 6
Money, 304–326; different kinds of, 304; paper, 307, 319–324; issues of Continental Congress, 308; metallic, 311–317; representative, 309; coinage of, 306, 311–315; essential facts of monetary system, 325; amount of, in the United States, 326
Monometallism, 316
Monopoly, 364; suppression of, 367
Montana, admission of, 68
Morality, the public, 393–395
Morrill Bill, 332
Municipal corporations, 75; char ters for, 76; control of, 77
Municipalities, organization of, 216–222; functions of, 222; commission system of governing, 222; debt of, 291

N

National and federal government contrasted, 116
National banks, 322
National Convention, 230
Naturalization, process of, 96
Naval Academy, 357
Navy, Department of, 142; Secretary of, 252; policy in reference to, 252; strength of, 253
Nebraska, admission of, 68; the debt of, 291; town government in, 208; townships in, 211; registration in, 345

Nevada, admission of, 69
New England, popular government in, 19; town government in, 203–208; Confederation, 39
New Hampshire, registration in, 345
New Jersey, in the convention of 1787, 116; courts in, 180; road commissioners in, 340
New Mexico, its government, 186
New York, relinquishes claim to Vermont, 64; its supreme court, 180; surrogate court in, 199; township government in, 210; road commissioners in, 340; builds Erie Canal, 340; registration in, 345; State Board of Charities, 388
Nobility, titles of, 50
Nominating conventions, 227–230
Nomination of candidates, 225; direct, 231
Non-importation Act, 329
Normal schools, 356
North Carolina, ratifies the Constitution, 48; local government in, 196
North Dakota, admission of, 68; township government in, 211; town government in, 208; labor clause in constitution of, 372; prohibition in, 394
Northwest Territory, 65

O

Office, the right of holding, 105
Ohio, its admission, 66; township government in, 211; canal construction in, 340; registration in, 345; debt of, 291
Oklahoma, referendum in, 167; townships in, 211; prohibition in, 394
Oligarchy, 7; not permitted under Constitution, 58
Ordinance of 1787, its provisions, 65; and the public schools, 356; text of (Appendix C)
Ordinances, 220
Oregon, admission of, 69; referendum in, 167; "recall" in, 23; plan of electing senators, 122
Oregon country, 69
Original packages, 395
Orphan's court, 199
Overseers of the poor, 200

P

Panama Canal Strip, 189
Pardon, the power of, 134, 171
Parliament, English, the first, 18; representation in, 18; its original organization, 26; claims the power of taxation, 266; its labor laws, 370
Parties, origin of, 79; sketch of, 81–83; elasticity of principles of, 83; loyalty to, 84; and the election of the President, 133; origin of, 79–81; the nomination of candidates by, 225; the development of party organization, 226; permanent committees of, 227; primaries, 228; nominating conventions of, 229
Partnerships, 362
Passports, 140, 259
Patents, 364, 402
Payne Tariff Law, 333
Penn, William, quoted, 21
Pennsylvania, minority representation in, 21; early legislature of, 162; its courts, 180; township government in, 211; its aid to public schools, 355; road commissioners in, 340
Pensions, 386
People and their representatives, 21
Petition of Right, 89
Philadelphia, Continental Congress meets in, 40; Convention of 1787 held in, 47
Philippine Islands, the government of, 191; use of silver in, 315
Piracy, 380
Plan of union, 40
Police power, 390–395; defined, 390; exercised by State, 391
Policemen, 254

Political rights, 102–106; of women, 105
Politics, origin of, 6
Poll tax, 268
Pools, 364
Popular government, 9–15. See Government (popular)
Porto Rico, the government of, 190
Posse comitatus, 253
Post-office, Department of, 141; controlled by Congress, 341; its services, 342
Powers of federal government, 49–54; of the States, 56; prohibited to the States and to the federal government, 50; concurrent, 49; of Congress, 129
Presidency, succession to, 136
President of the United States, election of, 132, 231; powers and duties of, 134; his share in law-making, 135; the personality of, 137; and his cabinet, 139; nomination of, 227–230; as commander-in-chief, 251; and the militia, 253; appoints diplomatic representatives, 260
Primary meeting, 228
Probate courts, 181
Progressive taxation, 301
Prohibition, 394
Prohibition Party, 82
Property tax, 267
Protection and free trade, 329
Prothonotary, 199
Publicity, 367
Public debt, 288–294; necessity of, 288; the national, 289; of the States, 290; of local governments, 291; how paid, 293
Public lands and public schools, 356
Public opinion, 245–247
Public schools. See Education

R

Railroads, taxation of, 298; and the interstate commerce commission, 339; regulation of the rates of, 339; State commissioners for regulation of, 340; chartered by State, 340
Ratio of representation, 119
"Recall," 23
Redemption of Treasury notes, 314, 324
Referendum, 167
Registration of voters, 345
Relief, outdoor and indoor, 386
Religious liberty, 97
Representation, principles of, 19; of the minority, 20; of States in Congress, 104; ratio of, 119; and taxation, 266
Representative government, 19–22. See Government (Representative)
Representatives (House of), 118; apportionment of members of, 118; the election of members of, 119; at work, 124–126
Republic defined, 7
Republican Party, 82
Resolutions of Congress, 401
Responsibility of the individual, 15
Rhode Island, ratifies Constitution, 63; county in, 197; road commissioners in, 340
Rivers and Harbors, 340
Roads, 339
Rules of the House of Representatives, 126

S

Safety, the public, 392
St. Louis, not in a county, 283
Salaries of federal officers, 145
Samoa, the government of, 192
School district, 353
Secession, 63
Secretary of State, of the United States, 140, 260; of a State, 172
Selectmen, 206
Seligman, E. R. H., quoted, 300
Senate (of the United States), representation in, 117; election of members of, 120; its organization, 127; at work, 128; ratifies treaties and confirms appointments, 130
Sheriff, 198

Sherman Act, 314
Shipping, foreign, 333
Shiremoot, 18
Silver, coinage of, before 1873, 311–313; demonetization of, 313; its properties as a medium of exchange, 306; silver certificates, 314
Single tax, 301
Sinking fund, 293
Slavery, prohibited by ordinance of 1787, 65; abolished, 82
Smith, Adam, his canons of taxation, 270
Smithsonian Institution, 143
Social Democratic Party, 82
Socialism, 239
Society, definition of, 3
South Carolina, local government in, 196; progressive taxation in, 301; its dispensary system, 395
South Dakota, admission of, 68; referendum in, 167; township government in, 211; town government in, 208
Sovereign government, 4
Speakership of the House of Representatives, 125
Spirit, the American, 109–111
Stamp Act Congress, 40
State, evolution of the, 4–6; organization of the early, 5
State banks, 320
State, Department of, 140
Statehood, provisions concerning, 63
States (Commonwealths), constitutions of, 32–36; under the Articles of Confederation, 43; powers prohibited to, 50; reserved powers of, 51, 56; governments of, 55; powers of, 56; relation of, to federal government, 59–61; their relation to each other, 58; right to self-government, 58; interstate influence, 59; the thirteen original, 63; admission of new, 63; regulation of the suffrage by, 103–105; executive officers of, 170–175; legislatures of, 162–168; judicial system of, 177–182; the taxing power of, 280; control interstate commerce, 339; control elections, 344; control public education, 352; define and punish crime, 378; their control of corporations, 360; regulate labor, 371; wield the police power, 391
State's Attorney, 200
Strikes, 374
Suffrage, history of, 102; controlled by State, 103; for women, 105
Sumptuary laws, 247
Superintendent of public instruction (State), 173
Supreme Court (State), 180
Supreme Court of the United States, decides between State and federal governments, 57; established by Constitution, 148; organization of, 150; jurisdiction of, 157; and the Constitution, 157–160; and the people, 160
Surrogate's Court, 199

T

Tariff, 329–333; free trade and protection, 329; instability of, 333; history of, 330–333; revenue raised by, 274, 333
Tax, definition of, 267; the general property, 267; the income, 267; the corporation, 267, 298; the inheritance, 267; the franchise, 267; the poll or capitation, 268; the customs, 268; the excise, 268; the license, 268; the single, 301
Taxation, 265–302; the source of the taxing power, 266; and representation, 88, 266; direct and indirect, 268; principles of, 269; federal power of, 272; taxing power of State, 280; State system of, 281–286; property exempt from, 286; equalization of, 283; incidence of, 297; difficulties of, 296; problems of, 296–

302; of corporations, 298; of personal property, 300; of railroads, 299; of franchises, 299; progressive, 301; for education, 353
Taxes, different kinds of, 267–269
Telegraph, how controlled, 341
Tennessee, admission of, 64; local government in, 196
Territories, 184–193; governed by Congress, 185; on the American continent, 186–189; insular, 189–193
Texas, annexation of, 69; courts of, 180; local government in, 196; registration in, 345
Tobacco as money, 304
Tonnage duties, 280
Town, the New England, 203–208; origin of, 203; officers of, 206; civic influence of, 207; its influence outside New England, 208
Town meeting, the New England, 205
Towns, 216, 218
Township, 210–214; in New York, 211; in Pennsylvania, 212; functions of, 213; organization of, 213; and good citizenship, 214; area and division of, in the West, 356
Trade unions, 369–371; in England, 370; in the United States, 371; aims of, 371; recognized by government, 372
Treason, 381
Treasury, Department of, 141
Treasury notes, 314
Treaties confirmed by Senate, 130; described, 260
Tribe, organization of the, 4
Trust agreements, 364
Trusts, development of, 361–365; extent of, 365; advantages and disadvantages of, 366; problem of, 365–368; efforts to control, 367
Tutuila, 192
Tyranny, 14

U

United States, a federal republic, 39; separates from England, 41; under the Articles of Confederation, 41–47; establishes a federal government, 48; the original boundaries of, 63; expansion of, 64–70; three grades of government in, 73; political parties in, 79–84; and its dependencies, 184–193; foreign policy of, 262; army and navy of, 250–253; financial system of, 272–277; monetary system of, 304–325; banks of, 319; crimes against, 380; its educational activities, 356
United States banks, 319; opposed by Jackson, 320; collapse of, 320
United States Notes, 289, 322–325; issue of, 323; redemption of, 324; legality of, 324
Universities, 356
Utah, admission of, 69; woman suffrage in, 105; eight-hour law in, 373

V

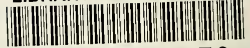
Vermont, admission of, 64; changes form of legislature, 162
Veto power, 28; of President, 135; of governor, 172
Vice-President, 136
Villages, 218
Virginia, first legislature in, 19; sends commissioners to Mount Vernon, 46; in Convention of 1787, 117; early county in, 196
Voters, qualifications of, 103; duties of, 105

W

War, Department of, 141; Secretary of, 251; declared by Congress, 250; management of, 251
Washington, George, on the independence of the departments, 29; efforts of, to strengthen

Tho w.B.
1
297715
Jof C
6102-D
41

Union, 46; President, 48; election of, 133; and his secretaries, 140
Washington (city), 188
Washington (State), admission of, 69; municipal home rule in, 76
West Point, academy at, 357
West Virginia, admission of, 67; local government in, 196; registration in, 345
Whig party, 81
Wilson Bill, 332
Wisconsin, admission of, 66; town government in, 208; township government in, 211; registration in, 345
Women, the political rights of, 105
Wyoming, admission of, 68; female suffrage in, 105; labor clause in constitution of, 372


LIBRARY OF CONGRESS
0 027 272 752 1