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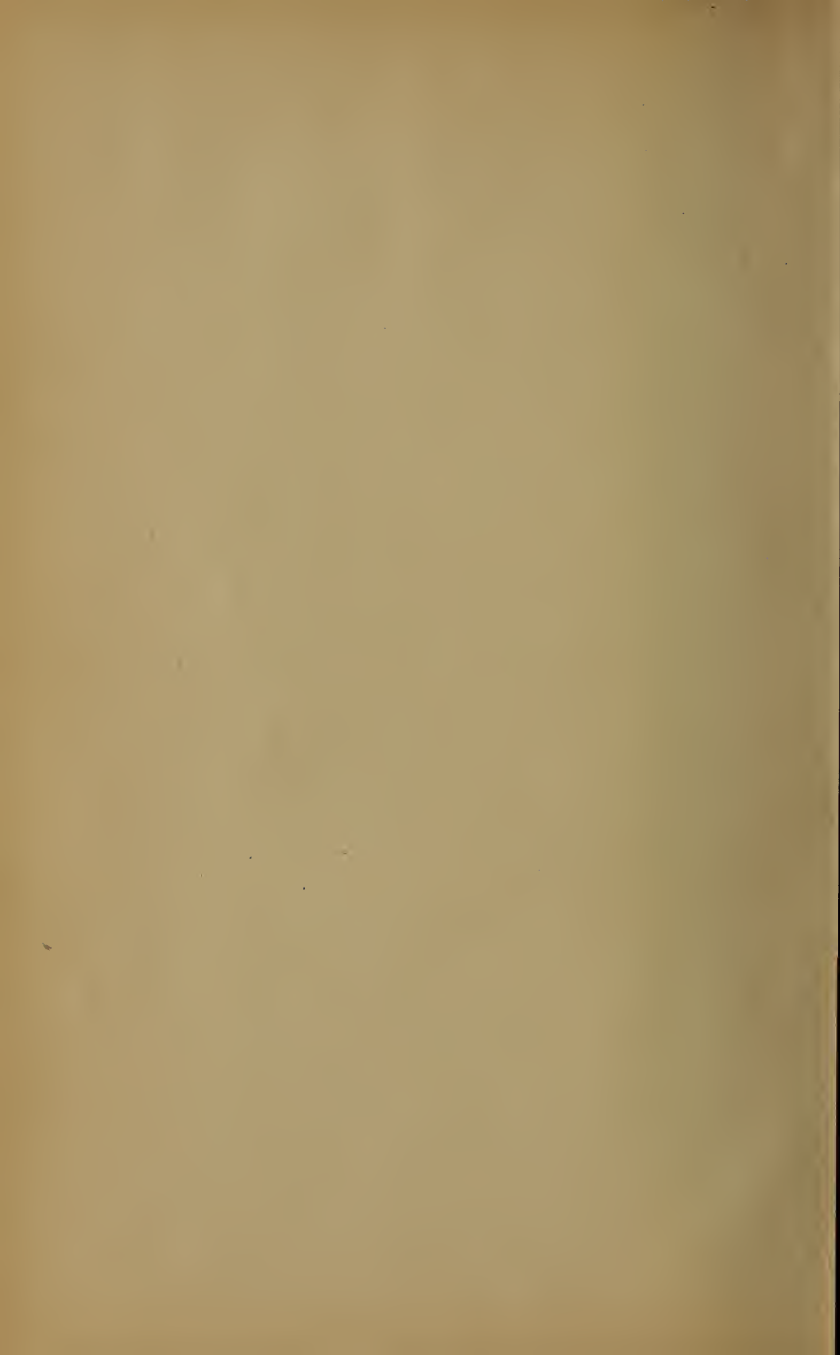
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# CIVICS

## FOR NEW YORK STATE

BY

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*Member of the New York Bar*



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*Civics for New York State*

W. P. I



## Preface

No text-book, however good, can take the place of the teacher. The book may supply materials for study, furnish an outline and guide for the student, stimulate him to original thought and inquiry; but it is the teacher, after all, who must vitalize the subject.

It is the aim of *Civics for New York State* to help the teacher in his efforts to help the boys and girls of New York to an understanding of the several governments, local, State and national, under which we live; to arouse in their minds an interest in the work which the different governments are called upon to perform; and to inspire our young people with a love not only for their country and State, but also for the city or other local division in which they live, and a desire to see its public business wisely and justly administered.

To accomplish these purposes the author has aimed, first of all, to make the subject—often looked upon as a somewhat dry one—alive with interest; secondly, to develop it in accordance with true pedagogic principles; thirdly, to treat it historically, so that present forms and institutions may be traced to their historic origins; and fourthly, to combine all with a full and comprehensive summary of the latest general laws and principles underlying the governments affecting the people of New York, and an account of our more important public officers, their powers and duties.

With these ends in view, the book at the same time follows closely the plan laid down by the New York State Board of Regents in their Syllabus outlining the subjects necessary to be mastered in order to pass the Regents examinations in civics; and the student who makes a careful reading of this book and its collateral references should be able to pass any ordinary Regents examination in civics.

Besides its use as a text-book, it is hoped that the book may prove of interest and value to the general reader, leading him to realize more vividly the truth that governments, laws and public officials are but the machinery by which he and his neighbors secure the doing of needed public work; that he has a direct interest in the proper performance of this work; and that his interest requires his attendance at the caucus and the primary as well as at the public elections. In short, it is hoped that *Civics for New York State* will stimulate good citizenship, not only in the schoolroom, but in the busy world outside.

The summaries following the several chapters, and the maps and diagrams accompanying the text, will aid the student in his efforts to fix the subject clearly in mind. Further sources of information will be found at the close of a number of chapters under the title "Additional Reading." The "Regents Syllabus," (page 351) with page references to this book, will be found helpful to those who are preparing to pass the Regents examinations.

C. DE F. HOXIE.

# Contents

CHAP.	PAGE
I. THE TOWN AND ITS PUBLIC WORK . . . . .	7
II. GOVERNMENT BY TOWN MEETING . . . . .	13
III. TOWN OFFICERS, THEIR POWERS AND DUTIES . . . . .	23
IV. THE VILLAGE AND ITS GOVERNMENT . . . . .	33
V. THE GOVERNMENT OF CITIES . . . . .	40
VI. GREATER NEW YORK . . . . .	52
VII. THE COUNTY . . . . .	70
VIII. THE STATE, AND THE PEOPLE WHO MADE IT . . . . .	84
IX. HOW NEW YORK BECAME A STATE . . . . .	94
X. THE STATE CONSTITUTION . . . . .	103
XI. PERSONAL RIGHTS . . . . .	113
XII. THE RIGHT TO VOTE . . . . .	124
XIII. DEPARTMENTS OF STATE GOVERNMENT—THE LEGISLATURE .	131
XIV. THE LEGISLATURE—(CONTINUED) . . . . .	140
XV. THE STATE'S EXECUTIVE DEPARTMENT . . . . .	153
XVI. THE JUDICIARY DEPARTMENT—HOW CRIMINALS ARE BROUGHT TO JUSTICE . . . . .	166
XVII. THE JUDICIARY DEPARTMENT—CIVIL SUITS AT LAW . . . . .	178
XVIII. THE PUBLIC SCHOOLS . . . . .	189
XIX. ASSESSMENT AND COLLECTION OF TAXES . . . . .	201
XX. THE CONDUCT OF PUBLIC ELECTIONS . . . . .	214
XXI. THE STATE AND THE UNITED STATES . . . . .	224
XXII. THE UNITED STATES, THE STATES, AND THE PEOPLE . . . . .	238
XXIII. DEPARTMENTS OF UNITED STATES GOVERNMENT . . . . .	260
XXIV. THE UNITED STATES AND OTHER NATIONS . . . . .	286
XXV. PERSONAL AND PROPERTY RELATIONS . . . . .	303

## Appendix

Constitution of the United States . . . . .	317
Summary of New York State Constitution . . . . .	329
Table of the principal officers of local, state, and national governments, with mode of election or appointment, term of office, and salary . . . . .	347
Regents' Syllabus, with references to corresponding topics in this book . . . . .	351
Index . . . . .	355

---

 Maps, Diagrams and Illustrations

City of New York, by Boroughs and Districts of Local Improvements, . . . . .	52, 53
City of New York, by Senate and Assembly Districts . . . . .	56, 57
Map of Oneida County, showing towns, villages and cities . . . . .	71
State, by Counties . . . . .	72
State, by Senate Districts . . . . .	138
Senate Chamber . . . . .	134
State Capitol . . . . .	142
State, by Judiciary Districts . . . . .	186
Specimen Ballot . . . . .	219
The Capitol at Washington . . . . .	265

## CHAPTER I.

### The Town and its Public Work.

As we travel a country road in the early spring we sometimes come to places where the rains have washed deep holes in the roadbed. Rough stones and boulders lie uncovered ; a small bridge has been carried away by the floods ; our wagon wheels sink deep in mud and water. The road as it stands can no longer be used in comfort and safety. It must be repaired. Earth and gravel must be drawn and placed on the roadbed, the bridge must be rebuilt, and the water drained away.

Who is to do this work, so necessary for the comfort and safety of the travelling public ? Who will superintend the workmen to be employed ? Who will pay their wages ? Who will supply materials for repairs ? These are questions which confront at some time or other, every person living upon a public road, or interested in its use.

The natural answer to these questions is that the public officers in charge of the road will see to its repair, and that the taxpayers will meet the expense. But here again arise more questions. Who and what are public officers ? How are they chosen ? What gives them authority over roads and other public affairs ? How does the money to pay for needed public work find its way from the pockets of the taxpayers, into the hands of the proper public officers ? In attempting to mend our country road, we find ourselves

face to face with questions involving almost the entire machinery and authority of government.

The first step naturally taken in the mending of the road would be to call a meeting of the persons most immediately interested, to discuss the work to be done, to decide on the amount of money needed, to select suitable persons to supervise the work, to apportion each interested person's share of the cost, and to arrange for collecting the money. This natural method of procedure corresponds very closely with the legal method of securing the performance of most needed public work in the country districts of New York. In these places meetings of the voters are regularly held to discuss and decide questions relating to the public business. These meetings are known as Town Meetings. Regular town meetings are held once in every two years in all the towns of New York. This brings us to another question, What is the town?

**The Town.**—If we start from a country place in New York, and drive off in any single direction for three or four miles, we shall come to the borders of another town from the one where we started. Wherever we go throughout the State, except in the cities, we find the country cut up into towns, or townships, as they are sometimes called. As a rule, each town differs in size and shape from all the others; but no town is so large that its voters may not conveniently gather in town meeting. In many of the western States, towns are laid out in blocks of territory, six miles long and six miles wide, like the squares on a checkerboard, each town containing about thirty-six square miles. Towns in New York<sup>1</sup> and the older eastern States, are not thus laid

<sup>1</sup> Except in the western part of the State, and in some portions of the central part.

out; but they were formed gradually as people from Holland, England, and other European countries, came two or three hundred years ago to this country, built forts and established trading posts to trade with the Indians, cleared the land of forests, laid out farms and gathered in villages. As public necessity required, local governments were established, and local officers chosen to administer public affairs. Thus many towns of New York were formed, here and there, with irregular boundaries and of different shapes and sizes; and out of these early forms have gradually developed our present city, town and village governments. We may speak, then, of a town in New York, as lying within a certain piece of territory, the voters of which meet regularly to select town officers and order the town's public work. Several towns united form a county,<sup>1</sup> of which there are sixty-one in New York.

**The Town a Municipal Corporation.**—But while a town may be said to lie within a certain definite piece of territory that may be shown on a map, the town itself is not territory. The real town consists of the townspeople living within the territory, who are united for purposes of town government. In this sense a town is a municipal corporation, which being explained, means a number of persons associated together for purposes of government, and having by law power to do or direct the public affairs of a certain territory. A town, then, consists of the people of the town united in a body politic, or municipal corporation.

**The Town Governed by Its People through the Town Meeting.**—The town's public business is largely transacted by its voters assembled in town meeting. In the town meeting any voter may propose any action of interest to the

<sup>1</sup> The counties forming the city of New York have now no towns.

townspeople, allowed by the law ; his proposition may be debated by the voters in open meeting, and decided, "yes" or "no," by majority vote of those present. The final decisions of a town meeting upon questions relating to its public affairs, are known as the town's By-laws. The word "by" in by-law comes from an old Norse word meaning town. It probably crept into our language centuries ago, when the Danes were masters in Great Britain and Danish kings sat on the English throne. In our New York town meetings, money needed for carrying on the town's public work may be voted, Assessors may be chosen to apportion each person's share of the money to be raised in town for public purposes, and a Collector to collect this money. Money thus lawfully assessed and collected from private persons for public purposes is called a Tax ; and the power to assess and collect taxes, possessed by the town meeting is one of the most important powers of government.

The work of the town meeting, thus described, constitutes very largely what we call "governing the town." Indeed, for many purposes, we may say that the town meeting, attended by the lawful voters of the town, discussing the town's public work, electing officers to carry on that work, and directing the assessment and collection of taxes, is *the government of the town actually assembled and doing its work*. We sometimes speak of "the government" as if it were some mysterious, far-away institution, quite apart from the common people. In the town meeting, we see that "the government" consists of the people, assembled according to the forms of law, discussing and directing their own public work.

**The Town an Example of Direct Democratic Government.**—The government of a town by its voters assembled



in town meeting, is an example of what is known as direct democratic government, as distinguished from what is known as representative democratic government.<sup>1</sup> Under direct democratic government, the voting population decides directly, "yes" or "no," questions relating to public affairs. Under representative democratic government the voters choose certain persons to represent them, and then leave to these, their chosen *Representatives*, the decision of public questions, and the direction and management of public affairs. As the town is an example of direct democratic government, so our city, county, and State governments, as well as the government of the United States, are examples very largely of representative democratic government, public affairs under these governments being conducted mainly by bodies of representatives chosen by the people. Thus, the representative law-making body of the city is the Board of Aldermen, of the county the Board of Supervisors, of the State the State Legislature, of the United States the national Congress. This distinction between direct and representative democratic government will be shown more fully in examples given in later chapters of this book. Meanwhile it is well to remember that in no place do the people of New York come into more direct relations with their government than in the town meeting.

### SUGGESTIVE QUESTIONS.

What officers have charge of public roads in your locality?

<sup>1</sup> Democratic comes from the Greek words, *demos*, the people, and *krateo*, to govern. Hence, democratic government means a government by the people.

How is the money supplied for the care and maintenance of such roads?

Locate your town, with reference to other towns, and describe its boundaries.

Describe the circumstances of the first settlement of your town.

What is the town?

What is a municipal corporation?

What are town by-laws, and how are they made?

What is a tax?

How are town taxes voted?

What would you say of a government that did not have the power to tax?

What is direct democratic government, and how does it differ from representative democratic government?

## CHAPTER II.

### Government by Town Meeting.

LET us attend a town meeting held in one of the towns of New York. Every town, we have learned, holds a regular town meeting once in two years, and special meetings may be called at other times on petition of the taxpayers. As a rule, biennial town meetings are held on the second Tuesday in February, or on the second Tuesday in March of the odd-numbered years, these being the dates fixed by State law.<sup>1</sup> As we approach the town hall or other place where the meeting is being held, we notice an unusual stir about the building. Men are going in and coming out. Horses and wagons stand waiting outside, for many of the voters have driven considerable distances to attend the meeting. Inside we meet with a crowd of townspeople—staid business men, farmers bronzed and gray-bearded, bright young fellows just reached twenty-one, the shrewd-faced country lawyer, the doctor, the preacher, and the schoolmaster. Every wide-awake voter attends the town meeting.

At one end of the room, facing the people, sits a Justice

<sup>1</sup> The latter date is for town meetings in counties having more than 300,000 and less than 600,000 population. The board of supervisors of any county has power to fix the time for holding its biennial town meetings on any day between February 1 and May 1, inclusive, or on the first Tuesday after the first Monday in November (General Election Day).—Laws of 1900, Chapter 374. Special town meeting may be called at any time on petition of twenty-five taxpayers, or by certain town officers.

of the Peace, the officer chosen to preside. Before him is a row of ballot boxes. In charge of these are officers known as Inspectors of Election. Near by is a row of small booths or stalls with swinging doors, each just about large enough to admit a man. Men are going in and coming out of the booths, each with an official ballot, on which are the names of fellow-townsmen to be selected as public officers of the town for the next two years or more. The voters coming from the booths hand their ballots, marked and folded, to an inspector of election. The inspector separates the "stub ends" and drops the ballots, still folded, through a thin slit in the top of the ballot box. We see through its glass sides, the ballots fall among those already in the box. This is the scene which has been going on in the town meeting since sunrise.

Twelve o'clock noon comes. The presiding justice of the peace now declares the meeting open for the discussion of the business not to be decided by ballot. Any voter of the town may now propose in open meeting any question of interest to the townspeople, allowed by the law; the voters present may debate it and decide it, "yes" or "no," by majority vote of the meeting; and if adopted, it becomes one of the by-laws of the town. What are the questions which the people may thus debate and decide in the town meeting?

**Powers of a Biennial Town Meeting.**—We find, laid down in the laws of New York, that a biennial town meeting, besides its power to select town officers, has these additional powers:

Power to decide how many constables, not exceeding five, the town may have; to direct the prosecution or defense of lawsuits in which the town is interested; to pass by-laws for the destruction of noxious

weeds and animals in the town ; to establish pounds or enclosures where stray animals may be confined ; to abate a public nuisance ; to make rules for the management of the public property belonging to the town, such as a town hall, a park, or a common owned by the town ; to make rules for ascertaining whether boundary fences are properly built and kept ; to direct the raising of money for the support of poor people in the town who need assistance ; and finally, a very broad power, described as " power to determine any other question lawfully submitted." <sup>1</sup>

Any proposition relating to the carrying out of any of these powers may be introduced by any lawful voter of the town meeting, may be discussed, and decided, " yes " or " no," by majority vote of the meeting ; but no question involving the spending of the town's public money may be proposed after two o'clock in the afternoon, and any proposition to spend over \$500 must be decided by ballot. The Town Clerk acts as secretary during the discussions, recording the result of each vote taken. The presiding justice of the peace preserves order, and conducts the meeting according to the rules of debate. When this deliberative business is concluded, the meeting is again opened for the election of public officers, and for the determination of other questions to be decided by written or printed ballot.

**Procedure in Case of Questions Decided by Written or Printed Ballot.**—Important propositions relating to a town's public business are sometimes decided by written or printed ballot, without previous debate in the town meeting. In such a case the proposition is first submitted to the town clerk, who has ballots prepared both for and against it. The clerk causes notices of the proposition and the proposed vote upon it, to be posted in conspicuous places at least ten days before the meeting, so that every voter may

<sup>1</sup> Laws of 1897, Chapter 481.

inform himself and come prepared to cast an intelligent ballot.

**Town Meeting a Very Old Form of Government.**—The principle underlying the town meeting—that of direct local government by the people—may be traced in the practices of the earliest known ancestors of the English-speaking people. More than a century and a half before the Christian era the Roman general Julius Cæsar found the fair-haired Teutonic or German ancestors of the English, living in groups of related families, on the banks of the Elbe, the Rhine, and the Weser, and along the borders of the North Sea. These family groups moved each year from place to place, taking with them their horses, cattle and other possessions. The members of each group were united by the tie of blood relationship, and each had its head man or chief. Such a wandering family group is called a clan. It is the first or primitive form of political organization among partially civilized people. Questions of interest to the clan were decided by its fighting members<sup>1</sup> in public meeting, much as questions are to-day decided by the voters of a town meeting.

**The Mark.**—One hundred fifty years after Cæsar, the

<sup>1</sup>“The earliest form of political union in the world is one which rests, not upon territorial contiguity, but upon blood relationship, either real or assumed,” says Mr. John Fiske in *American Political Ideas*. The primitive clan, existing as an enlarged kind of family, had its consultative or legislative body, which met for the discussion and decision of questions of interest to the entire clan. This consultative or legislative body, according to Mr. Herbert Spencer, was at first only a council of war. “Evidence coming from many peoples in all times shows,” says Spencer in his *Political Institutions* “that the consultative body is at the outset nothing more than a council of war. It is in the open-air meeting of armed men that the cluster of leaders is first seen performing that deliberative function in respect of military measures, which is subsequently extended to other measures.”

Roman historian Tacitus wrote of our German ancestors. The clan had then ceased to move from place to place. Each group of related families had settled down in its own village, on its own spot of cleared land in the forest, by spring or running stream. About the village were the flocks and herds and farms of the village community. Surrounding such a farmer village was a thick-set hedge or palisaded wall to protect it from its enemies; and each village, with its farms, was separated from neighboring villages by a belt of waste or uncultivated land. This belt was called a "mark," and the protecting hedge or wall was called a "tun" (pronounced toon). In course of time all within the mark, including the village itself, became known as "the mark," "the tun," or "the town." Thus arose the English words, "town" and "township." At first the farm lands of such a village community were owned in common, and once a year in early spring the freemen of the town gathered in "tungemote" (town meeting) to parcel out these common lands for cultivation. Here on a high mound or under the spreading branches of a great tree, the "tungemote" decided the customs of tillage and voted "yes" or "no," on the question of admitting strangers to the protection of the tun, and to a share of the common lands.<sup>1</sup>

<sup>1</sup> For a complete account of the mark system, see Stubbs' *Constitutional History of England*, Volume I., Sections 23, etc. Fiske says: "The Mark community was a complete self-governing body. The assembly of the marksmen, or members of the community, allotted lands for village cultivation, determined the law, or declared the custom as to methods of tillage, fixed the date for sowing and reaping, voted upon the admission of new families into the village, and in general transacted what was regarded as the public business of the community. In all essential respects this village assembly or mark-mote would seem to have resembled the town meetings of New England."

**The Town Meeting Carried Into England.**—Our German ancestors were a race of warriors and conquerors. In the fifth and sixth centuries, three Low-German<sup>1</sup> peoples, speaking different dialects of a common tongue, crossed the North Sea and landed on the coast of Britain. They drove back or conquered the inhabitants, and colonized the country. On English soil they planted the “tun” and set up the town meeting. Here, as in the forests of ancient Germany, the freemen met in “tungemote,” passed “by-laws” for the ordering of the town’s public business, chose a “reeve” or head man to preside over the town meeting, and to enforce its by-laws; and a “tithingman,” or petty constable, to arrest offenders against the law, and to preserve the public peace.

**The Parish.**—When England in the sixth and seventh centuries became converted to Christianity, churches were built and the land was divided into parishes, each under its parish priest. In this division for church purposes, the boundary of a parish usually coincided with the boundary of a township, and the freemen of the town became voters in the “Vestry Meeting” that governed the parish for church purposes. The vestry meeting was so called because it was held in the room of the church where the vestments were kept. In this meeting the voters of the parish church taxed themselves for church purposes, and for the support of the poor. The freemen of the town, being usually church members, voted in vestry meeting, and soon affairs of the town became so involved with affairs of the parish, that nearly all were transacted in vestry meeting. In this way the voters elected in vestry meeting, along with “church wardens,” or over-

<sup>1</sup> So called because they lived in the lowlands of what is now Germany and the Netherlands.



seers of the church, "way wardens," or overseers of the highways, and the petty constable or "tithingman." A vestry clerk was also chosen to keep the records of the vestry meeting and the parish.

**The Manor.**—While the English town was thus losing its identity in the parish, great political changes took place in England. During the fighting which resulted in the conquest of Britain great chiefs arose. Little kingdoms were formed, ruled by petty kings. These chiefs and kings seized on the conquered land and parcelled it out in large allotments to their followers. As early as the eighth century, it is said, conquest and purchase had given rise to great estates, so that all the arable land in some neighborhoods was in the hands of one wealthy proprietor or lord. Gradually the great lords absorbed even the lands of the free townsmen, and the townspeople passed from independent villagers occupying their own lands, to tenants living on the land of a lord. After the conquest of England by William of Normandy in 1066, what was once the free English township had become the Manor<sup>1</sup> of the lord.<sup>2</sup> The principle of local

<sup>1</sup> Manor, from the Latin word *manere*, to dwell, denoted originally the large mansion or dwelling of the lord.

<sup>2</sup> On the relation of the ancient English town to the parish and the manor, Professor Stubbs, in his *Constitutional History of England*, Volume I., Section 39, says: "The unit of the constitutional machinery or local administration, the simplest form of social organization, is the township. It may represent the original allotment of the smallest subdivision of the free community, or the settlement of the kindred, colonizing on their own account, or the estate of the great proprietor who has a tribe of dependents. The internal organization in both cases seems to have been much the same, for the dependent communities had probably in most cases been originally free, and reduced to dependence by a powerful neighbor; or were composed of his tenants who entered into the rights and duties of men whose estates their lord had purchased or accumulated by inheritance." In Section 40 he says: "In a further stage

self-government by the people survived, however, in certain meetings of the manor. The adult male residents assembled in the manor Court Leet, presided over by the lord's steward. Here a jury was chosen to inquire into offenses against the law, and here by-laws were made regulating the intercourse of the people of the manor. In Court Baron the freeholders of the manor—those holding lands of the lord—met and decided disputes between tenants, or between the tenants and their lord.

**The Town Meeting in America.**—When the Pilgrim Fathers came to America in 1620 they brought with them the principle of the town meeting. On shipboard, while yet out at sea, the Pilgrims gathered about their leaders in the *Mayflower*, and signed a written document which laid down a plan for the government of the settlement which they proposed to found. This document is sometimes spoken of as the first written constitution adopted by the people of America. Under it every freeman was to have a voice and vote in the decision of public affairs. The Pilgrims were one branch of the great body of religious reformers, known as Puritans. Soon after the coming of the Pilgrims great numbers of Puritans came to New England, where they settled. They grouped themselves in villages about the village church, each village surrounded by the farms of the villagers, much as the ancestors of the English had grouped themselves in the ancient German mark. Here

the township appears in its ecclesiastical form as the parish or portion of a parish, the district assigned to a church or priest. The boundaries of the parish and the township or townships with which it coincides are generally the same; in small parishes the idea and even the name of township is frequently at the present day, sunk in that of the parish; and all the business that is not manorial is dispatched in vestry meetings, which are however primarily meetings of the township for church purposes."

in its primitive simplicity was again set up the town and the town meeting. All the grown men of a New England township were expected to attend its annual town meeting, held in the spring of the year, to pass by-laws and to elect town officers.

**The Town Meeting in New York.**—The Dutch, who settled New York, were descendants of the same Low-German stock as the English. Holland, the home of the Dutchmen, “early became an aggregate of towns, each providing for its own defense, administering its own finances and governing itself by its own laws.<sup>1</sup> The Dutch brought the principle of the town meeting to “New Netherland,” as they called what is now New York; and the Dutch settlements on Long Island, and along the Hudson River, were early given the privilege of choosing their own public officers and making by-laws for their own local government “according to the customs and manners of Holland.”<sup>2</sup>

In 1664 war between England and the Netherlands resulted in New Netherland becoming an English province. It passed into the hands of the English Duke of York and became known thereafter as New York. Under English rule town meetings were established in New York, at which the landowners elected “a constable and eight overseers” who acted as a local governing board for the town with power to make town by-laws.<sup>3</sup> This form of government was less democratic than in New England, where the town officers simply carried out the wishes of the town meeting. In the next chapter will be described town government as we find it to-day in New York.

<sup>1</sup> Broadhead's *History of New York*.

<sup>2</sup> Elting's *Dutch Village Communities on the Hudson River*.

<sup>3</sup> Thwaites's *Colonies*.

## SUGGESTIVE QUESTIONS.

Where are town meetings held in your town?

Are these meetings held in a single place for the town as a whole, or are they held in the different election districts?

What is the date of the next biennial town meeting in your town?

Who may vote at town meetings?

What are some of the questions that may be decided by the voters of a town meeting?

What principle of government is common to the ancient German clan, the German mark, the English parish, the court leet of the manor, and the modern town meeting?

In what way were the early town meetings of New England more democratic than the first town meetings in New York?

## CHAPTER III.

### Town Officers, Their Powers and Duties.

IN the New York town meeting we saw the voters passing from the polling booths, each with an official ballot marked and folded, to deposit it in the ballot box. On these official ballots, prepared by the public election officers, appear the names of all persons regularly nominated according to law for town officers. Let us look at an official ballot for a list of officers chosen at a biennial town meeting. Here is the list with the term for which officer is chosen :

**Officers Elected at a Biennial Town Meeting.**—One Supervisor for two years, one Town Clerk for two years, one Collector for two years, one or three Overseers of the Poor for two years, one or three Commissioners of Highways for two years, not more than five Constables for two years, two Inspectors of Election for each election district in town for two years, two Justices of the Peace for four years.

These officers, except the justices of the peace, are known as the town's *Executive Officers*, because they are chosen to execute or carry out the will of the people as resolved in town meeting, and to execute or enforce other town laws. Besides these, two additional inspectors of election are appointed for each election district by the presiding officer of the town meeting, from among the inspectors nominated by the political party that cast votes next in number to the party winning the election. And this brings us to the question : How are the names of persons to be voted for placed on the official ballot ?

**Naming Candidates for Office.**—In every town and city of New York, there are, as we know, two or more political parties—Republican, Democratic, Prohibition, Socialist, etc.,—whose members vote for public officers. The voters of each party in a town meet before election day, at the time and in the manner prescribed by State law, each party in its own nominating convention or primary assembly. In these meetings the voters choose the men whom their party will support for public office at a coming election. These “nominations,” as they are called, are sent to the officers whose duty it is to prepare the official ballots, and the names are placed in separate party columns on the ballot. There is also a column in which any voter may write the name of any person for whom he wishes to vote, though that person may not have been named by the convention or primary assembly of any party. The voter takes an official ballot, thus prepared,<sup>1</sup> into the voting booth, and there indicates by a pencil mark the names of those for whom he wishes to vote. The ballots thus marked are deposited in the ballot box, the nominee receiving the most votes for a particular office being elected.

**Town Executive Officers—The Supervisor.**—The chief executive officer of the town is the supervisor. This is a comparatively modern office, the first supervisors in the towns of New York having been elected under a State law passed in 1703. The supervisor receives and pays out all moneys raised for the public work of his town, except moneys raised for highways and for the support of the poor. Money for highways goes to the commissioner of highways, and money for the support of the town poor to the overseers of the poor. The supervisor, although elected

<sup>1</sup> See Chapter XX., The Conduct of Elections, for specimen official ballot.

by the people of the town, is a county as well as a town officer ; and he represents his town in the law-making body of the county known as the County Board of Supervisors. This custom of representing the town in the county board of supervisors may be traced to an old English custom of sending the "reeve" or head man of each town, and "four discreet men," to represent the English town in the political gathering known as the "shire mote," (shire meeting) the English shire corresponding to our county.

**The Town Clerk.**—The town clerk is a sort of general clerk or secretary for the town. He keeps a record of the public business transacted at town meetings, and has charge of books and papers belonging to the town. Our modern town clerk is a lineal descendant of the clerk elected by the voters of the parish in the old English vestry meeting.

**Highway Commissioners.**—The highway commissioners have the general care and oversight of roads and bridges in the town. They divide the town into Road Districts and appoint an Overseer of Roads for each district. Money for the roads may be collected as a part of the general town tax, or it may be raised from the people of the different road districts. In some towns every male resident<sup>1</sup> twenty-one years of age and over, is required, either to work one day or to pay for at least one day's work in a year on the public roads of his district. This individual tax is sometimes called a "poll tax," that is a tax levied on each "poll" or head. A person taxed for maintaining the roads of his district may "work out" his tax by himself performing labor upon the roads, or he may pay the tax in money. "Working out the road tax" is a very old English custom, the British churl

<sup>1</sup> Certain persons, as clergymen, old soldiers, etc., are exempt from the poll tax.

of twelve hundred years ago being familiar with "the spectacle of the road officer with his company of neighbors engaged in repairing the public ways."<sup>1</sup> Besides their general oversight of roads, highway commissioners, may, on the direction of commissioners appointed by the County Judge, lay out new highways or discontinue old ones.

**Overseers of the Poor.**—Persons in town unable to care and provide for themselves or who have no relatives to support them, are looked after by the overseers of the poor. These officers may assist a poor person at his own home, or send him to the County Poor House, to be provided for at the expense of the town.

**Constables.**—The town constable, although his duties are now comparatively humble, may boast of a famous descent. The constable comes from an ancient German officer known as the "tithingman," who was responsible for the good behavior of ten heads of families in the old Teutonic division known as "The Hundred,"<sup>2</sup> a form of government next above the German mark. In England the constable was elected, sometimes by the townspeople, sometimes in the manor court, and sometimes in the vestry meeting. His duties were to arrest criminals and to keep the public peace. The New York constable carries out the legal orders of the justices of the peace. On an order from a magistrate he may arrest persons accused of crime, or he may arrest suspected persons without such an order. The name "constable" comes from two Latin words, "comes stabuli," meaning a master of horse. It was

<sup>1</sup> Howard's *Local Constitutional History of the United States*.

<sup>2</sup>The Hundred was a political division between the town and the larger tribal division corresponding to our county. The State of Delaware is to-day divided into "Hundreds."



formerly applied by the kings of France to commanders of the army. The name was introduced into England with the Norman Conquest, and soon came to mean an officer who supported the king in preserving the public peace.

**Assessors and Collector.**—The assessors fix, for purposes of taxation, the value of each man's taxable property, the amount of the tax which each individual taxpayer is to pay being found by comparing the value of his taxable property with the total value of the property in town subject to taxation. The collector collects each person's share of the taxes, after it has been determined by the proper officers.<sup>1</sup>

**Inspectors of Election.**—Four inspectors of election preside at each polling place<sup>2</sup> of the town meetings or other public elections. They receive the official ballots from the voters, place them in the ballot boxes, and count the ballots at the close of election.

**The Justice of the Peace.**—The justice of the peace is the town's judicial officer, and each town has four justices elected for terms of four years each. The justice of the peace hears and determines suits at law, where the sum sued for does not exceed \$200, and he tries persons accused of petty offenses. He issues warrants<sup>3</sup> for the arrest of persons suspected of crime, and though he may not try persons for grave offenses, such as murder and burglary, he may examine them when arrested and brought before him, and send them to jail till they can be tried by the higher courts. A justice of the peace may order a constable to summon be-

<sup>1</sup> See Chap. XIX., Assessment and Collection of Taxes.

<sup>2</sup> A town meeting may sometimes be divided, the voters of each part of the meeting casting their ballots at separate polling places.

<sup>3</sup> See Chap. XVI., How Criminals are Brought to Justice.

fore him twelve citizens of the town, who are property owners, from among whom six may be drawn as a Justice's Jury, to aid in determining the facts in suits tried before the justice. The office of justice of the peace may be traced to an old English officer known as Conservator of the Peace whose duty it was to afford protection against unlawful force and violence, common during many periods of early English history.

**The Town Board.**—Nearly all officers of the town receive and pay out town money in the discharge of their public duties. They account for this money before what is known as the town board. This is composed of the supervisor, town clerk, and justices of the peace, or any two of the justices. Any person having a claim against the town may present it to the town board, which may allow or reject it. Appeals from decisions of the town board may be taken to the county board of supervisors, which has power to reverse the decision of the town board. A town may elect three Auditors to examine the accounts of its officers, instead of having them examined by the town board.

**Pay of Town Officers.**—Most of the town officers above described are paid from two dollars to six dollars a day for each day of actual service to the town. Justices of the peace, town clerks, and constables are also paid for certain services in fees fixed by State law.

**Three Departments of Government.**—In our study of the town we have seen that its public work is of three quite distinct and separate kinds—first, the making of the town by-laws by the voters assembled in town meeting; second, the carrying out or executing of the laws by executive officers elected at the biennial town meeting; and, third, the

work of judging criminals and trying civil suits at law, performed by justices of the peace. These three kinds of work are known respectively as legislative or lawmaking, executive or law-enforcing, and judicial; and as we study the governments of city, county, and State, and the government of the United States, we shall find these three departments—legislative, executive, and judicial—running through them all.

**The Town and the State**—Thus far we have spoken almost entirely of the town as a self-governing political unit, whose people make their own laws, and enforce them by officers of their own choosing. We have seen, however, that the town is a part of the county, and that county officers may in some instances interfere in town matters. We shall also see that the State government is superior to both town and county. Our New York town meetings are conducted in strict accordance with a plan laid down by the law of the State, while the powers and duties of town officers are fixed by State law. The State, while it leaves to the people of each town, large freedom in managing their own local public affairs, thus provides a uniform plan of government for all the towns.

**Paramount Importance of Local Government.**—This local self-government of town and county under the State law, gives at once stability and elasticity to our institutions. It permits freedom of action and self-help in every locality, and at the same time gives strength and uniformity throughout the State. While it is important to have a State government strong enough to defend the people from public enemies, and able to maintain justice, it is supremely important that all possible freedom be allowed the people in the management of their local affairs, such as is provided in

the government of the town meeting. In this meeting the people come face to face with questions concerning their personal and financial interests. They examine, discuss, and decide these questions largely for themselves. Before they vote money for public improvements they must know where it is coming from, and that ultimately it will come out of their own pockets. They learn prudence as they develop strength in self-government. In the government of their own town they tend to acquire the skill and knowledge necessary to govern the State and the nation, and if need be, to extend our sway over foreign peoples in distant colonies.

**Things to Remember.**—In our study of the town and its government we should remember :

1. That the town is a municipal corporation or body politic, having many powers of self-government conferred upon it by State law ;

2. That the town is a subdivision of the county for purposes of county government, the supervisor of the town being its representative in the county board of supervisors ;

3. That the town by-laws are made by the voters of the town assembled in town meeting ; that they are enforced by the town's executive officers—supervisor, town clerk, constable, etc. ; that the justice of the peace is the judicial officer of the town ; that these three departments of government—legislative, executive and judicial—extend throughout our county, city, State, and national governments ;

4. That the town meeting, representing the primary assembly of freemen, is the oldest form of government known to the ancestors of the English-speaking people ; appearing at different times as the assembly of the clan, the mark, the

parish and the manor; and that this gathering of the free-men in mark-mote, vestry meeting, manor court, and town meeting, where by majority vote of "yes" and "no," they order the public affairs, is our nearest approach to that direct democratic government described by President Lincoln as "a government of the people, by the people and for the people."

### SUGGESTIVE QUESTIONS.

What officers are elected at a biennial town meeting?  
For what terms of office?

Describe the official ballot voted at town meeting.

How are the names of candidates for town officers placed on the official ballot?

What officers constitute the town's executive officers?  
Why are they so called?

Of what county law-making body is the town supervisor a member?

Describe the duties of the town clerk, highway commissioners, overseers of the poor, constables, assessors, inspectors of election, town board.

The justice of the peace is called the town's judicial officer. What does that mean?

What are some of the advantages of government by town meeting?

### ADDITIONAL READING.

For a comparison of different kinds of township government in the United States, including the New York town, see Bryce's *American Commonwealth*, Volume I., Chapter XLVIII. On the origin of the township, read *The Germanic Origin of New England Towns*, by Herbert B. Adams, in Volume I. of the Johns Hopkins University *Studies in Historical and Political Science*; also "The Township,"

in Howard's *Local Constitutional History of the United States*, in the same series. For an account of the transfer of the German mark government to English soil, and the development therefrom of the English parish and the English manor, see Hannis Taylor's *Origin and Growth of the English Constitution*, Part I; also Stubbs's *Constitutional History of England*, Volume I., Sections 20 to 45. For a picturesque description of the mark system of government as it appears in modern times in the smaller Swiss Cantons, see Freeman's *Growth of the English Constitution From the Earliest Times*, Chapter I.

## CHAPTER IV.

### The Village and its Government.

As we drive along a road in the country, a sudden turn of the road, or an opening in the trees ahead of us, will sometimes show us, all at once, as if set in the frame of a picture, the roofs and walls of half a hundred cottages, rising from the masses of green foliage surrounding them; while from the center of the clustering mass a church spire points its sharp finger skyward. As we go nearer, paved or wooden sidewalks replace the footpath along the road. We see a store or two, a blacksmith's shop, a shoemaker's sign, a post office, a schoolhouse and a mill. Perhaps there is a factory with rows of staring windows and rumbling machinery. Such a spot of busy life, set among green fields and surrounded by farms and rural scenery, we call a village.

Such a village may or may not have its own local government distinct from the government of the town in which it has grown up. If it is a village with a population of at least 200 persons, all living within a mile square,<sup>1</sup> its people may, under the law of the State, vote to form themselves into a distinct municipal corporation, with a village government.

**Why a Separate Village Government.**—Why should the people of such a village wish a government independent of the town government under which they live? Because in a village sidewalks must be built, street lamps must be

<sup>1</sup> Laws of 1899, Chapter 154.

erected and lighted, waterworks must be established, a fire engine must be provided, policemen must be employed and paid, and many other common public wants must be supplied, which are not demanded by the people in the sparsely settled farming districts of the town. It would not be just to ask the farmers of the town to help pay for the street lamps and waterworks of the village; and it would not be right for these farmers to interfere in matters which concern the villagers alone. So a village government is set up within the town, but separate from it, to do the public business of the village.

**The Village Still a Part of the Town.**—Such a separate village government does not, however, exempt the village people from the operations of the government of the town in which the village is situated. The village is still a part of the town for town purposes, and the villagers must join with the farmers of the town, and with the residents of other villages, in attending town meeting, and in electing a supervisor, town clerk, and other town officers.

**Plan of Village Government.**—As the State law lays down the general plan for the government of the town, so it lays down the general plan of village government;<sup>1</sup> but the State leaves to the people of the village, as it leaves to the people of the town, the actual management and carrying on of their own local government. The State permits the people of the village to make local by-laws or ordinances

<sup>1</sup> Article XII., section 1, of the New York State Constitution, says: "It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations." Under this rule the Legislature has provided a general plan of government for the villages of the State.



to regulate the conduct of persons within the village, as it permits the town meeting to make by-laws for the government of the town. The village, like the town, also elects its own village officers to enforce its by-laws.

**The Village Charter.**—When the people of a certain territory have voted to incorporate themselves into a village and have decided upon its boundaries and the details of its government, they take the plan to the State Legislature at Albany, and ask that it be enacted into law. If the legislature considers the plan for the proposed village and its government satisfactory, it enacts it into law, and it is then known as the Village Charter.<sup>1</sup> A village charter, thus formed, often occupies many pages in the statute books of the State, and it may be as carefully drawn and as elaborate a document as the State Constitution.

**Four Classes of Villages.**—The State law divides villages into four classes, as follows: First class, village with a population of 5,000 and over; second, population between 3,000 and 5,000; third, population between 1,000 and 3,000; fourth, population less than 1,000. There are different State laws governing the villages of each particular class, although each separate village, as before said, makes its own local by-laws or village ordinances.

**The Village Trustees.**—The village by-laws are made by a special body of officers elected by the voters of the village. These officers are the village board of trustees. A village trustee must own a house, land, or other property, on which taxes are paid to carry on the village government; and the State law requires every village to have

<sup>1</sup> The word charter comes from the Latin word *charta*, meaning a leaf of paper. The village charter, therefore, means literally the paper on which is written the village plan of government.

at least two trustees. Villages of the third class may have four ; second class, four or six ; first class, six or eight. The village trustees have the management of any public property belonging to the village, such as the village lockup, fire engines and engine houses, or the village waterworks. They also have control of its public money. Village trustees are elected—one-half the board each year—at the Annual Village Election, which takes place on the third Tuesday in March.<sup>1</sup> A village trustee serves without pay.

**Powers of the Board of Trustees.**—Among the powers given by State law to the village board of trustees are the following :

Power to establish a village lockup, pound, clock, scales, and market ; to establish village fire limits, name streets, employ a village attorney, construct drains and regulate water courses, establish and regulate the village water supply, and provide lights ; and the trustees as a board, have all the powers of separate boards of fire, water, light, sewer, and cemetery commissioners, if the village have no such separate boards. The trustees may make ordinances for the preservation of peace and order in the streets and public places of the village, regulate public amusements, regulate the speed of locomotives and cars at street crossings, subject to the State railroad law ; regulate the use and sale of fireworks, inflammable materials, and gunpowder, and may issue certain uniform licenses. The board holds an annual meeting on the Monday following the annual village election. A majority, including the village president, constitute a quorum to do business. Laws made by the board are known as village ordinances.

**The Village President.**—The village president is the chief executive officer of the village. He is elected at the

<sup>1</sup> This is the date fixed by State law, unless a town meeting in which the villagers take part is held on that day. In such case the village election is held the day after. Laws of 1897, Chapter 414.

annual village election, participated in by all the voters of the village, and he holds office for one year. He acts as president of the village board of trustees, and has a vote in that body. He is the head of the village police force, and he must see that all by-laws and resolutions of the village boards are carried out. He may sue in the name of the village for any penalties due it. He serves without pay, and must be an owner of property paying taxes to the village.

**Other Executive Officers.**—Other executive officers of the village are Treasurer, Clerk, Street Commissioner, Collector, Assessors, and Village Engineer. The first five are usually elected by the voters and serve for one year.<sup>1</sup> Every village must have a Board of Health of from three to seven members, appointed by the trustees. This board elects a Health Officer, who must be a physician. The board takes measures to do away with public nuisances, such as open drains and cesspools, and makes regulations to prevent the introduction and spread of disease. The village treasurer receives and handles the public moneys of the village raised by taxation and otherwise. The village clerk has charge of the public documents and records of the village and of its corporation seal. He also acts as clerk of the village board of trustees. The village street commissioner has, under the direction of the village trustees, the general care and supervision of the public streets, parks, walks, culverts and wells of the village. The compensation and power of all these officers are largely fixed by the village board of trustees.

**The Village Police Court.**—A Police Justice may be elected every four years by the voters of a village. Persons

<sup>1</sup> Laws of 1897, Chap. 414.

charged with offenses against the village ordinances are brought before the police justice, tried and sentenced. The police justice, like a justice of the peace, may also command the arrest of criminals; and he may hold a Court of Special Sessions for the trial of misdemeanors committed in the village.

**Special Village Elections.**—A special village election, similar to a town meeting, may be held, whenever a question of interest to the villagers is to be decided, or such a question may be decided at the regular election. At such elections each proposition must be voted upon by ballot, and no person may vote on a proposition, unless he or his wife owns property paying taxes to the village. Such questions as, "Shall the village extend its system of waterworks?" "Shall it have a new police station?" "Shall it put in electric lights?" are thus decided by the village taxpayers at the village elections. While only the taxpayers of a village may vote upon propositions, any male citizen who has been for thirty days a resident of the village, and who is a qualified voter at the town meeting, may vote for village officers.

**Things to Remember.**—The village, like the town, may be organized as a municipal corporation, with its village government independent of town government; but the people of such a village are still a part of their town and subject to town government.

The village lawmakers are its president and board of trustees. The president is also the chief executive officer of the village. The village police justice is its judicial officer, though any justice of the peace of the town in which a village is located, may exercise his powers in the village.

Special village elections, similar to town meetings, may be held in a village to decide, "yes" or "no," by vote of its taxpayers, questions of interest to the village.

### SUGGESTIVE QUESTIONS.

Why does a village need a government independent of the government of the town in which it is situated?

What are village ordinances? By whom are they made?

Tell how a village may obtain a charter form of government.

What name is given to a member of the village legislative body?

Name some of the powers of the village board of trustees.

What is the chief executive officer in a village government?

What judicial officer in the village government corresponds to the justice of the peace in the town government?

Name some purposes for which a special village election may be held. Who may vote at such elections? What distinction is made between the voters at a special village election, and those who may vote for village officers?

## CHAPTER V.

### The Government of Cities.

A CITY is a village grown large, and all that has been said of the need and value of a separate government for the incorporated village, applies with even greater force to the city. The village contains a few hundreds or thousands of people with common public interests, but the city has a population of tens or hundreds of thousands, and has highly organized and complex public activities. The few hundred rods of sidewalk and roads in the village, become miles of sidewalk and paved streets in the city, traversed by horse and electric railroads, honeycombed with sewers and gas pipes, crossed and lined by thousands of telegraph and telephone connections, and studded with a forest of street lamps. The village needs a constable or two to keep the peace; but the city must have its trained and disciplined police army, with detective bureau, station houses, patrol wagons and city prison. The village spends a few thousands of dollars to bring pure water from near-by springs into its streets and houses; but the city must spend hundreds of thousands, perhaps millions, on its system of waterworks. It must have costly aqueducts and water stations, and employ a corps of trained engineers. The village may have its single fire engine and volunteer fire company; but the city must have a paid fire department, with perhaps hundreds of signal stations and dozens of engines. A city may have its street-cleaning department, its charities department, its park

department, its department of law, and its department of finance—all under competent and well-paid officers.

**Special Forms of City Government.**—To do the vast and complicated public work of a city requires a special form of government, depending on the size and location of the city. But though differing in detail, the general plan of government for cities is much the same throughout the State. Each city, like each town and incorporated village, is a municipal corporation having its own local legislative, executive, and judicial officers; each makes and enforces its own local by-laws or city ordinances, as they are called; and each is dependent upon the State for its particular form of municipal government.

**City Charters.**—Up to within a comparatively recent time there have been few general State laws for the government of cities in New York; but each village, as it became large enough to feel the need of a city government, has framed a special plan of government for itself, and applied to the State legislature to have it enacted into law. Such a plan of city government, defining the powers and duties of city officers, and the municipal rights of its people, as we learned in the chapter on the village, is called a charter.

**Ancient Charters.**—The practice of giving special charters to particular cities by the governing power in the state, is a very old one; and many rights and liberties which the people now enjoy have come down to us through this custom. In very early times the kings of England and other European countries had almost unlimited power over the people living on the great estates and in the cities of their realms. The king parcelled out the land to his chief warriors and nobles, who lived in great fortified castles, and were bound to serve him and fight for him, and to furnish

soldiers for the king's army in payment for the use of their lands. As cities increased in size and men began to turn their attention from fighting and farming to trading and manufacturing, it became customary for the people of a city, when called upon to furnish soldiers for the army of the king or their overlord, to pay instead a sum of money. This custom gradually grew into the plan of paying an annual rent to the king or lord. But it sometimes happened that the king or lord of a city wanted more money than its customary rent. At such times the city might pay the money demanded, on condition that its lord give it some privilege or right of self-government, such, for example, as the right to have a city court with a judge chosen by the people, instead of appointed by the lord. The rights thus given at different times to a city were preserved, and together formed its charter, which its king or lord could not lawfully violate. The great city of London, thus obtained in the year 1101 from King Henry I. of England the right to elect its own chief magistrate and sheriff.

**Origin of the English Boroughs.**—At its beginning the English city was little more than an ordinary English township more thickly populated than usual. Such towns grew up at the mouths of rivers, on bays or arms of the sea, or at the meeting of highways where the people gathered for manufacture or trade. As such a town increased in population, and its inhabitants became wealthy, a high and thick stone wall, with heavy gates and towers that could be defended against bands of robbers or other enemies, took the place of the original hedge or protecting "tun." The town was now called a "burh" or borough, which means a fortified place. Within the walled borough, government went on much as in the ordinary town. The free townspeople or



“burghers” met in “borough mote” (borough meeting), chose a head man or “borough reeve,” and made by-laws for the government of the borough. Sometimes the borough was composed of several closely united towns or parishes, in which case its government had features somewhat like the government of the English shire or county, the borough having its “shire reeve,” or sheriff, appointed by the king. The free burghers united in guilds or companies of weavers, dyers, armorers, gold beaters, merchants, etc.; and each guild, as a rule, occupied a different part of the town. Each sent its own head man, or “aeldorman” (alderman), chosen by its members to a common city meeting or council; though in some cities the merchant guild seems to have been the governing body. When the people of a borough had purchased or otherwise received the right of self-government, a Mayor chosen by the people took the place of the sheriff formerly appointed by the king, and the borough community became a municipal corporation, quite like our modern cities, with full power to regulate its own local affairs and to make by-laws for its own local government.<sup>1</sup>

**City Government in the Netherlands.**—In much the same way as in England, city government grew up in the Netherlands, from which came the Dutch, who first settled New York. Dutch towns grew into walled cities having charters purchased from their counts or lords, giving the townspeople the right to levy their own taxes, elect their own magistrates, and make their own laws.<sup>2</sup> The cities of

<sup>1</sup> Hannis Taylor, *Origin and Growth of the English Constitution*.

<sup>2</sup> The oldest known city charter is dated A. D. 1217, and may still be seen in the town hall in Middleburg. It was given by William I., Count of Holland, and Joanna, Countess of Flanders, and declares that “To all Middleburgers one kind of law is granted.”

New Netherland, as New York was called, were governed in much the same manner, though not at first with the same popular liberty, as the cities of Holland. In New Amsterdam (the Dutch name given to the present city of New York) there were elected as early as 1652, a schout, two burgomasters, and five schepens, to act as a local court, and to perform some of the functions of a legislative body.<sup>1</sup> Later, the English substituted a mayor and a Board of Aldermen for the Dutch schout, burgomasters and schepens.

**Three Classes of Cities.**—Cities of New York are now

<sup>1</sup>The word "schout," or "schoudt," is said to be an abbreviation of the Dutch "schuld-rechter," or righter of crimes. The schout, both in Holland and in New Netherland, performed duties somewhat analogous to those of our modern sheriff, and district attorney. In the draft of conditions offered in 1656 by the city of Amsterdam to emigrants to New Netherland, the government of the city of New Amsterdam (now New York) was to be under a schout, "as the head of justice," to be appointed by the West India Company; three burgomasters to be appointed by the common burghers of the city "from the honestest and fittest"; and five or seven schepens, to be selected by the Director General and Council of New Netherland, from among double the number proposed by the burghers. The schepens were empowered to give final judgment in suits for all sums under one hundred guilders, but in cases where the amount in dispute exceeded this sum, there might be an appeal from the judgment of the schepens to the Director General and Council. The schepens could also pronounce sentence in all criminal cases, subject to this right of appeal. In a charter granted in 1674 to New Orange (now Albany), the schout, burgomasters and schepens, besides acting as a local court, were empowered to enact, and, with the approbation of the governor, "to publish and affix statutes, ordinances, and plackards for the peace, quiet and advantage of the city," "provided the same do not in anywise conflict, but agree as much as possible, with the laws and statutes of the Fatherland." It thus appears that these officers, in some instances, possessed legislative as well as judicial powers. See Broadhead's *History of the State of New York; Holland Documents*, Volume I., page 621; *The Documentary History of New York*, Volume I., Part XXI., "Papers Relating to the City of New York," pages 598, etc. See also Elting's *Dutch Village Communities on the Hudson River*.

divided into three classes. Cities of the first class have a population of 250,000 and over; second class, a population between 250,000 and 50,000; while cities of the third class include all others.<sup>1</sup> The following outline of government applies generally to all cities of the State.

**City Government—The Board of Aldermen.**—A city is usually divided for convenience in administering the laws, into local subdivisions called Wards; and each ward may send its own representative, alderman, or councilman, to the Board of Aldermen or Common Council, which is the city's law making or legislative body. Sometimes, however, the entire board of aldermen or common council is elected on one general ballot, by the voters of the entire city. Some cities elect an alderman or councilman from each ward with a certain number of aldermen-at-large, the latter being voted for by the voters of the entire city. Aldermen, in common with all elective city officers (except in cities of the third class) are elected at the time of the General State Election of an odd-numbered year,<sup>2</sup> and they hold office for

<sup>1</sup> The forty cities of New York are classified according to the last enumeration, as follows:

First class: New York, Buffalo.

Second class: Rochester, Albany, Syracuse, Troy, Utica.

Third class: Amsterdam, Auburn, Binghamton, Cohoes, Corning, Dunkirk, Elmira, Geneva, Gloversville, Hornellsville, Hudson, Ithaca, Jamestown, Johnstown, Kingston, Little Falls, Lockport, Middletown, Mount Vernon, Newburgh, New Rochelle, Niagara Falls, North Tonawanda, Ogdensburgh, Olean, Oswego, Poughkeepsie, Renesselaer, Rome, Schenectady, Watertown, Yonkers, Watervliet.

<sup>2</sup> Laws of 1898, Chapter 182. State officials are elected in the even-numbered years. The purpose of the law requiring different dates for State and city elections, is to keep State and city politics independent of each other; so that a citizen may vote freely and intelligently in a city election without being influenced by his desire to support a particular party in the State.

two years. The powers exercised by the board of aldermen or common council are somewhat similar to those of the board of trustees in the village, and to the town meeting in the town. The board of aldermen may make by-laws or ordinances for the general local government of the city, including its streets, sewers, docks and public buildings. They may grant local franchises or licenses for the regulation of particular trades and kinds of business. They may fix the tax rate for local purposes, not exceeding the limits fixed by State law, and they may vote money from the city treasury for the conduct of the public business.

**The Mayor.**—The mayor is the city's chief executive officer. He is elected by the voters of the entire city. It is his duty to enforce the by-laws or ordinances enacted by the board of aldermen, and to preserve the peace of the city. He has control of the city's police force, and he may call out any regiment of State militia located in the city, to suppress riots or other disorders. In some cities the mayor is a member of the common council and presides at its meetings, and in all cities the mayor has what is called a Veto over acts or ordinances passed by the common council. "Veto" comes from the Latin and means "to forbid"; and the mayor exercises his veto by forbidding or failing to approve of a measure passed by the common council. An act of the council "vetoed" by the mayor fails to become law, unless the council repasses it by a two-thirds affirmative vote. This is called "passing a bill over the mayor's veto." Such acts become the law without the mayor's consent. The mayor may appoint and remove many officials and heads of departments in the city government, but in exercising this power he is subject to the State "Civil Service laws," which declare that all appointments and

promotions in the civil service (that is, in the public service outside the army and navy), "shall be made according to merit and fitness, to be ascertained so far as practicable, by examinations, which so far as practicable shall be competitive."<sup>1</sup>

**Other Executive Officers of the City.**—Associated with the mayor in the executive work of the city, some appointed and some elected by the people, are such officers as City Treasurer, Assessors, Tax Collectors, City Auditors, City Attorney or Corporation Counsel, Street Commissioners, Superintendent of Schools, Park Commissioners, Civil Service Commissioners, etc., each with his special part of the public service to superintend or perform.

**City Courts.**—Each city in the State has its own local court or courts for the trial of criminals and civil suits at law. These courts are described in the chapter on the State Judiciary Department.

**Special Laws Affecting Cities.**—To give the people of a city an opportunity to express themselves freely for or against measures proposed by the State lawmakers, which apply specially to their city, there was placed in the last revision (1894) of the State Constitution, a section<sup>2</sup> which provides that the legislature may not enact a special law applying to a particular city, without first sending a copy of the proposed law to the city, and giving the people a chance to be heard for or against it. In cities of the first class, the mayor—in others the mayor and common council—may accept or reject such a proposed law, and return it within fifteen days to the legislature, or to the governor of the State if the legislature has adjourned. A proposed

<sup>1</sup> New York State Constitution, Article V., Section 9.

<sup>2</sup> New York State Constitution, Article XII., Section 2.

law thus rejected by a city, or not returned within the specified fifteen days, may be passed by the legislature, if in session, and signed by the governor, as though it had been accepted by the city. If, however, the legislature adjourn before the expiration of the fifteen days, and the proposed law is returned within that time as accepted by the city, the governor may act upon it as in the case of other proposed laws passed by the legislature; but if after the adjournment of the legislature the proposed law is not returned, or is returned as rejected, it fails to become a law.

**Limitation of City Indebtedness.**—To protect the property owners from a wasteful and careless expenditure of the public money, the State Constitution declares that no city, county, town, or village, may incur any indebtedness except for strictly public or municipal purposes. No county or city may go into debt in excess of ten per cent. of the assessed valuation of the houses and lands which pay taxes within its borders; and the amount to be raised by tax for county or city purposes in any county containing a city of over 100,000 inhabitants, or in any such city, cannot in any one year exceed two per cent. of the assessed valuation of its taxable property, aside from the amount to be raised for paying the principal and interest on its existing debt. Whenever the boundaries of a city become the same as those of a county, the county can go no further into debt, but the existing county debt is not included as a part of the city debt.<sup>1</sup>

**Government in Cities of the Second Class.**—Government in cities of the second class is carried on by a common council, mayor, and the following departments: Department of Finance, Department of Public Works, Department

<sup>1</sup> New York State Constitution, Article VIII., Section 10.

of Public Safety, Department of Public Instruction, Department of Assessment and Taxation, Department of Charities and Correction, Judiciary Department, and Department of Law.<sup>1</sup>

The common council has authority to "enact any ordinance not inconsistent with the laws of the State for the government of the city and the management of its business, for the preservation of good order, peace and health, for the safety and welfare of its inhabitants and the protection and security of their property." The mayor must call the heads of the different departments together for consultation on the affairs of the city at least twelve times a year. Two Judges of the City Court are elected by the people for terms of six years each, and the mayor appoints City Marshals, not to exceed five, having the powers and duties of constables.

### SUMMARY.

A city is a municipal corporation, created by State law, and provided with a special form of government fixed by the city charter.

The city charter is granted by the State legislature, and may be amended or abolished at any time by that body.

Charters were granted to the early cities in England by the king or other feudal lord of the city, usually in return for money payments made by the city. In this way many rights of self-government now enjoyed by the English-

<sup>1</sup>The laws of 1900 add to these a Board of Estimate and Apportionment, consisting of the mayor, corporation counsel, comptroller, president of the common council, and the city engineer; also a Board of Contract and Supply, composed of the mayor, comptroller, commissioner of public works, corporation counsel, and city engineer.

speaking peoples, were gradually purchased by the early English cities. The same practice prevailed among the early cities of the Netherlands.

The board of aldermen or common council constitutes the city's legislative department. The mayor is the city's chief executive officer. It is the duty of the mayor to enforce the law within his city, and he has a veto power over ordinances passed by the city's legislative body. The mayor's power of appointment is limited by the State civil service law. Each city has its special city court or courts, with powers and duties fixed by the city charter.

Special State laws limit the power of a city to go into debt. No law applying specially to any particular city may be enacted by the State legislature, unless submitted to the common council or mayor of the city for acceptance or rejection by the city. But such rejection of a proposed law may not necessarily prevent the legislature from enacting it.

### SUGGESTIVE QUESTIONS.

What is a city charter? What power may grant, amend, or abolish such a charter?

Describe the origin of the English borough.

How did the early English cities obtain charters?

What classification of cities exists in New York State?

Describe the legislative body of a city in this State?  
How are its members chosen?

What is a city ordinance?

Who is the city's chief executive officer? What power has he in the making of city ordinances?

What State law limits a mayor's power to appoint officers in the city government?



What limit is there to the power of a city to go into debt?

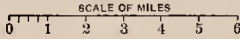
How are the people of a city given opportunity to be heard for or against laws proposed in the State legislature, which apply specially to their city?

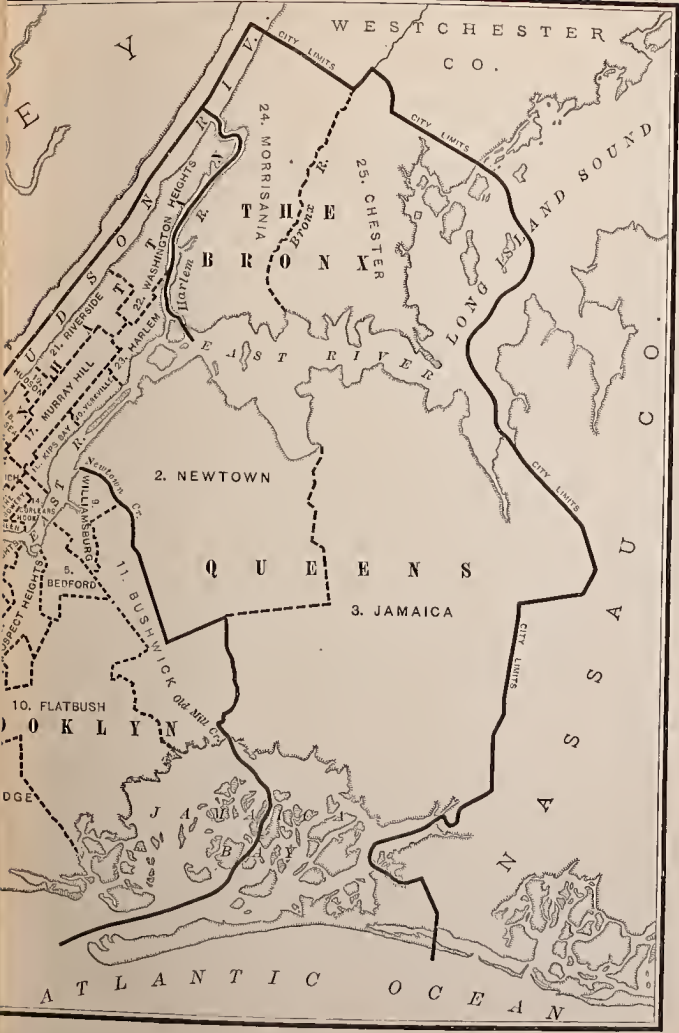
#### ADDITIONAL READING.

For an account of the development of the English borough, see Hannis Taylor's *Origin and Growth of the English Constitution*, Book III.; also Stubbs's *Constitutional History of England*, Volume I., Sections 20 to 45. Read also "The English Towns," Section IV., of Chapter IV., Green's *Short History of the English People*. For a general account of American city governments, see Bryce's *American Commonwealth*, Volume I., Chapters L. and LI.

# CITY OF NEW YORK.

BOROUGHS AND  
DISTRICTS FOR HOME RULE AND  
LOCAL IMPROVEMENTS.





H  
E  
Y

WESTCHESTER  
CO.

24. MORRISANIA  
T H E  
B R O N X  
25. CHESTER

LONG ISLAND SOUND

2. NEWTOWN

Q U E E N S

3. JAMAICA

10. FLATBUSH  
B R O O K L Y N

1. B U S H W I C K  
B R O O K L Y N

A T L A N T I C O C E A N

## CHAPTER VI.

### Greater New York.

AT the mouth of the Hudson River, facing the glittering waters of New York Bay, through whose narrow strait the ships of all nations carry on a mighty commerce between the old world and the new, stands the city known as Greater New York. Four counties of the State—New York, Kings, Queens, and Richmond—are included within its borders; and it unites under a single city government the former cities of New York, Brooklyn, and Long Island City, and the teeming villages on Staten Island, and in Kings and Queens counties, outside the former Brooklyn and Long Island City.<sup>1</sup> The population of Greater New York is about three and one-half millions, making it the second city in size on the globe, and by far the largest city on the American continent. It contains considerably more people than the combined States of Maine, New Hampshire, Vermont, Connecticut, Rhode Island and Delaware, with the District of Columbia and Wyoming thrown in for good measure.

This mighty city—New York—was created by the State legislature of 1897, its people having previously expressed themselves by ballot taken at a regular election, as in favor of uniting their separate governments in a single municipality. The legislature then enacted a charter for the great city, which is now entitled under the law to sixty of

<sup>1</sup> Three towns of the former Queens County have been erected by the legislature into the County of Nassau.

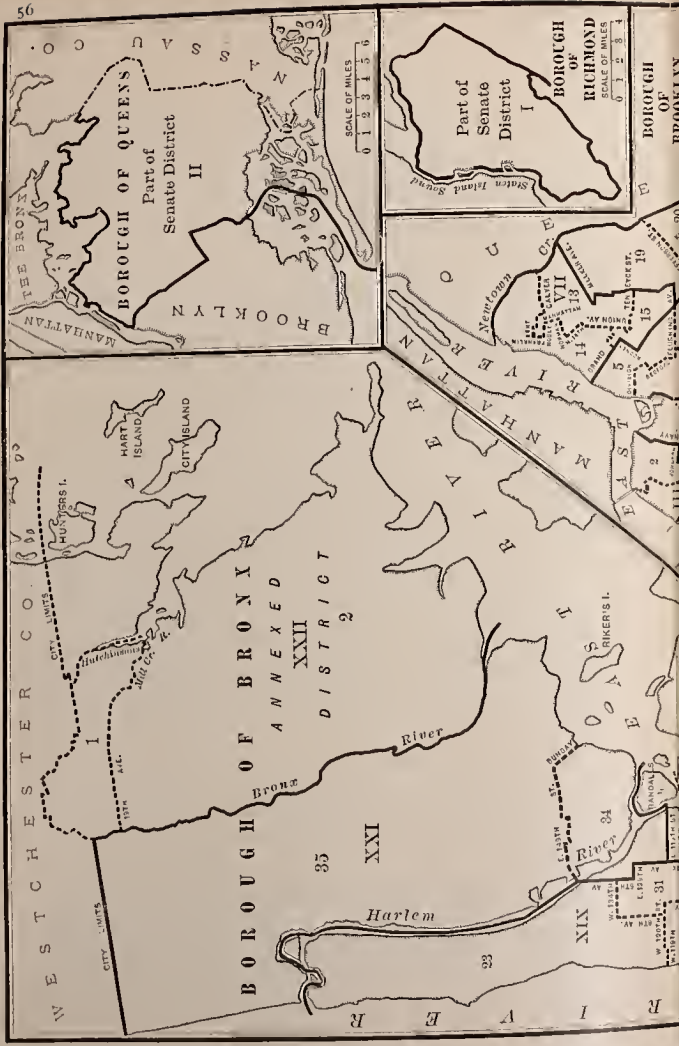
the one hundred fifty assemblymen of the State, and to twenty-one<sup>1</sup> of the fifty State senators. This teeming population, equal in number to nearly half the population of the State, and to more than three quarters of the population of the United States when Washington was made President, and paying more than sixty per cent. of the direct taxes levied for State purposes,<sup>2</sup> is, however, under the law of the State, as powerless to govern itself as the smallest town or incorporated village. Its vast public activities are confined rigidly within its charter fixed by the State, and it cannot lay out a new park, widen an old street, or construct a public speedway, without the authority of the State legislature.

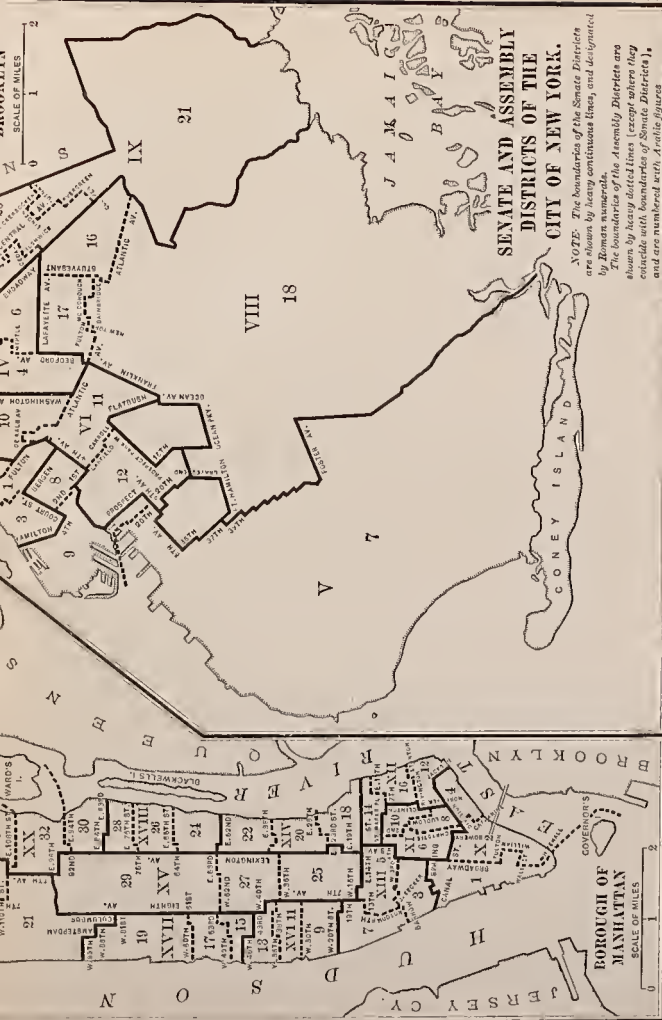
**The Government of New York.**—New York, like the other municipal corporations of the State, has its own local legislative, executive, and judiciary departments of government, with powers and duties fixed by the city charter. For the purpose of administering its local government, the city is divided into five Boroughs. These are the Boroughs of Manhattan and The Bronx, embracing the former city of New York, and the present New York county;<sup>3</sup> the Borough of Brooklyn, including Kings county and the former city of Brooklyn; the Borough of Queens, including the

<sup>1</sup> The first senate district of the State includes Suffolk, as well as Richmond county.

<sup>2</sup> The tax levy fixed by the Legislature for the year beginning October 1, 1899, for the whole State was \$12,642,228. Of this amount New York paid \$7,877,719.

<sup>3</sup> The Borough of Manhattan includes Manhattan Island, Governor's Island, Bedlow's Island, Ellis Island, the Oyster Islands, Blackwell's Island, Randall's Island, and Ward's Island. The Borough of the Bronx includes that portion of the city of New York lying northerly or easterly of the Borough of Manhattan between the Hudson River and the East River or Long Island Sound, including the several islands.





present Queens county; and the Borough of Richmond, having the boundaries of the present Richmond county.

**The Board of Aldermen.**—New York's local legislative body is the Board of Aldermen. This board consists of seventy-three aldermen, elected from as many aldermanic districts; a president elected by the people of the whole city at the time of the election of the mayor and for the same term of office; and five borough presidents. Each assembly district in the city is an aldermanic district, except as otherwise provided in the charter. Manhattan with thirty-four assembly districts, elects thirty-seven aldermen;<sup>1</sup> Brooklyn with twenty-one districts, elects twenty-two aldermen;<sup>2</sup> Queens with two districts, elects four aldermen; The Bronx, containing the annexed district, the thirty-fifth assembly district, and a part of the thirty-fourth, elects seven aldermen; and Richmond with one assembly district, elects three aldermen. The aldermen are elected by the voters of their respective aldermanic districts at the general elections in the odd-numbered years. They hold office two years, and receive an annual salary of \$1,000 each. The aldermen appoint a clerk of the board, who is also the city clerk. He serves six years at an annual salary of \$7,000. The president of the board of aldermen is the acting mayor of New York during the absence or disability of the mayor. He receives an annual salary of \$5,000. A majority of the board constitutes a quorum for the purpose of doing business.

<sup>1</sup> The twenty-first, twenty-third and thirty-first assembly districts are divided into two aldermanic districts each; and that part of the thirty-fourth lying within Manhattan constitutes a single aldermanic district.

<sup>2</sup> The seventh assembly district of Kings county is divided into two aldermanic districts.



**Powers of the Board of Aldermen.**—The board of aldermen sits in the Borough of Manhattan, and it must hold at least one meeting a month, except during the months of August and September. The board has power to pass local by-laws or ordinances for the city upon subjects enumerated in the charter. Ordinances are passed by a majority of all the voting members of the board; but no ordinance involving the spending of the public money, the granting of a franchise, or the making of a specific public improvement may be passed except by unanimous vote of the board, until at least five days after an abstract of its provisions has appeared in the official paper known as the "City Record." This prevents undue haste and gives the people an opportunity to be heard. The board has power to make and enforce local police, health, park, fire, and building regulations, not inconsistent with the charter, nor contrary to the laws of the State and of the United States. The board may make by-laws, among other things for :

The establishment and regulation of public markets, parks, streets, boulevards, bridges, docks, waterworks, schoolhouses, and other public buildings of the city; for the inspection and sealing of weights and measures; the inspection, weighing and measuring of coal, wood, hay, etc.; for the numbering of houses and lots; for regulating public cries, advertising noises, steam whistles, etc.; regulating the use of guns, pistols, fireworks, etc.; regulating places of public amusement, the construction and use of hydrants, cisterns, sewers, pumps, etc.; regulating partition walls and fences; for licensing truckmen, hackmen, expressmen, pawnbrokers, and others; for the suppression of vice and immorality, and the prohibition of gambling houses. The board may also grant franchises for street railroads and ferries; restrict the height of buildings; change ward boundaries; and it may on recommendation of the board of estimate and apportionment, fix generally the salary or compensation of any officer or person paid out of the city treasury, except day laborers, teachers,

examiners and members of the supervising staff of the department of education. It may reduce salaries recommended by the board of estimate and apportionment, subject, however, to the veto power of the mayor. The board may, within the limits fixed by State law, authorize the city to issue its bonds for needed public improvements.

**The Mayor.**—The mayor is the executive head of the city. He is chosen at the general elections in the odd-numbered years, for a term of two years, by the voters of the entire city. He receives an annual salary of \$15,000. The mayor must be vigilant and active in enforcing the city ordinances and the laws of the State. He must keep himself informed of the doings of the different departments of the city government, and once a year he must communicate in a written message to the board of aldermen a general statement of the finances, government and improvements of the city, recommending such measures as he deems expedient. The mayor appoints in most instances the heads of the different departments in the city government, and he has power to remove generally any city official holding office by appointment of the mayor.<sup>1</sup> The mayor himself may be removed from office by the governor of the State.

**Veto Power of the Mayor.**—All by-laws or ordinances passed by the board of aldermen must be sent to the mayor for his approval or rejection. If the mayor approve a proposed ordinance, he must sign it and return it within ten days after receiving it to the board of aldermen or to the board at its next meeting.<sup>2</sup> If the mayor disapprove a

<sup>1</sup>The exceptions are members of the board of education, the aqueduct commissioners, the trustees of the College of the City of New York, the trustees of certain hospitals, and judicial officers whose removal is provided for by the constitution.

<sup>2</sup>A proposed ordinance involving the appropriation of public money, the granting of a franchise, or the making of a specific improvement, must be

proposed ordinance he must return it within the time specified with his written objections. This is the mayor's veto. The board of aldermen, after ten days and within fifteen days after receiving the veto, may re-pass the proposed ordinance over the mayor's veto by an affirmative vote of at least two thirds of the members; except that a proposed ordinance involving the expenditure of public money, the creation of a debt, or the laying of an assessment may be passed over the mayor's veto only by an affirmative vote of three fourths of the members. But the mayor's veto of a proposed ordinance involving the granting of a franchise is final.

**City Administrative Departments.**—Associated with the mayor in the executive government of the city, are fifteen departments, with heads in nearly every instance appointed by him.<sup>1</sup> These are the department of finance, law department, police department, department of water supply, gas and electricity, department of street cleaning, department of bridges, department of parks, department of public charities, department of correction, fire department, department of docks and ferries, department of taxes and assessments, department of education, health department, and tenement house department. Each of these departments is headed by one or more commissioners.

**The Department of Finance.**—Very important among the administrative departments is the department of finance, headed by the comptroller, who is elected at the time of the election of the mayor, by the voters of the entire city. The

returned within the time specified after an abstract of its provisions has been published in the "City Record."

<sup>1</sup> The exceptions are the head of the department of finance, and the head of the department of education, who are elected—the former by the people, the latter by the members of the board of education.

comptroller serves two years at an annual salary of \$15,000. The comptroller has general charge of the financial affairs of the city, and the accounts of its various departments are subject to his inspection and revision. The department of finance includes five bureaus—one for the collection of interests, rents and moneys due from sales; one for the collection of taxes; one for the collection of arrears; one for the auditing of city accounts; and one for the reception of all moneys into the city treasury, and the paying out of the same. The last-named bureau is in charge of the city treasurer or chamberlain, appointed by the mayor at an annual salary of \$12,000.<sup>1</sup>

**The Board of Estimate and Apportionment.**—The mayor, comptroller, president of the board of aldermen, and the five borough presidents, constitute a board of estimate and apportionment. It is the duty of this board once a year to make up a budget or statement of the estimated expenses of the city as required by the different departments. This budget is submitted to the board of aldermen, and when passed upon by that body it becomes the legal amount to be raised within the city for purposes of local government. In the board of estimate and apportionment, the mayor, comptroller, and president of the board of aldermen have three votes each, the president of the Borough of Manhattan and the president of the Borough of Brooklyn two votes each, and the presidents of the Boroughs of The Bronx, Queens, and Richmond, one vote each.

**The Law Department.**—The head of the city's law department is the corporation counsel, appointed by the mayor, at an annual salary of \$15,000. He has charge of the official law business of the city and its various departments, and he is the legal adviser of the city government.

<sup>1</sup> The city chamberlain also acts as treasurer of New York county.

**The Police Department.**—The head of the police department is the police commissioner, appointed by the mayor for a term of five years at an annual salary of \$7,500. The police commissioner is chief of police. He appoints two deputy chiefs at salaries of \$4,000 each, fifteen inspectors at salaries of \$3,500 each, and an army of policemen.

**Borough Officers.**—At the time of the election of the mayor the voters of each borough of New York elect a borough president. He holds office for two years, and receives an annual salary of \$7,500 in the Boroughs of Manhattan, Brooklyn, and The Bronx, and \$5,000 in Queens and Richmond. Each borough president has general charge and oversight of the public streets, sewers, bridges, tunnels, and buildings<sup>1</sup> within his borough. He looks after the construction of new streets, regulates the construction and laying of surface railroads, looks after the filling in and fencing of vacant lots, and the removal of encumbrances. He may appoint, and at pleasure remove a commissioner of public works and a superintendent of buildings for his borough. In Queens and Richmond the borough presidents also have charge of street cleaning.

**Boards of Local Improvements.**—For purposes of home rule and local improvements, the city is divided into twenty-five districts of local improvements corresponding quite generally in size and extent to the senate districts.<sup>2</sup> In each

<sup>1</sup> Except schoolhouses, almshouses, penitentiaries, fire and police stations.

<sup>2</sup> The districts of local improvements are as follows: 1, Borough of Richmond; 2, wards 1 and 2, Borough of Queens; 3, wards 3, 4 and 5, Borough of Queens; 4, third senate district; 5, fourth senate district; 6, wards 8, 30, and 31, Borough of Brooklyn; 7, wards 10 and 12, Brooklyn; 8, sixth senate district; 9, seventh senate district; 10, eighth senate district; 11, ninth senate district; 12, tenth senate district; 13, eleventh senate district; 14, twelfth senate district; 15, thirteenth senate district; 16, fourteenth senate district;

district of local improvements there is a board of local improvements, known as the "local board." Each local board is composed of members of the board of aldermen within the district, and each is presided over by the borough president of the borough in which the board is located. A local board has power to open streets, establish parks, and construct tunnels and bridges where the adjoining property bears a part of the expense; but plans for such improvements must be first approved by the borough president, and by the board of estimate and apportionment,<sup>1</sup> and, in a case where the charge imposed upon the whole city is more than \$500,000, by the board of aldermen also.

**Other Departments.**—The department of water supply, gas and electricity, the department of street cleaning, and the department of bridges are headed respectively by the commissioner of water supply, gas and electricity, the commissioner of street cleaning, and the commissioner of bridges, each appointed by the mayor, and each receiving an annual salary of \$7,500. Each commissioner administers his department under regulations imposed by the board of aldermen. The department of parks is headed by the park board, composed of three commissioners of parks, appointed by the mayor at an annual salary of \$5,000 each. Other heads of departments appointed by the mayor are the commissioner of public charities, salary, \$7,500; the commissioner of cor-

17, fifteenth senate district; 18, sixteenth senate district; 19, fifteenth and seventeenth assembly districts, Manhattan; 20, eighteenth senate district; 21, nineteenth and twenty-first assembly districts, Manhattan; 22, thirty-first and twenty-third assembly districts, Manhattan; 23, twentieth and part of the twenty-first senate districts; 24, part of twenty-first senate district; 25, part of the twenty-second senate district.

<sup>1</sup> Proposed improvements costing less than \$2,000 need not be submitted to the board of estimate and apportionment.

rection, salary, \$7,500; the fire commissioner, salary, \$7,500; the commissioner of docks, salary, \$6,000; five commissioners of taxes and assessments, salary, \$7,000, (the president receiving \$8,000); a tenement house commissioner, salary, \$7,500.

**Department of Education.**—The mayor appoints the Board of Education, consisting of forty-six members—twenty-two from Manhattan, fourteen from Brooklyn, four from The Bronx, four from Queens, and two from Richmond. The members are appointed for terms of five years each, and they serve without pay. The board has the management and control of the public schools of the city; appoints a city superintendent of schools, eight associate superintendents, and twenty-six district superintendents. The board has power to divide the city into forty-six local school board districts, corresponding to the forty-six members; and each borough president appoints five members of a local school board for each district within his borough. These, with the member of the board of education living in the district, and the district superintendent, constitute a local school board for the district.

**Department of Health.**—The commissioner of health, appointed by the mayor, at a salary of \$7,500, the police commissioner, and the health officer of the port constitute the board of health. This department has authority to enforce the laws for the preservation of life and health throughout the city, and over the waters within its jurisdiction.

**County Government in the City of New York.**—Each county included within the borders of New York has its separate county government, independent of the government of the city, and in many respects the same as county government in other parts of the State. There are, how-

ever, no town governments in Greater New York, and consequently no such officers as town supervisors or county boards of supervisors. Each county has, however, its sheriff, county clerk, district attorney, and other county officers, and, except in New York county, its county court.

**Courts in New York—The Supreme Court.**—The first judicial department and the first judicial district of the State have the same boundaries as New York county; while the Boroughs of Brooklyn, Queens, and Richmond are included in the second judicial department and the second judicial district. In all boroughs of the city the Supreme Court and its appellate division have jurisdiction, as in other parts of the State; and special laws largely increase the compensation of supreme court judges in Manhattan and Brooklyn.

**County Courts in New York.**—Kings, Queens, and Richmond counties have each a county court and a surrogate's court, with powers and duties quite similar to such courts in other parts of the State. Kings county elects two county judges. New York county has no county court, but elects two surrogates for terms of fourteen years each, at annual salaries of \$15,000 each.

**The City Court.**—Two courts in New York county take the place of a regular county court. These are the City Court, and the Court of General Sessions; and both have jurisdiction in New York county only. Seven judges of the city court are elected for terms of ten years each at annual salaries of \$10,000 each. The city court hears and determines civil suits in which the amount sued for does not exceed \$2,000. Appeals from its decisions are to the appellate division of the supreme court.

**The Court of General Sessions.**—The court of general sessions is mainly a criminal court. It has jurisdiction to



try all crimes cognizable within the county, including those punishable with death. It is in four parts, its judges being the Recorder, the City Judge, and three Justices of Sessions, all elected by the voters for terms of fourteen years each, at annual salaries of \$12,000 each. A grand jury is drawn for this court. All the foregoing are courts of record.

**Inferior Courts in New York.**—Two inferior courts not of record have jurisdiction throughout the entire city. These are the Court of Special Sessions, and the Municipal Court of the City of New York. In both these courts cases are tried by the judges without the aid of a jury.

**Court of Special Sessions.**—For the purpose of administering criminal justice, the city is divided into two divisions. The first embraces the boroughs of Manhattan and The Bronx, the second the boroughs of Brooklyn, Queens, and Richmond. Five judges of a Court of Special Sessions are appointed by the mayor in the first district and five in the second, for the purpose of trying cases of misdemeanors committed in the city and not brought up on indictment or presentment of a grand jury, and some other offenses. The judges of the Court of Special Sessions hold office for terms of ten years each, at annual salaries of \$9,000 in the first division and \$6,000 in the second. Three judges sitting together constitute the court, and the concurrence of two is necessary to a decision.

**City Magistrates.**—Twelve city magistrates are appointed by the mayor, in the first division, for terms of ten years each; and fifteen magistrates are elected by the voters in the second division, for terms of six years each. In each division the magistrates so appointed or elected, constitute a Board of Magistrates for the division. The first division contains seven districts, and the second thirteen, of which

eight are in Brooklyn, three in Queens, and two in Richmond. In most of these districts a magistrate is in daily attendance upon a magistrate's court for the hearing and trial of petty offenses, and the commitment of accused persons. The salaries of the magistrates are \$7,000 in the first division, \$6,000 in Brooklyn, and \$5,000 in Queens and Richmond.

**The Municipal Court.**—The lowest court of civil jurisdiction in Greater New York is the Municipal Court of the City of New York. For the purpose of administering justice through this court the city is divided into twenty-three districts as follows: borough of The Bronx two districts, Manhattan eleven, Brooklyn five, Queens three, Richmond two. In each district a session of the municipal court is presided over by a justice, elected by the voters of his district, for a term of ten years, at an annual salary of \$6,000 in Manhattan, Bronx, and Brooklyn, and of \$5,000 in Queens and Richmond. The municipal court has general jurisdiction in civil suits where the amount sued for does not exceed \$500.

## SUMMARY.

The city of New York includes within its borders the counties of New York, Kings, Queens, and Richmond, and the former cities of New York, Brooklyn, and Long Island City.

For administrative purposes the city is divided into five boroughs: Manhattan, The Bronx, Brooklyn, Queens, and Richmond.

The board of aldermen composed of seventy-three members elected from as many districts, a president elected by

the voters of the entire city, and the five borough presidents, constitute the chief branch of the city's legislative department.

The mayor is the head of the city's executive department, and has a veto power over ordinances enacted by the board of aldermen.

The local courts of the city include a city court and a court of general sessions, for New York county, and a court of special sessions and a municipal court for the whole city.

### SUGGESTIVE QUESTIONS.

Name and describe the boroughs of New York.

Describe the board of aldermen and its powers.

Describe the board of estimate and apportionment.

What officer is at the head of the city's finance department? May he be removed from office? If so, in what manner? What are the duties of the city chamberlain?

Name six administrative departments included in the city government. Describe the boards of local improvements, their powers and duties.

Name two duties of a borough president. How is he placed in office?

What are the duties of the corporation counsel? How do his duties differ from the duties of the district attorney of New York county?

What judicial department is coextensive with the boundaries of the former New York? What State courts are maintained in this department? What courts take the place of a county court in New York county? Which of these courts is a court of civil jurisdiction only? What court is presided over by the recorder?

## CHAPTER VII.

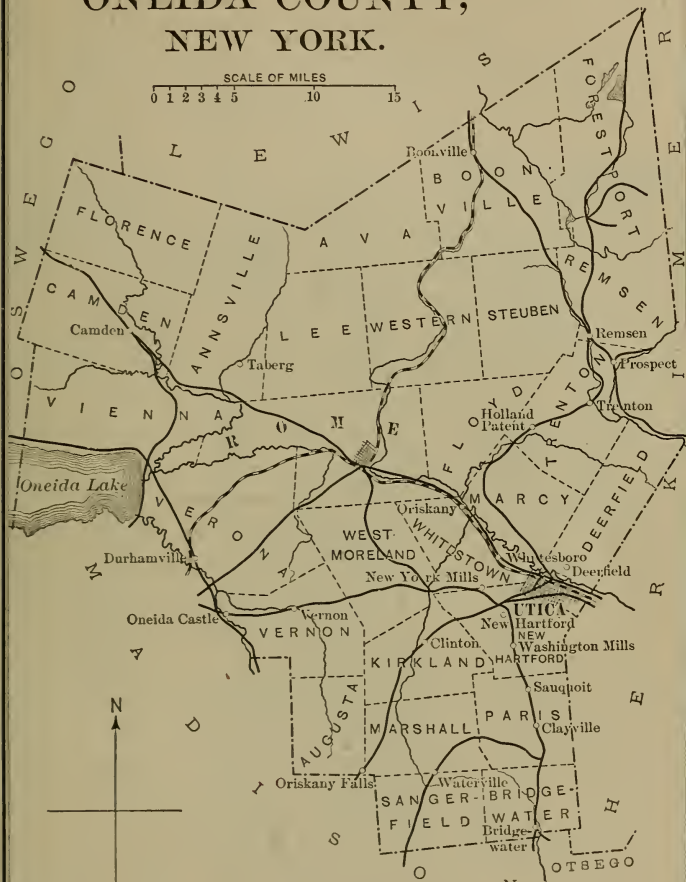
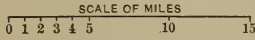
### The County.

MORE than two thirds of the people of New York live in cities; the remainder live in towns; but every person, whether living in city or town, lives in a county. What is a county? If we look on a large map of New York we see that it is cut up into sixty-one counties. Every county<sup>1</sup> is, in turn, composed of towns, and many contain cities and villages, the people of the different towns, cities, and villages being united under a county government. We have seen the incorporated village, with its separate village government, lying within the town, the village being at the same time a part of the town and the villagers subject to town laws. In the same way a town or city lies within its county, the people of city and town being subject to county laws, as well as to their own town and city laws.

**Why We Have County Government.**—Why do we have counties and county government? First, because some kinds of public work are most effectively and conveniently carried on by the people of several towns and villages united in a county government. But there are other reasons for the existence of counties than mere convenience. We have counties, because, like the town and the town meeting, they

<sup>1</sup> Except New York, Kings, Queens, and Richmond, which lie within the city of New York.

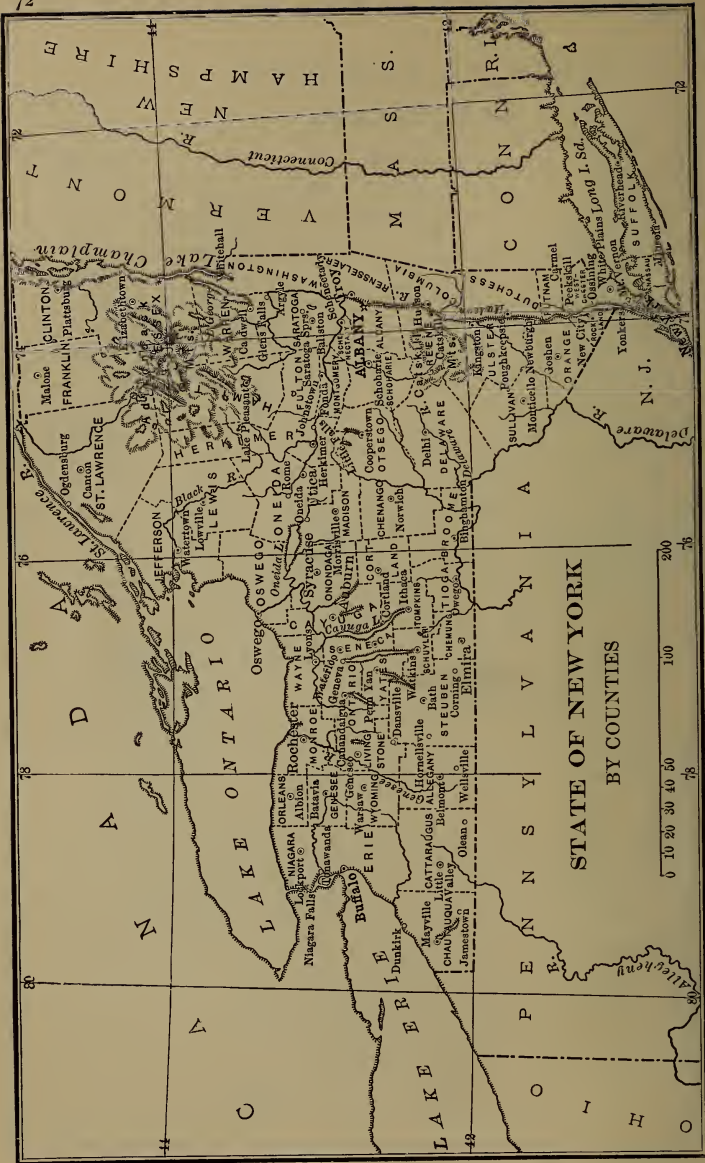
# ONEIDA COUNTY, NEW YORK.



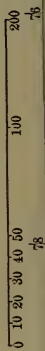
### REFERENCE

- County Boundary
- Town Boundaries
- Railroads
- Canals

Cities appear in this type **UTICA**  
 Towns " " " " **VERNON**  
 Villages " " " " **Clinton**



STATE OF NEW YORK  
BY COUNTIES



have come down to us, in one form or another, from the earliest history of the English-speaking race.

**The Ancient German Tribe.**—We have seen our Teutonic ancestors living in self-governing village communities, or marks, in the forests of ancient Germany. We saw the peaceful affairs of such a community ordered by its freemen assembled in the ancient mark meeting, the forerunner of the modern town meeting. We learned that the inhabitants of such a mark community are supposed to have been united by the tie of common blood, the mark representing originally a group of related families. But running through these various isolated mark communities, separated by their belts of waste and woodland, was another tie—the tie of similar speech and nationality. When war threatened, this tie took form in the tribal or national assembly, attended by freemen from the different kindred villages. In these tribal meetings, held in field or forest, the freemen, each man armed with spear and shield—the visible sign of his freedom—joined hands against a common foe. Here they chose chiefs of the tribe, sentenced traitors to be hanged and cowards to be smothered in mud, judged disputes between tribesman and tribesman and between village and village. Here questions of interest to the tribe were debated, the warriors shouting their opposition or expressing their approval by the clashing of shield and spear. Sometimes the freemen of several mark communities united in what was called the “ga” or “gau,” and sent a hundred fighting men under their own leader to the army of the tribe. The “ga,” or “Hundred,” as it afterwards came to be called, also had its “hundred mote,” or meeting of freemen from the villages composing the “hundred.”

**The English Shire.**—The organization of our German

ancestors in tribes and hundreds, as well as in marks and towns, was carried by Angle, Saxon, Jute and Friesian into the conquered territory of Britain. We have seen how the mark community became the old English town, and how later it became the parish and the manor. In Britain the German "ga" and the German tribe became respectively the English "hundred" and the little English kingdom. In course of time the various little kingdoms that developed on English soil united in the single Kingdom of England, each petty kingdom becoming a share, or "shire," in the greater English nation. "Out of a union of townships," says a modern writer, "grew what was finally known in England as the hundred; out of a union of hundreds grew the modern shire; out of a union of modern shires grew the English kingdom." The king or head man of the former petty kingdom became the Ældorman, or earl, under the greater King of England; and its national or tribal assembly became the English "shire mote," or shire meeting.<sup>1</sup> In the shire meeting, laws were made for the shire, and criminals

<sup>1</sup> "The primitive states in which the settlers originally grouped themselves in Britain were reproductions in every material particular of the Continental Teutonic states, as described by Cæsar and Tacitus. The unit of organization in the primitive state was the village community, which appeared in Britain as the *tun* or township. By a union of townships was formed the district generally known in Germany as a *gau* or *ga*, a name which yielded in England to that of *scir* or *shire*. By a union of gas or shires was formed the primitive state. The *scir* or *shire* was simply what the word implies, a division of the larger whole; and it is now maintained, with greater or less emphasis, by the highest authorities that *scir* or *shire* was the term originally employed in Britain to describe a district which arose out of a union of townships. But the early shire, which thus represented the largest division of the primitive state, must not be confounded with the modern shire, which represents the largest division of the consolidated kingdom."—Hannis Taylor, *Origin and Growth of the English Constitution*, Part I., Chap. V.



were judged, much as in the ancient tribal assembly. After the Norman conquest of England, the shires became known as "Counties" from their resemblance to districts of France then governed by counts.

**The County in America.**—When our English ancestors came to America they brought with them the English plan of county government. In Massachusetts and other New England colonies, counties were formed by a union of towns, and each county had its "county court" for the trial of criminals and suits at law. In Virginia, counties were established without towns, and in that State the county is to-day the chief unit of local government. New York had town government before it had counties. The Dutch early established a system of local government in the different settlements and towns; and the English, in 1683, divided the province into twelve counties. Each had its county court, as in Massachusetts, and in each the governor appointed a sheriff to collect provincial taxes, and to act as the chief executive officer of the county in enforcing provincial laws.

**The Modern County in New York.**—The sixty-one counties into which New York is now divided have been formed at different times by the State legislature. The law defines a county as "a municipal corporation comprising the inhabitants within its boundaries, and formed for the purpose of exercising the powers and discharging the duties of local government, and the administration of public affairs conferred by law." In plain words, this means that the people of a county, like the people of the town, village, and city, may act together as a body politic, in doing such public work as the State allows them to do; that, through their representatives, they may acquire and own houses and

lands and other property for county purposes; buy, sell and make contracts; sue and be sued in a court of law, much as a single person. Each county in New York acts as an agent for the State in collecting taxes and enforcing State laws; and each has its own local capital or "county seat," the meeting place of its county board of supervisors, and the place where the county court house and jail are maintained.

**The County Board of Supervisors.**—The law-making body of the county, like that of the village and city, is a body of representatives chosen by its voters. This is the county board of supervisors, composed of one supervisor from each town and city ward<sup>1</sup> in the county. Each member is elected for a term of two years by the voters of his town or ward, and each supervisor, as we have seen,<sup>2</sup> is an officer of his town or city, as well as a county officer.

**Powers of the Board of Supervisors.**—The powers and duties of the board of supervisors, like the powers and duties of the town meeting, are fixed by State law. They may be summarized as follows:

The board of supervisors has the custody of the corporate property of the county; audits accounts and charges against the county, and directs the raising by taxation of sums necessary to defray them; has power to direct the raising in each town of a sum to defray the town's necessary expenses; to cause to be assessed, levied and collected any taxes due from the town to the State; to fix the salaries of county treasurer, district attorney, and county superintendent of the poor; to borrow money for the use of the county, and to author-

<sup>1</sup> Special laws govern in the city of New York as we have seen. The State Constitution also provides that in cities, whose boundaries are the same as a county, that the common council or board of aldermen shall have the duties and powers of a board of supervisors.

<sup>2</sup> Chapter III., page 25.

ize a town to borrow for town purposes ; to make local laws for the destruction of wild animals and noxious weeds, and for the protection of fish and game within the county ; to divide and erect school commissioner districts within the county ; to divide towns, alter their boundaries, and erect new towns ; to form assembly districts under State law within the county ; to establish fire districts outside cities and incorporated villages ; to open and discontinue county highways, erect bridges, and apportion the expense among the towns and the county. The board also makes a list of persons who may be called upon to serve as grand jurors in the courts sitting within the county,<sup>1</sup> and in some counties the board has power, on application of the taxpayers, to alter the boundaries of incorporated villages.

**Town and County Government.**—As we study these powers of the board of supervisors, we see that in many things the county government is superior to and over the governments of the towns in the county, as the colonel of a regiment is superior to and over his regimental captains. The county may force a town to raise money for town purposes or for the State. It may even do away altogether with a town, joining its people to another town. In his great work, *The American Commonwealth*, Mr. James Bryce describes the system of local government carried on in the towns and counties of New York, as being almost a perfect one. He says :

“ Of the three or four forms of local government that I have described, that of the town or township with its popular primary assembly is admittedly the best. It is the cheapest and most efficient ; it is the most educative to the citizens who bear a part in it. The town meeting has been not only the source but the school of democracy. The action of so small a unit needs, however, to be supplemented, perhaps also in some points supervised, by that of the county, and in this respect

<sup>1</sup> This is done by commissioners of jurors in some counties

the mixed system of the Middle States<sup>1</sup> is deemed to have borne its part in the creation of a perfect type."

**County Executive Officers.**—The county, like the town, village, and city, has its executive officers, to enforce its laws. The principal county executive officers are the Sheriff, District Attorney, County Clerk, County Treasurer, and Superintendent of the Poor. These officers are elected by the voters of the entire county, at the time of the general State election,<sup>2</sup> and they hold office for terms of three years each. Besides administering county affairs, most of these county executive officers are agents of the State in enforcing State laws within the county.

**The Sheriff.**—The sheriff is the principal executive officer of the county. It is his business to preserve its peace, arrest offenders against the law, and to have the care and custody of convicted criminals, and of persons detained on suspicion of breaking the law. He summons witnesses and jurors to attend courts held within the county, and executes the legal orders and sentences of the judges. The sheriff formerly hanged convicted murderers sentenced to the death penalty. So important is he in executing and enforcing the

<sup>1</sup> In the New England States the town is more important than the county, the latter existing largely as a court district. The town meeting is the principal source of local government. In Rhode Island and Connecticut the towns send representatives to the State legislature. In most Southern States, on the contrary, few if any towns exist, the county being the principal unit of local government. In the Middle and Western States, represented by New York, Pennsylvania, New Jersey, Ohio, Indiana, Illinois, Iowa, etc., the town is the principal unit of local government, while the county is in a measure a supervising government. Neither towns nor counties in New York send representatives to the State legislature, but these are chosen in senate and assembly districts.

<sup>2</sup> The Tuesday following the first Monday in November.

decrees of the courts, that the sheriff has been called "the right arm of the judge." If a riot breaks out, the sheriff has power to call out the *Posse Comitatus*, that is, all able-bodied men in the county, to suppress it. If then unable to bring about order, the sheriff may call upon the governor of the State to come to his aid with the State militia. The sheriff appoints an Under Sheriff, and also one Deputy Sheriff for every three thousand population in his county to assist him. So great is his power, that to prevent its possible abuse, the State forbids the election of a particular sheriff for two terms in succession.<sup>1</sup> The sheriff is paid in fees fixed by State law, and in a percentage of the money which he collects from the sale of property ordered by the courts to be sold for the payment of debt. The office of sheriff is derived from the "shire reeve," or head man of the ancient shire, who was chosen by its freemen to preside over the "shire mote."

**The District Attorney.**—The district attorney is the public prosecutor of criminals in his county, and the legal adviser of its executive officers and grand jury. When prosecuting persons charged with crime, the district attorney acts as an agent of the State, all crimes being prosecuted by him in the name of "The People of the State." He is paid a salary, which comes out of the county treasury, and is fixed by the county board of supervisors.

**The County Treasurer.**—The county treasurer has charge of the public moneys of the county. He receives money collected by the town collectors for county and State taxes, and pays the latter to a State officer known as the Comptroller. He also receives from the comptroller money raised by the State for the public schools of his county,

<sup>1</sup> New York State Constitution, Article X., Section 1.

paying it over to the supervisors of the several towns. In some counties the county treasurer is paid a salary fixed by the board of supervisors, and in others a percentage of the moneys handled by him.

**The County Clerk.**—The county clerk keeps the public records of the county, such as records of deeds, mortgages, and the judgments of its courts. He acts as clerk of the county court and of the Supreme Court when sitting within his county. He is usually paid in fees for services performed.

**Other Officers.**—From one to three superintendents of the poor are elected or appointed in each county. They have charge of the county poorhouse, where poor persons are cared for, and they make a report annually to the State Board of Charities. In some counties having a large population, an officer known as a Commissioner of Jurors is appointed by the courts. From lists furnished by the supervisors and assessors he selects those persons eligible to serve as jurors in the courts held within the county. Every county officer who handles money of the county must account for it in a yearly report to the board of supervisors.

**The County Court.**<sup>1</sup>—Every county in the State, except New York county, has a county court for the trial of persons charged with crime and for the trial of civil suits at law. A County Judge, elected by the voters of the entire county, for a term of six years, presides over the county court. All ordinary crimes against persons and property, except murder, may be tried in a county court; also generally any civil suit at law when the sum sued for does not exceed \$2,000. A person aggrieved by the decision of a justice of the peace, may take the matter to the county

<sup>1</sup> See Chapter XVII., The State Judiciary Department.

court for a re-trial. Such action is called "appealing to the county court." County judges are paid salaries, differing in different counties, their pay being fixed by State law and coming out of the county treasury.

**Coroners.**—Four coroners are elected by the voters of each county. It is a coroner's duty to investigate the causes of sudden or suspicious deaths, and he may, on request, inquire into the cause of any suspicious fire. For these purposes he may summon and examine under oath any person whom he thinks may have a knowledge of the matter under investigation. Coroners were formerly allowed to summon a jury in connection with their investigations, which are termed inquests. The coroner's jury was, however, abolished, except in counties wholly or partly in a city of the first class, by State law in 1899. Under old English law the coroner was a peace officer like the sheriff. From this ancient view of the dignity of his office, has probably come the modern practice of requiring the coroner to act in place of the sheriff when the latter is disqualified. The modern New York coroner is usually a practicing physician, though this is not required by law.

**The Surrogate and His Court.**—Each county has a surrogate's court<sup>1</sup> through which the property of persons who have died is distributed among those who are entitled by law to receive it.<sup>2</sup> The surrogate's court also has a general oversight of the property of persons not of full age. The duties of the surrogate were at one time performed largely by officers of the church, usually the bishop, and the word, "surrogate," meant literally one who was substituted for another. In New York the surrogate is elected by the

<sup>1</sup> Also called a Probate Court.

<sup>2</sup> See Chap. XXV., Personal and Property Relations.

voters of the county for a term of six years.<sup>1</sup> In counties having less than 40,000 population the county judge acts as surrogate.

**Things to Remember.**—The county is a municipal corporation, created by the State law, and standing in importance between the town and the State. The county government supervises in some respects the government of the town; and it acts, at the same time, as an agent for the State in collecting State taxes, prosecuting criminals, and enforcing State law. Each town and city ward is represented in the county board of supervisors, the lawmaking department of the county. This board is an example of representative democratic government, as the town meeting is an example of direct democratic government.

The people of the county as a whole elect a sheriff, county clerk, county treasurer, and other county executive officers.

The judicial officers of the county are the county judge, surrogate, and coroners.

### SUGGESTIVE QUESTIONS.

In what year was your county organized? Is it one of the original counties of the State, or was it formed by dividing one of these counties? What is the name of its county-seat?

Give an instance of the value of county government as a matter of convenience in administering the law. Give a historical reason for county government. What powers has the New York county, not generally possessed by the county in New England?

<sup>1</sup> Fourteen years in New York county.



What is the origin of the English shire? What legislative body in the New York county corresponds to the English shire-mote? Is the county legislative body an example of direct or representative democratic government?

Name some powers of a board of supervisors in the county government; in the government of its several towns.

Describe the duties of the sheriff, district attorney, county treasurer, county clerk, county superintendents of the poor.

What is the jurisdiction of the county court?

Name two duties of coroners.

What are the powers of a surrogate's court?

#### ADDITIONAL READING.

For the origin and development of the English county, see Hannis Taylor's *Origin and Growth of the English Constitution*, Part I., Chap. III., IV., and V.; Stubbs's *Constitutional History of England*, Vol. I., Sections 30 to 50; Vol. II., Section 200, etc. See also Howard's *Local Constitutional History of the United States*, Part III. For a comparison of county government in different parts of the United States, see Bryce's *American Commonwealth*, Vol. I., Chap. XLVIII.

## CHAPTER VIII.

### The State, and the People Who Made It.

WE now come to a government greater and more powerful than the governments of town, village, city, and county—the government of the State of New York. What is the State? How did it arise? What does it do for the people? What are its relations to these lesser governments?

If we look on a map of New York, we see spread out before us a representation of the visible territory of the State. On the north we see Lake Ontario, River St. Lawrence, and Canada; on the east, Lake Champlain and the New England States; on the south, Pennsylvania and New Jersey, and Long Island, stretching like a huge foot out into the Atlantic, with the city of New York at its heel; on the west we see Lake Erie, the Niagara River and Niagara Falls. We see forty populous cities and sixty-one counties, the whole crossed and lined by canals and railroads, and making a territory larger than the combined European kingdoms of Belgium, the Netherlands, and Denmark.

**The State a Municipal Corporation.**—But the State of New York, like the town and the county, is something more than territory. The real State consists of the people of New York, united in a political organization for purposes of government. In this sense the State, like the town, village, city, and county, is a municipal corporation, having the power to perform its own public work, manage its

own public property, and make and enforce its own State laws.<sup>1</sup>

But the State of New York, considered as a political unit or municipal corporation, is immeasurably superior in power and authority to the lesser municipal corporations of town, village, city, and county. The State, as we have already learned, is the author and creator of these lesser political bodies; and it is only by authority of State law that they exist and do business as distinct and separate governments.

**The State as a "Sovereign."**—Because of the great powers exercised by the State government, New York and other States of the United States, are sometimes spoken of as "Sovereign States." What does this mean? We read of kings and rulers who have power to make and enforce laws, whose word is life or death to their subjects, whose people obey them without question. We speak of such powerful rulers as "sovereigns"; and the word means one having power to rule, and one whose rule is actually obeyed. The State of New York possesses in large degree such "sovereign power" over its people and over the lesser governments within its borders. Thus, the people of the State of New York, through their representatives, have made a law punishing the crime of murder by death, and any individual member of the State convicted of murder may be made to suffer the death penalty. In the same way, the people of New York as a political unit, may compel individual mem-

<sup>1</sup> In a strictly technical sense, only the lesser governments created by the State—such as the town, village, city, and county—are included in the term "municipal corporation." But in its broader sense a municipal corporation means a body politic. This includes the State "and each of the governmental subdivisions of the State."—*American and English Cyclopædia of Law.*

bers of the State to shoulder muskets and fight for its defense, even at the cost of their own lives. So the State may punish as guilty of treason individual citizens who strike at its life. It may also compel its individual citizens to give up their houses and lands for a reasonable compensation, when needed for public purposes. None of these sovereign powers are possessed by the lesser municipal corporations. No town, village, city, or county may take life, or force its people to take up arms in its defense, punish its enemies for treason, or take private property for public purposes. Only the State possesses such powers.

**The United States the Real Sovereign Power.**—But while we use the term, “Sovereign State,” in speaking of New York and other States of the Union, we must not confound the sovereignty possessed by such States with the sovereign powers exercised by the United States, for national purposes and in our relations with foreign nations. In the sense of being a sovereign power, capable of dealing with foreign nations, of making war and peace, and of entering into treaties with foreign powers, the United States is our only sovereign. The relations of the United States to the individual States composing it, are fully described in a later chapter of this book.<sup>1</sup>

**Some Powers of the State.**—Notwithstanding the limitations of State sovereignty, the powers of New York and other States of the Union over individuals living within their borders, are supreme in many of the most important matters connected with our daily lives. Thus the State of New York makes laws punishing all ordinary crimes which are not offenses against the United States government. It is State law that prohibits murder, arson, burglary, forgery,

<sup>1</sup> Chapter XXII.

theft, and drunkenness. State law prescribes the form of marriage, and defines the rights and duties of married people. State law controls and orders the relations between parents and children, masters and servants, guardians and wards, principals and agents.<sup>1</sup> Our laws regulating ordinary business relations are mostly State laws. When we sue a man and compel him to pay a debt or to perform an agreement, we do it in accordance with the forms prescribed by the State. Houses and lands cannot be legally bought, sold, or transferred from one person to another, except according to laws made by the State. Our public schools are carried on and our teachers licensed and paid under the authority of State law.

**Duties of the State.**—But while the State exercises these vast powers over the individuals composing it, the State has also duties to perform in return. The State must protect the people composing it in the enjoyment of their personal rights to life, liberty, and property. It must suppress crime, preserve the public peace, and as far as possible, insure the safety and freedom of all its individual members.

Such are some of the functions performed by the people of New York through their organization in the political form known as the State. Whence originated this powerful government? What are the forms under which it is exercised? In order to answer these questions intelligently, let us turn for a moment to a study of the people who made New York.

**The People Who Made New York—The Dutch.**—New York was planted as a Dutch colony. The Dutchmen came from that small corner of Europe which lies between the River Scheldt and the Peninsula of Jutland. There the land

<sup>1</sup> See Chapter XXV., "Personal and Property Relations."

is low, and the North Sea breaks threateningly on the thin coast. Much of the soil is composed of mud and sand washed down in the beds of the rivers and flung back by the ocean, forming dunes and sandhills. Behind these gather lakes and marshes, covered at high tide by the salt waters. Large tracts reclaimed from the ocean lie below the level of the sea, and are protected from overflow by huge dikes of timber and stone, much of it brought hundreds of miles from the mountains of Norway. The country is appropriately called "the Nether (or lower) lands."

On this battlefield of the elements the ancestors of the men who planted New York built and maintained their homes. They drove back the ocean, drained lake and marsh, and covered the new-made land with farms and cities. Yet more than once the sea broke down the protecting dikes and buried farms and cities under its angry waters. The Dutchman's struggle, first, to wrest his home from the ocean, and then to preserve it, made him fearless, resolute, far-seeing and independent. As he would not yield to the sea, so he could not be conquered by man. As early as the year 1477—fifteen years before Columbus set foot on the shores of America—the Dutch had forced their rulers<sup>1</sup> to agree to the principle of "No taxation without

<sup>1</sup>The first General Assembly or Congress of the Netherlands was called together in 1477 by the Duchess Mary of Burgundy. It refused to vote any money to the government until its complaints had been heard and justice had been done to the Dutch people. The assembly forced Duchess Mary to agree to "Het Groote Priviligie,"—The Great Privilege—or Magna Charta of the Dutch people. "The Great Privilege," among other things gave the Netherlands' Congress power to levy taxes, coin money, regulate manufactures and commerce, declare war and raise armies and navies. It was for violating the provisions of The Great Privilege that the Dutch people in 1581 deposed Philip II. of Spain, and established the Dutch Republic. A very in-

consent." In a war lasting from 1563 to 1648—ten times as long as our American war for independence—the Dutch won their independence from Spain. When, in 1609, the clumsy "Half Moon" rounded the western end of Long Island, bringing Henry Hudson and his crew in sight of the lower end of Manhattan Island, the Dutchman in his small corner of Europe, was choosing his own rulers, paying taxes levied only by his own consent, and the seven provinces of the United Netherlands were under a republican form of government much like the United States of to-day.

**The English.**—While the Dutch were settling New Netherland, as they called New York, the "Mayflower" landed her Pilgrim band on the rocky shores of New England. The Pilgrims left their homes to obtain personal and religious freedom. They were brothers of the Puritans who, in 1649, a few years after the "Mayflower's" voyage, overturned monarchy in England, cut off the head of the tyrannical Charles I., abolished the House of Lords, declared "the people under God to be the origin of all just powers,"<sup>1</sup> and established the English Free State or Commonwealth. One of the first acts of the Pilgrims and other Puritans on reaching America was to establish a system of direct democratic government in town meetings. But the New England Puritans, although driven from their European homes by intolerance, themselves became intolerant. They allowed only church members to vote and hold public office.

Interesting account of this struggle, in which the Dutch people won their independence from Spain, is given in a book called *Brave Little Holland and What She Can Teach Us*, by Prof. William Elliot Griffis. The author draws many parallels between the struggle for freedom in Holland and the Struggle for American Independence. Mr. John Lothrop Motley, a famous American author, also tells the story in his *Rise of the Dutch Republic*.

<sup>1</sup> Resolution of the "Rump" Parliament, 1648.

They hanged inoffensive Quakers. They drove Roger Williams into the wilderness for daring to exercise his right to think and speak freely. Because of persecutions like these many of the more liberal Puritans left New England, and settled in the territory which is now New York. Hundreds of Englishmen, including many important families,<sup>1</sup> thus came to New York, bringing the New England town meeting to the shores of Long Island. These liberty-loving Puritans were heartily welcomed by the tolerant Dutch.

**The French.**—The common people of France enjoyed as late as the twelfth century, a freedom unsurpassed in most parts of Europe. In many rural communities public affairs were “directly regulated” by “a general assembly of the inhabitants.”<sup>2</sup> The French towns had charters which gave the townspeople power to make and enforce their own local laws, and to assess and collect their own taxes, as well as taxes due to the king. Gradually, however, these rights were taken away by the powerful kings of France, who tried also to dictate what religion Frenchmen should practice. The Protestant French Huguenots were forbidden to hold meetings, were denied the right to hold office, and forced from the principal trades and professions. Thousands of them fled to Holland, where French colonies took root in the principal cities of the Dutch Republic.<sup>3</sup> In the early part of the seventeenth century many of these liberty-loving Huguenots emigrated from Holland to America. The first actual settlers of New York were French Walloons, “ingenious, brave and persistent,”<sup>4</sup> and the first director general

<sup>1</sup> Lamb's *History of the City of New York*.

<sup>2</sup> *The State*, Woodrow Wilson, Secs. 356-366.

<sup>3</sup> Baird's *The Huguenot Emigration to America*.

<sup>4</sup> Lamb's *History of the City of New York*.



of New Netherland was a Frenchman. In 1685, Louis XIV., king of France, revoked the famous law, known as the Edict of Nantes, which gave protection to the Huguenots. Thousands more of the bravest and best Frenchmen, including many famous in letters, art and science, then left their country. Many came to New York, bringing with them education, habits of industry, graceful accomplishments, and love of personal and religious freedom.<sup>1</sup>

**Other Nationalities.**—The Dutch early invited “persons of tender conscience” to settle in New Netherland. The result was that strangers were constantly arriving. Among them were Germans, Swedes, Scotch and Irish. Love of freedom seems to have been a strong motive in most of these immigrations. Such were the people whose blood mingled at the birth of the “fearless, thoughtful, energetic, constructive people, politically alive and religiously free,” who “rejected hereditary leaders” and laid broad the foundations of the Empire State.

### SUMMARY.

The State is a municipal corporation with powers superior to the municipal corporations of town, village, city and county.

The State is the creator of these lesser municipal corporations, and may alter or abolish them at will.

The State is, in a limited sense, a sovereign, having power to take the lives and property of its citizens. Most laws punishing crime and regulating our ordinary social and business relations are State laws; but the power of the State does not extend to questions of national interest, or to those

<sup>1</sup> Lamb's *History of the City of New York*.

affecting our relations with foreign nations. These are controlled by the United States, which is the supreme power in this country.

As the citizen owes obedience to the State, so the State must protect the citizen in the enjoyment of his freedom, and in his personal and property rights.

Liberty-loving people from Holland, England, France, and other European countries, settled New York, bringing with them many of the fundamental ideas underlying our present institutions.

### SUGGESTIVE QUESTIONS.

What are the relations generally of the State to the lesser municipal corporations of town, village, city, and county?

What is meant by the term, "a sovereign State"?

Mention some powers of the State that indicate its sovereignty.

Has a county government the right to take life as a punishment for crime? Under what laws may life and property be taken for public purposes?

What power in this country is superior to the State of New York? For what purposes is it superior?

Mention three important subjects controlled by State law.

### ADDITIONAL READING.

For a discussion of the nature of the American State, see Bryce's *American Commonwealth*, Volume I., Chapter XXXVI. See also "Character, Organs and Functions of the States," Sections 1087, 1088, etc., in Prof. Woodrow Wilson's *The State*. For a discussion of the meaning of the term sovereignty, see Burgess's *Political Science and Constitutional Law*, Part I., Book II., Chapter I. For an interesting but exaggerated account of the influence of the Dutch in

the development of American political institutions, see Douglass Campbell's, *The Puritan in Holland, England and America*. *Brave Little Holland and What She Can Teach Us*, by Prof. William Elliot Griffis, contains many interesting and suggestive comparisons between the development of free democratic institutions in the Dutch Republic and the United States.

## CHAPTER IX.

### How New York Became a State.

WHEN the Dutch settled in the country discovered by Henry Hudson, the United Netherlands, the home of the Dutchmen, were at war with Spain. The latter owned vast colonies in America, and Spanish ships crossed the Atlantic carrying fabulous treasures of gold and silver, the spoil of her American possessions, home to Spain. In 1620, leading merchants in the Netherlands organized the West India Company, secured powerful fighting vessels, and the permission to attack Spain's American possessions. They also hoped to capture the Spanish treasure ships as they crossed the Atlantic. As a part of its plan of operations the West India Company agreed to colonize and defend the country discovered by Hudson, in return for the exclusive right of trading with the Indians there. This right the United Netherlands granted to the West India Company, and the latter thus came into possession of the country between the Connecticut and Delaware rivers. Through the middle of this vast territory flowed the Hudson River, and the company built forts, one at the mouth of the Hudson, on the site of the present city of New York, and another well up towards its source, where Albany now stands.

To this country, which the Dutch called New Netherland, the West India Company at once began to send colonists. It framed a plan of government for its new possessions, and appointed a Director General to govern them, who

was himself given power to appoint a Council. Director and council made laws for New Netherland, subject to the approval of the West India Company, and the government of the United Netherlands. The company forbade its colonists to engage in manufacturing or trade, and parcelled out the land lying along the Hudson and Delaware rivers to great proprietors called "Patroons," who agreed to plant colonies on their lands. Each patroon ruled like a little king on his vast estate. The actual settlers of New Netherland, the hard-working farmers and mechanics, had no voice in the management of public affairs.

**The Beginnings of Representative Government.**—In 1641 Director General Kieft, of the Dutch West India Company, quarreled with the Indians, and called a meeting of the heads of the families living in New Amsterdam and vicinity (now New York city) to obtain their advice. At this meeting the people chose "Twelve Select Men," all emigrants from Holland, to act for them. The twelve asked that they be given a place in the director's council, that the people might have a voice in their own government. The director thereupon dismissed the twelve men and ordered them to hold no more meetings. In 1643 the people again chose eight men, who appealed to the government of the United Netherlands and asked for the removal of the director.

In 1646 the West India Company made Peter Stuyvesant director general. Stuyvesant told the people that he had come to "govern them as a father does his children," but he soon found himself in difficulty over the taxes which he laid upon the people without their consent. He then asked the different settlements to choose eighteen men, from whom he would select nine men to act "as the people's tribunes" to advise the director and council. The nine men chosen

by Stuyvesant did not wait, however, to be called upon for advice, but boldly appealed to the government of the United Netherlands, and asked that New Netherland be taken from under "the intolerable rule" of the West India Company; "for no man," said they, "is unmolested or secure in his property." They asked that New Netherland be made a province under the rule of the States General or Congress of the United Netherlands, and that each town be given a local government "resembling the laudable government of the fatherland." As a result of these appeals the West India Company gave the people of the different settlements power to choose certain persons from whom the director general should select local officers known as "schout," "schepens," and "burgomasters" for each settlement.

**The Assembly of 1653.**—In December, 1653, an assembly, composed of two men from each settlement on Long Island and along the lower Hudson, met in New Amsterdam and denounced Director Stuyvesant for making laws and appointing officers without the consent of the people, declaring such practices "contrary to the granted privileges of the Dutch government, and odious to every free-born man." Troubles now came thick and fast in New Netherland. The English seized the land west of the Connecticut River. The towns on Long Island rose in rebellion. The Indians threatened war, and the treasury of the West India Company was empty. In the midst of these troubles, Director Stuyvesant, at the request of the burgomasters and schepens of New Amsterdam, called together the first Provincial Assembly ever held on the soil of what is now New York.

**New York's First Provincial Assembly.**—This assembly met April 10, 1664. It was composed of twenty-four men, two being chosen by the people of each of the twelve towns

or settlements in New Netherland. It called on the West India Company to protect New Netherland from the Indians and English, but refused to vote a tax proposed by Stuyvesant. A few months later English warships sailed into the harbor of New Amsterdam. The Dutch flag was hauled down and New Netherland passed, September 8, 1664, from the rule of the West India Company into the hands of the English.

**New York Under the English.**—Charles II. was then king of England. He gave New Netherland to his brother James, Duke of York. The duke sold the land lying between the Hudson and the Delaware, and called the remainder "New York," after the county in England over which he ruled. He appointed Col. Richard Nicholls to be governor of New York, and the governor was allowed to appoint a council. Governor Nicholls was given power to make and interpret the laws of the province. He thereupon prepared a code known as "The Duke's laws," which he presented to a convention of representatives from the towns of the province. This code was even less liberal than the laws of the West India Company, for under it the people were not allowed to choose their own local officers, or to have a voice in the laying of taxes which they must pay. The convention objected to "The Duke's laws," but the governor told its members that he was the real master in New York, and if they wanted a larger share in the government they must go to the king. Under his new laws the governor appointed a mayor, aldermen, and a sheriff, in place of the Dutch schepens and burgomasters of New Amsterdam, and named local officers in each of the other towns.

**The Duke Consents to an Assembly.**—After many de-

mands by the people, the Duke of York at last consented, as a means of raising revenue from New York, to give it a provincial assembly. In 1683 he gave the freeholders, or landowners, power to choose representatives to an assembly with liberty "to consult and debate on all affairs of public interest." This assembly met in 1683. It was composed of ten councilors, appointed by the governor, and of seventeen representatives, elected by the freeholders. It is memorable for having gathered into one historic document a summary of the more important rights and privileges known to the people who made New York, and for enacting them into law, under the title of "The Charter of Liberties and Privileges."

**The Charter of Liberties and Privileges.**—This famous charter, enacted more than two centuries ago, and nearly one hundred years before the American Declaration of Independence, contains in substance most of the rights for which the war of the revolution was afterwards fought, and in outline many of the more important rights possessed by the people of New York to-day.

The charter of liberties and privileges declared the supreme law-making power of the province to be in the governor, council, and people of New York, met in general assembly; that every freeholder and freeman should be allowed to vote for representatives without restraint; that no freeman should suffer under the law except by the judgment of his equals; that all trials at law should be by jury of twelve men; that no tax should be levied except by the consent of the assembly; that no seaman or soldier should be quartered on the people against their will; that no martial law should prevail; and that no person professing faith in God by Jesus Christ, should be at any time questioned for any difference of opinion.<sup>1</sup>

<sup>1</sup> Lossing's *Empire State*.



**The Duke Becomes King.**—The Duke of York is said to have signed and sealed the charter of liberties and privileges, but it was never delivered to the people. Two years later the duke became James II., King of England. Fearing the growing spirit of independence in the colonies, he rejected New York's charter of liberties and privileges, abolished the assembly, took away the charters of the New England colonies, forbade the people to gather in town meetings, and levied oppressive taxes without their consent. In 1688 the English people drove him from the throne and invited William, Prince of Orange, the Stadtholder<sup>1</sup> of the Dutch Republic, with his wife, Mary, the daughter of the deposed James, to the throne of England.

**King William Establishes a Government for New York.**—King William ordained a government for New York, composed (1) of a governor, appointed by the king; (2) a council, which consisted first of seven and afterwards of twelve members, also appointed by the king; and (3) an assembly elected by the freeholders of each county of the province. In their mimic sphere these departments corresponded to the king, lords, and commons of England. All laws were required, after passing the governor and assembly, to be submitted to the king; and no law could be passed contrary to the general laws of England. To the assembly was given the important power of levying taxes for the support of the provincial government.

**Governors Against Assembly.**—Now began a long and bitter struggle, ending only with the war of the American Revolution, between the governors representing the king, and the assembly representing the people of New York. The governors demanded that the assembly give them

<sup>1</sup> An officer something like our President of the United States.  
L. of C.

a regular and permanent income for the support of the provincial government. The assembly refused to grant any money except for short periods, and asserted its right, as representing the people who paid the taxes, to receive a statement of the government's expenses. The royal governors dissolved assembly after assembly, only to find the next one equally determined and fearless. "Nowhere," says the historian Bancroft, "had the relations of a province to Great Britain been so sharply controverted as in New York." In 1753 the British government yielded, and consented to yearly grants of money by the assembly. The governors were also obliged to give a yearly statement of expenses to the assembly. New York had won its most important right of self-government—the right to levy its own taxes and to say how they should be spent.

**New York Becomes a State.**—New York had now, after nearly ninety years of English rule, become almost wholly English in customs and feelings. The people looked upon themselves as possessing, by residence and legislative conquest, all the rights of Englishmen. But when the Stamp Act was passed in 1765, by the British Parliament, it seemed to the people of New York to overthrow at one stroke all that had been gained for liberty on this side of the Atlantic. Great Britain's insistence led to the union of the colonies in the Continental Congress, which recommended that each colony set up for itself an independent government under the general authority of the Congress. A provincial convention, elected by the people of New York, met at Kingston in 1777, framed the first constitution of the State, and adopted it April 20. It was at once published as the law of the land by the secretary of the convention mounting a barrel in front of the courthouse where

the convention was sitting, and reading the constitution to the assembled multitude. Thus New York took its place as one of the States in our great American Union.

### SUMMARY.

New York was settled under the direction of the Dutch West India Company, a private corporation which was given the power to govern, as well as colonize the country. The West India Company, under the general supervision of the government of the United Netherlands, made and enforced the laws of New York, and the people had at first no voice in public affairs.

At public meetings called by the director generals of the West India Company, the people chose at different times twelve, eight, and nine men to act for them in public matters. This was the beginning of popular representation in the province. Delegated conventions, whose members were chosen by the towns of the province, demanded local self-government and the right to tax themselves, as under the home government in the Netherlands.

In 1664 New Netherland became the English province of New York; and in 1683 the freeholders were given the right to elect a representative provincial assembly.

The first provincial assembly, under English rule, enacted in 1683, the charter of liberties and privileges, which contained in outline many of the most important rights guaranteed by the present State constitution.

In 1691 the assembly obtained the important power of levying taxes for the support of the provincial government; and in 1753—sixty-two years later—the right of saying how the taxes, so levied, should be spent.

In 1777 a constitutional convention, elected by the

people, adopted and published the first constitution of New York State.

### SUGGESTIVE QUESTIONS.

How did the Dutch West India Company come into possession of the territory which is now New York ?

Describe the beginnings of representative government in New Netherland.

What were "the Duke's laws" ?

Give an account of the assembly which enacted the charter of liberties and privileges.

What important right was given to the New York assembly by William and Mary ?

Give an account of the controversy between the royal governors of New York and the assembly. How did this controversy end ?

Give an account of the formation of the first constitution of New York.

## CHAPTER X.

### The State Constitution.

WE have seen a Dutch colony planted on the banks of the Hudson, become the home of a cosmopolitan and liberty-loving people, and develop under more than a century of English rule into the State of New York. Let us now look at the form of government under which the people of New York live and work and conduct their public business.

**The State Constitution.**—If you have helped to form a debating club or a literary society, you will probably remember that one of the first things done was to appoint a committee to draw up a set of rules for the orderly government of the club. These rules defined and fixed the powers and duties of the officers and the rights and duties of the members. Such a set of rules is called a constitution. The constitution, when reported by the committee, is voted upon, “yes” or “no,” by the members of the club. If accepted it becomes the law of the club, and cannot be altered or done away with except by the club. No officer or member may lawfully do anything contrary to the constitution. In a somewhat similar way, and for much the same purposes, the people of New York have adopted a written constitution as the fundamental or underlying law of the State.

**The Constitution the Supreme Law of the State.**—The written State constitution, adopted by a majority of the voters of the State, establishes in outline the government

of the State, as the constitution of the debating club establishes in outline the government of the club. No public officer or citizen may lawfully do anything contrary to the constitution, and no law may be passed by the State legislature that is not in harmony with it, for the constitution is itself the supreme law of the State. There is no law in New York superior to its State constitution, except the law found in the constitution and statutes of the United States, dealing with subjects which the people of the United States have taken away from the States, and placed in the hands of the national government.<sup>1</sup>

**Beginnings of the Idea of the Constitution Found in the Ancient City Charter.**—The written constitution, in which the people outline their form of government, and limit the powers and duties of their public officers, is generally spoken of as having its origin on American soil; but the beginning of the idea may be traced to a much earlier period than the formation of the States of the American Union. In our study of the city, we learned how the ancient towns and cities of Holland, England and other European countries, obtained written charters from their kings or lords. We saw how the people bargained for the right to elect their own local officers and to obtain their own courts of justice. We saw the rights thus obtained written upon parchment and preserved as the charter of the city. In such written charters may be traced the beginning of the idea of the written State constitution.

**Magna Charta.**—In the year 1215, the English people lived under the reign of the tyrannical and wicked King John. He cruelly murdered his nephew, Prince Arthur, and did not hesitate to take the lives and property of his

<sup>1</sup> See Chapter XXII., "The United States, The States and the People."

subjects for his own selfish purposes. At last the great lords and barons of England could stand John's injustice no longer. They gathered an army, and met the king at the meadow of Runnymede, by the River Thames, "where rushes grow in the clear water and its banks are green with grass and trees." Here they forced the king to sign a paper known ever since as the great charter of English liberty—*Magna Charta*. In this great charter, a copy of which, yellow with age, is still preserved in the Lincoln Cathedral, King John promised that he would not sell, delay, or deny justice to any man; that he would imprison no man without a fair trial; that he would observe the liberties granted in the charters of the towns and cities, and that he would lay no taxes upon the people except by consent of their representatives in the "general council of the kingdom"—that is, the English Parliament. The king signed the great charter with a smile on his lips, but when he had parted with the barons he raved like a madman, flinging himself on the floor, and gnawing sticks and straw in his impotent rage<sup>1</sup>—all because he had signed a paper agreeing to observe the laws and not to oppress his people. This great charter, signed by John, is often spoken of as being a part of the English constitution,<sup>2</sup> and many pro-

<sup>1</sup> Green's *History of the English People*.

<sup>2</sup> The English have no formal written document known as The Constitution, such as we have in the United States. They consider those things to be constitutional which have been long established by custom and usage, or which have been enacted by Parliament. The English from the earliest times have claimed certain rights and privileges as belonging to the people, because they were held to be in accord with the good customs and laws of the past. These rights and privileges have been summarized from time to time in such historic documents as *Magna Charta*, the *Petition of Right of 1628*, the *Habeas Corpus Act*, and the *Bill of Rights of 1689*. Hence these documents are spoken of as forming a part of the English constitution.

visions in our American State constitutions may be traced to it.

**The Constitution of the Dutch Republic.**—In 1477 an event took place in the Netherlands quite similar to the signing of Magna Charta in England. A congress of representatives from the different States of the Netherlands forced Duchess Mary, their ruler, to sign “Het Groote Priviligie,” (The Great Privilege), in which she promised to observe the liberties granted in the ancient charters of the Dutch cities, and to lay no taxes on the people except by consent of their representatives. When the Dutch threw off the yoke of Spain, and the Republic of the United Netherlands was formed in 1581, “Het Groote Priviligie,” signed by Duchess Mary, was made the basis of the written constitution of the Dutch republic.<sup>1</sup>

**Charters in the American Colonies.**—Most of the English colonies in North America were planted and grew up under written charters. Some of these charters were granted by the English king to companies of merchants similar to the Dutch West India Company, which settled New York. These charters usually gave the company the right to settle the land, and to govern the colonies which it planted, by officers appointed by the company. Such were the first charters issued to the companies who colonized Massachusetts and Virginia. Other colonies, like Pennsylvania, and Maryland, were planted under the rule of great proprietors like William Penn, who owned the land, and gave charter government to the people who settled upon it. Still others, like Rhode Island and Connecticut, received charters directly from the king, under which the people were allowed to choose their own officers,

<sup>1</sup> Motley's *Rise of the Dutch Republic*, condensed by Griffis.



and, within certain limits, make their own laws. The first written constitution actually made by the people of America was framed by the freemen of the three towns of Windsor, Hartford, and Weathersfield, lying in the Connecticut valley. It was called "The Fundamental Orders of Connecticut." King Charles II. accepted it as a lawful form of government for the colony of Connecticut, which retained the "Fundamental Orders," with scarcely any change, down to the time of the revolutionary war.

**Colonial Charters Become State Constitutions.**—Under these various charters the American colonies grew up with governments having general features much alike in every colony. Each colony had a governor and council, generally appointed by the king, and an assembly usually elected by the people. These constituted the law-making power of the colony, subject to the government of England. When the colonies became States, soon after the Declaration of Independence, it was easy for the people, by making some alterations, to change their written charters granted by the king or great proprietor, into written State constitutions.<sup>1</sup>

<sup>1</sup>"When they (the colonies) cast off their allegiance to Great Britain their self-constitution as independent political bodies took the shape of a re-casting of their colonial constitutions simply. Rhode Island and Connecticut did not find it necessary to change their charters in any important particular; they already chose their own governors and officials as well as made their own laws. The other colonies, with little more trouble, found adequate means of self-government in changes which involved hardly more than substituting the authority of the people for the authority of the English Crown. But the charter, the written constituent law, was retained: the new governments had their charters which emanated from the people, as the old governments had had theirs given by the king. . . . The colonists were not inventing written constitutions; they were simply continuing their former habitual constitutional life."—Woodrow Wilson, *The State*, Section 1062.

**How the Constitution of New York Was Made.**—New York did not have a charter government, unless we speak of the charter given by the Netherlands States General to the West India Company, as such a government. It is true that the first provincial assembly under the rule of the Duke of York, enacted in 1683 the charter of liberties and privileges, but it was not accepted by the duke. Our first State constitution was the work of a convention of delegates chosen by the voters of the State soon after the Declaration of Independence. This convention was given power to frame the outline of a government for the new State. It completed its work, as we have seen, while sitting at Kingston, in 1777. The newly-framed constitution declared that the power to govern the State rested in the people of the State. It continued the assembly as under the old provincial government, and provided for a governor to be elected by the landowners or freeholders of the State, and for a Senate of twenty-four freeholders, also elected by the freeholders, to take the place of the council, formerly appointed by the king. This constitution was not submitted to the people. The times were perilous; a British army was about to invade the State. The constitution makers simply published the result of their work, which at once became the law of the State.

**Revising the Constitution.**—New York's constitution has been revised or remodeled several times by conventions elected for that purpose by the voters of the State. The first important revision took place in 1821, the second in 1846, and the third in 1894. When the members of a convention elected to revise the constitution have carefully considered proposed changes, and have agreed among themselves upon a new or revised constitution, it is sub-

mitted to the voters of the State for their approval or rejection. Printed ballots are prepared and distributed to each voter as he reaches the polling place at the time of the election. On these ballots are the words, "yes" or "no," indicating whether or not the voter wishes to vote for or against the proposed new constitution. If a majority of the "electors voting thereon"<sup>1</sup> vote in favor of the new constitution, it becomes the law of the State. If not, the proposed constitution is rejected, and the people continue to live under their old constitution. We thus see that the people of a great State, adopt their fundamental law much as the voters of a town meeting vote "yes" or "no," upon propositions submitted to them.

**What the Constitution of New York Contains.**—When we look at the constitution, as found in the "Red Book," or Legislative Manual of the State, we see that it may be naturally but somewhat roughly divided into four parts. The first is a sort of great charter of liberties or enumeration of the people's rights, which may never be taken away or abridged by the people's rulers. This part of the constitution is sometimes called the "Bill of Rights."<sup>2</sup> The second part states who may vote in New York, prescribes the qualifications of voters, and the manner of conducting public elections. The third part lays down the form and framework of the State government, fixes the boundaries of legislative and judiciary districts, and defines the powers and duties of the State officers. The fourth part contains miscellaneous provisions relative to the money, credits, debts and laws of the State, relative to corporations, public charities, the schools, the powers and duties of

<sup>1</sup> New York State Constitution, Article XIV., Section 1.

<sup>2</sup> See Chapter XI., Page 114.

local officers, and the government of cities, counties and villages.

**Amending the Constitution.**—In a government like ours it is important for the freedom and safety of the people, that ample opportunity be given to amend the constitution. Otherwise constitutional government might become a tyranny, and its only remedy a revolution. A constitution that could not be changed when a majority of the people wished it, would be like a house too small for a growing family. To give opportunity for the people to change their constitution, the revised State constitution of 1894 provides that, beginning with the year 1916, and every twenty years afterwards, and also at such other times as the legislature shall direct, there shall be submitted to the voters of the State this question, “Shall there be a convention to revise the constitution and amend the same?” The constitution may also be amended by any two consecutive State legislatures, agreeing by majority vote of all the members of each house of both legislatures, to any proposed amendment, and then submitting it to the voters of the State for their adoption or rejection. If a majority of those voting vote “yes” on a proposed amendment it becomes the law, otherwise it is rejected.

#### SUMMARY.

The constitution, adopted by the voters of the State, is its fundamental law. The legislature may pass no law not in accord with the constitution; and no law is superior to the State constitution, except the constitution and laws of the United States.

The idea of the written State constitution may be traced in the written charters of cities. Magna Charta is spoken

of as a part of the English constitution. Most of the British colonies in America had some form of written charter as an outline of government. During the revolutionary war these colonial charters were changed into State constitutions.

New York's constitution contains a summary of the personal rights possessed by the people of the State, and lays down the form and framework of the State government.

The constitution may be revised and amended by a convention elected by the people for that purpose, which must afterwards submit its work to the voters of the State ; or two successive legislatures may submit any amendment to the voters.

### SUGGESTIVE QUESTIONS.

What is meant by the State constitution ? How does it differ from other State laws ?

Describe in outline the various parts of the constitution of New York State. What is meant by the "bill of rights," as contained in the constitution ?

Trace the beginnings of the idea of the written constitution, in (1) the ancient city charter, (2) Magna Charta, (3) "Het Groote Priviligie," (4) the charters of the early American colonies.

Describe the formation of the Fundamental Orders of Connecticut.

What law-making bodies were established by the New York State constitution of 1777 ?

Name a provision of the State constitution that indicates a distrust, on the part of the people, of the State legislature.

When was our State constitution last revised ? By what

body? Under what authority? How did the revised draft finally become law?

Describe the usual manner of amending the constitution.

#### ADDITIONAL READING.

Read Green's *Short History of the English People*, Chapter III., Sections II. and III., for an account of the origin and signing of Magna Charta. Read the same work, Chapter IV., Section IV., "The English Towns," for the growth and development of charter government in English cities. For an account of charter government in the American colonies, see Schouler's *Constitutional Studies*, Part I., Chapter II., "The Colonial Governments." For an account of the transition from colonial to State government, see Woodrow Wilson's *The State*, sections 1050 to 1065. On the nature, growth and development of American State constitutions, read Bryce's *American Commonwealth*, Vol. I., Chapters XXXVII. and XXXVIII.

## CHAPTER XI.

### Personal Rights.

OUR forefathers went into the war of the revolution to defend their personal rights. They did not want independence from Great Britain, so much as they wanted the right to make an honest living as British subjects on American soil. They did not want to be hampered by laws prohibiting them from making horseshoe nails, or from building vessels in which to carry their produce to market. They wished to be allowed to trade with their neighbors, or wherever they could get the most money for their goods, and they did not want to be forced to pay taxes which they had no part in assessing or collecting, and in the spending of which they had no voice.

When the First Continental Congress met in Philadelphia, in 1774, its members drew up a petition to Parliament and king in which they said: "Permit us (in America) to be as free as yourselves, and we shall ever esteem a union with you to be our greatest glory and our greatest happiness." The British home government rejected this appeal for freedom, and left the men of New York, Massachusetts, Virginia, and the other colonies, no choice but submission or resistance by arms.

When the people of the thirteen colonies, in 1776, declared their independence of Great Britain, and began to set up State governments of their own, naturally the first thing they wished to make sure of was the preservation of their

personal rights. Accordingly we find standing first in nearly all the State constitutions adopted during the revolutionary war, declarations of rights—rights which may never be abridged or taken away from the people.

**Declarations of Personal Rights in Early State Constitutions.**—Such a declaration of rights, placed at the head of a newly-made State constitution, was usually known as a “bill of rights”; and these included nearly every important personal right known to our liberty-loving ancestors. Thus, the “bill of rights” at the head of Virginia’s new constitution, declared all political power to be vested in and derived from the people, and that the magistrates and public officers are the people’s trustees and servants; the Pennsylvania “bill” that all freemen have a right to elect or to be elected public officers; the Massachusetts “bill” that if private property is taken for public purposes it must be upon reasonable compensation; and the North Carolina “bill” that every person has an inalienable right to worship God according to the dictates of his own conscience.

**Called “Bills of Rights” from the English Bill of Rights of 1689.**—It is probable that these declarations of rights in the newly-made constitutions, were called “bills of rights,” in imitation of the great Declaration of Right, drawn up by the English Parliament in 1689, after the tyrannical James had been driven from England; this was presented to William and Mary, and accepted by them before Parliament would allow them to take the throne; and afterwards it was enacted into law under the title of the “Bill of Rights.” Like Magna Charta, the Bill of Rights of 1689, is often spoken of as being a part of the English constitution.

**The “Bill of Rights” in the New York State Constitution.**—New York’s constitution, adopted in 1777, did not at



first contain a formal "bill of rights," although it embodied the utterances of the Declaration of Independence and included an endorsement of the Dutch principle of freedom in matters of religion. Before the close of the revolutionary war, however, a formal declaration of rights was placed in our State constitution.

Looking at the constitution, as adopted by the voters after the last revision, in 1894, we find standing first, and before its various numbered sections this preamble :

*"We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings do establish this constitution."*

There is here condensed in twenty-five words the history of the authority for our State government. Following the preamble is Article I. of the constitution, composed of eighteen sections, being the New York "bill of rights."

**Arbitrary Power Not to be Exercised.**—Article I., Section I of the State constitution reads : "No member of the State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." What does this mean? In plain words it means that no person of the State, however poor or humble, may, without just cause, as decided in a trial before a court of law, be deprived of his right to vote, of any money or property belonging to him, or of any other lawful right; that if he loses any of his rights, it must be in consequence of crime, of which he has been found guilty by due process of law.

To understand fully this section of the constitution, we must go back to the time when the English barons met King John at Runnymede and forced him to sign the Great Charter. In that charter there is a famous promise made

by the king which reads: "No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way brought to ruin, save by the law of the land<sup>1</sup> and the legal judgment of his peers." John, we remember, had taken the lives and property of his subjects for his own selfish purposes. He had imprisoned men without trial or authority of the law, and had tortured them to make them give up their possessions. In this clause of Magna Charta he promised to stop such abuses. Section 1 of Article I. of our State constitution, is this famous promise of Magna Charta applied to modern conditions.

**Trial by Jury.**—Section 2 of Article I. of the State constitution reads: "The right of trial by jury in all cases in which it has heretofore been used shall remain inviolate forever." This fixes more firmly the guaranty against arbitrary power given by Section 1. Trial by jury is a part of "the law of the land," or due process of law, by which the guilt or innocence of a person accused of crime is to be determined. It gives an accused person the right to demand that a jury of twelve impartial men<sup>2</sup> shall examine in open court the proofs of his innocence or guilt, and that only after the twelve have decided him guilty, is he to be punished. The jury is also used in determining the truth

<sup>1</sup> "The words 'by the law of the land,' as used in Magna Charta, are understood to mean due process of law;—that is, by indictment or presentment of good and lawful men; and this, says Lord Coke, is the true sense and exposition of the words."—*Kent's Commentaries*. "By 'the law of the land' is most clearly intended the general law—a law that hears before it condemns, which proceeds upon inquiry, and renders judgment only upon trial. The meaning is that every citizen shall hold his life, liberty and property and immunities, under the protection of the general rules which govern society."—Webster in the Dartmouth College Case.

<sup>2</sup> The jury in the court of the justice of the peace consists of six men.

in private disputes, wherein one person sues another in a court of law. This right to a trial by a jury of twelve men is a very old one, and its beginning may be traced in a number of early English customs. When, in 1066, William the Conqueror crossed the channel, defeating the English at the battle of Senlac, he ordered a census of their houses, lands and cattle to be taken. For this purpose he ordered that twelve men in each neighborhood should give him the facts, swearing to their truth. This was termed ascertaining the facts "by inquest."<sup>1</sup> It had long been a custom of the English people to settle disputes in folk meeting, where the freemen of the hundred or shire gathered in hundred-court or county-court to discuss and decide the public business. At such meetings, both the person complaining and the person defending himself, after swearing each to his side of the matter, would, if possible, get twelve friends or neighbors to swear that they believed him to be a truthful man. It finally became a custom, about the time of King Henry II., to have the facts in all such disputes left to an impartial jury of twelve men, who were to ascertain the truth. Thus arose the legal right of trial by jury.

**The Right of Freedom of Conscience and Worship.**—Section 3 of Article I. of our State constitution guarantees "the free exercise and enjoyment of religious profession and worship without discrimination or preference," forever to every person in the State; and declares that "no person shall be rendered incompetent as a witness on account of his opinion in matters of religious belief." Thus, Catholic, Protestant, Jew, and Agnostic, stand on an equal footing under the law of New York. All have equal rights; all may vote or hold office. None is denied any public privilege.

<sup>1</sup> Hence, possibly, the origin of the term "Coroner's Inquest."

But this liberty of conscience granted by the constitution, may not be construed to protect vicious or immoral practices carried on in the name of religion.

**The Writ of Habeas Corpus.**<sup>1</sup>—Section 4 of Article I. of the State constitution preserves to the people of New York the Writ of Habeas Corpus, and declares that this privilege shall not be suspended “unless when in case of rebellion or invasion, the public safety may require its suspension.” The writ of habeas corpus is an order that may be obtained from a judge by the relatives or friends of a prisoner, commanding those restraining him to bring him into court, that it may be lawfully decided whether or not he is justly and legally restrained. The right to this writ or order is one of the oldest and most highly-prized rights of the English-speaking people. It is based on the famous promise of John in Magna Charta, that no freeman shall be taken, or imprisoned, but by the lawful judgment of his peers.<sup>2</sup> The right to the writ of habeas corpus applies in all cases where a person is believed to be unlawfully restrained.

**Excessive Bail Shall Not be Required, Nor Cruel Punishments be Inflicted.**—Section 5 of Article I. of the State constitution reads: “Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.” As we shall see in another chapter,<sup>3</sup> when a person is arrested and accused of crime, instead of being put

<sup>1</sup> Habeas corpus, from the Latin, *habeo*, to hold; and *corpus*, the body.

<sup>2</sup> Another clause in Magna Charta reads: “Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.” “This important writ,” says Mr. John Fiske, “may have been the prototype of the writ of habeas corpus, and was granted for a similar purpose.”

<sup>3</sup> Chapter XVI., “How Criminals are Brought to Justice,”

at once into jail to await his trial, he is sometimes allowed to go free, on giving a pledge that he will appear in court to be tried at a future time. Giving such a pledge is called "giving bail," and this section of the constitution means that a court or judge cannot require a pledge so large that an accused person may not take advantage of this right. All of Section 5, except the part referring to witnesses, is taken word for word from the Bill of Rights of 1689.

**Other Rights of Accused Persons.**—Section 6, of Article I., gives a person accused of crime the right to have the matter examined by a grand jury,<sup>1</sup> and the further right of a public trial, at which the accused person is allowed to have a lawyer to defend him. It also says: "No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled to be a witness against himself; nor be deprived of life, liberty or property without due process of law;<sup>2</sup> nor shall private property be taken for public use without just compensation."

**Private Rights, and the State's Right of Eminent Domain.**—As will be seen from the last section, the law gives the people of the State the right to take private property for public purposes. This right is called the right of eminent domain. Under it the State can compel a man to

<sup>1</sup> See Chapter XVI., "How Criminals Are Brought to Justice."

<sup>2</sup> "It, (the phrase, 'due process of law') has long been in use among law writers and judicial decisions as implying correct and orderly proceedings, which are due because they preserve all the securities for private rights which are applicable to the particular case. In this sense it is synonymous with 'law of the land,' as used in the famous thirty-ninth chapter of Magna Charta, which declared that no 'freeman shall be taken, or imprisoned, or disseized or outlawed, or banished, or otherwise destroyed, nor will the king pass upon him or commit him to prison unless by the judgment of his peers or 'the law of the land.'" The identity of the two in meaning and purpose is now well settled."—Cooley, *Principles of Constitutional Law*.

give up his house and land, if the premises are needed for a public institution, such as a schoolhouse, hospital, or park. Under the right of eminent domain, we see that the individual holds his property subject to the greater right of the people of the State; but the individual thus compelled to yield his private rights, is under the constitution, entitled to just and reasonable compensation.

**The Right of Freedom of Speech.**—Section 8, of Article I. reads: “Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” In prosecutions for libel the truth may be given in evidence. These are rights fully enjoyed in but few countries outside the United States.

**Freedom of Petition.**—Section 9, of Article I. declares that “no law shall be passed abridging the right of the people peaceably to assemble and to petition the government or any department thereof.” This right has its origin in the English Bill of Rights of 1689, in which it was declared “that it is the right of subjects to petition the king and all commitments and prosecutions for such petitions are illegal.”

**Rights in Land.**—Other sections of Article I. declare that the people of the State possess the original and ultimate ownership of the land of the State; and that any land losing its private owner must revert to the State. Every private owner of land is given full right to sell or dispose of it, except that agricultural lands may not be leased for a longer period than twelve years. No one may buy land from the Indians without consent of the legislature; and no alien may own land in New York without formally declaring his intention of becoming a citizen.

**English Common Law and the Battle of Lexington.**—Section 16, of Article I. declares that all parts of the common law of England,<sup>1</sup> not repugnant to the State constitution, which were in force in the colony of New York on April 19, 1775, shall remain as a part of the law of the State. This is the date of the famous battle of Lexington, in the beginning of the war of the revolution. After that assault upon American liberty, the people of New York no longer considered themselves as living under the laws of Great Britain.

**Civil and Political Rights.**—The personal rights above described, as guaranteed to the people of New York by the State constitution, are known as civil rights, to distinguish them from other rights known as political rights. Civil rights belong equally to every man, woman and child of the State, while political rights are more in the nature of special privileges given to certain classes of people. Thus the right to vote is a political right, and is given generally to male citizens, twenty-one years old and over; while the rights of freedom of speech, liberty of the person, personal security, freedom of conscience, and the right to hold property, are civil rights, belonging equally to all members of the State, whether men or women.

**Criminals May Lose Their Personal Rights.**—A member of the State loses his political rights, such as the right to vote and to otherwise take part in the government of the State, on being convicted of a felony; and he cannot thereafter exercise these rights, unless restored to citizenship by the governor. This is not the case, however, as regards the civil rights of a convicted criminal. He is still entitled, after serving the sentence imposed for his crime, to the pro-

<sup>1</sup> See "Sources of State Law," Chapter XXV.

tection of the State in the enjoyment of his life, liberty, and property ; but a person condemned to prison *for life* loses all property rights, and is regarded by the State as legally dead.

### SUMMARY.

Article I. of our State constitution, known as the " Bill of Rights," guarantees the free exercise of many personal rights to the people of the State.

Among the personal rights so guaranteed are freedom of the person, the right of trial by jury, freedom of conscience in religious matters, the right to the writ of habeas corpus, reasonable bails and fines, humane legal punishments, reasonable compensation for private property taken for public uses, freedom of speech, and freedom to petition the government.

Many of these personal rights are inheritances from Magna Charta, the English Bill of Rights of 1689, and customs of our English and Dutch ancestors.

These personal rights belong equally to all the people of the State, and are known as civil rights. They are distinguished from political rights, which are given only to certain classes of citizens.

Criminals may lose both their civil and political rights.

### SUGGESTIVE QUESTIONS.

What is the origin of the expression, " bill of rights " ?

In what part of our State constitution do we find the " bill of rights " ?

What does the constitution mean when it says that no member of the State shall be deprived of his rights " unless by the law of the land, or the judgment of his peers " ?



Describe the duties of a trial jury.

What provision in the State constitution guarantees freedom of conscience?

What is the writ of habeas corpus? How is it obtained? For what purpose?

What is bail? What provision of the constitution guarantees the right of bail?

Name three legal rights of a person accused of crime.

Describe the right of eminent domain. For what purpose may it be used?

What is meant by "freedom of petition"?

What is the difference between a civil right and a political right? Have all citizens equal political rights? Have they equal civil rights? How may a citizen lose his civil and political rights?

## CHAPTER XII.

### The Right to Vote.

As we walk the streets of a city or village in New York on the first Tuesday after the first Monday in November, we see here and there groups of men gathered in front of certain buildings designated as "polling places." Some are hurrying into the polling places, or standing in line waiting for their turn to go in and vote. Others, having cast their ballots, are coming out. A policeman, with club and badge, stands near—the visible symbol of the law. Men of every class—rich and poor, the merchant prince and the day laborer, the hard-working farmer and mechanic, and the idle fellow—all gather at the polling places on election day.

What is it all about? Why is this voting going on? Because this is the manner in which the people of the State of New York engage in the business of self-government. Every man, as he puts his ballot into the box on election day, is for the time being a part of the government, as much as the sheriff who arrests a criminal, or the judge who sentences him from the bench. On election day the voter helps to choose public officers to do the public work. At the polling place he says, "yes" or "no," to a proposed State constitution. Here he votes for legislators to make the laws, a governor to enforce the laws, and judges to interpret the laws and to apply them in particular cases. The individual voter, as he casts his ballot, is thus the fundamental governing power in the State.

**Who May Vote.**—The New York State constitution says :<sup>1</sup> “Every male<sup>2</sup> citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people.” An exception to this is made in favor of soldiers and sailors in time of war. They may vote, though they may not at the time of voting be in their home election districts, and their ballots will be counted as if cast in the home districts.

**Who Are Citizens.**—Who are citizens, and what is the citizenship that gives a man the right to vote in New York? First, citizenship is a national rather than a State affair. A person must be a citizen of the United States in order to be a citizen of his State. “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,” reads the fourteenth amendment of the United States constitution. A law of the United States<sup>3</sup> also declares that all persons born out of the country but of citizen parents are citizens. Citizenship, for purposes of voting in New York State, implies therefore :

1. That the voter must have been born in the United

<sup>1</sup> Article II., Section I.

<sup>2</sup> By State law of 1901, women taxpayers are allowed to vote in town and village elections on propositions involving the spending of the public money.

<sup>3</sup> United States Revised Statutes 2d ed., Section 1993, Title 25.

States, and that he is not the subject of another nation ; or

2. That, if born out of the United States, he is the child of parents who are citizens ; or

3. That, though born in another country, he has been naturalized as a citizen of the United States.

Some States allow immigrant residents, who have declared their intention of becoming citizens of the United States, to vote ; but in New York only the full-fledged male citizen, twenty-one years of age or over, may vote at the general elections. We thus see that, while the United States confers citizenship, the State confers the right to vote and fixes the qualifications of the voter.

**How An Alien<sup>1</sup> May Become a Citizen.**—A foreigner may become a citizen of the United States, and thus a citizen of New York State, by :

1. Living five years continuously in the United States, and one year in the State where naturalization is sought, and

2. Making oath before a court of record<sup>2</sup> at least two years before his admission to citizenship, that it is his intention to become a citizen and to renounce forever his allegiance to any foreign state or ruler, and to renounce any foreign titles or orders of nobility he may hold ; and

3. At the time of his application for admission as a citizen, taking an oath to support the constitution of the United States.

The court must also be satisfied that the applicant for citizenship has during the year before he takes this oath

<sup>1</sup> An alien is a person born in a foreign country and not a subject of the United States.

<sup>2</sup> A court which has a clerk and an official seal.

behaved as "a man of good moral character," attached to the principles of the constitution of the United States, and well disposed towards the good order and happiness of the same.<sup>1</sup>

**Some Exceptions to the Rule.**—An alien, over twenty-one years of age, who has been honorably discharged from the army or navy of the United States, may take the oath admitting to citizenship, without any previous declaration of his intention to become a citizen, if he has lived a year in the United States and is a person of good moral character; it being thought that a man willing to fight for the country is entitled to the rights of a citizen of the country. Minor children of naturalized parents, living in the United States, are considered as citizens; and the naturalization of a husband makes his wife a citizen; but New York does not allow a woman citizen to vote except at school district elections.<sup>2</sup> Indians not taxed and Chinese are excluded from citizenship; and idiots, lunatics, and criminals sentenced to State prison, are not allowed to vote.

The people of New York seem to have a growing feeling of the importance and value of citizenship in the State, and desire only the best people from foreign lands to become citizens here; so in order to prevent the hurried naturalization of unfit persons on the eve of election, the people placed in the constitution of 1894 the rule that a man must be a citizen of the United States for at least ninety days before being allowed to vote. Thus a naturalized citizen who has not been naturalized at least ninety days before an election, may not vote at that election.

<sup>1</sup> United States Revised Statutes, 2d ed., Section 2165, Title 30.

<sup>2</sup> See note, "Voters at School District Meetings," Chapter XVIII., "The Public Schools;" also note, page 125.

**Citizens May Lose the Right to Vote.**—A man convicted of bribery or of desertion from the army or navy of the United States, or of an infamous crime punishable in a State prison, loses the right to vote, unless afterwards restored to citizenship. A person convicted of accepting money or any other bribe for voting, loses the right to vote for five years. A person who bets on the results of an election is also disqualified for voting at that election; and no person may vote at a general, special, or city election in New York, unless he has registered his name and address with the election officers at least ten days before the election. This helps to prevent fraudulent voting, by giving the officials and others interested, an opportunity to look up the person registering and to find out if he be entitled to vote. This rule requiring registration does not apply in town elections, or in villages having a population of 5,000 or less, except by special law of the State; it being supposed that in such small places every voter is known, and that opportunities for illegal voting are consequently small.

**In School District Meetings.**—In the school district elections held in the country districts of the State, the men and women of the district, who are citizens of the United States and of full age, and who own or rent houses or lands in the district, or who pay taxes on personal property of the value of fifty dollars in the district, or who have living with them children who have attended the district school for at least eight weeks during the year, meet and vote much as in the town meeting. The women join with the men in electing school officers and in determining the amount of money to be raised and expended for school purposes.

**Voting a Political Right.**—The right to vote is a political right rather than a civil right. That is, the right to vote is

not a right inherent in a citizen of a State, like the right of freedom of speech, or of liberty of conscience ; but it is a privilege to participate in the government, conferred upon a certain class deemed competent to exercise it. Thus while the constitution guarantees to all persons in the State—men, women and children—the exercise of the civil right of free speech, it limits the general political right of voting to certain male citizens, twenty-one years of age and over. A State has power to restrict or extend the right to vote ; but the United States constitution, Amendment XV., forbids any State to abridge or deny the right of any citizen to vote “ on account of race, color, or previous condition of servitude.”

**Voting a Duty.**—No man enjoying the protection of the laws, and wishing to see them faithfully executed, and the public business properly performed, should fail to exercise his right to vote ; for constitutions and statutes avail but little in the ordinary management of public affairs, unless they have back of them honest, faithful, and efficient public officers. How the people of New York vote, and the manner of choosing public officers, are described in detail in Chapter XX., “ The Conduct of Public Elections.”

## SUMMARY.

The ordinary citizen takes part in the government of his State when he votes at public elections.

The general right to vote in New York is confined to male citizens of the United States, twenty-one years of age and over, but exception is made in favor of certain women in school-district, town and village elections.

Aliens, resident for five years in the United States may

become citizens on making formal declaration of their intention so to do, and on taking the oath of allegiance.

The United States confers citizenship, but the State confers the right to vote, which is a political not a civil right.

Citizens may lose the right to vote through conviction of infamous crime and by failure to register.

### SUGGESTIVE QUESTIONS.

Is the right to vote a civil or a political right ?

What government in this country confers the right to vote ? What government confers citizenship ?

Mention five requirements of a legal voter in New York State ?

Who are citizens ?

How may an alien obtain citizenship in the United States ?

Mention three ways in which a citizen may lose his vote at a particular election.

How are would-be voters registered ?

May any citizen vote at a school-district election ?



## CHAPTER XIII.

### Departments of State Government—The Legislature.

IF we go through a large cotton manufactory, during the height of the busy season, we see in one part of the factory huge bales of cotton fiber brought in from the trucks, unpacked and assorted. In another part we hear the roar of machinery, as clashing looms and flashing shuttles lengthen inch by inch the new-made woof into good stout cloth. In another department we see this cloth in the process of bleaching ; while in a fourth, busy packers and shippers are preparing to send it to market. In still another part of the establishment is the manager's office, with its small army of clerks and bookkeepers. Each department has a different work to do, but all are working harmoniously for a common purpose. As in the manufactory, so in the vast and complicated business known as the government of the State, the work is carried on in different departments, yet all with the single aim of service to the people.

**Three Departments of Government.**—There are, as we have seen, three general departments running through the government of the United States, the governments of the several States, and the local governments of town, village, city, and county, organized under the government of the State. These are the Legislative, Executive, and Judiciary Departments. The legislative department makes the laws. The executive department enforces the laws, and the

judiciary department interprets the law, and applies it in the trial of criminals and civil suits at law. The legislative department is represented in the State by the legislature, in the county by the board of supervisors, in the town by the town meeting, in the city by the common council or board of aldermen, and in the village by the board of village trustees. The head of the executive department of the State is the governor, of the city the mayor, and of the village the village president. It is not so easy to point out the executive head of the county and the town; for while the sheriff may be the most important county executive officer and the supervisor the most important executive officer of the town, neither sheriff nor supervisor can be said to be over or superior to the other county and town executive officers. The judiciary department is composed of courts and judges.

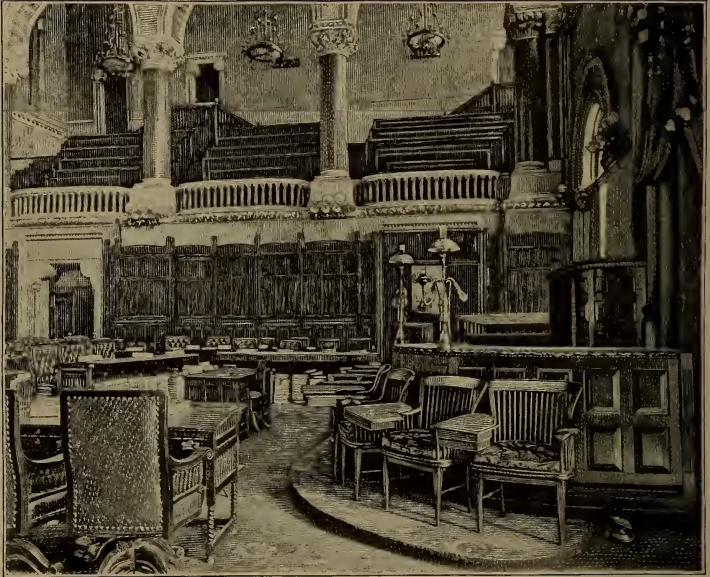
**Three Departments Not Always Separate and Distinct.**—While the work of these three departments is, as a rule, quite separate and distinct, each department having its own officers usually unconnected with the other departments, there are many public officers who perform duties in more than a single department. Thus the governor of the State, while at the head of its executive department, is an important part of the legislative department, most bills before becoming laws being approved by him. The governor also exercises judicial functions in reviewing the facts in cases where criminals sentenced by the courts appeal to him for pardon or commutation of their sentences. In other countries there is often much less separation of the three departments of government than in ours. Thus, in England, the cabinet, comprising the chief executive officers of the government, is composed of active members of the British Parliament, the law-making body; while in such

countries as Russia and Turkey the head of the state is at once the chief law-making, law-enforcing and law-interpreting power.

**Development of the State Legislature.**—In our study of the town meeting we saw the freemen of the ancient German mark gather beneath some giant oak, parcel out the common land, and decide upon the rules for its cultivation. In the German tribal assembly we saw warriors from the different villages meet in field or forest to debate questions of peace or war. We heard their shouts of opposition, or the clashing of spears on shields as they signified their assent to some favored proposition. Such were the rude beginnings of legislation among our German ancestors. Later, in the English shire meeting, we saw the “reeve and four discreet men” from each town in the shire, sent to take the place of the original primary assembly of freemen now grown too large to conveniently handle. In the shire meeting laws were thus made by representatives of the people, instead of directly by the people, as in the mark meeting and the town. Our modern State legislature is a still further extension of the principle of law making by the people’s representatives, and over a much larger territory than the English shire.

**New York’s Legislature.**—The State legislature derives its authority to make laws from the constitution adopted by the voters of the State; and it is composed of representatives chosen by these voters. It meets regularly once a year on the first Wednesday in January at the State capitol at Albany. It comprises two divisions, or “houses”—a Senate of fifty members elected biennially, and an assembly of 150 members elected annually. Each house has its separate meeting place or “chamber,” magnificently

decorated and furnished in the State capitol building. The lieutenant governor of the State is the presiding officer of the senate, but he does not vote in that body except in case of a tie. The assembly elects one of its own members to preside over it. He is called "The Speaker," and he may



SENATE CHAMBER, ALBANY, N. Y.

vote on all measures coming before the assembly. A majority of each house constitutes a quorum for the purpose of doing its ordinary business, and the members receive an annual salary of \$1,500 each, paid out of the State treasury.<sup>1</sup>

<sup>1</sup> In addition travelling expenses of ten cents a mile are allowed each member, from his home to Albany and return, once during each session of the legislature.

**The Legislature and the People.**—The legislature, thus constituted, is in theory the servant of the people, created by the people through the constitution, and empowered to make laws for the State. In town meeting we see the voters decide directly, “yes” or “no” propositions affecting their interests. In the legislature we see representatives of the people, chosen by the voters, deciding for the people. Why do we not have direct democratic government in the State at large, as in the town meeting? As in the case of the English shire and the modern American county, principally because it would be impracticable for all the voters of the State to meet and vote directly upon the complicated matters involved in the vast public business of the State. So the people, through the constitution, have divided the State into fifty senate districts and 150 assembly districts, and the voters in each senate district choose every two years a senator, and the voters in each assembly district every year an assemblyman, to speak and act for them in matters of law making left to the State legislature.

**Why a Legislature of Two Houses.**—Why do the people choose a legislature of two houses with varying terms of office? Could not a single legislative house do the work in a manner satisfactory to the voters? Yes, and no. A single legislative body chosen to-day may represent to-day the views of a majority of the voters upon some burning public question. Six months from to-day the sober second thought of the majority may modify or entirely change its former view of the question at issue. If there be a second legislative house elected for a term of office differing from the first, the sober sense of the mass of the people is likely to be in the long run better represented than by a single house. Two legislative houses act as checks upon each

other, and tend to prevent the making of careless, ill-timed and hasty laws. A few States<sup>1</sup> in the early days of the republic, did start out with a legislature composed of a single house, but they soon gave up the plan. New York's two-chambered legislature grew naturally out of the old provincial assembly, composed, first of the governor's council, and second, of representatives elected by the people of the counties.

**Legislatures May Misrepresent the People.**—It has been said that the legislature is in theory the servant of the people, carrying out in its acts or laws the wishes of the people who have elected it. In practice, however, a legislator in a modern American State may be anything but the people's servant. A senator or assemblyman, once chosen, is under the law absolutely independent of the people of his district. He may vote against their interests, and as long as he violates no law of the State, the people have no relief against his *mis*-representation, except to elect another man in his place when his term of office expires. To remedy partially this apparent defect in our present form of representative government, it is proposed by some to make what is known as the Initiative and Referendum a part of the State fundamental law. Under the initiative and referendum it is proposed, when a certain number of voters petition for a law, that the legislature shall frame the proposed law and submit it to a vote of the people for adoption or rejection, much as amendments to our State constitution are now submitted. The petition of the voters for a proposed law is known as the initiative, and its submission by the legislature to the voters as the referendum. Such a practice would involve a considerable extension of the principle of direct

<sup>1</sup> Pennsylvania, Georgia, and Vermont.

democratic government in the State. The initiative and referendum is widely practiced in the Swiss republic.<sup>1</sup>

**The Constitutional Convention.**—An important part of the State legislative department is the constitutional convention, elected from time to time, by the people, for the purpose of revising the constitution or of preparing amendments to it. The manner of electing the members of a constitutional convention, and of submitting the work of the convention to the people, has been described in a previous chapter.

### SUMMARY.

State and local government is carried on in three departments, legislative, executive and judiciary.

The legislative department makes laws, the executive department enforces the law, and the judiciary department interprets the law and applies it in particular cases.

The legislature, composed of a senate of fifty members and an assembly of one hundred and fifty members, is the chief constituent of the State's legislative department.

The legislative houses act as checks upon each other to prevent ill-advised and hasty legislation.

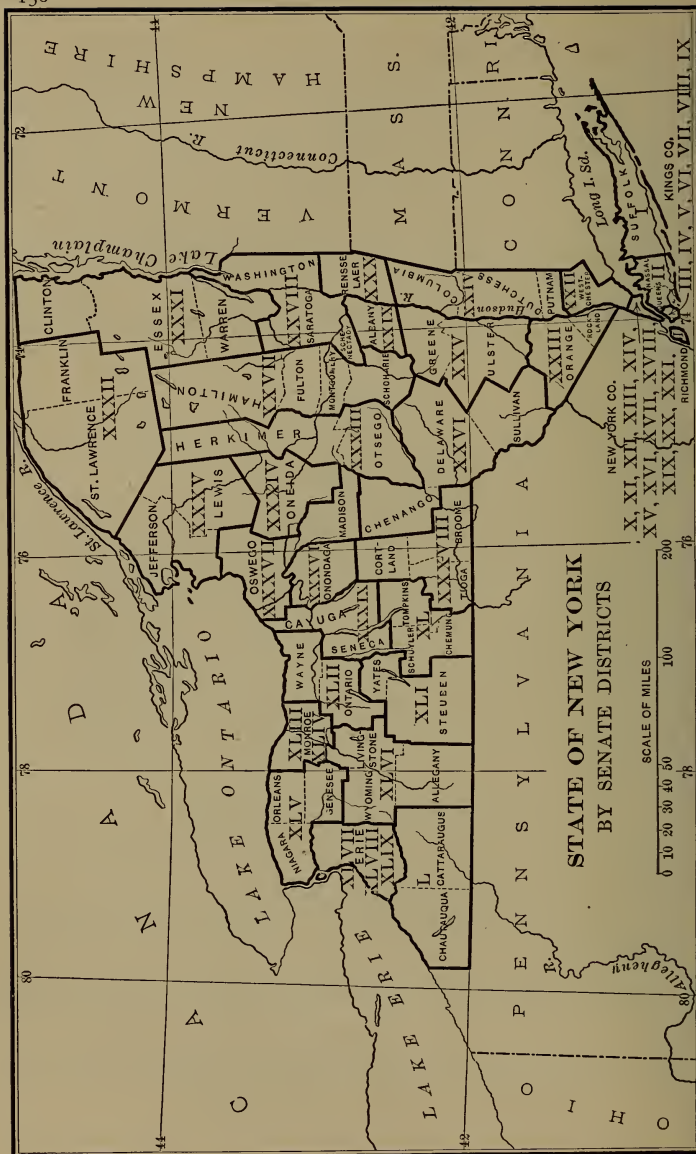
### SUGGESTIVE QUESTIONS.

What are the departments of State government? Describe generally the purposes of each.

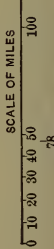
Is it proper to speak of the State legislature as a "primary assembly"?

Describe in detail the constitution of the New York legislature.

<sup>1</sup>For an account of the initiative and referendum as practiced in the Swiss republic, see *The Referendum in Switzerland*, by Deploige.



# STATE OF NEW YORK BY SENATE DISTRICTS



NEW YORK CO. X, XI, XII, XIII, XIV,  
 XV, XVI, XVII, XVIII,  
 XIX, XX, XXI.

RICHMOND CO. XII, III, IV, V, VI, VII, VIII, IX,  
 KINGS CO. X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI.



Mention a difference between the powers of the lieutenant governor, while presiding over the senate, and the powers of the speaker.

What are some of the advantages of a legislature composed like that of New York's over a legislature of a single house?

What is meant by initiative and referendum?

## CHAPTER XIV.

### The Legislature—(Continued).

EVERY ten years the people of New York are counted for the purpose of apportioning senators and assemblymen among them. This count takes place in the years ending with the figure 5. On the result of such count or "census," as it is called, are fixed the boundaries of the senate and assembly districts.

**Senate Districts and Senators.**—The State constitution<sup>1</sup> says that the ratio for apportioning senators shall always be found by dividing the whole number of inhabitants of the State, aliens excepted, by fifty. Thus if the State at a particular census be found to contain a population of ten millions, each 200,000, or one fiftieth part of the whole, would be entitled under the ratio, to elect one State senator. This strict mathematical rule is not however carried out in practice; for the constitution further says, that in forming senate districts, no county may be divided, except to form two or more districts wholly within it; and further, that no one county may have more than one third of all the senators; and that no two counties joining each other may have more than one half of the senators of the State. This rule is intended to prevent a small section of the State, with a preponderance of population, from making laws in the interest of the section as against the interests of the State as a whole.

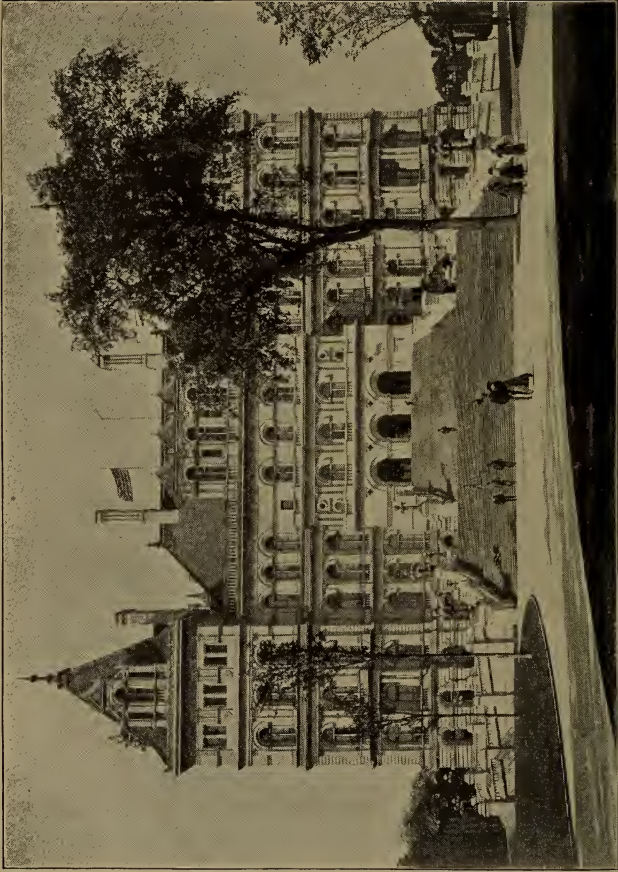
<sup>1</sup> Article III., Section 4.

**When There May be a Senate of More than Fifty Members.**—Though the ratio for apportioning State senators among the people is one fiftieth of the entire population, the senate is not limited to exactly fifty members. “The senate shall always be composed of fifty members,” says the constitution, “except, that if any county, having three or more senators at the time of any apportionment, shall be entitled on such ratio (the population of the State divided by fifty) to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty”; and the whole number of State senators shall be increased by the additional number allowed the particular county.

**Representation of the City of New York in the Senate.**—New York county (containing the Boroughs of Manhattan and the Bronx, New York) has twelve senators; Kings county (containing the Borough of Brooklyn) has seven; and Erie county (containing Buffalo) has three. New York and Kings have together one less than two fifths of the entire fifty senators in the State; and if we add the senator from Queens county (containing the Borough of Queens, New York) and the senator who represents Richmond (the Borough of Richmond) and Suffolk counties, we find that the city of New York to-day elects more than two fifths of the entire State senate.

**Assembly Districts and Assemblymen.**—The quotient obtained by dividing the entire population of the State, aliens excluded, by the whole number of assemblymen, is the ratio for apportioning assemblymen among the people; but each of the sixty-one counties<sup>1</sup> of the State must have at least one assemblyman, except the Adirondack counties of Fulton and Hamilton, which together have but one.

<sup>1</sup> Except Nassau, now part of the 3d dist. of former Queens county.



Under this rule every part of the State has its representative in the more popular branch of the legislature. Every county having a population of one and one-half times the ratio, or more, may have at least two assemblymen. The remaining assemblymen are apportioned among counties having a population of more than two ratios, and in proportion to the population of each. Thus New York county has now thirty-five assemblymen and Kings twenty-one; while Queens and Richmond, making up the remainder of the city of New York, have three and one respectively. This gives New York exactly two fifths of the 150 assemblymen in the State; so that to defeat a measure urged by New York, the rest of the State must be pretty well united in opposition.

The board of supervisors of any county, entitled to more than one assemblyman, divides the county into assembly districts. Where the county has no supervisors, and its limits are included within the limits of a city, the common council of the city divides the county. No town and no city block may be divided in forming assembly districts.

**Who May be Elected to the Legislature.**—The people may elect any citizen of the State twenty-one years of age, to either the senate or assembly; but no person may be a member of the legislature and hold at the same time another public office. The same is true of a person who, within one hundred days of his election as senator or assemblyman, has been a member of Congress, or a civil or military officer of the United States, or an officer of any city government.<sup>1</sup> These are rules adopted by the people to keep the lawmakers free from the influence of other departments of government, and free from national or local

<sup>1</sup> New York State Constitution, Article III., Section 8.

influences that might interfere with their impartial action in favor of the State.

**How State Laws are Made.**—First, a member of the senate or assembly draws up a proposed law, or “bill,” as it is called. If in the assembly, the bill goes to the clerk of that body and from him to the speaker, who at the proper time announces its introduction and reads the title of the bill. This is called “the first reading of the bill.” In the senate each senator personally introduces his own bills. After its “first reading” a bill in both senate and assembly is usually sent by the presiding officer to a committee previously appointed by him to consider proposed laws upon similar subjects.

**Committees of the Legislature.**—The members of each house—senate and assembly—are at the beginning of each session of the legislature, divided into committees to consider proposed laws. In the assembly the members composing such committees are named by the speaker; in the senate by the lieutenant governor or other presiding officer.<sup>1</sup> In both senate and assembly standing committees of from five to thirteen members each, are appointed on each of such subjects as finance, judiciary, affairs of cities, canals, commerce and navigation, insurance, railroads, taxation and retrenchment, internal affairs of towns and counties, public education, affairs of villages, agriculture, roads and bridges.<sup>2</sup>

<sup>1</sup> The lieutenant governor is the constitutional president of the senate; but the Constitution, Article III., Section 10, provides that the senate shall choose a temporary president, in case of the absence or impeachment of the lieutenant governor, or in case he refuses to act as president, or is acting as governor.

<sup>2</sup> A complete list of the standing committees of senate and assembly, with the members composing them at any session of the legislature, may be found in the “Red Book,” or State Legislative Manual for that particular year.

Besides its standing committees, each house may have a number of select or special committees to consider matters outside the lines of ordinarily proposed legislation.

**Work of the Legislative Committees.**—When a bill, after its “first reading,” has been referred to the proper committee its members proceed to hear the arguments both for and against it. These hearings may be public, and prominent men on both sides of the question may be invited to present their views. After sufficient consideration the committee reports the bill either “favorably” or “unfavorably” to the house in which it originated. An “unfavorable” report is often sufficient to “kill the bill,” that is, to prevent further action being taken in its favor; but not always. Sometimes a committee makes no report on a bill unless ordered to do so by the house. Failure to report upon bills is an effective way of preventing much undesirable legislation.

**Debating Proposed Laws.**—When a bill has been formally reported to senate or assembly by the committee having it in charge, it may then be taken up section by section, debated, amended if thought necessary, and agreed to by a majority of the house. Such favorable action is called passing a bill “on its second reading”; or the bill may be defeated, on motion to pass it on a second reading. A bill passed on its second reading is then printed in its final form, and it cannot be afterwards changed. In this final form the bill must lie for three legislative days (unless the governor certify that the bill should at once become a law) on the desks of the members of the house where it originated, before it can be passed on its “third” or final reading.<sup>1</sup> This deliberation gives each legislator an opportunity

<sup>1</sup> New York State Constitution, Article III., Section 15.

to examine carefully all bills before finally voting upon them.

**“Committee of the Whole.”**—Before its final passage on third reading, a bill is often considered and debated in what is termed “Committee of the Whole.” The committee of the whole includes the entire senate, or the entire assembly. In committee of the whole the strict formal rules of the legislative body are laid aside, the speaker or other presiding officer leaves the chair, naming some member of the house to take his place, and free and informal debate upon the merits of the proposed law is indulged in. When such discussion is completed the committee of the whole resolves itself into senate or assembly, as the case may be, and the chairman of the committee reports what action has been taken. The committee of the whole cannot conclude any business and cannot adjourn; it is simply a legal fiction for securing freedom of debate.

**Bills Must Pass Both Houses.**—A bill, after passing the house in which it originated, goes to the other house, where it is referred to the proper committee to go through a procedure similar to the one in the house where it originated. No bill may become a law, except by the assent of a majority of the members elected to each branch of the legislature<sup>1</sup> and whenever public money is appropriated for any purpose, at least three fifths of the members of the house in which the vote is taken must be present.<sup>2</sup> Bills appropriating public money for private purposes, must receive a two-thirds affirmative vote of the members elected to each legislative house, in order to become laws.<sup>3</sup> These re-

<sup>1</sup> New York State Constitution, Article III. Section 15.

<sup>2</sup> New York State Constitution, Article III., Section 25.

<sup>3</sup> New York State Constitution, Article III., Section 20.



strictions are placed on the legislature by the people of the State, in order to prevent a careless and hasty spending of the public money.

**Action by the Governor on Bills.**—Bills which pass in both senate and assembly, go to the governor of the State for his signature. If the governor approves a bill, he signs it and it becomes the law. If he disapproves it, he returns it to the house in which it originated with a statement of his objections. This is called the "Governor's veto" of the bill. The bill may then be reconsidered, and if finally approved by two thirds of the assembly and two thirds of the senate, it becomes a law without the governor's signature.<sup>1</sup>

If a bill sent to the governor, be not returned by him within ten days (Sunday not counted) after it is presented to him for his signature, it becomes a law without his signature, if the legislature is still in session. On adjournment of the legislature, the governor has thirty days in which to consider unsigned bills in his possession. If he sign them within that time they become laws; if not they fail.

The governor, though the head of the executive department, is thus an important part of the law-making power. For through his veto, he may prevent the passage of ill-advised and hasty laws, by compelling their reconsideration by the legislature.

**What the Legislature May and May Not Do.**—The legislature may enact any general law, applying to the people of the whole State, that is not in conflict with the constitution and laws of the United States<sup>2</sup> and the State constitution. Similarly the legislature may also repeal any law

<sup>1</sup> New York State Constitution, Article IV., Section 9.

<sup>2</sup> For Acts forbidden a State by the Constitution of the United States, see "Acts Forbidden to the Governments of the Several States," Chapter XXII.

previously enacted. Each legislative house makes its own rules, and judges of the qualifications of its members. The legislature is prohibited from enacting private or local laws in the following cases :

Changing names of persons ; laying<sup>g</sup> out or affecting roads or draining swamps, locating or changing county seats ; locating or changing venue in civil or criminal cases ; incorporating villages ; providing for electing supervisors or summoning jurors ; regulating the rate of interest on money ; conducting elections ; creating or changing fees of public officers during their term ; granting the right to lay railroad tracks ; granting to any private corporation, association or individual any exclusive privilege, immunity or franchise ; providing for building bridges, except on the Hudson below Waterford, on the East River, or over waters forming the boundaries of the State. But the legislature may pass general laws applying to any of these subjects.

The legislature may not audit or allow any private claim against the State, but it may grant money for the payment of claims, after they have been audited and allowed by the proper public officers.

**Freedom of Speech and the Legislature.**—Each legislative house, senate and assembly—is the sole judge as to whether its members have been properly elected to it, and as to whether or not they are entitled to seats in it. No member of either house may be made to suffer under the law, for any speech he may make in the legislature, or for any information he may furnish to enable it to perform its duty to the people. This is a rule of law placed by the people of the State in the constitution<sup>1</sup> for the purpose of giving members of the law-making branch of the government absolute freedom in their discussions of what is for the best interests of the State. It is similar to a provision

<sup>1</sup> New York State Constitution, Article III., Section 12.

in the English Bill of Rights of 1689, in which it was declared that "freedom of speech and debates or proceedings in parliament ought not to be questioned in any court or place out of parliament."

**Election of United States Senators.**—An important duty of the legislature is the election of senators to represent the State in the United States senate. When a United States senator is elected the two houses sit in joint session—that is the senate and assembly meet as a single body—and vote at least once a day till a senator has been chosen by a majority of the votes cast.<sup>1</sup>

**Power to Impeach and Remove Public Officers.**—A public officer guilty of wrongdoing, may be tried and removed from office by what is called the process of impeachment. In such cases the assembly makes a formal charge against the offending officer, reciting the facts of his wrongdoing. This charge is called the impeachment. The impeachment is heard by the members of the State senate, the judges of the State court of appeals, and the lieutenant governor, sitting together as a court for the trial of impeachments. A majority of the senators and judges must be present to constitute this court, and a two-thirds vote of all present is necessary to convict the accused public officer, who, if declared guilty, may be removed from his office and disqualified from holding any other office of honor, trust, or profit under the State. Besides his impeachment and removal from office, a public officer found guilty of wrongdoing may be punished like a common criminal, by sentence of the ordinary courts of the State.

**Other Legislative Powers.**—It is provided by State law that the governor shall appoint many important public offi-

<sup>1</sup> See "Election of Senators," Chapter XXIII.

cers, "by and with the advice and consent of the senate." Under this provision the governor names the persons to fill certain offices, sending these "nominations," as they are called, to the senate, which then, by majority vote, confirms or rejects them. This power of the senate to reject a nomination to office is an important check in preventing possible bad appointments.

### SUMMARY.

Senators and assemblymen are apportioned among the people of the State on the basis of population. For this purpose a State census is taken every ten years.

The ratio for apportioning senators is one fiftieth of the State's population, and the ratio for apportioning assemblymen is the whole population of the State divided by the entire number of assemblymen.

Every county in the State, except Fulton and Hamilton, is entitled to at least one assemblyman; and the supervisors of a particular county, entitled to more than a single assemblyman, divide it into assembly districts.

Any citizen of the State is generally eligible for the office of either senator or assemblyman; but no man while a member of the State legislature may hold any other public office.

Laws are made by their passing both senate and assembly by a majority vote in each. They are then signed by the governor. The governor may veto a proposed law, but it may be re-passed over his veto by a two-thirds vote of both senate and assembly.

The legislature is prohibited by the constitution from enacting private or local laws in many specified cases. The senators and assemblymen, sitting in joint session, elect

United States senators to represent the State in Congress. The assembly may bring impeachment cases against public officers before the senate, the judges of the court of appeals and the lieutenant governor, sitting together as a court for the trial of impeachments. The senate passes upon nominations to office made by the governor.

### SUGGESTIVE QUESTIONS.

In what years, and for what purposes, is the State census taken?

What provisions in the constitution prevent New York city from ever obtaining a preponderance of power in the State legislature?

What two counties of the State are together allowed but one assemblyman?

What body divides a county into assembly districts?

Why is a member of the State legislature not allowed to hold at the same time another office?

What provision of the constitution guarantees freedom of debate in the legislature?

Mention six steps in the passing of a law through the State legislature. What provision of the constitution ensures deliberation in the passing of laws? What special provision applies to the passing of bills appropriating public money?

Describe the work of standing committees of the legislature. How are these committees named?

Describe in detail the action necessary to pass a bill over the governor's veto.

Mention three cases in which the legislature may not pass private or local laws.

How are private claims against the State allowed?

What is meant by impeachment? For what purposes are impeachment proceedings brought? What body conducts such proceedings? What persons constitute the court for the trial of impeachments?

What power has the senate to reject nominations made to office by the governor?

## CHAPTER XV.

### The State's Executive Department.

AMONG our German ancestors every tribe or nation had its head man. He led its army in battle and presided over its assembly in time of peace. When Angle, Saxon, Jute, and Dane crossed the North Sea and made their homes in Britain, the head man of the tribe became the petty king in the little English kingdom, which afterwards became the "shire." These little kingdoms, as we have seen, finally united in the greater kingdom of England, and one king ruled over the English people. The king, through his subordinates, enforced the laws of the land; and no general law could be made without his consent. The king had power to pardon criminals condemned for violating the law. He called the lawmakers together in parliament, and dismissed them, much as he pleased. He appointed the chief judges and other officers of the realm.

The governor of the modern American State has inherited many of these attributes of kingship. He is the head of the State's executive department, and responsible for the enforcement of State law. He is commander in chief of the State's military forces. He has a veto power in its legislative department. He has the royal power of pardoning criminals condemned by its courts. He takes the initiative in the appointment of many high State officers. Yet, though he seems to be a great and glittering figure, the governor, like members of the legislature, can do

only those things permitted by the constitution. The governor's right to rule comes from the people, and under the law he is the people's chief servant.

**New York's Early Governors.**—The first governors of territory included in what is now New York, were, as we have seen, appointed by the Dutch West India Company, and they represented the interests of this money-making corporation, rather than the interests of the people over whom they ruled. Under the English, the early governors represented at first the Duke of York, and afterwards the king of England. Like the Dutch governors, they cared little for the rights of the people. After the Declaration of Independence, when New York became one of the United States, the freeholders or landowners elected the governor. But their experiences under colonial governors made them suspicious of their elective governor, and they gave him at first no veto power in the legislature. Neither was he allowed to appoint any subordinate State officers, except as a member of a council of appointment, in which the governor had one vote out of five. When the State constitution was revised in 1821, the people gave the governor the veto power, and the further power to appoint, by and with the advice and consent of the State senate, all judges except justices of the peace. Since then the office of judge has been made elective; and the powers of the governor have been enlarged with almost every subsequent revision of the State constitution.

**Powers and Duties of the Governor.**—The governor of New York is now elected by a plurality of the citizens voting at the general State election held in even-numbered years. He holds office for two years, and receives an annual salary of \$10,000. He has power to call together



the State legislature (or the senate alone) in extraordinary session, and one of his duties is to send a "message" to the legislature at every regular session of that body, describing the condition of the public business, and recommending the passing of such new laws as he may think wise. The governor may reprieve, pardon, or commute the sentence of any criminal convicted in the courts of the State. The governor is said to reprieve a criminal when he postpones the date of the execution of the sentence against him. He pardons the criminal when he forgives the offense and sets the offender free. He commutes the sentence when he makes the punishment lighter than the punishment fixed by the court. The only exceptions to this pardoning power of the governor, are in the case of a person convicted of treason, and in the case of a public officer who has been impeached. In the former case the governor may suspend the execution of sentence till the next meeting of the legislature, and leave the final decision of the matter to that body.<sup>1</sup> The governor has power to suspend the State treasurer during a recess of the legislature, and to appoint a deputy treasurer in his place. This enables the governor to protect the moneys of the State from a dishonest and incompetent treasurer.

**The Lieutenant Governor.**—The lieutenant governor is elected at the same time as the governor, in the same man-

<sup>1</sup> Ordinary crimes, such as murder, burglary, arson, etc., are committed directly against the individual and only indirectly against the State; while treason, on the other hand, is committed directly against the State. It strikes at the very existence of the political society which the subject is bound to defend. Therefore treason is a crime placed in a class by itself, and it is regarded as being most heinous because it aims to take the life of the State. Treason in New York consists in making war against the people of the State, or during war adhering to or aiding the enemies of the State.

ner, and for the same term of office. His salary is \$5,000 annually. He takes the place of the governor, should the latter die, resign, be impeached, or otherwise become unable to perform the duties of his office. The lieutenant governor presides over the State senate, and he has a vote in that body in case of a tie. He is also, by reason of his office, a member of various boards of State officials. Both the governor and lieutenant governor must be citizens of the United States, must be at least thirty years old, and must have lived in the State for at least five years preceding their election. Like the members of the legislature, they may hold but one public office at a time. If both governor and lieutenant governor become at the same time incapable of performing their official duties, a president of the senate elected by that body, acts as governor; and should the latter become disqualified, the speaker of the assembly becomes the acting governor.

**Other State Officers Elected by the Voters.**—At the same time as the election of the governor and lieutenant governor, the voters of the State elect for terms of two years, the following officers of the State executive department: Secretary of State, Comptroller, Treasurer, Attorney-General, and State Engineer and Surveyor. These officers receive an annual salary of \$5,000 each, except the comptroller, whose salary is \$6,000. They were at first appointed by the legislature, but since 1846 they have been chosen by the voters.

**The Secretary of State.**—The secretary of state is the chief clerk of the State executive department. He has charge of public records and documents belonging to the State, and he supervises the printing of the laws passed by the legislature. He keeps the great seal of the State, and

the original copies of deeds of lands belonging to the State. In general, the secretary of state may be said to perform for the State such duties as are performed by the county clerk for the county, and by the town clerk for the town. His office is not to be compared in dignity and importance with that of the United States officer known as the secretary of state. The latter is a member of the President's cabinet, and the chief officer in arranging our relations with foreign nations.

**The Comptroller.**—The comptroller manages the financial affairs of the State government, under the direction of the legislature and governor. He reports to the legislature the State's annual revenue and expenses, superintends the collection of State taxes, examines and audits claims and other accounts due to or from the State; and arranges for securing any temporary loans needed for carrying on the different departments of State government. No public money of the State may be paid out except upon the order or warrant of the comptroller directed to the State treasurer.

**The State Treasurer.**—The State treasurer receives from the comptroller moneys collected from State taxes and from other sources, and pays out the money as ordered by the comptroller. His duties are similar to the duties performed by a county, town, or city treasurer.

**The Attorney-General.**—The attorney-general is the law officer of the State government, and the State's chief public prosecutor. His duties to the State may be compared with the duties of district attorneys in the several counties. The attorney general conducts for the State all important suits or legal proceedings in which it is an interested party, and he prosecutes criminals before the supreme court, when requested to do so by the governor or by the judges of this

court. The attorney-general is also the legal adviser of the State legislature and other State officers.

**The State Engineer and Surveyor.**—The State engineer and surveyor has charge of the surveying and mapping of the public lands of the State. He also superintends the engineering department of the State canals. He must be a practical civil engineer.

**State Executive Officers Appointed.**—The governor, “by and with the advice and consent of the senate,” appoints a large number of officers in the different branches of the State executive department. Among the more important of these officers are: superintendent of public works, superintendent of banks, superintendent of insurance, superintendent of State prisons, three tax commissioners, three State railroad commissioners, three civil service commissioners, commissioner of agriculture, commissioner of labor and two deputy commissioners, three forest, fish and game commissioners, a State commissioner of health, State board of charities, three commissioners of lunacy, superintendent of public buildings, three quarantine commissioners, and a health officer of the port of New York. Although the State constitution requires the “advice and consent of the senate” in making these appointments, in actual practice this requirement is little more than a form, the governor’s nominations to office being as a rule, confirmed almost without question by the senate. The power of the senate to reject a nomination made by the governor is, however, an important one, and one that may be effectively used to prevent a bad man from taking office.

**Executive Officers Elected by the Legislature.**—The members of the two houses of the legislature—senate and

assembly—sitting together in joint session, elect a State Superintendent of Public Instruction for a term of three years at an annual salary of \$5,000. They also elect nineteen Regents of the University of the State of New York. The State superintendent of public instruction and the regents have general supervision of schools and public education in the State. Their duties are described in detail in Chapter XVIII.

**The State Militia.**—An important branch of the State executive department is the State militia. The militia consists of “all able-bodied male citizens between the ages of eighteen and forty-five who are residents of the State,”<sup>1</sup> except a few already considered to be acting in the public service, such as legislative and executive officers, judges, teachers, ministers, physicians, etc. Every member of the militia is a possible soldier, and the State legislature is required by the constitution to maintain at all times a force of “not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service.”<sup>2</sup> This requirement is met at present by the voluntary enlistment of young men in regiments known as the National Guard. The members of the national guard choose their own local officers, and the State furnishes the men with arms and armories. The State militia, including the national guard, is under the command of the governor of the State, who appoints the chiefs of the staff, and, with the consent of the senate, the major general. The governor may call out the militia whenever necessary to suppress disorder or enforce the laws of the State.

**The State's Civil Service.**—Outside of the possible mili-

<sup>1</sup> New York State Constitution, Article XI., Section 1.

<sup>2</sup> New York State Constitution, Article XI., Section 3.

tary service required of every citizen of the State, there are many persons employed in what is called the civil service of the State. This includes all public offices of the State not classified as naval or military. Officers in the State's civil service are either elected by the people or appointed by other officers. These appointed officers constitute by far the larger number of officeholders, and consist chiefly of persons occupying comparatively inferior positions, such as clerks in the legislative, executive and judiciary departments of the State and the various local governments. Up to within a few years ago this army of petty officeholders held their positions, not so much because of their peculiar fitness for holding office, as a reward for services rendered to some politician or political party. In this way, many unfit persons came into the public service and many abuses arose. In consequence, it became necessary to enact both national and State laws, regulating appointments to the civil service.<sup>1</sup> Appointive officers are, under the State civil service law, divided into a "classified" and an "unclassified" list. Most of the more prominent appointive offices are in the unclassified list, while the classified list is made up of minor offices. An applicant for a position in the classified list must pass an examination to determine his fitness for the position, and once appointed he cannot usually be removed from office except for good cause. Appointments in the State or local municipal civil service are made under supervision of, and in accordance with rules laid down by the State civil service commissioners, who have their headquarters at Albany. Different cities have local boards of civil service commissioners, each acting under the direction of the State commissioners.

<sup>1</sup> See "The President and the Civil Service," Chapter XXIII.

**Some State Executive Officers, their Powers and Duties.**<sup>1</sup>—*The State Superintendent of Public Works* has general charge of the construction and repair of the State canals, and he sees to the execution of the laws relating to navigation upon them.

*The State Superintendent of Insurance* has general supervision of insurance companies doing business in the State, and these companies are required to report to him at least once a year on their financial condition, for the protection of persons doing business with them.

*The State Superintendent of Banks* performs similar duties with reference to banks and trust companies doing business in the State. These institutions report to the superintendent of banks, and such reports, including the reports from insurance companies, are laid before the State legislature.

*The Superintendent of State Prisons* has the supervision, management, and control of the three State prisons in New York where persons convicted of grave crimes are confined. He appoints agents, wardens, physicians, and chaplains in these prisons, while the State comptroller appoints clerks employed in them. Persons convicted of lesser offences, as we have already learned, are confined in the county jails which are under the supervision of the sheriffs of the several counties.

*The Tax Commissioners* visit the different counties of the State to determine the value of the taxable property in each county. The amount of property upon which the people of each county must pay State taxes, is finally determined by the State board of equalization. The duties of these officers are more fully explained in Chapter XIX.

<sup>1</sup> For a table of public officers, their salaries and terms of office see Appendix.

*The State Railroad Commissioners* have a general oversight of the railroads doing business in the State, including the horse and electric railroads. The commissioners investigate the causes of accidents, and look generally after the comfort and safety of the travelling public. They may examine the books and accounts of railroad companies, and it is their duty to report to the attorney-general any mismanagement or violation of the law by these companies. The commissioners may also decide upon the necessity of a proposed new railroad and give permission for it to be built. They report annually to the State legislature.

*The Commissioner of Agriculture* collects facts and statistics relating to farming, and through his subordinates conducts Farmers' Institutes, where facts as to the best methods of cultivation are disseminated among the people. It is a part of the commissioner's duties to prevent the spread of infectious diseases among farm animals, fruit trees and bees, and also to prevent the adulteration of food products. The State Weather Bureau is under the management of the commissioner of agriculture.

*The Commissioner of Labor* collects facts and statistics relative to wages and conditions of laborers, and, in conjunction with two deputy commissioners, conducts a bureau of factory inspection and a board of mediation and arbitration which is empowered to give advice in the settlement of disputes between employers and employees.

*The Forest, Fish and Game Commissioners* have charge of fish hatcheries for stocking the streams and lakes of the State, and generally enforce the laws protecting fish and other game. They also supervise the vast quantity of wild forest land owned by the State in the Adirondack region and other places, wherein lie the



sources of the streams which supply water for the State canals.

*The State Board of Charities* visits the reformatory and charitable institutions of the State, and the county and city poorhouses, where paupers are cared for at public expense, and reports on the condition of these institutions to the State legislature.

*The State Commissioner of Health*, the quarantine commissioners, and the health officer of the port of New York act together, under State law, to prevent the introduction and spread of disease.

## SUMMARY.

The governor is the head of the State executive department, and the commander in chief of the State's military and naval forces. He has a veto power in the legislative department.

The governor is elected by a plurality of the votes cast for this office at a State election, and he holds office for two years at an annual salary of \$10,000.

The lieutenant governor takes the place of the governor on the death or disability of the latter. He is the presiding officer in the State senate, and he has a casting vote in that body in case of a tie.

Other officers of the executive department elected by the voters of the State are: secretary of state, comptroller, treasurer, attorney-general, and State engineer and surveyor.

The governor, by and with the advice and consent of the senate, appoints such State executive officers as State superintendent of public works, superintendent of banks, State railroad commissioners, etc.

The legislature, in joint session, elects a State superin-

tendent of public instruction and regents of the University of the State of New York.

The State militia, including the national guard, are an important feature of the State's executive department, under the control of the governor.

### SUGGESTIVE QUESTIONS.

When and by whom is the governor of New York elected?

What is meant by the governor's "Message"?

What powers has the governor in the case of a criminal convicted by the State courts?

In what cases is the governor unable to exercise his pardoning power?

Define treason against the State.

What officers of the executive department besides governor and lieutenant governor, are elected by the voters of the entire State?

In what important particular does the office of secretary of state in New York, differ from the national office of secretary of state?

How do the duties of the comptroller differ from those of the State treasurer?

With the duties of what county officer may we compare those of the attorney-general?

Name six important State executive officers appointed by the governor, with the advice and consent of the senate; two elected by the legislature.

What is meant by the State militia? How does it differ from the regular army?

What is meant by the State's civil service? Describe the

duties of the State civil service commissioners. For what purpose have civil service examinations been instituted?

Describe the duties of State superintendent of public works, State superintendent of insurance, State superintendent of banks, State assessors, State railroad commissioners.

## CHAPTER XVI.

### The Judiciary Department—How Criminals are Brought to Justice.

A PEACEABLE man walking along the street, is attacked by a highwayman, knocked down, and robbed of his purse. The robber hurries away, and the injured man crawls to the nearest house or to the police station, and tells the story of the crime. What is the duty of the State in such a case? First, it is the duty of the peace officers of the vicinity,—sheriff, constables, or policemen—to search for the robber, and if they find him, to take him before the courts for the trial of his offense.

**Arrest by "Hue and Cry."**—But the robber may even now be running from a pursuing policeman, who saw from a distance; his attack on the citizen. As the policeman hurries after the robber, he shouts to the people in front of him to stop the fleeing criminal. The law gives the policeman the right to demand this help, and all persons called upon are bound to give it. With shouts of "Stop thief!" the people take up the pursuit, and the robber is cornered and captured. Such pursuit and capture is called arresting a criminal by "hue and cry." It comes down to us from an old English custom, under which the people turned out with shouts and blowing horns to capture an escaping criminal.

**Arrest by Warrant.**—But suppose the robber escapes the arrest by "hue and cry". What is to be done? The

injured man, or some person knowing the facts, then goes before a magistrate, such as the judge of a court, or a mayor, tells him that a crime has been committed, and describes as best he can the criminal. The magistrate, if he believes that a crime has been committed, issues, in the name of and by the authority of the people of the State, a paper called a warrant. The warrant is directed to a peace officer—sheriff, constable or policeman. It describes the criminal and directs the peace officer to arrest him and bring him before the magistrate. The robber may be discovered hiding in a building, by the officer having the warrant. Still having the power to summon the people to his aid, the officer forces his way into the building, breaking down the door if necessary. He may shoot the robber and cripple him, if necessary, in order to make him submit. The law gives the officer power even to take the life of the criminal, rather than that he should escape, but the officer must use no unnecessary force.

**Rights of Accused Persons.**—When the prisoner is brought before the magistrate, he must be told of the charges against him, and the facts tending to prove their truth. Every accused person is presumed by the law to be innocent until he is proven guilty, and the prisoner is not obliged to answer any questions that will tend to prove his guilt. Such is the rule inherited from the common law of England. The prisoner may be immediately examined by the magistrate, or the magistrate may, at the request of the prisoner, commit him to jail to await a future examination into his offense. The magistrate may also commit the prisoner when he finds himself unable to examine at once into the facts.

**The Right of Bail.**—Instead of sending the prisoner to

jail, the magistrate may, in certain cases described by law, give the prisoner into the keeping of his friends, on condition that they give a sufficient pledge of money or property for the prisoner's appearance in court at a future time to answer the charges against him. Such action on the part of a prisoner and his friends is called "giving bail"; but a person accused of a capital offense,<sup>1</sup> such as murder, which is punishable by death, is not allowed to give bail. Should an accused person who has given bail, fail to appear in court at the time set for him to answer the charges against him, the property pledged for his appearance is forfeited to the State. But the forfeiture of the money does not protect the criminal. He may be again arrested, and in such case the magistrate would be justified in refusing to allow him to give bail a second time.

**Inquiring into the Charge Against the Prisoner.**— If the offense charged against the prisoner be a minor one, or one which the magistrate before whom the prisoner is brought may finally try and determine, the formal trial of the prisoner may proceed without postponement or bail. If, however, the offense charged be an infamous crime, or one punishable by death,<sup>2</sup> it must be formally inquired into by a grand jury of the county where the crime was committed.

<sup>1</sup> Capital, from the Latin "caput," meaning "the head." Literally a capital offense is one for which the punishment is loss of the head.

<sup>2</sup> Article I., Section 6, of the New York State constitution says: "No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the legislature) unless on presentment or indictment of a grand jury."

**The Grand Jury.**—The grand jury is a body of men selected from among the taxpayers of the county, to inquire into crimes supposed to have been committed therein. The supervisors of the several towns of the county make up a list of 300 men “of approved integrity, fair character and sound judgment,” each supervisor furnishing names in proportion to the population of his town. The names are then written, each on a separate slip of paper, and put into what is called the grand jury box. When a court for the trial of criminals is to be held, the county clerk in the presence of the sheriff and county judge, draws at random from the grand jury box the names of twenty-four persons.<sup>1</sup> These persons constitute the grand jury to inquire into crimes at a particular term of court. Not more than twenty-three nor less than sixteen grand jurymen are allowed to sit in any particular case, and it takes the votes of twelve to hold an accused person for trial.

**The Indictment.**—The grand jury when inquiring into the facts of an alleged offense, sits in secret session. Before them may come the district attorney, who is the public prosecutor of criminals in the county. He presents to the jury a written accusation, called a bill of indictment, containing the charges against the person whose alleged offense the jury is investigating, and brings witnesses and evidence

<sup>1</sup> Thirty-six in New York county. In all counties of the State having a population of 500,000 or more, the duty of making up the jury lists is in the hands of officers appointed by the courts and known as commissioner of jurors and special commissioner of jurors. Chapter 369 of the Laws of 1895 also creates the office of commissioner of jurors in each county having a population of 300,000 or more, except New York and Kings which already had such officers; while by chapter 194 of the laws of 1897 the office of commissioner of jurors is created in each county having a population between 150,000 and 190,000, except the county of Albany.

in support of the charges. If twelve of the grand jury, after hearing the evidence against the accused person, believe it to be such as, if uncontradicted, would warrant a trial jury in convicting him, the foreman of the grand jury writes across the back of the indictment the words "A true bill," and returns the indictment to the court. The accused person must now be tried on the charges made in the indictment. If the grand jury does not think the evidence sufficient to hold him for trial, the indictment is returned to the court endorsed with the words, "Not a true bill." The accused person is then allowed to go free, or he may be held to await a new indictment.

**Origin of the Grand Jury and Its Presentment.**—This custom of formal presentation of a bill of indictment against an accused person through a grand jury, may be traced to a period not very much later than the conquest of England by William of Normandy.<sup>1</sup> Almost immediately after the

<sup>1</sup> "The primitive Teutonic suit was a simple demand made by the actor on the defendant for compensation. . . . The demand and denial which made up the issue were unattended by any allegations of fact in support of either. The vitally important point in the procedure . . . was the question of proof. . . . Proof, as understood by the Teutonic barbarian, was not a judicial means of bringing conviction to the mind of the court; it was simply a satisfaction due and given by the party to his adversary in the form prescribed by custom. . . . Three independent means of proof were allowable—oath, ordeal and documents. The oath could be accompanied or supported by the oaths of compurgators or oath-helpers, or by the oaths of witnesses. After the party making the proof had sworn to his demand, his oath-helpers swore to their belief, not in their chief's assertion, but in his credibility." . . . But "the conclusion is now firmly established that out of the inquest of proof, which was chiefly employed in judicial matters in suits relating to rights in land, was developed by the lawyers of the Plantagenet period the jury of judgment, the trial jury of modern times."—Hannis Taylor, *Origin and Growth of the English Constitution*, Book I., Chapter V.



conquest, in connection with juries of inquest, previously described,<sup>1</sup> we find accusatory juries presenting offenses committed within their district or hundred to the king, or to his commissioned justices, who afterwards tried the persons thus accused, convicting or discharging them according as the evidence showed their guilt or innocence. From these ancient accusatory juries, is probably also derived our modern proceeding known as presentment by grand jury.<sup>2</sup> In this proceeding the grand jury does not wait for a formal presentation to it of a bill of indictment against an accused person, but the jury itself takes the initiative against the offender, by sending to the court a written accusation known as the presentment. The presentment is employed in cases of public nuisance or wide-spreading evils. On receiving the presentment of a grand jury, the judge usually orders an indictment to be framed, and issues a warrant for the arrest of the alleged offenders.

**Appearance of Prisoner for Trial.**—The grand jury, having returned to the court the indictment, endorsed with the

<sup>1</sup> See Chapter XI., "Personal Rights."

<sup>2</sup> Professor Stubbs in his *Constitutional History of England*, Volume I., Chapter XIII., Section 164, says that compurgators have nothing in common with the jury but the fact that they swear. Yet this is a step in the history of the jury. The first form in which the jury appears is that of witnesses. The whole system of recognition by sworn inquest was introduced into England by the Normans. Under this system the sworn recognitors were rather witnesses than judges; they swore to facts within their own knowledge; the magistrate to whom the inquest was entrusted was the inquirer, and he inquired through the oath of men sworn to speak the truth, and selected in consequence of their character and local knowledge. Such was the instrument introduced in its rough simplicity at the conquest, and developed by the lawyers of the Plantagenet period into the modern trial jury. Henry II. expanded and consolidated the system. It became under his hand a part of the settled law of the land, a resource open to every suitor.

words "A true bill," the person accused in the indictment must now appear in open court for formal trial of the offense charged against him. When charged with a felony, that is, with a crime punishable by confinement in a State's prison, the prisoner must be personally present in court; when tried for a lesser offense, or a misdemeanor,<sup>1</sup> he need not be present himself but may be represented in court by his lawyers. The complaint against the prisoner is made out in the name of "The People of the State of New York"; and the people, as complainant, are represented in court by the district attorney.

**The Arraignment and Plea.**—The prisoner is now arraigned in open court before the judge. The indictment is read to him and he is required to answer to its charges. The prisoner may plead that he has been at some former trial in a court of law, already convicted or acquitted of the particular charge in the indictment; and if this is found to be true, the rule of the constitution that no man shall be "twice put in jeopardy for the same offense" applies, and the prisoner must go free. If the prisoner plead "Guilty" to the charge in the indictment, the judge sentences him to the punishment fixed by State law for his crime. If, however, he plead "Not guilty" to the charge, a question of fact arises, and the prisoner has a right to demand that it be tried by a trial jury.

**Trial by Jury.**<sup>2</sup>—A trial jury is a body of twelve

<sup>1</sup>All crimes which are neither treason, directed against the life of the State, nor felony, are misdemeanors. Crimes may be classified as felonies or misdemeanors by the State legislature.

<sup>2</sup>The jury of presentment, is also according to Stubbs, a creation of Henry II. It was brought into close connection with the system of compurgation, the jurors who presented the list of criminals representing the compurgators of the accuser. "As a matter of history it seems lawful to regard the pre-

men<sup>1</sup> selected from among the people of the county, where the crime is committed or triable, and sworn to decide according to the evidence, the issue of fact (in libel cases the issue of law also) that has arisen between the people and the accused. Trial jurors are selected from lists of property owners furnished by the supervisors, town clerks and assessors. They must be between the ages of twenty-one and seventy, must be citizens of the United States and residents of the county in which they are drawn to serve as jurymen. As in the case of the selection of grand jurymen, the county clerk<sup>2</sup> draws the names of thirty-six men to serve as trial jurors at a particular term of court; and twelve are chosen as a trial jury in a particular case. Before this jury the district attorney presents the people's case against the person accused. The prisoner defends himself through his lawyer, who is an officer of the court, producing the evidence of witnesses, if he has any, in support of his defense.

sentment as a part of the duty of the local courts for which an immemorial antiquity may be claimed, with at least a strong probability." The same author also says that at an early period, before the abolition of the trial by ordeal, by the Lateran Council of 1215, a petit jury was allowed to disprove the truth of the presentment, and after the abolition of the ordeal that expedient came into general use. The further change in the character of the jury, by which they became judges of fact instead of witnesses, is common to the civil and criminal jury alike. "As it became difficult to find jurors personally well informed as to the point at issue, the jurors summoned were allowed at first to add to their number persons who possessed the requisite knowledge, under the title of *Afforcement*. After this proceeding had been some time in use the afforcing jurors were separated from the uninformed jurors, and relieved them altogether from their character of witnesses. The verdict of the jury no longer represented their previous knowledge of the case, but the result of the evidence afforded by witnesses of the fact; and they became accordingly judges of the fact, the law being declared by the presiding officer acting in the king's name."

<sup>1</sup> Six in courts of a justice of the peace.

<sup>2</sup> See note page 169.

Poor prisoners unable to hire a lawyer are assigned one by the court to help in their defense; and when it can be shown that there is a probability of the people of a county being so prejudiced against the prisoner that a jury of the county cannot render a fair and impartial decision, a trial jury may be selected from an adjoining county; or the trial itself may be removed to another county. Such removal is called "a change of venue."<sup>1</sup>

**The Judge's "Charge."**—The judge rules upon questions of law as they arise in the trial of the prisoner; and at the close of the trial "charges" the jury, explaining the law governing the matter and reviewing any evidence which he thinks necessary to a clear understanding of the subject.

**The Verdict.**—The jury then retires behind closed doors, and deliberates in secret upon the probable guilt or innocence of the prisoner. The agreement of the entire twelve jurymen is necessary to convict or acquit the prisoner. The jury must find the prisoner "Not guilty," if after hearing all the evidence its members have a reasonable doubt of his guilt. The formal decision of a trial jury, delivered in open court, for or against a prisoner, is called "The Verdict of the Jury." If a trial jury cannot agree upon a verdict of "Guilty" or "Not guilty," the accused person must have another trial before a new jury, till he is either convicted or acquitted.

**The Sentence.**—After a verdict of "Guilty" the judge pronounces upon the prisoner, the sentence fixed by State law as a punishment for his offense. The judge is usually allowed to use his judgment as to whether the prisoner shall be made to suffer a maximum or a minimum penalty. Old

<sup>1</sup> Venue is from the Latin "vicinia," or the Norman French, "visne," meaning neighborhood.

and hardened offenders are usually given the maximum penalty allowed by the law, while young criminals, whose offenses are accompanied by mitigating circumstances, are given a penalty less than the maximum. In some cases the judge suspends the enforcement of the sentence during the good behavior of the person convicted. If the verdict of the jury be "Not guilty," the judge discharges the prisoner, and he cannot be tried again for the offense.

**Appeals.**—A prisoner may appeal from a jury's verdict of "Guilty" to a higher court, and ask for a new trial of his case, on the ground of error committed in the first trial, or of a verdict not in accordance with the law or the evidence. The higher court appealed to, after reviewing the proceedings in the lower court, will, if it thinks no error has been committed, dismiss the appeal, in which case the prisoner must suffer the penalty imposed by the judge's sentence in the lower court. But if the higher court finds the error complained of it will order a new trial of the prisoner before the lower court.

These proceedings in the trial of criminals have most of them come down to us, either directly or in a modified form, from the customs of the early English law. Taken together, they constitute the "due process of law" of our State constitution, without which no person may be deprived of his life, liberty, or property. They also show the exceeding care with which the descendants of our free Teutonic ancestors guard the sacred personal liberty of even the worst of criminals, that no wrong may be done to any person. Here we see what is meant by the famous clause of Magna Charta, repeated in so many charters and constitutions of the English-speaking people, that "No freeman shall be taken, or imprisoned, or outlawed, or brought to

ruin, unless by the lawful judgment of his peers, or by the law of the land."

### SUMMARY.

Offenders against the law are arrested by the officers of the executive department, and are tried before the courts of the judiciary department.

A person accused of crime is held to be innocent until proven to be guilty. He has the right, in many instances when arrested, to "give bail" for his future appearance in court to answer the charges against him.

Charges of infamous crime against a person must be presented in the form of an indictment by a district attorney to a grand jury of the county where the offense is triable.

### SUGGESTIVE QUESTIONS.

Describe two ways in which a criminal may be arrested.

What is a warrant of arrest? By whom is it issued? What facts must it contain? To whom is it directed?

Describe the right of bail. For what offenses are prisoners not allowed to give bail?

What is a grand jury? How is it selected? Describe its duties.

State the difference between a bill of indictment and a presentment.

What is meant by the prisoner's "plea"?

Describe the trial jury. Tell how it is selected. Describe its duties in court, on the trial of a prisoner.

Explain the meaning of "judge's charge," "verdict," "sentence," "appeal," as used in trials at law. When will a higher court order a new trial?

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ADDITIONAL READING.

On "The origin of the Jury," see Green's *Short History of the English People*, Chapter II., Section 8, "Trial by Jury," and the same work, Chapter IV., Section 4, "The English Towns." See also the works of Stubbs and Hannis Taylor on the constitutional history of England, under the index title "jury."

## CHAPTER XVII.

### The Judiciary Department—Civil Suits at Law.

Two farmers, living side by side, have a dispute about the division line between their farms. Each claims to own the same piece of land; each believes himself right; neither will yield, and there is a long and bitter quarrel. Who is to decide the matter finally and put the rightful owner into possession of his property? If the farmers can come to no agreement, they may take the matter into a court of law. Here each will present the facts supporting his own claim to the land, with the testimony of any witnesses in his favor, and leave the truth to be determined by process of law. Such a suit at law, involving the ownership of property, is called a civil suit, to distinguish it from a criminal suit, such as described in the last chapter. Much of the time of the judiciary officers of State and local governments is spent in hearing and determining the facts in civil suits at law.

**Proceedings in Civil Suits at Law.**—The person who begins a civil suit at law is called the plaintiff. In a paper called the complaint, he presents to the court an outline of the facts in support of his claim, and prays that the judgment of the court may be given in his favor. The person opposed to the plaintiff in the suit is called the defendant. In a written answer the defendant opposes the claim of the plaintiff. Should the defendant fail to answer the complaint, and should he fail to appear in court, after he has been served with a legal paper called a summons, in which he is



ordered to appear and answer, the plaintiff may prove the truth of his claim, by the testimony of himself and his witnesses; after which the judge will order the sheriff or other executive officers to put him in possession of the rights which were in dispute. If, however, the defendant answers the plaintiff's complaint, denying its statements, an issue of fact arises, the truth of which may be determined, as in a criminal suit, by a trial jury. The jury after hearing both sides, gives its verdict, and the judge orders the party found to be in the right, to be put in possession of the disputed property.

**The Courts as Interpreters of the Law.**—Besides deciding questions in dispute between individuals, the courts are often called upon to decide on the meaning and application of various laws. A bill passes the legislature and is signed by the governor, in which different persons who are interested in the rights affected by it, read quite different meanings. One man understands the statute<sup>1</sup> to mean one thing; another quite a different thing. Who is to decide what it really does mean? As in the case of the farmer's dispute over the land, the courts must decide; and a decision is obtained by some one bringing a suit to determine his rights under the disputed law.

**Statutes May Be "Constitutional" or "Unconstitutional."**—Suppose, for example, the State legislature passes a bill declaring the business of slaughtering animals within any city to be a nuisance, dangerous to the health of the people, and orders such slaughtering stopped. Butchers, who have built large and expensive slaughterhouses, suddenly find themselves deprived of the lawful right to use

<sup>1</sup> A bill after passing the legislature, and being signed by the governor, is called a statute.

their property. If they obey the law they must sell or dispose of their buildings as best they can, and remove their business outside the city. But perhaps they pay no attention to the prohibitory statute. In that case a suit may be brought against the butchers by the district attorney, charging them with violating the law. The butchers may defend the suit, pleading that the statute prohibiting slaughtering is not in accordance with the fundamental law; that they are being deprived of their property without the "due process of law" required by the constitution. An issue of law now arises between the people of the State and the butchers, which must be decided by the courts. If the highest court, having the right to try and determine the matter decides the statute to be in harmony with the constitution, the butchers must close up their slaughterhouses, or take them outside the city limits. But if the court decides the statute to be not in accord with the constitution, it is void, and no man is bound to obey it.

**Courts Enumerated—Courts of Justices of the Peace.**—Let us briefly consider the different courts, established by the people of the State, to do the important work above described.

The lowest courts—and those nearest to the people—are the courts presided over by justices of the peace. The people of each town elect four justices of the peace for terms of four years each. This is required by State law. A justice of the peace holds two courts—a court for the trial of civil suits, called a Justice's Court; and a court for the trial of petty criminals, called a Court of Special Sessions. As a general rule no civil suit may be tried in a justice's court, when the amount sued for exceeds \$200. In courts of special sessions certain small offenses enumerated by State law

may be tried, but persons accused of crime before a justice of the peace, usually give bail to await the action of a grand jury in a higher court. Issues of fact in a court presided over by a justice of the peace, are determined by a justice's jury, composed of six citizens and freeholders of the town. The constable summons twelve men from the jury list of the town, to appear in court, and six of them are drawn to sit in a particular case. Justices of the peace are paid in "fees," fixed by State law, for services performed.

**County Courts.**—The court next above those of a justice of the peace, is the county court, and an appeal from the decision of a justice of the peace may be heard before the county judge, who presides over the county court; but the principal business of the county court is in trying cases too important to be heard in the courts of justices of the peace. Each of the sixty-one counties of the State, except New York county,<sup>1</sup> has a county court presided over by a county judge, who is elected for a term of six years by the voters of his county, and who is paid out of the county treasury. The county judges receive different salaries, fixed by State law, in the different counties. All crimes, except those punishable by death, may be tried in a county court. Civil suits, in which the sum sued for does not exceed \$2,000, may be tried in a county court. Issues of fact in a county court are determined by a trial jury of twelve men selected as in the case of a criminal trial.

<sup>1</sup>The Court of General Sessions in New York county and the City Court of New York take the place of a county court. The former has jurisdiction mainly in criminal cases, including crimes punishable by death, and the latter in civil cases where the amount sued for does not exceed \$2,000. King's county has two county judges and the jurisdiction of its county court extends to crimes punishable by death.

**The Supreme Court.**—Next above the county court is the supreme court. This is in many respects the most important court of the State. Before it may be tried all grave crimes against the laws of the State and all important civil suits. For convenience in administering justice through the supreme court, the State is divided into four judicial departments, and these in turn are divided into eight judicial districts. The first judicial department and the first judicial district are co-extensive, and embrace the county of New York. The second judicial department also coincides with the second judicial district, which includes Kings, Queens, Richmond, Nassau, Suffolk, Rockland, Westchester, Putnam, Orange and Dutchess counties. The third judicial department includes the third, fourth and sixth judicial districts; and the fourth judicial department, the fifth, seventh, and eighth judicial districts.<sup>1</sup> There are seventy-six supreme court judges, and they are elected by the voters of the eight judicial districts for terms of fourteen years each, as follows: First district, twenty-two judges; second district, twelve judges; third, fourth and sixth districts, six judges

<sup>1</sup> The third judicial department includes the third judicial district, embracing Columbia, Rensselaer, Sullivan, Ulster, Albany, Green, and Schoharie counties; the fourth judicial district embracing Warren, Saratoga, St. Lawrence, Washington, Essex, Clinton, Franklin, Montgomery, Hamilton, Fulton, and Schenectady counties; and the sixth judicial district embracing Otsego, Delaware, Madison, Chenango, Tompkins, Broome, Chemung, Schuyler, Tioga, and Cortland counties. The fourth judicial department includes the fifth judicial district embracing Onondaga, Jefferson, Oneida, Oswego, Herkimer, and Lewis counties; the seventh judicial district embracing Livingston, Ontario, Wayne, Yates, Steuben, Seneca, Cayuga, and Monroe counties; and the eighth judicial district embracing Erie, Chautauqua, Cattaraugus, Orleans, Niagara, Genesee, Allegany, and Wyoming counties.

each; fifth and seventh districts, seven judges each; eighth district, ten judges.

**Supreme Court—Trial and Special Terms.**—In each county of the State there are held at certain designated times, trial terms of the supreme court, each presided over by a single supreme court judge. At these trial terms civil and criminal cases are tried with the aid of a trial jury. Civil suits are also tried by the judge without the aid of a jury, if the parties to the suit so agree. In each county also the supreme court holds special terms, presided over by a single judge, who hears and decides various legal motions without the aid of a jury. The supreme court, both at trial term and special term, acts as a court of original jurisdiction, that is, it hears cases and motions originally presented to it and not on appeal from the decisions of the lower courts.

**Supreme Court—Appellate Division.**—In each of the four judicial departments there is an appellate division of the supreme court, composed of certain judges selected by the governor from among the seventy-six supreme court judges of the State. Seven judges constitute the appellate division in the first judicial department, and five constitute the appellate division in each of the other departments. The appellate division of the first department sits in the city of New York (borough of Manhattan); the second department, in the borough of Brooklyn; the third department, at Albany; and the fourth department, at Rochester. Terms of this court may be held in other places whenever the judges of a department deem that the public interests will be served thereby. Appeals from decisions of the county courts, and from the trial and special terms of the supreme court, in any judicial department, are heard in the

appellate division of the supreme court of the department. Judges of the appellate division are appointed for terms of five years each.

**The Court of Appeals.**—Highest above all these courts, and the court of last resort in questions arising under the State law, is the court of appeals. This court is composed of seven justices—one chief justice and six associate justices, elected by the voters of the entire State for terms of fourteen years each, at annual salaries of \$13,700 each, (the chief justice, \$14,200); and the governor may appoint not more than four supreme court judges to sit temporarily as associate justices in this court. The court of appeals reviews questions of law brought up to it from the appellate divisions of the supreme court. No questions of fact are reviewed by the court of appeals, except in criminal cases where the sentence is death. Five justices of the court of appeals constitute a quorum, and the concurrence of at least four is necessary to a decision. The decisions of the court of appeals, with the arguments and explanations of its judges, constitute the final interpretation of the law of the State. There is no higher court in the land, except the supreme court of the United States.

**Coroners' and Surrogates' Courts.**—Besides the courts above described, there is in each county a coroner's court, held for the purpose of inquiring into the causes of sudden and suspicious deaths. The coroner may summon witnesses before him and examine them, and he may issue a warrant for the arrest of any person who may be charged with the commission of the crime under investigation. Coroners formerly had power to summon a jury in connection with their investigations which are termed "Coroner's Inquests"; but this power was abolished by State law in 1899, except

in case of inquests held in a county situated wholly or partly in a city of the first class, when not less than nine nor more than fifteen persons, qualified to serve as jurors, may be summoned by the coroner.

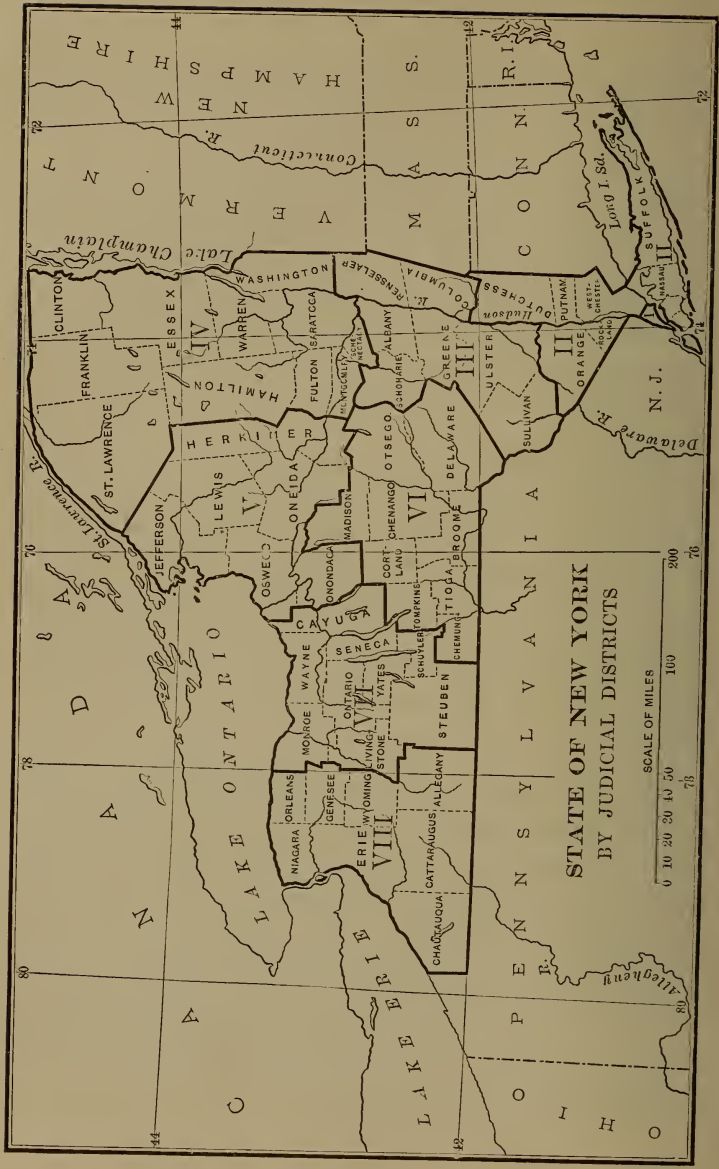
Each county has a court presided over by a surrogate who takes proof of the wills of deceased persons, and attends to the settlement and division of the estates of persons who die without having made a will. This court also appoints guardians for the care of the persons and property of minors. In counties having a population of less than forty thousand, the county judge performs the duties of surrogate.

**Courts "of Record" and "Not of Record."**—A number of cities also have minor civil and criminal courts specially allowed them by State law.<sup>1</sup> The surrogate's court, county court, supreme court and court of appeals are Courts of Record. That is, each has its official seal and an official clerk, who keeps a detailed record of its proceedings. Courts of justices of the peace, coroner's courts, and most minor courts of cities, are designated as Courts Not of Record.

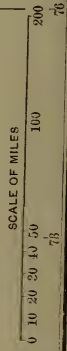
**The Court for the Trial of Impeachments.**<sup>2</sup>—Differing from the law courts above described, is the court for the trial of impeachments. This court tries, and if found guilty, removes from office high public officials, especially judges, who, by reason of their offenses, are no longer fit to serve the people in the offices which they hold. Impeachment cases are brought by the assembly and are tried before the State senate and its president, and the judges of

<sup>1</sup>The courts of the city of New York are described in Chapter VI., "Greater New York."

<sup>2</sup>See also Chapter XIV., "The Legislature."



**STATE OF NEW YORK  
BY JUDICIAL DISTRICTS**





the court of appeals, sitting together as a court of impeachment. A two-thirds vote of this court is necessary to convict and remove an official from office. When the governor or lieutenant governor is tried before the court for the trial of impeachments, the latter official does not, for obvious reasons, sit as a member of the court.

**Court of Claims.**—A State cannot be sued in a court of law by one of its own citizens, or by the citizens of another State; but any one having a claim against the State may take it to the court of claims, and if the court finds the claim to be valid, it must be paid after deducting any just claim of the State. This court consists of three judges of claims appointed by the governor, by and with the advice and consent of the senate, for terms of six years each, at annual salaries of \$5,000 each. The court of claims holds four sessions a year at the State capitol at Albany.<sup>1</sup> Appeals from its decisions may be made to the appellate division of the supreme court. A State may be sued however by another State, the suit being brought in a United States court; but no private person is allowed to bring suit against any one of the United States.

**General Provisions.**—No judge of the court of appeals or of the supreme court may hold at the same time another public office, and no judge except a justice of the peace, may accept any fee for the performance of his public duties. This latter provision is intended to keep the judges free from the temptation to entertain any legal proceedings, or to perform, as judges, any acts that might increase their own personal incomes. No person may hold the office of judge longer than until and including the last day of December next after he shall be seventy years of age.

<sup>1</sup> Laws of 1897, Chapter 36.

## SUMMARY.

Besides trying persons accused of crime, the courts of the judiciary department hear and determine questions of private rights in dispute between individuals.

Questions of private rights are brought before the courts in civil suits at law, in which the aggrieved person is the plaintiff, and his opponent is the defendant.

The courts also act as interpreters of the law, and they decide whether or not statutes enacted by the legislature are in accord with the constitution.

The courts, beginning with the lowest, include in regular order, courts of justices of the peace and the local courts of cities, county courts, the supreme court and the court of appeals.

Appeals are made from decisions of the lower courts to the higher courts.

The courts also include a coroner's and surrogate's court in each county, the State court of claims, and the court for the trial of impeachments.

## SUGGESTIVE QUESTIONS.

What is a civil suit at law? How does it differ from a criminal trial?

Explain the meaning of the word plaintiff. Defendant. Summons. Issue of fact.

Under what circumstances and by whom may a statute of New York be legally declared to be unconstitutional? Must an unconstitutional statute be formally repealed by the legislature?

Give an account of the two courts of a justice of the peace. How many and what persons may constitute a jury in the court of a justice of the peace?

## CHAPTER XVIII.

### The Public Schools.

THE laws of New York require the children living within the State to attend some school regularly. Under these laws public schools have been opened in every part of the State, where free instruction is given to children between the ages of five and eighteen years. Should any child in the State, able to go to school, fail to attend one of these free public schools, his parent or guardian must show to the satisfaction of the school officers, that the child is receiving regular instruction elsewhere, equivalent to the instruction in the free public schools.

Why does the law provide for free public schools, and compel the children of the State to attend regularly some school? Because every male citizen, twenty-one years old and over, and otherwise qualified, has been given the right to vote at public elections held within the State. At these elections public officers are chosen to make, interpret, and enforce the State laws. Thus every voter, as he puts his ballot into the box on election day; helps to determine the kind of government under which we all live. It is supremely important that the voter shall be sufficiently intelligent and well-informed to cast a ballot for the best interests of the State. Such intelligence and information the State aims to develop by its system of free public schools, and its law requiring the children to attend school.

**The State's Public School System.**—The free public

schools of New York are carried on under both State and local laws. The State constitution<sup>1</sup> directs the legislature to "provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated." This has been done by placing provisions in the charters of the cities and villages, providing for free public schools to be carried on, usually under the direction of a local board of education and a local superintendent of schools; while outside of cities and villages the State is divided into districts, each under an officer known as the School Commissioner. A school commissioner is elected every three years by the voters of his district, and has general supervision, subject to State law, of the free common schools within his district. Every school commissioner's district is in turn divided into school districts, in each of which there is maintained a free common school, supported partly by the people of the district and partly by the State. These are the schools carried on in the "little red school-houses" that dot the hillsides and stand like sentinels at the country crossroads, each under its own proudly waving "stars and stripes," all over the Empire State. Over all these—school commissioners, school districts, boards of education, city and country schools—there is a State superintendent of public instruction elected by the legislature, for a term of three years, with an annual salary of \$5,000. He is the head of the free school system of the State and the last resort in all disputes affecting the public schools.

**The School Commissioner and His Duties.**—Every county in the State, outside of those composing New York city, has one or more school commissioners' districts, lying wholly within the county. The school commissioner is

<sup>1</sup> Article IX., Section 1.

partly a State and partly a local officer. The State pays each commissioner a salary of \$1,000 annually<sup>1</sup> and the board of supervisors of the county in which the school commissioner has his duties, may increase this salary, the increase coming out of the treasuries of the towns composing the commissioner's district. This board also has power to divide a school commissioner's district that contains over one hundred school districts, and to make an additional district out of the territory, which, of course, calls for the election of an additional school commissioner. The school commissioner may divide his commissioner's district into a convenient number of school districts, each to have its free common school.

It is the commissioner's duty to supervise the free common schools of his district and to see that proper instruction and discipline are maintained in them. Under the direction of the State superintendent of public instruction he also examines and licenses would-be teachers. He may condemn a public schoolhouse as unfit for use and order the people of the district to repair it or to build a new one; but the people may appeal from his decision, first to the supervisor, and then to the State superintendent of public instruction. Any person of full age, a citizen of the United States and a resident of his school commissioner's district is eligible for the office of commissioner. Women are frequently chosen, and some of our best commissioners have been women, formerly teachers in the free common schools.

**The School District and Its Government.**—For school purposes the State has made each school district a self-governing unit, in many respects similar to the self-governing municipal corporations of town, village, city and county.

<sup>1</sup> He is also allowed \$200 for travelling expenses.

The law-making power of the school district is the School District Meeting. All citizens of full age, irrespective of sex, who live in the district, who send one or more children to the district school, or who own property in the district liable to be taxed for school purposes<sup>1</sup> are lawful voters at these school district meetings. The regular annual school district meeting is held on the first Tuesday in August, usually in the district schoolhouse. It elects by ballot, of the majority of the voters present, the following executive officers of the school district: One or three trustees, a district clerk, a collector, and a treasurer.

All of these officers must be residents of the school dis-

<sup>1</sup> VOTERS AT SCHOOL DISTRICT MEETINGS.—Title VII., Article I., Section II, of the Consolidated School Law of New York State thus describes the qualifications of voters at school district meetings: "Every person of full age residing in any school district who has resided therein for a period of thirty days next preceding an annual or special meeting held therein, and a citizen of the United States who owns or hires or is in the possession, under a contract of purchase, of real property in such school district liable to taxation for school purposes; and every such resident of such district, who is a citizen of the United States, of twenty-one years of age, and is the parent of a child or children of school age, some one or more of whom shall have attended the district school in said district for a period of at least eight weeks within one year preceding such school meeting; and every such person not being the parent, who shall have permanently residing with him or her a child or children of school age, some one or more of whom shall have attended the district school in said district for a period of at least eight weeks within one year preceding such school meeting; and every such resident and citizen as aforesaid, who owns any personal property, assessed on the last preceding assessment roll of the town, exceeding fifty dollars in value, exclusive of such as is exempt from execution, and no other shall be entitled to vote at any school meeting held in such district, for all school district officers and upon all matters that may be brought before said meeting. No person shall be deemed to be ineligible to vote at any such school district meeting, by reason of sex, who has one or more of the qualifications required by such section."

trict, and qualified voters at the district meeting; and they must also be able to read and write. They hold office for one year, except where the district elects three trustees, in which case the term of a trustee is three years, one trustee going out of office each year.

**Powers of the School District Meeting.**—Besides the power to elect district officers, a school district meeting has power to fix the amount of bonds which the collector and treasurer shall give for the faithful performance of their work; power to designate, with the consent of the school commissioners, a site for a schoolhouse<sup>1</sup>; power to vote a tax upon the taxable property of the district for school sites, supplies, buildings, and furniture; for school apparatus not exceeding twenty-five dollars in one year, for school libraries, and for teachers' wages. A special law governs school districts containing more than 300 children of school age.

**The School Trustee.**—The State law makes the trustee or trustees of a school district a corporate body, or board, for the purpose of holding and managing the school property of the district; and the trustee is the chief executive officer of the school district. The trustee may call special meetings of the school district voters. He makes out a list of persons in the district who are liable to pay taxes for school purposes, putting the amount of each person's school tax opposite his name on the tax list, and directs the district collector to collect this tax. He may also raise by direct tax any reasonable sum needed to pay teachers' wages. He buys or leases property for school purposes, and purchases school apparatus, as directed by the district meeting; hires the teachers who teach in the district school; makes rules

<sup>1</sup> School sites may be chosen also at special district meetings.

for the government and discipline of the school; and prescribes its course of study, subject to the State laws governing these matters, and to the general supervision of the school commissioner and the State superintendent of public instruction.

**Union Free School Districts.**—Under directions laid down by State law, the voters of any school district, or the voters of adjoining districts voting to consolidate their school districts, may establish a union free school, and elect a board of education of from three to nine members, having generally the powers and duties of school trustees. This board may establish an academic department in the union free school for higher instruction under the supervision of the State board of regents. In villages of the first class, and in union free school districts of sufficient population, the board of education may elect a local superintendent of schools.

**Money for the Schools.**—Besides the moneys voted at school district meetings, the State distributes each year large sums for the support of the free public schools. This money is raised partly by an annual tax levied by the State legislature on the taxable property in each county, and it is partly the income from certain educational funds belonging to the State, which the people, through the constitution, have declared shall be kept inviolate for school purposes.<sup>1</sup> These are known as the Common School Fund and the United States Deposit Fund. The common school fund had its beginning in 1805, when the State sold some 500,000 acres of public land "to raise a fund for the encouragement of common schools." The United States deposit fund is a portion of a surplus of \$30,000,000 of United States funds that had accumulated in the United States treasury, and that

<sup>1</sup> New York State Constitution, Article IX., Section 3.



was distributed in 1832 among the States, to be kept until called for by the national government.

**Distribution of School Moneys.**—From these moneys the State superintendent of public instruction apportions annually the salaries of the school commissioners throughout the State, and the sums prescribed by State law for each city, incorporated village, union free school district, and each common school district, depending upon population, number of teachers employed, number of children attending school, and the length of their attendance. The remainder the superintendent apportions among the counties in proportion to population, the money being paid to the county treasurer. The school commissioners of the county apportion this State money among the towns and the school districts, money for the towns going to the supervisors, who pay it over to the trustees of the school districts. Out of its school moneys the State supports a Normal College at Albany and twelve Normal Schools for the instruction and training of public school teachers. It also pays for the maintenance of teachers' training classes in connection with academies and the academic departments of union free schools, and for the teachers' institutes carried on in various school commissioners' districts, where teachers already employed in the public schools may receive instruction. The State also has a "Literature Fund" the income from which goes to the academies.

**Schools in Cities.**—The public schools of each city, while being subject generally to the State laws regulating public education, and to the general supervision of the State superintendent of public instruction, are carried on in accordance with special provisions in the various city charters; each city having generally its own local board of education, elected or

appointed, and its superintendent of schools, usually elected by its board of education.

**School-teachers are Public Officers.**—Teachers in the free public schools are public officers, paid partly by the State and partly by the local government employing them; and no person may teach in the public schools without first receiving a teacher's license. A license may be obtained (1) by passing a graded examination prepared by the State superintendent of public instruction and conducted by a school commissioner, the license being good only in the commissioner's district; or (2) by passing an examination conducted by the State superintendent of public instruction for a license good for life, which gives permission to teach in any public school in the State; or (3) by graduating from a State Normal School; or (4) by securing a certain standing in a teacher's training class; or (5) by passing the local examination of a city superintendent of schools for license to teach in his particular city.

**The Compulsory School Attendance Law.**<sup>1</sup>—The com-

<sup>1</sup>THE COMPULSORY ATTENDANCE LAW.—Title XVI., Section 3, of the Consolidated School Law, being a portion of the Compulsory Educational Law, reads: "Every child between eight and sixteen years of age, in proper physical and mental condition to attend school, shall regularly attend upon instruction at a school in which at least the common school branches of reading, spelling, writing, arithmetic, English grammar and geography are taught, or upon equivalent instruction by a competent teacher elsewhere than at a school, as follows: Every such child between fourteen and sixteen years of age, not regularly and lawfully engaged in an useful employment or service, and every such child between eight and twelve years of age, shall so attend upon instruction as many days annually, during the period between the first days of October and the following June, as the public school of the district or city in which such child resides, shall be in session during the same period. Every child between twelve and fourteen years of age in proper physical and mental condition to attend school, shall attend upon instruc-

mon schools of the State are free to all children over five and under eighteen years of age; and the State requires every child between eight and twelve years old who is in proper physical and mental condition, to attend the common schools or equivalent instruction, throughout the school year between October 1st and the following June. Every such child between twelve and fourteen years old must attend school at least eighty days during the school year, and must attend the full school year, unless engaged in regular, useful, and lawful employment; and every child between fourteen and sixteen years old who is not regularly and lawfully employed must attend school for the full school year. Attendance officers, called truant officers, who have power to arrest truants without a warrant, must be appointed in each city and school district to enforce compulsory attendance. Parents who neglect to cause their children to attend school in accordance with the law are guilty of a misde-

tion during the school year then current, at least eighty secular days of actual attendance, which shall be consecutive except for holidays, vacations and detentions by sickness, which holidays, vacations and detentions shall not be counted as a part of such eighty days, and such child shall, in addition to the said eighty days, attend upon instruction when not regularly and lawfully engaged in useful employment or service. If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given to children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours of each day thereof, as are required of children of like age at public schools; and no greater total amount of holidays and vacations shall be deducted from such attendance during the period such attendance is required, than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practice of such public school."

meanor. The State superintendent of public instruction may withhold school moneys from cities or districts that fail to enforce compulsory school attendance, and he may remove from office any school officer who willfully neglects his duties.

**The University of the State of New York and the Regents.**—As the free common schools of the State are conducted under the general supervision of the State superintendent of public instruction, so higher education in the universities, colleges, academies, high schools, and technical schools of the State, is carried on under the general supervision of the Regents of the State University. The regents, as we have seen,<sup>1</sup> consist of a body of twenty-three men, nineteen of whom are appointed for life by the State legislature. The regents include the governor, lieutenant governor, secretary of state, and State superintendent of public instruction, as *ex officio* members. The University of the State of New York, under the control of the body of regents, is a federation of the higher institutions of learning in the State—universities, colleges, academies, high schools, technical schools, etc., including some public libraries, museums and university extension centers,—which have been passed upon and officially examined by the regents, and which have conformed to their requirements as to course of study, instruction, examination, diplomas, etc. This university was incorporated by the legislature in 1784 and is a distinctly supervisory body. The officers of the regents of the university are a chancellor and vice-chancellor, and an administrative secretary.

**Powers of the Regents.**—The board of regents has power to incorporate, alter, or revoke the charters of universities,

<sup>1</sup> Chapter XV., "The State's Executive Department."

colleges and other institutions of higher learning in the State. Officers of the board visit and examine these institutions annually. The regents also prepare regents' examinations covering college preparatory studies and qualifications for admission to various technical and professional schools. These examinations are made use of in determining the amount of money to be apportioned to separate schools from a fund of some \$100,000 distributed by the regents to academies and high schools. The regents also conduct a department of university extension work, sending out teachers and lecturers, conducting examinations, and granting regents' certificates to students passing the required examinations.

### SUMMARY.

The State must have intelligent voters, if it would have good government ; so it has established free schools and requires the children to attend school.

Outside of cities, the State is divided into school commissioners' districts ; and these are in turn divided into school districts, each having its free common school, supported in part by the State and in part by the district. Each city has its own system of free public schools and its school superintendent, as provided in its charter. All are under the supervision of the State superintendent of public instruction.

The school district is a unit of local government for school purposes. The school district meeting is the district legislative body, and the school trustee is the chief executive officer of the district.

Higher instruction in the state is under the supervision of the regents of the University of the State of New York.

## SUGGESTIVE QUESTIONS.

Give the substance of the law compelling children to attend school in this State. What is the purpose of this law? How is it enforced?

Give an account of the school commissioner and his duties.

What is a school district? Describe in outline the government of the school district for school purposes. Who is its chief executive officer?

How are union free school districts formed? For what purposes?

Describe the duties of the State superintendent of public instruction. How is he chosen?

Name three sources from which money is obtained to carry on the free public schools of this State. How may a person obtain a license to teach in such schools?

Describe the board of regents and its duties. How are the regents chosen? For what terms? What is the University of the State of New York? Who was its first chancellor? What is a regent's certificate?

## CHAPTER XIX.

### Assessment and Collection of Taxes.

GOVERNMENT cannot be carried on without money. The town must have money to pay for roads and bridges; the village must have money for street lamps, village water-works and police. The great city must spend millions of dollars every year for lighting, paving, street cleaning, water, police, schools, and a hundred other necessary public activities. In the county the sheriff, the county judge, county clerk, and other officers must be paid. So in the State, the governor and his army of assistants in the executive department, the members of the legislature, and the judges of the courts must all have their salaries. Without money, the wheels of government would soon cease to revolve. Many beneficial public activities would be suspended, schools would close, courts and policemen would stop work, county poorhouses and State asylums would be obliged to turn their helpless inmates into the streets, law would remain unenforced, and confusion, ignorance, and crime, would soon triumph over the feeble and unorganized efforts of individuals.

But where is all the money, needed to carry on the vast and complicated public activities of our government, to come from? How is it to be apportioned among the people benefited? How collected so as least to inconvenience the people who are to pay it? To answer these questions satis-

factorily has been from the beginning of civilized government, one of its most difficult and delicate problems.

**Money to Carry on the Government is Collected in the Form of Taxes.**—Money or service lawfully taken from the people to meet the expenses of their government is called taxes. Different governments have different methods of assessing and collecting the taxes. Taxes for the support of the government of the United States are collected very largely as customs duties and internal revenue. The former is a tax collected at the United States customhouses, on the value of goods or products brought into this country from foreign countries. The United States internal revenue taxes are collected not on goods imported, but upon domestic commerce and manufactures. Internal revenue is often collected in the form of stamps purchased from the officers of the United States government, and placed on the article manufactured or sold. Thus, the manufacturers of prepared tobacco place on each package or box of cigars before selling it, an internal revenue stamp, bought at the office of the United States collector of internal revenue. Both customs duties and internal revenue taxes are known as indirect taxes, because they are paid ultimately by the consumer or purchaser of the articles taxed, he paying the tax in the increased price asked for the taxed article.

**State and Local Taxes.**—Money for carrying on our State and local governments is collected very largely in the form of a tax on the value of houses, lands, and other permanent property, located in the territory governed. Such permanent property is called real property. Movable property, such as horses, cattle, the goods of a merchant, certain farm machinery, etc., is also subject to taxation; but this movable property, which is called personal property, is a



more difficult form of property to tax than real property, owing to the comparative ease with which it can be concealed, and because of its greater fluctuation in value. We have seen that a poll or personal tax is also assessed on the voters in the country districts, for the purpose of keeping up the roads. In the raising of State and local taxes, each owner of taxable property is required generally to pay a tax equal to a certain definite percentage of the value of his property subject to taxation. Thus if \$100,000 of taxes is to be raised in a certain city, and the value of the taxable property in the city is \$5,000,000, each dollar's worth of property will pay two cents in taxes; and John Smith, who owns a house and lot valued at \$2,500, must pay fifty dollars. This form of taxation is called direct taxation, because the tax money goes directly from John Smith's pocket to the officers of the government, instead of being paid indirectly, in the increased price which he pays for an article which is taxed by the government.

**Tax Districts.**—For the purpose of collecting taxes, the State is divided into tax districts, each district usually corresponding to a town or city. Officers are elected or appointed in each town and city to ascertain the value of the houses, lands, and other taxable property in the district, and these officers often collect in a single sum, from each property owner, the amount of taxes due from him to the State, county, town, and city governments.

**Fixing the Amount of the Taxes.**—The State legislature decides what sum must be raised each year from the property in each county to carry on the State government. The county board of supervisors in each county decides how much money must be raised as a county tax to carry on the county government; and this is added to the sum to be

raised in the county for State purposes. The amount to be raised for town purposes is decided by the town meeting in each town; the sum is reported to the county board of supervisors, and the board adds it to the town's proportion of State and county taxes. The amount of money needed to carry on a city government is usually fixed by its common council, which reports the sum to the board of supervisors of the county in which the city is located; and the board adds to this sum the State and county tax for which the city is liable, as in the case of a town. Village and school-district taxes are collected independently of the State and other local taxes, by the village and school-district officers.

**Assessors and Their Duties.**—In each tax district of the State, three assessors are elected by the people of the towns, but special laws govern in the cities. It is the duty of the assessors to "ascertain by diligent inquiry" all property and persons in the district liable to be taxed. Generally all real property—that is, houses and lands—must pay taxes, and a mortgage given for a debt due upon a house or farm does not lessen the amount of taxes the property must pay. A man may also be taxed on his personal or movable property after deducting his just debts from its value. Exception is made of public property belonging to the United States or to the State, and of property of municipal corporations used for public purposes, such as a courthouse, jail, park, cemetery, etc. Such property is not taxed. Neither is the property of religious and charitable organizations, like churches and hospitals, when used directly for religious or benevolent purposes.

**The Assessment Roll.**—From information obtained by the assessors, they make up what is called an assessment

roll for the tax district. This roll must contain the name of each person in the tax district liable to be taxed, the value of his real property, and the amount of any personal property or rents upon which he may be taxed. Having made up the assessment roll, the assessors now notify the people of the district that the roll is open for inspection. The assessors fix a time and place for hearing any complaints of persons, who may think themselves wrongly assessed. As a result of these hearings, corrections may be made in the assessment roll. This roll, when corrected, is filed with the town or city clerk.

**The County Board of Equalization.**—The assessment roll for each tax district is taken to the annual meeting of the county board of supervisors ; and the board there examines the different rolls. If any person still feels aggrieved at the amount he has been assessed, he may now appeal from the decision of his local assessors to the county board of supervisors, for its decision. This board, when examining the assessment rolls, sits as a County Board of Equalization of Taxes, and has power to increase or decrease the aggregate assessed value of the real property in any tax district, in order to produce a just relation among the several district valuations ; but the board must not decrease the total assessment of the county. The board apportions the State and county taxes due from each town and city, adds the town or city tax, and puts the amount of each person's tax opposite his name on the assessment roll of his tax district. The assessment roll, thus completed, becomes the tax roll of the district. We will now go back to John Smith, who owns a house and lot valued at \$2,500. We will suppose the county board of equalization finds that \$100,000 is to be raised in taxes from the property of the

city where John Smith lives. Of this sum, \$80,000 is required by the city government to pay for schools, police, streets, sewers, lights, etc.; \$10,000 is the city's share of the money needed to carry on the county government; and \$10,000 is due from the city to the State government. The total tax on each dollar of taxable property in the city is two cents. Of the fifty dollars taxes which John Smith will pay on his property, valued at \$2,500, forty dollars therefore, will go to the city government, five dollars to the county, and five dollars to the State.

**Collecting the Taxes.**—The amount of each man's tax having been ascertained, the board of supervisors directs the collector in each tax district, to collect the money due, and pay it over to the officials entitled by law to receive it. The commissioners of highways receive the money for building and repairing the roads; the overseers of the poor, the money for the support of the county's poor; the supervisor, the money for town expenses; the city treasurer, the money for the city government; and the county treasurer, the remainder. The county treasurer pays out of the money received by him, any charges against the county, and he pays to the State comptroller the tax on the property of the county fixed by the legislature for State purposes. Both the State comptroller and the county treasurer are authorized by law to sell real property on which the tax remains unpaid; but the property so sold may be redeemed or bought back by its former owner, on his paying back taxes due, and the costs and expenses of the tax sale. The local authorities of cities may sell in a similar way real property on which certain city taxes have not been paid.

**The State Board of Equalization.**—That the property in

each county may be justly assessed for the payment of taxes due to the State, officers known as State tax commissioners, visit the different counties, ascertain the value of the taxable property, and the manner of its assessment and valuation by the assessors in the local tax districts. Once a year, a State board of equalization, somewhat similar to the county board just described, meets at Albany to examine and revise the valuations of the taxable property reported from the different counties. The tax commissioners are members of this State board. The State board of equalization may increase or decrease the aggregate value of the assessment of the real property of any county, but it cannot decrease the total of the assessed valuation of property within the State. Appeals from decisions of county boards of equalization may be made to this State board.

**“Tax Dodging” and its Penalty.**—Sometimes persons try to escape paying their just share of the taxes by concealing their taxable property, or making false statements to the assessors as to its value. Such attempted “tax dodging,” the law of the State classes among the misdemeanors, and a person thus trying to deceive the tax officers, may be tried and punished by the criminal courts.

**Other Taxes for State and Local Purposes.**—Besides the system of direct and indirect taxes previously described, the State collects a tax on certain inheritances of property; on the capital stock of private corporations; and from the owners of public franchises, such as the privilege of operating a street railroad or a telegraph system. State taxes are also collected on the business of selling intoxicating liquors—this last under what is known as the Raines liquor tax law. Special taxes are also collected in cities and villages, for opening streets, grading and paving them, and for laying

sewers—these special taxes being usually quite largely collected from the property immediately benefited by the improvements made.

**Private Corporations and Their Nature.**—We have spoken of the taxes collected upon the capital stock and income of private corporations operating railroads, telegraph lines, etc. What is a private corporation, and how does it differ from the municipal corporations of town, village, city and county, previously described? Private corporations are composed of persons united usually for the conducting of money-making enterprises, like banking, insurance, railroads and other enterprises too great to be successfully managed by a single individual. A private corporation, like a municipal corporation, must go to the State legislature for its charter for permission to do business; and these corporations are organized under a general law of the State, known as the Corporation Law. When the individuals composing a private corporation have obtained their charter, they may buy, sell, and hold property, carry on the corporate business permitted by their charter, sue and be sued, as a single individual.

**Banks and Banking.**—Important private corporations, subject to the laws of New York, are the State banks, which, under the general laws of the State, are allowed to issue their banknotes, or promises to pay, for circulation among the people as money. For the security of those who deposit their money in State banks, or who use their banknotes as money, the law provides that these banks shall be subject to the control of the State Superintendent of Banks. Under the State constitution all State banknotes issued or put in circulation as money, must be registered by the State, and the banks must deposit with the State officers, securities suf-

ficient to redeem their notes in coin.<sup>1</sup> The constitution still further provides for the protection of the people against the possible failure of the banks to meet the obligations of these notes, that the legislature shall have no power to pass any law "sanctioning in any manner directly or indirectly, the suspension of specie payments by any person, association or corporation issuing banknotes of any description."<sup>2</sup> This means that, if so demanded, a bank must pay its notes in coin.

Differing from the State banks, are the national banks, created by United States law and under the supervision of the United States Treasury Department. One of the chief functions of the national banks, is to issue their paper notes or promises to pay, and loan them to the people. A national bank, wishing to issue banknotes, must first buy United States bonds<sup>3</sup> equal in face value to the total amount of the notes which the bank proposes to issue. These bonds the bank must deposit with an officer of the treasury department known as the comptroller of the currency, as a security for the redemption of its banknotes. The treasury department at Washington then prints notes or bills for the bank, which, when signed by the proper officers, may be loaned or circulated as money.

**The State not to Aid Private Enterprises.**—The State constitution<sup>4</sup> says that the money or credit of the State

<sup>1</sup> New York Constitution, Article VIII., Section 6.

<sup>2</sup> New York Constitution, Article VIII., Section 5.

<sup>3</sup> Bonds of the United States are its written promises to pay at a definite time money which it has borrowed, with interest, at a rate fixed by Congress at the time of issuing the bond.

<sup>4</sup> New York State Constitution, Article VIII., Section 9; also Article VII., Section 1.

shall not in any manner "be given or loaned to or in aid of any association, corporation or private undertaking," conducted for private gain. And the State may not become the owner of any stock or bonds of any association or private corporation. These constitutional provisions are intended to prevent the lawmakers from using the public money in such a way as to benefit any private enterprise. The State is prohibited by the constitution from incurring any public debt in excess of \$1,000,000, unless it be for the purpose of repelling invasion, suppressing insurrection, or defending the State in time of war.<sup>1</sup> The State constitution also prohibits any county, city, town, or village, from giving money or property to, or loaning its money or credit in aid of, any individual, association, or corporation, or from owning any stock or bonds of any private association or corporation.<sup>2</sup>

**The Forest Preserve and the Canals.**—New York owns a vast quantity of wild forest land in the Adirondack region, much of which is covered with virgin forests. In it are the head waters of the Hudson, Mohawk, and other large rivers, which supply water for the canals owned by the State. This, with other wild lands owned by the State, is called the "Forest Preserve." It is under the care of the forest, fish and game commission, and affords a magnificent public park for the people of the State. The State constitution declares that the forest preserve, now or hereafter to be acquired, shall be forever kept as wild forest land; and that it may not be leased, sold, or exchanged, or taken by any corporation; and that the timber on it shall not be sold,

<sup>1</sup> New York State Constitution, Article VII., Sections 2 and 3.

<sup>2</sup> New York State Constitution, Article VIII., Section 10.



removed, or destroyed. In connection with the same subject, the constitution declares that the canals owned by the State shall not be sold or leased, but must remain the property of the State and under State management. No tolls may be charged on the canals, but they are always to remain free public waterways for the use of the people.<sup>1</sup>

### SUMMARY.

Money to carry on the various governments, State and local, is collected from the people and property within the State in the form of taxes.

Money for the support of the United States government is collected in the form of indirect taxes; for the support of State and local governments principally in the form of direct taxes on real and personal property.

The State legislature decides the amount of tax to be raised for the State government; the board of supervisors the amount for the county; the town meeting the amount for the town; and the common council the amount for the city.

The State is divided into tax districts, each with its own board of local assessors, who fix the value of each man's property for purposes of taxation, and record the same in the district assessment roll.

The county board of supervisors, sitting as a board of equalization, compares the assessment rolls of the several tax districts in the county, fixes a just relation between the different valuations, and fixes each man's total tax for State and local purposes, except village, school-district and

<sup>1</sup> New York State Constitution, Article VII., Sections 7, 8, and 9.

road taxes, which is then collected in a lump sum by the collector of his tax district.

A State board of equalization performs similar duties in regard to the valuations of the different counties of the State.

### SUGGESTIVE QUESTIONS.

Name three purposes for which taxes may be legally imposed in this State.

What is the difference between direct and indirect taxation? Which is chiefly employed for State and local purposes?

What are customs duties? What is internal revenue?

What are the usual boundaries of a tax district in this State? Describe generally the mode of assessing and collecting State and local taxes.

What is meant by the "county board of equalization"? What are the duties of this board?

What is a tax sale? When is it employed? What is the penalty for making false statements to the tax officials about one's taxable property?

How does a private corporation differ from a municipal corporation?

What officer has general supervision of the operations of State banks? For what purpose? What provision of the constitution prohibits a State bank from suspending specie payments?

Describe briefly the difference between a national and a State bank. May the State guarantee the financial standing of a bank? If not, why not? May a city loan money to a bank?

What is the State's forest preserve?

ADDITIONAL READING.

For a brief account of the history and working of the national banking system, see Dunbar's *Chapters on the Theory and History of Banking*, Chapter IX., "The National Banks of the United States." On the general subject of taxation, see R. T. Ely's *Taxation in American States and Cities*.

## CHAPTER XX.

### The Conduct of Public Elections.

VOTING in New York seems at first sight to be a very simple affair. The voter goes to the polls on election day, and puts into the ballot box a piece of paper on which are the names of men whom he wishes elected to public office. But voting when we come to look more carefully into it, is not such a simple matter. A large number of public officers are required to conduct our public elections, and many forms of law must be complied with, before every citizen possessing the right to vote, may cast a ballot for the men of his choice, before the ballots so cast may be counted, and before the men elected to public offices may take their places in the service of the State and local governments.

**Government Carried on by Political Parties.**—One of the first things we shall see, as we come to look more carefully into the subject of public elections, is that the men elected to office nearly always represent some one or more political parties. They are Republicans, Democrats, Prohibitionists, Socialists, etc. When the citizen goes to the polling place to vote, he does not, usually, write on his ballot the name of any man who he thinks would make a good governor, sheriff, mayor, etc., but he votes for men whose names are already on the ballot—for men who have been named for these offices by some organized body of citizens. Thus he casts a ballot for the nominees of the Republican party, the Democratic party, the Prohibition party, or the

Socialist party. Or perhaps he votes for men who have been named for office by some body of independent voters not connected with these parties. If he votes for men not previously nominated by some organized body, he votes for persons who have no possible chance of being elected; and for this "throwing away of a vote" there is little excuse, except as the voters of a minority party wish "to stand up and be counted" for some principle held dear by them. Because the men elected to public office usually represent some political party, the State has enacted laws regulating the action of political parties, so as to give each member of a party a voice in the selection of his party's nominees for public office.

**How Political Parties Work.**—Parties in New York are organized along the lines of the local political divisions—election districts, towns, wards, cities, and counties. They are also organized as State bodies. In each of these political divisions every fully organized party has its party committee, composed of men voting with it, whose duty it is to secure a voluntary enrollment or list of the party's voters, to collect and pay out money to advance the party interests, to circulate newspapers advocating its principles and candidates, and to bring out the party's voters on registration and election days. Such a committee also calls, at the proper time, a primary meeting of the party's voters in the division under its control, for the purpose of naming party candidates for public office, or to select delegates to represent the party in a nominating convention that shall name such candidates. Every enrolled voter of a party is entitled to attend its primary meetings held in his particular district, and he is eligible as a delegate to its nominating conventions.

**State Regulation of Political Parties.**—The State law provides that every political organization casting a certain number of votes for governor (at present 10,000) shall be known as a political party. It also provides that the voluntary enrollment of party voters, previously mentioned, shall, in cities of the first and second class, take place under the direction of the public inspectors of election, at the times and places provided for the registration of voters for the public elections.<sup>1</sup> This party enrollment is by secret ballot, the voter indicating on a ballot furnished by the inspectors of election, his party preference. This ballot is then placed in a sealed envelope and deposited in a special ballot box provided for the enrollment. At the proper time these envelopes are opened by an officer known as the custodian of primary records, and the names of the enrolled voters are turned over to the proper officers of their respective political parties. Outside cities of the first and second class this party enrollment is conducted by the party committees of the different parties, under regulations imposed by State law. Only an enrolled party voter may take part in his party's primary meetings and nominating conventions, which are also conducted under forms laid down by State law. A party primary meeting, attended by the enrolled voters of the party, usually names the party's candidates for office in the smaller political divisions, such as the town or ward; while nominating conventions, composed of delegates elected by the party voters at the different primary meetings, name the

<sup>1</sup> Other cities, and villages of 5,000 or more population, may, on formal request of a majority of the voters, or on request of the party committees, come under the provisions of this law. See Chapter 473, Laws of 1899, known as the "Primary Election Law."

party's candidates in the larger divisions—assembly district, city, county, and State.

**Filing the Nominations.**—The party convention or primary having chosen its candidates to be voted for by the people at the public election, their names must be filed with certain public officers designated by State law. If the nominations are for offices to be filled by the voters of the entire State, such as governor or secretary of state, or by the voters of a division larger than a county, such as a Congressional District, the names of the candidates must be filed with the secretary of state. Nominations for offices to be filled by the voters of a county must be filed with the county clerk, of a city with the city clerk. Other local nominations may be filed with a town or a village clerk. Bodies of citizens not connected with any of the regular political parties, may nominate candidates "by petition," as it is called. This is done by getting a certain number of voters to sign a paper naming a particular candidate. Thus 6,000 voters of the State—at least fifty of whom<sup>1</sup> must come from each county<sup>2</sup>—may sign the nominating "petition," or certificate, of a candidate for a State office. A candidate so named is said to have an independent nomination.

**Registering the Voters.**—For purposes of conducting public elections, the State is divided into election districts, each district having one polling place. In towns and villages the election districts are few in number; in large cities they sometimes number hundreds. At every polling place, a certain number of days before election, officers known as the board of registry meet to register the qualified voters of the district. As already stated,<sup>3</sup> every voter must be regis-

<sup>1</sup> Laws of 1896, Chapter 909.

<sup>2</sup> Except Fulton and Hamilton.

<sup>3</sup> Chapter XII., "The Right to Vote."

tered before he can vote. No matter how well a voter may be otherwise qualified, if he fails to register, he cannot vote. This is a rule adopted to prevent fraudulent voting. In cities and villages of the first class, the board of registry holds four meetings, and each voter must present himself personally to be registered. In country districts, and smaller villages, but two meetings of the board of registry are held, and it is not always necessary that a voter be present personally to be registered.

**The Public Election.**—The General State Election is held annually, on the first Tuesday following the first Monday in November, and the polling places throughout the State must be open on that day from 6 A. M. to 5 P. M. for the reception of ballots. The secretary of state notifies each county clerk what State and county offices are to be filled at the election, and the clerk adds the local offices and publishes the list for public information. The town boards in towns, and the common council in cities (the commissioners of elections in the city of New York) divide the territory under their jurisdiction into election districts, and designate the location of the polling places. The election officers in each district consist of four inspectors of election, two poll clerks, and two ballot clerks—all divided equally between the two leading political parties.

**Official Ballots.**—Official ballots to the number of twice the registered voters are provided at each polling place at public expense, and none but such ballots may be voted. The official ballot contains in separate party columns, each headed by the party emblem, the names of all the candidates duly nominated and to be voted for by each political party, and by each body of citizens making independent nominations. There is also a blank column on the ballot in which





any voter may write the name of any person for whom he wishes to vote, if the name does not appear in any of the party or independent columns.

**Marking the Ballots.**—As each voter enters the polling place to vote, his name is announced by the election officials and he is given an official ballot, which he takes into one of a number of secret voting booths provided in the polling place. There in secret the voter marks his ballot. If he wishes to vote a “straight party ticket,” that is for the candidates nominated by a single political party, he makes an “X” mark in a circle which is printed at the head of that party’s column on the ballot. If he wishes to vote a “split ticket,” that is, to divide his vote among the candidates of different parties, he makes an “X” mark before the name of each candidate for whom he wishes to vote.

**Voting.**—After the voter has marked his ballot, he folds it, with the names inside, so that no person can see for whom he has voted, comes out of the secret booth and hands the folded ballot to one of the election officers, who deposits it in the ballot box. This secret method of voting with official ballots supplied through public officers, at public expense, is called the Australian system, because it has been in successful use for a long time in Australia. The secret vote gives every voter an opportunity to deposit a ballot for the men of his choice without fear of intimidation. It also tends to prevent bribery at elections, few men being willing to pay money for a vote, without some proof that it is cast.

**Counting the Ballots.**—The votes are immediately, at the closing of the polls in each election district, publicly counted by the inspectors of election, and the result is filed with the county clerk. The supervisors of each county then meet as a board of county canvassers, to determine the results of the

election, from the reports filed with the county clerk. The report of the canvass of each county board is then sent to a State board of canvassers, consisting of the secretary of state and other State officers. This State board is the final authority in determining the results of the election. The candidate for any particular office found to have the greatest number of votes, is declared elected. It is not necessary that he have a majority of the votes polled for the office.<sup>1</sup>

**The Oath of Office—Provisions Against Bribery.**—Members of the State legislature and all State officers, executive and judicial, except inferior officers exempt by law, must, before they enter upon the duties of their offices, take before a public officer authorized to receive an oath, an oath or affirmation to support the constitution of the United States and the State constitution, and faithfully to discharge the duties of their offices; and each must, in addition, solemnly swear (or affirm), that he has not directly or indirectly paid, offered or promised to pay, contributed, or offered, or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding of a vote, at the election at which he was chosen; and that he has not made any promise to influence the giving or withholding of any vote.<sup>2</sup> Any officeholder who receives anything of value for performing or omitting to perform any official duty, is guilty of a felony; and any

<sup>1</sup> The candidate polling the most votes for a particular office is said to have a plurality of the votes cast. This is not necessarily a majority of the votes. A majority means more than half the votes cast for a particular office. In case of three candidates for the same office, one might be elected by a plurality, that is, he would have more votes than either of his opponents, but not necessarily more than half the votes cast for the office to which he was elected.

<sup>2</sup> New York State Constitution, Article XIII., Section 1.

person who promises or offers a bribe to an officeholder for such a purpose, is guilty of a felony.<sup>1</sup>

### SUMMARY.

A candidate for public office must usually win a nomination from a political party before he can win an election at the polls; for this reason the State regulates by law the conduct of political parties, which are organized along the lines of the different political divisions—State and local.

Nominations for public office are made in party primaries and conventions, the names of the nominees filed with the public election officials and placed upon an official ballot, which is given to every qualified voter at the polls on election day.

The State is divided into election districts, each having its own polling place and its own local election officials.

Voting is done in secret and the votes are publicly counted by the election officials of each district, and the result filed with the county clerk.

The boards of supervisors, acting as boards of county canvassers, canvass the results of the election in the several counties, and report to the State board of canvassers, which is the final authority in determining the results of a general election.

### SUGGESTIVE QUESTIONS.

What is an official ballot? What must it contain?

What is a political party under the laws of New York?

What is a primary? How does it differ from a nominating convention? Who are entitled to attend and take part in a primary or caucus? In a nominating convention? De-

<sup>1</sup> New York State Constitution, Article XIII., Sections 2 and 3.

scribe briefly the manner of enrolling party voters in this State.

With whom must nominations for a State office be filed? A county office? For member of the house of representatives? What is meant by an independent nomination? What feature of the official ballot gives a voter absolute freedom in expressing his choice for the occupant of any particular office?

How may a legal voter lose his right to vote at a particular election?

Name the election officers required in each election district.

Explain the terms "plurality" and "majority."

Give the substance of the oath of office required of State officials.

## CHAPTER XXI.

### The State and the United States.

UP to this time we have been speaking of New York as an independent political unit, doing its own public work, through the State and local governments which its people have created. We shall now speak of New York as a part of the United States—the great national state<sup>1</sup> of which New York is one of forty-five local States or commonwealths. How did New York become a part of the independent nation known as the United States? To answer this question we must go back to the time when the people of thirteen British colonies, lying between the Appalachian Mountains and the Atlantic Ocean—weak in men and arms, but strong in their sense of justice and personal freedom—were struggling with Parliament and king for their constitutional rights as Englishmen.

**Taxation Without Consent.**—The war of the American revolution, as everybody knows, was fought mainly over the question of the right of Parliament to tax the people of the colonies without their consent. For hundreds of years

<sup>1</sup> The word "state" is here used in its general sense, and means the whole body of people united under a single government, whatever its form. Thus we may speak of the "British state" or the "French state," meaning the people of Great Britain or the people of France united under their respective governments. "The state," says Professor Burgess in his *Political Science and Constitutional Law*, "is a particular portion of mankind viewed as an organized unit." In this sense the United States is the "state" while the word "State," as applied to local commonwealths like New York, Massachusetts, etc., is to be taken in a special and limited sense, and as applying only to divisions of the real state.

before the Revolutionary War, it had been the constitutional right of Englishmen to pay taxes levied only by the consent of their chosen representatives. When, in 1215, King John signed the great charter, he agreed to levy no new taxes except by consent of the representatives of the English people in the "general council of the kingdom." When, fifty years later, Earl Simon de Montfort summoned the first English House of Commons in opposition to the unjust rule of Henry III., this body announced as one of its leading principles that the people can be taxed only by consent of their lawfully chosen representatives. In 1297 King Edward I., formally renounced, by act of Parliament,<sup>1</sup> the right to tax the English people except by consent of their parliamentary representatives. Almost from the beginning of the English settlements in America, each colony had its own representative assembly, chosen by its own people, which alone had the right to levy the provincial taxes. Hence when George III. tried to impose, through the Stamp Act, a tax on the internal commerce of the colonies without the assent of the colonists, it seemed to them to be an act of intolerable tyranny.

**Beginnings of Colonial Union—The Stamp Act Congress.**—The Massachusetts assembly took the first important step against this attempt at unlawful taxation, by inviting the different colonial assemblies to send delegates to a general convention in opposition to the Stamp Act. The invitation was accepted, and representatives from nine colonies met October 7, 1765, in the New York city hall, in what has

<sup>1</sup> This was the Statutum de Tallage, by which the right of arbitrarily taxing the citizens and burgesses was relinquished in these words: "No tallage or aid shall be taken or levied by us or our heirs, in our realm, without the good will and assent of the archbishops, earls, barons, knights, burgesses and other freemen of the land."

since been known as the Stamp Act Congress. This Congress or meeting drew up a memorial to Parliament, a petition to the king, and a declaration of rights, in which it was asserted that the people of the colonies "are entitled to all the inherent rights and liberties of the king's natural born subjects within the kingdom of Great Britain; that it is inseparably essential to the freedom of a people and the undoubted right of Englishmen, that no taxes be imposed upon them, but by their consent, given personally, or by their representatives"; and that "*the only representatives of the people of these colonies are persons chosen by themselves therein*"; and "that no taxes ever have been, or can be constitutionally imposed upon them, but by their respective legislatures." Every patriotic young American knows how Parliament, frightened into the repeal of the Stamp Act, still insisted upon levying an impost duty on tea; of the struggle which followed the attempt to force this taxed tea upon the people; of the Boston "tea party"; of the closing of the port of Boston, and the taking away of the chartered liberties of Massachusetts.<sup>1</sup>

**The First Continental Congress.**—The people of all the colonies smarted under the wrongs inflicted on Massachusetts; for they saw in them danger not only to Massachusetts, but to the liberty of every British subject on this side of the Atlantic. Everywhere, throughout the colonies, there flamed out a sentiment in favor of resistance. The result was the calling of the First Continental Congress. It met at Philadelphia, September, 1774, every colony except

<sup>1</sup>Parliament took from the selectmen of the Massachusetts towns the power to summon juries, and gave this power to sheriffs appointed by the king. Town meetings were prohibited, and judges, justices of the peace, and other officers formerly elected by the people, were appointed by the king or by his representative.



Georgia being represented by delegates chosen by its provincial assembly. The Continental Congress had no power to make laws, but it prepared a general plan for commercial nonintercourse with Great Britain, drew up a declaration of rights and a petition to Parliament and to the king in which it asked that English subjects on this side of the Atlantic be given "equal freedom" with Englishmen everywhere.

**The Second Continental Congress.**—Meanwhile British troops assembled at Boston, set out on their memorable expedition to destroy the military stores gathered by the Massachusetts patriots at Concord. On the morning of April 19, 1775, there was fired at the north bridge "the shot heard round the world." A few days later the Second Continental Congress, composed of delegates, chosen principally by conventions of the people in the different provinces, though some were still sent by the provincial assemblies, met at Philadelphia. This Congress at once assumed charge of the common war against Great Britain; began the enrollment of troops for the colonies; assigned quotas of men and money to be raised by the different colonies; and appointed George Washington commander in chief of the colonial forces,—henceforth known as the Continental Army. To these revolutionary acts the people of the several colonies generally assented.

**The Government of the United States Begins in the Continental Congress.**—From the time that the Continental Congress assumed the right to manage the common cause of the colonies, it is safe to say that our existence as a nation began;<sup>1</sup> and the separate colonies, which had before

<sup>1</sup> "This (the Continental Congress) was the first organization of the American state. From the moment of its existence there was something more on this side of the Atlantic than thirteen local governments. There

been subject to Great Britain, now became voluntarily subject to their representatives in the Continental Congress. The authority of Congress did not however rest upon any definite grant of power by the colonies. It was assumed by Congress and acquiesced in by the people. Congress planned and recommended, and its plans and recommendations were voluntarily carried out, under the stress of war, by provincial congresses chosen by the people of the different colonies.

**The Declaration of Independence.**—Sentiment for union among the colonies and in favor of separation from Great Britain now became almost universal. On May 10, 1776, the Third Continental Congress sitting at Philadelphia, “recommended that the several assemblies and conventions of the United States Colonies” adopt in each colony “such a government as shall in the opinion of the *representatives of the people* best conduce to the happiness and safety of their constituents in particular, and America in general.” In plain words, this was a recommendation that each colony organize its own government independent of Great Britain. On July 4, 1776, the Continental Congress acting “as the representatives of the United States of America,”<sup>1</sup> adopted the Declaration of Independence, which formally separated the colonies from Great Britain. In this declaration, it was asserted that “these United Colonies, are and of a right, ought to be free and independent states; that they are absolved from all allegiance to the British Crown,” “and that

was a sovereignty, a state; not an idea simply on paper, but in fact and in organization. The revolution was an accomplished fact before the Declaration of 1776, and so was independence.”—Burgess, *Political Science and Constitutional Law*.

<sup>1</sup> Heading of the Declaration of Independence.

as free and independent states they have full power to levy war, conclude peace, contract alliances, establish commerce and do all other acts and things which independent states may of right do." Such was the formal birth of the nation, of which New York is now one of forty-five local commonwealths or States.

**The Articles of Confederation.**—Thus far the authority of the Continental Congress, which had put forth the Declaration of Independence, raised armies, laid taxes, and contracted a common debt for the colonies to carry on their common war, had been an authority of undefined powers, voluntarily submitted to by the people of the colonies acting through the several provincial congresses, or legislatures, which they had chosen. The people now saw the need of a central government with definitely granted authority and specifically defined powers. Congress had previously appointed a committee from among its members to draw up such a plan of government. This plan was reported by the committee, eight days after the adoption by Congress of the Declaration of Independence. It was debated by Congress and adopted November 15, 1777, in the form of "Articles of Confederation and Perpetual Union Between the States of New Hampshire, Massachusetts Bay, Rhole Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia." The Articles of Confederation, thus adopted, were submitted to the legislatures of the thirteen States, each legislature being advised to authorize its delegates in the Continental Congress to ratify or agree to the articles for the State. The ratification of the last State—Maryland—was secured March 1, 1781.

**Government Under the Articles of Confederation.**—The ratification of the Articles of Confederation made the United States a nation in law, as well as in fact. Under these articles the United States occupied a position with reference to the several States, somewhat like that which Great Britain had occupied towards the several colonies. The articles affirmed that each State retained “its sovereignty, freedom and independence and every power jurisdiction and right,” “not by this confederation especially delegated to the United States in Congress assembled.” They also declared that the States “hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them.” This was the form of government known as a confederacy, or union of States, rather than a government set up by the people of a single Federal state.<sup>1</sup>

**Congress the Central Government of the Confederation.**—Congress was the government of the United States under the Articles of Confederation, as it had been before the adoption of these articles. It was composed of from two to seven delegates from each State chosen annually by

<sup>1</sup> Professor Burgess in *Political Science and Constitutional Law*, thus distinguishes a confederacy from a federal form of government like that of the United States to-day: “Confederate government is the form in which, as to territory and population, the state (nation) is coextensive in its organization with the organization of the local government. Federal government is the form in which, as to territory and population, the state (nation) is coextensive in its organization with the organization of the general government. In a confederate system there are several States, an equal number of local governments and one central government. In the federal system we have one state, one central government and several local governments.”

its legislature. Each State had a single vote in Congress, no matter how many delegates it sent. Each paid the expenses of its own delegates, and a State might at any time recall a delegate and send another in his place. The articles gave Congress power to regulate and control the foreign relations of the several States and of the United States; and the control of the army and navy of the United States; and no State could maintain an army or navy without the consent of Congress. Congress had charge of the national finances; determined the value of coin and the standard of weights and measures; and was the last resort in all disputes between the States. There were no separate departments in the new government, but all powers, legislative, executive and judiciary, were exercised by Congress which met as a single house. The executive work of Congress was conducted chiefly by a committee of one member from each State known as the "Committee of States."

**Weakness of Government Under the Confederation.**— In the form of national government prescribed by the Articles of Confederation, there were many weaknesses and defects, which finally resulted in its entire overthrow, and the adoption of a new form of government under the present Constitution of the United States. The main defect was the inability of Congress to enforce any of its own acts, against the wishes or indifference of individual States. Congress "could ask the States for money but could not compel them to give it; it could ask them for troops but could not force them to heed the requisition; it could make treaties with foreign nations, but must trust the States to fulfill them; it could contract debts but must rely upon the States to pay them."<sup>1</sup> It could not compel the States

<sup>1</sup> *The State*, Woodrow Wilson.

to abide by its decision in disputes among themselves. In short, the government of the United States *lacked executive power*. Foreign nations would not enter into treaties with the United States because the government could not compel the States to observe those treaties. Finally the vital power to levy and collect taxes was wholly lacking, except as the Articles of Confederation gave Congress power to "ascertain the necessary sums of money to be raised for the service of the United States,"<sup>1</sup> and power to apportion the rate of proportion to be paid by each State. The taxes themselves were to be "laid and levied by the authority and direction of the legislatures of the several States."<sup>2</sup> If a State legislature neglected or refused to act, Congress could not collect a dollar from the State.

**Need of a Stronger National Government Recognized.**—The central government struggled for six years against the burden of weakness imposed by the insufficient executive power granted to Congress, gathering a constantly increasing harvest of disrespect at home and contempt abroad. Year after year States failed to pay their proportion of the national taxes apportioned by Congress. Paper money issued by the national government became almost worthless, and Congress with great difficulty borrowed money from France, Holland, and Spain, to pay the running expenses of the government. Commerce fell into decay. Different States enacted burdensome tariff laws against the products of neighboring States. Some States, to save expense, neglected to send delegates to Congress. Unpaid soldiers of the continental forces mutinied, and insulted Congress at its very doors. Rebellious outbreaks occurred

<sup>1</sup> Articles of Confederation, Article IX.

<sup>2</sup> Articles of Confederation, Article VIII.

in a number of States. Spain threatened to make trouble over the navigation of the Mississippi, and Great Britain, although the war of the revolution had ended, refused to withdraw her troops from our western borders. The country became rapidly convinced of the need of a stronger national government.

**Call for a Convention to Frame a New National Government.**—In 1786, delegates from five States met in convention at Annapolis, Md., to discuss the regulation of commerce among the different States. Members of this meeting proposed a convention of delegates from all the States, “to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal government adequate to the exigencies of the Union, and to report such an act for that purpose to the United States in Congress assembled.” This proposition was sent to the legislatures of all the States. It was also sent to Congress, which approved the calling of the convention.

**The Constitutional Convention.**—Delegates to the proposed convention were chosen by the legislatures of all the States except Rhode Island, and it met in May, 1787, at Philadelphia. It was composed of fifty-five delegates, among them being the most distinguished men of the country. Washington was chosen president of the convention, which sat with closed doors and debated all questions in secret. Each State, as in the Continental Congress, had a single vote. The convention proceeded to draft the present constitution of the United States, placing in it an article<sup>1</sup> to the effect that when *conventions of the people* in nine States should agree to the proposed new constitution, it should be-

<sup>1</sup> United States Constitution, Article VII.

come binding law for those States. The convention then sent the proposed constitution to the Continental Congress, advising that body to agree to it, and to send it unamended to conventions to be called in the different States for its ratification.

**The Constitution Ratified by State Conventions.**—A convention chosen by the voters of Delaware was the first to agree to the proposed constitution, as recommended by Congress and by the national constitutional convention. This was soon followed by the ratification of the constitution by the convention in Pennsylvania. By June, 1788, conventions chosen in nine States had formally ratified the new constitution. By August two more States had agreed to it, and Congress, in September, 1788, appointed the first Wednesday of the following February, as the time for the election of a president and vice president of the United States under the new constitution.<sup>1</sup> It also appointed the first Wednesday in March (March 4, 1789), as the time for the organization of the new government of the United States. The authority of the old Continental Congress, authorized by the Articles of Confederation, then ceased. On March 4, the Congress of the United States under the new constitution, assembled in New York, and on April 30, George Washington was formally inaugurated as the first President of the United States. Such was the birth of the United States of America under the constitution now in force.

#### SUMMARY.

New York is one of forty-five local commonwealths or States in the national state, known as the United States.

<sup>1</sup> Rhode Island and North Carolina did not ratify the Constitution until the year after the new government of the United States went into effect.



The government of the United States began in the Continental Congress, whose acts were acquiesced in, and whose recommendations were voluntarily carried out by the thirteen colonies, under stress of war during the American Revolution.

The Declaration of Independence formally separated the American colonies from Great Britain; and the adoption of the Articles of Confederation made the United States a nation in law, as well as in fact.

Under the Articles of Confederation, Congress was the government of the United States. Congress consisted of a single legislative body, in which each State had one vote. There were no separate executive and judiciary departments in the national government.

The chief fault of government under the Articles of Confederation was the inability of Congress to collect taxes and enforce any laws of the United States. Congress could only recommend and advise, leaving its wishes to be carried out by the separate State governments.

The need of a stronger national government resulted in the calling of the constitutional convention of 1787, which framed the present constitution of the United States. The constitution was submitted to conventions of the people in the several States, with the understanding that, when ratified by nine States, it should become the legal basis of a national government for those States.

#### SUGGESTIVE QUESTIONS.

What is the meaning of the word "state" as applied to New York? As applied to the United States?

What functions did the so-called "Provincial Congresses" perform during the Revolutionary War?

When may the actual government of the United States be said to have begun? Was this government voluntary or compulsory so far as the individual States were concerned? What formal document made the United States a government in law, as well as in fact?

Describe generally the powers of Congress under the Articles of Confederation. How were the States represented in Congress? What was their relative power one to another in that body?

What is the difference between a confederation and a federal state? Which of these terms now applies to the United States?

Describe generally, the weakness of the government of the United States under the Articles of Confederation.

Give in detail the steps leading up to the calling of the constitutional convention of 1787. How were delegates to that convention chosen? What were the relative powers of the States in the convention? What part had the people of the United States in the ratification of the constitution framed by this convention? When and where did the government of the United States under the present constitution begin?

#### ADDITIONAL READING.

For an account of government under the Articles of Confederation, and the growth of the idea of the need of a stronger national government, with an account of events leading up to the adoption of the present constitution of the United States, see Hildreth's *History of the United States*, Volume III., Chapters XLIV. to XLVIII. See in the same connection Schouler's *Constitutional Studies*, Part II., Chapters III. and IV., "Articles of Confederation," and "The Federal Constitution; Its Nature and Establishment." For an account of the legal aspects of the change from government under the Articles of

Confederation to the present constitution, see Burgess's *Political Science and Constitutional Law*, Part I., Book III., Chapter II., "History of the Formation of the Constitution of the United States." Johnston's *American Politics* contains in its appendix, the full text of the Articles of Confederation.

## CHAPTER XXII.

### The United States, the States, and the People.

LET us look at the government established by the constitution of the United States, and at the rights and duties of the national government, of the States, and of the people, under that constitution.

**The United States a Nation.**—First, the United States is, under the present constitution, one indivisible national state<sup>1</sup> and not a league of States with a central national government, as under the old Articles of Confederation. The difference may be shown by a comparison.

**A Comparison.**—Under the Articles of Confederation, Congress—then constituting the government of the United States—dealt almost exclusively with the governments of the several States. Under the present constitution the government of the United States *deals chiefly with the people of the United States*, and but little with the governments of the several States. Under the Articles of Confederation, if Congress wanted money, it applied to the governments of the several States. Now, the government of the United States collects taxes directly from the people by its own revenue officers located in every State. Under the Articles of Confederation members of Congress were elected by State legislatures; when they voted the members from each

<sup>1</sup>“The state is a particular portion of mankind viewed as an organized unit.”—Burgess, *Political Science and Constitutional Law*.

State voted as a unit, casting a single ballot *for their State*. Under the present constitution members of the United States Congress (except senators) are chosen by direct vote of the people, and all congressmen vote in Congress *as individuals*. Under the Articles of Confederation each State admitted foreigners to citizenship. To-day the government of the United States alone admits foreigners to citizenship.<sup>1</sup> The Articles of Confederation were adopted by the legislatures of the several States. The present constitution, according to its own preamble, is the work of "the people of the United States" adopted "to form a more perfect union." Finally, as still further showing the oneness of the United States under the present constitution, all members of the several State legislatures, and all executive and judicial officers of the States, must on taking office, swear or affirm that they will support the constitution of the United States.<sup>2</sup>

#### **The United States a Permanent and Indissoluble Union.**

—It was held by some, after the adoption of the present constitution, and down to the time of the Civil War of 1861–5, that a State had a legal right to withdraw from the Union established by the constitution, if its people saw fit. Eleven States, we know, did attempt to secede from the Union at the time of the civil war. They recalled their representatives in the United States Congress, and tried to set up a government known as the "Confederate States of America." A majority of the people of the United States did not believe, however, in this right of a State to withdraw from the Union; and the so-called Confederate States, as a result of the Civil War, were forced back into the United

<sup>1</sup> See United States Constitution, XIVth Amendment; also Chapter XII., "The Right to Vote."

<sup>2</sup> United States Constitution, Article VI., Section 3.

States. Indeed, it is claimed that these States were never legally out of the Union.

**The People and the Government.**—In studying the government established by the constitution of the United States, we must keep in mind: 1. That the real United States consists of *the people of the United States* united for purposes of government. The people thus constituted are the real national state, as the people of New York, united for purposes of government, are the real New York State. 2. That the people, in adopting the constitution, laid down in outline the framework and machinery of a national government known as the government of the United States, which is superior for certain purposes to the governments of the several States. 3. That back of the constitution, back of the national government which the constitution establishes, and back of the governments of the several States, stand the people of the United States—the organized political unit, the national state. The people thus constituted are the supreme law-making power. The people may change their constitution and form of government as they see fit, having always due regard to the legal forms under which they have ordained that such changes shall be made.

**The Constitution the Supreme Law.**—The fundamental law of the United States is laid down by the people in the written constitution of the United States and in its amendments. The constitution “and the laws of the United States made in pursuance thereof” are the supreme law of the land.<sup>1</sup> All statutes passed by the Congress of the United States or by any State legislature, must be in accord with the constitution of the United States; and anything in

<sup>1</sup> United States Constitution, Article VI., Section 2.

the constitution or statutes of any State not in accord with the constitution of the United States is void and of no effect.

**State Governments Independent of the National Government for State Purposes.**—But while the constitution and laws of the United States are the supreme law of the land, we must not fall into the error of regarding the authority of the several State governments as derived primarily from the constitution. Neither must we think that the State governments depend in any way for their existence upon the will of the national government. On the contrary, the State governments existed before our present constitution and national government, and their authority, like the authority of the government of the United States, comes from the people alone.

**Division of the Powers of Government.**—Under the constitution of the United States the people have divided the powers of government into :

1. Powers to be exercised by the government of the United States ;
2. Powers to be exercised by the governments of the several States ;
3. Powers to be exercised by none of these governments, but reserved to the people.

**The Government of the United States One of Specifically Given Powers.**—The tenth amendment to the constitution of the United States declares “ 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.” This makes the government of the United States one of powers *specifically given to it by the constitution*, and leaves all other powers to the

States or to the people. Hence, should the question arise, "Does a power belong to the government of the United States?" the answer is, "Yes, if the constitution gives it to the United States; no, if the constitution does not give it to the United States."

**Concurrent Powers.**—The constitution permits certain powers, such as the right of taxation, to be exercised both by the government of the United States and by the governments of the several States. Such powers are known as "concurrent powers." Should at any time a conflict of authority arise between the United States and a State, over the exercise of a so-called concurrent power, the State must yield to the government of the United States.<sup>1</sup>

**Prohibited Powers.**—Finally, the people, through the constitution, have prohibited both the government of the United States and the governments of the several States from exercising certain specified powers. These prohibited powers are reserved in the people, and cannot be exercised by government unless the constitution is changed.

**Powers Exercised by the Government of the United States.**—Certain powers are exercised by the government of the United States only. These are "powers that relate to the conduct of the foreign relations of the country and to such common national purposes as the army and navy, internal commerce, weights and measures, and the post office, with provisions for the management of the machinery" "charged with these purposes."<sup>2</sup> Other powers, as we have seen, may be exercised both by the government of the United States and by the States. Among these latter are the power to make laws on certain specified subjects,

<sup>1</sup> 139 United States Reports, p. 240; 158 United States Reports, p. 98.

<sup>2</sup> Bryce, *American Commonwealth*.



such as bankruptcy, and the power to tax. The rule in the exercise of such concurrent powers is, that State laws take effect only when the United States has made no law upon the particular subject.

**Control of Foreign Relations.**—The government of the United States has entire control over our relations with the people and governments of foreign nations. Thus United States tariff laws tax goods brought into this country; while the United States senate, in conjunction with the president, may make agreements to admit free, or at a low rate of duty, the products of foreign nations that freely admit the products of the United States. Such an agreement is called a “Reciprocity Treaty.” The government of the United States naturalizes foreigners, and admits them to citizenship; prohibits undesirable immigrants, such as anarchists, paupers, and criminals, from entering our territory; sends ambassadors, ministers, and consuls, to represent the United States before foreign governments; and receives similar officials sent to us. No State may hold any official intercourse with the government of a foreign nation.

**Control on the High Seas.**—As the government of the United States controls our foreign relations, so it controls citizens of the United States when on the high seas or on the tidewaters of the United States. Generally speaking the so-called “high seas” are the great body of ocean waters lying outside of a line drawn a marine league (about three miles) from the shore. Each nation controls the water within a marine league of the shore, as it controls its land. Outside this line no nation has exclusive control, except over its own citizens. The constitution gives Congress power to define and punish piracies and felonies and offenses against the law

of nations, when committed on the high seas by citizens of the United States.<sup>1</sup>

**War Powers.**—The Congress of the United States may declare war, and the president in conjunction with the senate, may make treaties of peace. But war cannot be carried on or peace guaranteed without the strong arm of the soldier and sailor. So the constitution gives Congress power to “raise and support armies,” to “provide and maintain a navy,” and to make rules for their government. Congress may also authorize private persons to fit out so-called “privateers,” or fighting vessels to prey upon the commerce of an enemy of the United States. This is described in the constitution as “granting letters of marque and reprisal.”<sup>2</sup> The word “marque” comes from the French, and means literally, the visible sign or mark of the government which gives a privateer authority to make captures. Without this “marque,” or sign of authority, a private fighting vessel is a pirate, and at the mercy of the armed vessels of every nation.

**Power Over the Militia.**<sup>3</sup>—Besides its power to raise and support armies, Congress “may provide for arming and disciplining the militia.” The militia is composed generally of all able-bodied men between eighteen and forty-five years of age in the several States. The militia may be called out by Congress “to execute the laws of the United States, suppress insurrections, and repel invasions.” When in the service of the United States the militia, like the regular

<sup>1</sup> See United States Constitution, Article I., Section 8. “The United States has no control over any criminal act committed upon a foreign ship by the subjects of a foreign nation when on the high seas.”—Schouler.

<sup>2</sup> See United States Constitution, Article I., Section 8.

<sup>3</sup> United States Constitution, Article I., Sections 8, 10.

army and navy, is under the direction of the president. No State may make peace or declare war, but each State may organize, drill, and officer its own militia "according to rules prescribed by Congress," and a State may use its militia to preserve peace within its borders.

**Power to Tax.**—The United States Congress has power to "lay and collect all taxes, duties, imports and excises to [*i. e.*, in order to] pay the debts and provide for the common defense and general welfare of the United States." United States duties or imports are now collected under so-called tariff laws at United States customhouses on goods imported to this country. United States excise taxes—that is, taxes on articles produced in this country—are collected as so-called "Internal Revenue." For the collection of internal revenue, the territory of the United States is divided into internal revenue districts, each under its own collector of internal revenue, appointed by the president with the advice and consent of the Senate.<sup>1</sup> Duties, imports and excises are "indirect taxes." Congress has power to collect so-called "direct taxes" on persons, and on the value of their property or their incomes. But direct taxes must be apportioned among the States in proportion to their population. Congress may lay no taxes on goods exported from any State; and, finally, "all duties, imports and excises," must be "uniform throughout the United States."

**Power to Borrow Money.**—Should the money raised by taxation be insufficient for the needs of the government, Congress is given power "to borrow money on the credit of the United States."<sup>2</sup> This is usually done by selling bonds of the United States. A bond is a promise to pay a certain

<sup>1</sup> See Chapter XIX., "The Assessment and Collection of Taxes."

<sup>2</sup> United States Constitution, Article I., Section 8.

definite sum at a future date with a fixed rate of interest. United States bonds are advertised and sold in the open market. They are readily purchased by our own citizens, and by foreigners, who wish a safe investment and a sure income from their surplus money.

**Power to Regulate Commerce.**—We have seen that Congress may regulate our commerce with foreign countries by tariff laws and reciprocity treaties. The government of the United States may go even further, and entirely prohibit our commerce with a foreign nation, as was done under the so-called Embargo Act preceding the War of 1812. Under its power to regulate commerce, and its further power to control our citizens on the high seas, Congress has enacted a great body of navigation laws,<sup>1</sup> which regulate the conduct of American ships and sailors ; and under which lighthouses, buoys and life-saving stations have been placed along our coasts, under which pilots act, wrecks are saved and wreckers compensated. The same power enables Congress to act in conjunction with the States to prevent the introduction of contagious diseases, by so-called quarantine regulations at the ports of the United States.

**Interstate Commerce.**—Besides its power to regulate foreign commerce, Congress regulates commerce “among the States and with the Indian tribes.”<sup>2</sup> Commerce among the States is known as “Interstate Commerce,” to distinguish it from commerce carried on entirely within the borders of a single State. A man in Chicago who sends a carload of dressed beef to a man in New York, is engaged in interstate commerce, for the beef passes not only from Illinois to New

<sup>1</sup> Cases arising under the navigation laws are tried in United States courts, known as admiralty courts.

<sup>2</sup> United States Constitution, Article I., Section 8.

York, but also through intervening States. Such commerce is regulated by Congress. So, also, are all railroads, telegraph lines, canals, steamboats, navigable rivers, bridges, or other means of transportation and communication between two or more States. On the other hand, the shipment of a cargo of flour from Rochester to Albany, is an act of commerce carried on wholly within a single State, and as such is subject only to State law.

Under its power to regulate interstate commerce, Congress established in 1887 the Interstate Commerce Commission, with power to prevent unfair discrimination in railroad rates on goods passing from one State to another. In 1890 Congress also enacted the so-called Anti-Trust law, designed to prevent combinations of capital in restraint of trade between the people of two or more States. No State may tax or in any way restrain trade with foreign countries, or between the people of two or more States. But a State may tax articles brought into it from another State, so long as the same tax is shared equally by its own local trade. It may lay impost duties necessary to maintain its own laws for the inspection of food and other products, such duties being subject to revision by Congress.

**Bankruptcy.**—Closely related to its power over interstate commerce, is the power of Congress to “make uniform laws on the subject of bankruptcy throughout the United States.”<sup>1</sup> A bankrupt is a person who cannot pay his just debts. Bankruptcy laws are designed to release bankrupt debtors from the legal obligations to pay their debts, provided the bankrupt gives up the property he possesses, to be divided among those whom he owes. A debtor, released under bankruptcy laws from the legal obligation to pay his debts,

<sup>1</sup> United States Constitution, Article I., Section 8.

may begin business again with the hope of retaining his future earnings.

**Post Offices and Post Roads.**—Congress is given power by the constitution to establish post offices and post roads throughout the territory of the United States.<sup>1</sup> This power includes every power necessary to establish a complete postal system under United States control, including the power to protect and carry the mails, and to punish as crimes acts that interfere with their prompt and safe delivery.<sup>2</sup> Under this power it is claimed by some that the government of the United States may, if necessary, construct independent national highways, or even buy up and operate the great railroad and telegraph systems of the country for postal purposes.

**Power to Coin Money.**—The constitution gives Congress power to coin money, to regulate its value, and the value of foreign coins in use in the United States; also power to punish counterfeiters of United States money, and power to fix a standard of weights and measures throughout the United States.<sup>3</sup> Under these powers the national government has established mints where gold, silver, and other metals are coined into the money of the United States. Besides this metal money, the national government issues paper money known as gold certificates, silver certificates, and treasury notes or greenbacks. Each gold or silver certificate represents an amount of gold or silver coin or bullion, deposited in the United States treasury, equal to the face value of the certificate; and a person holding such a certificate, may present it at any time at the

<sup>1</sup> United States Constitution, Article I., Section 8.

<sup>2</sup> Cooley, *Constitutional Limitations*.

<sup>3</sup> United States Constitution, Article I., Section 8.

treasury, and receive gold or silver for it. A United States treasury note or greenback, on the contrary, is a simple paper promise of the United States to pay the sum printed on the face of the note. There are now in existence \$346,000,000 of these treasury notes or greenbacks, and \$150,000,000 in gold is kept on deposit in the United States treasury to redeem these notes, should their holders wish to get gold.

**Patents and Copyrights.**—The government of the United States protects inventors by patents and authors by copyrights.<sup>1</sup> A patent gives an inventor the exclusive right to make and sell his invention anywhere in the United States, for a term of seventeen years. A copyright gives an author of a book the exclusive right to make and sell it for a term of twenty-eight years; and this may be extended fourteen years more on application. We have also an international copyright law, which gives foreign authors a right to copyright books in the United States, in return for similar privileges granted by foreign governments to American authors.

**United States Control Over Federal Places.**—The government of the United States has exclusive control over the District of Columbia, containing the seat of the national government, and the city of Washington. Congress makes laws for this district, and the president of the United States appoints its executive and judicial officers; and no person may vote while having a legal residence in the District of Columbia.

Similar authority is exercised by Congress over all United States property used for forts, arsenals, dock-yards, etc.

<sup>1</sup> United States Constitution, Article I., Section 8.

**United States Territory.**—At the close of the Revolutionary War the thirteen American colonies claimed the land lying between the Alleghany Mountains and the Mississippi. Most of it was unsettled and the claims of two or more colonies often overlapped and conflicted. During the formation of the union under the Articles of Confederation the States gave up their individual claims to this land, ceding it to the United States, on the understanding that it should be cut up into States, on acquiring sufficient population. There was thus created a territory belonging to the United States, and independent of the control of any particular State. Since then the government of the United States, by purchase, exploration and conquest, has extended the territory of the United States to include the vast domain lying between the Mississippi and the Pacific. Alaska, Hawaii, the Philippines, and other islands, have also become United States territory. All this territory is, or has been at some time, under the exclusive control of the United States.

**Government of United States Territory.**—The power to govern United States territory is placed by the constitution in the hands of Congress.<sup>1</sup> Over portions thinly settled, and inhabited chiefly by Indians and others incapable of self-government, Congress has established a form of government known as the unorganized Territory, consisting principally of a Territorial Governor and Territorial Judges, appointed by the president of the United States. These officers simply execute the laws made by Congress for the territory. Over other portions of United States territory, containing a larger proportion of people capable of self-government, Congress has established a form of government known as the organized Territory. This includes a Terri-

<sup>1</sup> United States Constitution, Article IV., Section 3.



torial governor, a Territorial secretary and a Territorial treasurer, appointed by the president, and a Territorial legislature elected by the people of the Territory. The Territorial legislature makes local laws for the Territory, subject to the approval of Congress. New Mexico, Oklahoma and Arizona have this form of organized Territorial government. Alaska and Indian Territory are unorganized Territories. A Territory of the United States is represented in Congress by its own Territorial delegate, who has a right to speak, but not to vote.

**How Territories Become States.**—When an organized Territory becomes sufficiently populous and capable of self-government, it may apply to Congress for admission into the Union as a State. If Congress favors its admission, it passes a law authorizing the Territory to form a State government. This law is called the enabling act. The governor of the Territory then calls on its voters to elect delegates to a Territorial convention, similar to a State constitutional convention. The Territorial convention, when assembled, adopts the constitution of the United States for the people of the Territory, and proceeds to frame a State constitution. This is submitted to the voters of the Territory, and if adopted by them, the fact is certified to the president of the United States. If the new constitution is found to be in accord with the constitution of the United States, the president issues a proclamation declaring the Territory to be admitted into the Union as a State. This entitles it to all the privileges of the older States.

**Other Powers of Congress**—Such are some of the specific powers given by the constitution to be exercised by the government of the United States. Besides these specified powers the constitution gives Congress power to

make all laws necessary to carry into effect these and all other powers, "vested by the constitution in the government of the United States or in any department or officer thereof."<sup>1</sup> Thus the people, by a single sweeping provision, have authorized the national government to exercise all powers necessary to "form the more perfect union," "establish justice," and "promote the general welfare,"<sup>2</sup> designed to be accomplished by our present constitution.

**Powers of the Several States.**—With such vast powers given to the national government, the question naturally arises, What powers of importance are left to be exercised by the governments of the several States? The answer is: That the States may exercise all powers (1) not specifically given by the constitution to the government of the United States; (2) not specifically forbidden by the constitution to be exercised by the several States; and (3) not reserved to the people. The powers thus left to the several States are vast and varied. While excluding every power relating to the control of our foreign relations, and to affairs of strictly national concern, they include the great body of civil and criminal law regulating persons and property in the daily walks of life.<sup>3</sup> Powers left with the States are thus summarized by Mr. Woodrow Wilson in *The State*:

"All the civil and religious rights of our citizens depend upon State legislation: the education of the people is in the care of the States; with them rests the regulation of the suffrage; they prescribe the rules of marriage and the legal relations of husband and wife, of parent and child; they determine the powers of masters over servants and the whole law of principal and agent, which is so vital a matter

<sup>1</sup> United States Constitution, Article I., Section 8.

<sup>2</sup> Preamble to the Constitution.

<sup>3</sup> See Chapter VIII., "The State and the People Who Made It."

in all business transactions ; they regulate partnership, debt and credit and insurance ; they constitute all corporations, both private and municipal, except such as specially fulfill the financial and other specific functions of the Federal Government ; they control the possession, distribution and use of property, the exercise of trades and all contract relations ; and they formulate and administer all criminal law except that which concerns crimes committed against the United States, on the high seas, or against the law of nations. Space would fail to enumerate the particular items of this vast range of power ; to detail its parts would be to catalogue all social and business relationships, to set forth all foundations of law and order."

**Powers Forbidden to the Government of the United States.**<sup>1</sup>—The national government is forbidden to suspend the Writ of Habeas Corpus "unless when in cases of rebellion or invasion the public safety may require it."<sup>2</sup>

No bill of attainder or *Ex post facto* law may be passed by Congress. Under certain old English laws the conviction of a person for a great crime was said to attain or stain his blood, so that his innocent children suffered in consequence of their father's act. Such attainder of blood was frequently produced by bills passed by Parliament, without a formal trial of the accused person in a court of justice. An *Ex post facto* law reaches back to make an act committed before the law was passed a crime, when previous to the enactment of the law it was not a legal offense ; or it may increase the penalty for a crime committed before the law was passed. Such laws are manifestly unjust.

No capitation or other direct tax may be laid by Congress, except in proportion to population among the several States, as determined by census.

<sup>1</sup> United States Constitution, Article I., Section 9.

<sup>2</sup> See Chapter XI., "Personal Rights."

No tax may be laid by the government of the United States on articles exported from any State.

No preference may be given to the ports of one State over another by any regulation of commerce or revenue.

No money may be drawn from the United States treasury except in consequence of appropriations made by law.

No title of nobility—such as duke, earl, lord,—may be granted by the government of the United States.

**Additional Prohibitions in the First Ten Amendments to the Constitution.**—All the above-described prohibitions appear in Article I., Section 9 of the constitution. After the adoption of the original constitution by the convention of 1787, many of the States refused to ratify it unless additional safeguards to personal liberty were inserted. Ten amendments were therefore proposed and adopted, which included a number of specific prohibitions against arbitrary powers, which it was feared might be exercised by the proposed national government. These prohibitions were many of them taken directly from State constitutions, already in successful operation in the several States.<sup>1</sup> Among the acts thus forbidden to the government of the United States are the following :

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of religion.

Freedom of speech and of the press, and the right of the people peaceably to assemble and petition the government or any of its departments for a redress of grievances, cannot be abridged.

<sup>1</sup> An interesting comparison may be made by the student between the Bill of Rights in the New York Constitution, and these prohibitions in the first ten amendments to the constitution of the United States.

The right of the people to keep and bear arms may not be infringed.

No soldier of the United States may in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in a manner prescribed by law.

The people are to be secure against unreasonable searches and seizures; and no warrants may be issued except for probable cause, and except as supported by oath or affirmation.

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment or indictment of a grand jury except in cases arising in the army and navy; nor be subjected to a second trial for the same offense, nor be compelled to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Private property may not be taken for public purposes without just compensation.

A person accused of crime must have a speedy and public trial, by a jury of the district and State wherein the alleged crime was committed. The accused person must be confronted with the witnesses against him, and the courts must compel witnesses in his favor to attend his trial. The accused must also be given the right to have counsel to assist in his defense.

No suit at common law may be decided where the value of the thing in dispute exceeds twenty dollars, without the right to a trial of the facts by jury; and no fact determined by a jury can be reëxamined, otherwise than according to the rules of common law.

Excessive bail shall not be required nor excessive fines

be imposed, nor cruel and unusual punishments be inflicted.

All the above prohibitions are against the government of the United States.

**Acts Forbidden to the Governments of the Several States.**<sup>1</sup>—The people through the constitution have forbidden the several States :

To enter into any treaty, alliance, or confederation ;

To make war without the consent of Congress, unless actually invaded or in such imminent danger as will not admit of delay ;

To coin money or emit bills of credit ;

To lay imposts or duties on imports or exports, without the consent of the government of the United States, except that a State may lay such taxes for the purpose of executing its own inspection laws ;<sup>2</sup> or

To keep troops or ships of war in time of peace, except with the consent of Congress.

**Prohibitions Against Slavery and Against Infringing the Rights of Former Slaves.**—In the thirteenth, fourteenth and fifteenth amendments to the constitution, adopted since the Civil War, the people have prohibited slavery throughout the United States ; and forbidden any State to abridge the privileges of any citizen of the United States ; or to deny to him the right to vote on account of race, color, or previous condition of servitude. In addition to these prohibitions the States are also forbidden to deprive any person of life, liberty, or property, without due process of law, or to deny to any person the equal protection of the laws.

<sup>1</sup> United States Constitution, Article I., Section 10.

<sup>2</sup> See page 247.

**States Must Give Credit to the Public Acts and Records of Other States.**—The constitution requires each State to give full faith and credit to all the public acts, records, and judicial proceedings, of all the other States; and declares that the citizens of each State are entitled to all the privileges and immunities of citizens in every other State. A person charged with crime in one State, who flees to another, must on demand of the executive authority of the State having jurisdiction of the crime, be delivered up to that State. This process of securing the return of a criminal to the State having authority to try the crime, is, as we have seen, called extradition.

**The National Government to Protect the States.**—The constitution declares that the United States shall guarantee to every State a republican form of government, and shall protect the States against invasion, and also protect a State against domestic violence, when so requested by its authorities.<sup>1</sup>

**Rights Retained by the People.**—The ninth amendment to the constitution, declares that the enumeration of certain rights in the constitution, shall not be construed to deny or disparage other rights, retained by the people.

**Amending the Constitution.**—Amendments to the constitution of the United States may be proposed by a two-thirds affirmative vote of both houses of Congress; or Congress may call a convention for proposing amendments, when so requested by two-thirds of the legislatures of the several States. Amendments so proposed, must, in order to become law, be ratified by three fourths of the legislatures of the several States, or by conventions called in three fourths of the States.

<sup>1</sup> United States Constitution, Article IV., Section 4.

## SUMMARY.

The United States is a sovereign, indivisible, federal, national state, and not a league of States or commonwealths with a central national government.

An outline of our national government is laid down by the people in the constitution of the United States, which constitution, and the laws made in pursuance of it, constitute the supreme law of the land.

The people have divided the powers of government into powers to be exercised by the government of the United States, powers to be exercised by the governments of the several States, and powers reserved to the people.

The people have prohibited the government of the United States from exercising certain powers, also the governments of the several States from exercising certain powers.

The government of the United States is one of powers specifically given to it by the constitution, all other powers being left to the States or to the people.

The government of the United States exercises generally such powers as are necessary to regulate our relations with foreign nations, and to regulate such matters as concern the people of more than a single State. The governments of the several States exercise all other powers not prohibited to them by the constitution, or not reserved to the people.

Specific prohibitions imposed upon the government of the United States, are found in Article I., Section 9, of the constitution, and in the first ten amendments, the latter being known as the national "Bill of Rights." Prohibitions imposed upon the several States are found in Article I., Section 10, of the constitution, and in the thirteenth, fourteenth and fifteenth amendments. These amendments pro-



hibit slavery, and guarantee the civil and political rights of former slaves.

### SUGGESTIVE QUESTIONS.

How were United States taxes laid and collected under the Articles of Confederation? How are they now laid and collected?

What feature of State representation in Congress under the Articles of Confederation, is preserved by the present constitution? What new feature of representation is added?

What was the so-called "right of secession?"

What is meant by the statement that the government of the United States is one of specifically granted powers? What are so-called concurrent powers?

Name a power, the exercise of which is prohibited, both to the government of the United States, and to the State of New York.

State generally what powers may be exercised by the United States government, and what by the governments of the several States.

Define reciprocity treaty, high seas, privateer, letters of marque and reprisal, bankruptcy, patent, copyright.

What is a United States bond? For what purposes are such bonds issued? Give an account of the different kinds of money issued by the United States government. Describe the difference between a national bank and a State bank.

Describe generally the power of Congress to regulate commerce. What is the interstate commerce commission? May a State tax imported goods? If so, for what purposes? May the United States impose a tax on goods exported from the States?

What is meant by United States territory? State the difference between the government of an organized Territory and an unorganized Territory. Give in detail the steps necessary for admitting a Territory into the Federal Union.

Define bill of attainder; *Ex post facto* law.

Name five specific prohibitions imposed by the constitution upon the government of the United States, in favor of liberty of the individual citizen. Name five prohibitions imposed on the governments of the several States.

Which amendment to the constitution prohibits slavery? Which guarantees civil and political rights to former slaves? How is this guaranty enforced?

#### ADDITIONAL READING.

Bryce's *American Commonwealth*, Part I., Chapter IV., "Nature of the Federal Government"; Chapter XXVII., "The Federal System"; Chapter XXVIII., "Working of the Federal System." Schouler's *Constitutional Studies*, Part II., Chapter V., "The Federal Constitution Analyzed; Structure and Distribution of Powers; Legislature"; Chapter VI., "Fundamental Powers of Congress"; Chapter VII., "Federal and State Prohibitions"; Chapter X., "Interstate and Territorial Relations." Burgess's *Political Science and Comparative Constitutional Law*, Volume I., Part II., Book I., Chapter II., "The Organization of the State in the Constitution of the United States"; Book II., Chapter II., "The System of Individual Liberty Provided in the Constitution of the United States." Johnston's *History of American Politics*, Chapter I., "Origin of Political Parties in the United States." Stevens, *Sources of the Constitution*, Chapter II.

## CHAPTER XXIII.

### Departments of United States Government.

THE government of the United States, like State and local governments, is carried on in three departments—legislative, executive and judicial. The work of each department is outlined in the constitution. The chief branch of the legislative department is Congress. The president of the United States stands at the head of the executive department. The judicial department is composed of United States courts and judges.

**Congress.**—The Congress of the United States, like the State legislature, is composed of two legislative branches or “houses.” These are the Senate and the House of Representatives. The senate is the so-called “upper house” of Congress. It corresponds to the senate of the State legislature, and to the House of Lords of the English Parliament. The house of representatives, or so-called “lower house” of Congress is a larger body than the senate, and its members are elected for a shorter term. It corresponds to the assembly in the legislature, and to the House of Commons in Parliament. Congress, thus composed, is the chief law-making power of the national government. It meets annually on the first Monday in December,<sup>1</sup> at the National Capitol in Washington, D. C. A new Congress meets every two years, and the life of a particular Congress ends at noon, March 4, in an odd-numbered year.

<sup>1</sup> United States Constitution, Article I., Section 4.

**The Senate.**—The senate of the United States is composed of two members from each State in the Union. This makes a senate of ninety members. The senators from each State are chosen by its State legislature, thus preserving a feature of the original union under the Articles of Confederation. A further feature of that union is also preserved in the equal representation of every State, large or small, in the Senate. Members of the senate are elected for terms of six years each, one third of the senators being elected every two years. This tends to keep a considerable portion of the senate at all times in comparatively close touch with the people. The vice president of the United States is the presiding officer of the senate. He does not vote in the senate except in case of a tie, when he may cast the deciding vote.

**Election of Senators.**—The two houses of a State legislature about to elect a United States senator, meet, each house in its own chamber, on the second Tuesday following the first regular meeting of the legislature, and the members proceed to cast their ballots for senator. At noon on the following day the two houses meet in joint session in a single chamber, and the votes of the previous day are read. If one person has received a majority of the votes of each house he is declared to be duly elected senator. But if no person has received such majorities, the two houses continue to meet in joint session at noon on each succeeding legislative day, and to take at least one vote a day, until one man receives a majority of all the votes of the joint assembly—a majority of all the members of the legislature being present and voting. When a vacancy occurs in the United States senate during a recess of the legislature entitled to fill the vacant place, the governor of the State may

appoint a man to act as senator till the office can be filled in the regular manner. A United States senator must be at least thirty years old, an inhabitant of the State from which he is elected, and must have been at least nine years a citizen of the United States.

**The House of Representatives.**—Members of the house of representatives are elected by direct vote of the people in the several States. Each State elects representatives in proportion to its population, the more populous States sending the larger number ; but each State is entitled to at least one representative. The ratio of population to one representative, and the number of representatives to which each State is entitled are fixed by Congress, according to the results of a United States census taken every ten years. The present ratio is one representative for every 173,901 people. This gives us under the census of 1890 a house of representatives of 357 members. By act of Congress approved January, 1901, the number of representatives is fixed at 386 to take effect March 4, 1903 ; and when new States are admitted their representatives are to be added to this number. The original ratio, fixed by the constitution,<sup>1</sup> was not more than one representative for every 30,000 people. Such a ratio would give us to-day a house of representatives of about 2,500 members, by far too large a body to transact business conveniently and speedily. The house of representatives elects one of its own members to preside over its deliberations. He is called the speaker, probably from an old English custom of having the presiding officer of the House of Commons act as the “spokesman” or speaker, for that body when it presented petitions to the king. The speaker is one of the most important and

<sup>1</sup> United States Constitution, Article I., Section 2.

powerful officers of the national government, as will be seen from a further description of his duties.

**Election of Representatives.**—The legislature of each State usually divides the territory of the State into as many congressional districts, as it has representatives in Congress.<sup>1</sup> Each district contains a population approximating the number of inhabitants fixed by Congress for one representative. A representative is elected every two years by the voters of each district, any voter qualified to vote for a State assemblyman being qualified to vote for a representative in Congress.<sup>2</sup> Representatives are elected at the general State election, which takes place on the Tuesday following the first Monday in November of an even-numbered year. An entirely new house of representatives is thus chosen every two years. The new house meets in December of the year following its election, unless Congress is sooner called together by the president. A representative must be at least twenty-five years old, an inhabitant of the State from which he is elected, and he must have been seven years a citizen of the United States. New York is divided into thirty-seven congressional districts, and the voters of the State elect thirty-seven representatives—besides the two senators chosen by the legislature—to represent the State in Congress.

**Meetings of Congress.**—Each Congress has two regular meetings or sessions. These are known as the First or Long Session, and the Second or Short Session. The long session begins in December of the year following the election of representatives, and usually continues until the fol-

<sup>1</sup> Some States elect one or more of their representatives on a general ticket voted for by all the voters of the State.

<sup>2</sup> United States Constitution, Article I., Section 2.



THE CAPITOL AT WASHINGTON.

lowing summer. The short session begins the next December, and lasts till the fourth day of the following March. Members of Congress—both senators and representatives—receive an annual salary of \$5,000 each, paid out of the treasury of the United States.

**How United States Laws are Made.**—United States laws are enacted by Congress in much the same way as laws are passed by our State legislature. As in the legislature, so in Congress, a proposed law is called “a bill.” Any United States senator may propose any law in the senate, and any representative may introduce any bill in the house of representatives, except that all bills for raising revenue must originate in the house of representatives.<sup>1</sup> This provision of the constitution is inherited from the English practice, of having all propositions for taxing the people come from the House of Commons, the legislative body in Parliament nearest to the people. A similar practice prevailed in the legislatures of the American colonies before the Revolutionary War, all bills imposing taxes being proposed in the assembly or lower house, composed of representatives chosen directly by the people.

**Committees of Congress.**—At the beginning of each Congress the members of both senate and house of representatives are divided into standing committees, for the purpose of considering proposed laws. Each standing committee of both house and senate, has its particular subject assigned to it, these subjects including the entire range of ordinary legislation. Special committees are appointed to consider questions not assigned to the regular standing committees. Every Congress has in both houses standing committees on such subjects as: elections, ways and means, ap-

<sup>1</sup> United States Constitution, Article I., Section 7.



appropriations, commerce, rivers and harbors, foreign affairs, agriculture, territories, education, military affairs, naval affairs, etc. The senate elects by ballot the members and chairmen of its standing committees. In the house the selection of both members and chairmen is left to the speaker.

**The Work of Congressional Committees.**—Each bill proposed in senate and house of representatives goes first to its appropriate standing committee. It is there examined as to its merits and defects, and the arguments of its friends and opponents heard. The bill may then be reported by the committee, either “favorably” or “unfavorably,” to the house in which it was proposed. A “favorable” report naturally helps a bill in its progress towards becoming a law, while an “unfavorable” report on a bill tends to defeat it. Many bills referred to committee are never reported back to senate or house, though these bodies may by vote compel a committee to report on any bill. Through such failure to report upon bills, many proposed laws are said to be “killed in committee.”

**Power of the Speaker.**—The speaker of the house of representatives may organize its committees in a way to defeat proposed laws, not favored by his friends or his party. In the same way, by appointing committeemen friendly to certain measures, the speaker may hasten their passage through Congress. A member of the house wishing to speak upon a measure before that body must first secure formal recognition from the speaker.

**Passing Bills in Congress.**—A bill reported by a committee to the house in which it was proposed, may be debated by the members of the house, amended if desired, passed by majority vote of the house, and sent to the other

house ; or the bill may be voted down by the house in which it was first proposed. If passed, the bill goes to the other house, where it is referred to its appropriate committee, to go through a process similar to the one in the house where it originated.

**Action by the President on Bills.**—Bills passed by both senate and house of representatives, go to the president of the United States for his approval and signature. The president has ten days, Sundays excepted, after receiving a bill, in which to consider it. He may sign the bill and return it, within the time prescribed, to the house where it originated, when the bill becomes a law ; or the president may veto the bill. A third course open to the president is neither to sign nor veto the bill. In this case, if Congress be in session at the end of the ten days allowed the president in which to consider the bill, it becomes a law without his signature. But if Congress adjourn before the expiration of the ten days, and the bill still remain unsigned in the hands of the president, it fails to become a law.<sup>1</sup> Such nonaction on a bill by the president is called a “ pocket veto.”

**Bills may be Passed over the President's Veto.**—A bill vetoed by the president may be reconsidered by the house in which it originated, and passed again by a two-thirds affirmative vote of the members. It is then sent to the other house, and if approved by a two-thirds affirmative vote of its members, the bill becomes a law in spite of the veto.

**Powers of Congress.**—The powers of Congress to legislate for the United States are outlined in Article I., Section 8, of the constitution. Many of the subjects of congress-

<sup>1</sup> United States Constitution, Article I., Section 7.

sional legislation are described in detail in the preceding chapter of this book.

**Privileges and Disabilities of Congressmen.**—A senator or representative may not be arrested while attending, going to, or returning from Congress, except he be charged with felony, treason, or breach of the peace. And no Congressman may be held legally accountable in any place for any speech or debate in either house.<sup>1</sup> These provisions, like the similar provisions in our State constitution,<sup>2</sup> protecting members of the legislature, come down to us from the time when English kings attempted to interfere with the free action of Parliament by arresting and detaining its members for pretended offenses. Finally, no person, while a member of Congress, may hold any other civil office under the authority of the United States.<sup>3</sup>

**The Executive Department.**—The executive department of the national government is the one through which are enforced and administered United States laws and treaties; which preserves peace and order throughout the territory controlled by the United States; which controls the relations and conduct of United States citizens when on the high seas, and defends their rights when threatened by the subjects of foreign nations. At its head is the president of the United States, and the department includes the United States army and navy, and a vast number of officials in the civil service of the United States.

**The President of the United States, His Powers and Duties.**—The president of the United States, as the executive head of the nation, is the commander in chief of the

<sup>1</sup> United States Constitution, Article I., Section 6.

<sup>2</sup> See Chapter XIV., "The Legislature."

<sup>3</sup> United States Constitution, Article I., Section 6.

United States army and navy, and of the militia of the several States when engaged in the service of the United States. It is his duty faithfully to enforce the constitution, laws and treaties of the United States, and to protect our citizens, when within the territory controlled by the United States,<sup>1</sup> when on the high seas, or when within the territory of a foreign nation. The president, through his subordinates, conducts all official intercourse of the United States with foreign governments. He appoints, by and with the advice and consent of the senate, the judges of the supreme court of the United States, and other important executive and judicial officers; while many subordinate officers are appointed by him alone. The president has power generally to remove officers appointed by him, whether appointed with or without the advice and consent of the senate. He may pardon or reprieve persons convicted of offenses against the United States, except in case of impeachment of public officers. He is elected by the voters of the several States for a term of four years, which begins on March fourth of an odd-numbered year. He must be a natural-born citizen of the United States, at least thirty-five years of age, and he must have been for fourteen years a resident of the United States. He receives an annual salary of \$50,000, paid out of the treasury of the United States.

**The President's War Powers.**—While the president is commander in chief of the army and navy, and may direct their action in such a way as to provoke actual war, Congress alone has power formally to declare war against an enemy of the United States. Congress also controls our military and naval operations, by its power to grant and refuse supplies of money and men necessary to carry on war.

<sup>1</sup> A State protects its own citizens when within the territory of the State.

The president's power is further limited by the clause of the constitution, which forbids Congress to grant money for military operations for a longer term than two years.<sup>1</sup>

**The President and Our Foreign Relations.**—Our intercourse with the governments of foreign nations is carried on by the president, acting through his subordinates. The president, by and with the advice and consent of the senate, appoints ambassadors, ministers, and consuls, to represent the government of the United States before foreign governments, and he receives similar officials sent to the United States. The president through his subordinates, makes all treaties of the United States with foreign governments, but a treaty must be agreed to by two thirds of a quorum of the senate. Treaties that require money to carry them into effect, depend upon Congress for the necessary appropriations.

**The President's Legislative Powers.**—We have seen that the president may veto bills passed by Congress, thus compelling that body to reconsider any hasty or injudicious action. The president is also required to give Congress information from time to time on the state of the Union, recommending the passing of any laws he may think necessary or wise.<sup>2</sup> Information is thus given, and recommendations made, by the president, in "messages" sent to Congress, usually at the beginning of each session. The president also has power to call the senate or both houses of Congress together in a so-called "extra session," when public business demands it. When the two houses disagree as to the time of adjourning Congress, the president may adjourn it to such time as he thinks proper.<sup>3</sup>

<sup>1</sup> United States Constitution, Article I., Section 8.

<sup>2</sup> United States Constitution, Article II., Section 3.

<sup>3</sup> United States Constitution, Article II., Section 3.

**The President and the Civil Service.**—The president's power to appoint and remove officers in the civil service of the United States, is limited by civil service rules, which he sanctions and enforces. Under these rules about one half of the nearly 200,000 Federal officeholders have been placed in the so-called "classified service"; and appointments in this service are made as the result of competitive examinations. The more important offices, such as heads of department in the cabinet, collectors of customs, collectors of internal revenue, postmasters in large cities, etc., are in the so-called "unclassified service." These offices are often filled, and their former occupants removed, by each succeeding president for purely political reasons.

**The President's Cabinet.**—The work of the executive department is largely carried on through eight subordinate departments. The heads of these departments are appointed by the president, by and with the advice and consent of the senate, and they are known as the president's cabinet. The members of the cabinet are as follows: Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Postmaster-General, Attorney-General, Secretary of Agriculture. The cabinet holds regular meetings, attended by the president, at which affairs of government are discussed and lines of action decided upon. Each cabinet officer has from one to four assistants or assistant secretaries, and each cabinet department is divided into bureaus, at the head of each of which is a commissioner.

**The Department of State.**—The department of state, headed by the secretary of state, conducts all official negotiations and correspondence of the United States with foreign governments. The secretary of state is also the

medium of communication between the president of the United States and the governors of the several States. He has the custody of the great seal of the United States, of treaties made with foreign governments, and of the laws of the United States as passed by Congress.

**The Treasury Department.**—The treasury department, under control of the secretary of the treasury, has the management of the national finances, and includes a number of important officers, among whom are comptrollers, auditors, treasurer of the United States, register of the treasury, commissioner of internal revenue, director of the mint, etc. The secretary of the treasury estimates the revenues and expenses of the national government and superintends the collection of the revenues. The treasurer receives and keeps the moneys of the government, and pays out money on the orders of the secretary of the treasury.

**The War Department.**—The war department, headed by the secretary of war, has charge of the equipment and supply of the United States army. Public improvements, like the construction of United States docks and bridges, are conducted by this department. So are explorations undertaken by the United States. The department has charge of the United States signal service along our coasts, of the United States Military Academy at West Point, and of several national parks and soldiers' "homes."

**The Navy Department.**—The navy department is headed by the secretary of the navy. It has charge of the navy of the United States and its equipment and supply; also of the United States Naval Academy at Annapolis.

**The Interior Department.**—The interior department, in charge of the secretary of the interior, performs a variety of work, as indicated by the titles of the commissioners head-

ing its various bureaus. In this department, the commissioner of the general land office has charge of the public lands belonging to the United States, and the commissioner of pensions of the granting of pensions to soldiers and sailors disabled in the service of the United States. The department grants patents and copyrights, looks after Indians living on the so-called "reservations"; conducts Indian schools; takes the United States census; includes a bureau of education in charge of a commissioner of education, who collects statistics relating to education in this and other countries; and a department of labor, which collects statistics relating to conditions of trades and laborers.

**The Post Office Department.**—The post office department has charge of the transportation of the mails, and of all United States post offices. The postmaster-general is at its head. He establishes post offices, and appoints all postmasters not appointed by the president.

**The Department of Justice.**—The department of justice is headed by the attorney-general, with duties somewhat similar to the duties of our State officer of that name. The attorney-general gives legal advice, when so requested, to the president and the heads of the subordinate executive departments; conducts cases before the United States courts in which the national government is interested; and has general supervision of the prosecuting officers known as United States district attorneys, and of the executive officers known as United States marshals.

**The Department of Agriculture.**—This department, headed by the secretary of agriculture, is divided into a number of bureaus which have for their object the betterment of agriculture. Various reports are published and distributed by the department.



Other features of the executive department include the interstate commerce commission, already referred to, the United States fish commission, the civil service commission, the government printing office, the national museum, bureau of ethnology, and the library of Congress.

**The Vice President.**—The vice president of the United States takes the place of the president, in case of his death, resignation, removal from office, or inability to perform the duties of his office. The vice president is elected at the same time and in the same manner as the president, and for the same term of office. His chief duty is to preside over the deliberations of the United States senate. He must possess the same qualifications as the president, as to age, citizenship, and residence. He receives an annual salary of \$8,000.

**Election of President and Vice President.**—The president and vice president are elected by the people of the several States, voting for officers called Presidential Electors. Each State chooses as many presidential electors as it has senators and representatives in Congress. The presidential electors are nominated by the different political parties, usually one elector from each congressional district in a State, and two for the State at large. The names are printed, each party's list, at the head of the party ticket on the official ballot, the different lists being voted for by the voters of the entire State. The presidential electors, when chosen, meet on the second Monday in January following their election, usually at their respective State capitals. They then cast their ballots for a president and vice president of the United States. The candidates for president and vice president who receive a majority of the votes of all the electors are elected. If no candidate receives a majority,

the president is chosen by the house of representatives, and the vice president by the senate, as described in the twelfth amendment to the constitution of the United States.

**The Presidential Succession.**—If both president and vice president die, or become unable to perform the duties of president, Congress is given power by the constitution,<sup>1</sup> to designate what officer shall act as president, till a new president is elected at a regular presidential election. By statute, passed in 1887, Congress provided that the following officers, if qualified, should succeed to the presidency in this order: 1, secretary of state; 2, secretary of the treasury; 3, secretary of war; 4, attorney-general; 5, postmaster-general; 6, secretary of the navy; 7, secretary of the interior.

**Impeachment.**—Any civil officer of the United States, including the president and vice president, may be impeached for treason, bribery, or “other high crimes and misdemeanors,” and if convicted, must be removed from office.<sup>2</sup> In impeachment cases the house of representatives presents the charges, and the United States senate sits as a court to try the accused. A two-thirds vote of the senators present is necessary to convict an impeached officer. The judgment of the court of impeachment cannot extend further than to remove the convicted officer from his office, and disqualify him from holding any office of honor, trust or profit under the United States. But an officer so convicted may also be indicted, tried, and punished, by the criminal courts, like any ordinary offender. When the president of the United States is impeached, the chief justice of the United States presides over the court of impeachment.<sup>3</sup>

<sup>1</sup> United States Constitution, Article II, Section 1.

<sup>2</sup> United States Constitution, Article II., Section 4.

<sup>3</sup> United States Constitution, Article I., Section 3.

**The Judiciary Department.**—As the government of the United States has its own law-making and law-enforcing powers, superior to and independent of the governments of the several States, so it has its own independent judiciary department to interpret and apply the United States Constitution, laws and treaties. The judiciary department includes the Supreme Court of the United States, provided for by the constitution,<sup>1</sup> and the inferior courts established by Congress.

**Jurisdiction of United States Courts.**—Suits arising under the constitution, laws and treaties of the United States are tried in the United States courts. A man charged with ordinary theft is tried in a State court, for theft is a crime against State law; but a man charged with stealing and making use of an idea protected by a patent, is tried in a United States court, because patents are given under United States law. So are cases affecting ambassadors, ministers and consuls, and the rights of United States citizens when on the high seas.<sup>2</sup> Controversies, in which the United States is a party, controversies between two or more States, between a State and the citizens of another State, between the citizens of different States, or between a State or its citizens and the citizens of a foreign nation, are tried in United States courts; but no State may be sued by the citizens of another State or by the subjects of a foreign nation.

**United States Courts Enumerated.**—The courts of the United States are the supreme court, already referred to, the circuit courts, the circuit court of appeals, and the district courts. The judges of these courts are appointed by the

<sup>1</sup> United States Constitution, Article III., Section 1.

<sup>2</sup> Courts applying the rules of law governing personal and property rights on the high seas are called Admiralty courts.

president of the United States, by and with the advice and consent of the senate. They hold office during good behavior, and receive salaries fixed by Congress.

**The District Courts.**—The district courts are the lowest United States courts. Every State has at least one district court, and the larger States two or three,<sup>1</sup> each presided over by a United States district judge. All crimes committed against the United States, except crimes punishable by death, are triable in district court. So are civil cases arising under the laws of the United States. An appeal may be taken from the decision of a district court to the circuit court of appeals, or to the supreme court. Appeals to the supreme court are taken when the question appealed involves: 1, a construction of the constitution; 2, the constitutionality of a law, State or national; 3, the construction of a treaty; 4, a punishment for a great crime.

**The Circuit Courts.**—Next above the United States district courts are the circuit courts. There are nine circuit courts in the United States, each circuit including several States. There is a United States circuit judge for each of the nine circuit courts. Circuit courts are presided over by a circuit judge, and there may be associated with him a judge of the supreme court, or a district judge in the circuit.

<sup>1</sup> New York State has four: The Western District, including Alleghany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates counties; the Northern District, including Albany, Broome, Cayuga, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Onondago, Oswego, Otsego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Tioga, Tompkins, Warren, and Washington counties; the Eastern District, including Richmond, Kings, Queens, Nassau and Suffolk counties; and the Southern District, including the residue of the State.

Criminal suits and civil suits, involving not less than \$500, and suits that arise under the patent and copyright laws are tried in circuit courts. Appeals from circuit courts are taken to the circuit court of appeals, or to the supreme court.

**The Circuit Court of Appeals.**—In each circuit there is a circuit court of appeals consisting of three judges—one specially appointed to the circuit court of appeals, one a supreme court judge, and one a district court judge of the circuit. The circuit court of appeals hears cases brought up to it on appeal from district courts and from circuit courts within the circuit.

**The United States Supreme Court.**—Above the district and circuit courts, and above the circuit court of appeals, stands the supreme court of the United States. This is the highest judicial tribunal in the land, and the final authority in all questions arising under the constitution, laws and treaties of the United States. The supreme court sits in the National Capitol at Washington. It is composed of a chief justice and eight associate justices, and the presence of six is necessary to render a decision. This court has the power to bring before it sovereign States of the Union, as well as their citizens. Its chief business is the hearing of appeals brought up to it from the inferior United States courts, and from the highest courts of the several States, where questions arise involving rights under the constitution and laws of the United States.<sup>1</sup> The supreme court has original jurisdiction, in cases wherein a State is a party in the controversy, or where the rights of ambassadors, ministers, and consuls are affected. One of its most important duties is to

<sup>1</sup> Appeals from decisions of the courts of the District of Columbia are made to the supreme court. Appeals are made from the courts of the Territories to the United States circuit courts of appeals and to the supreme court.

decide whether laws framed by the State legislatures or by Congress, are in accord with the constitution of the United States, such decisions being made in proceedings similar to those brought before our State court of appeals to test the constitutionality of a State law.

**Cases Removed from a State Court to the United States Supreme Court.**—Suits begun in State courts may be removed to the supreme court of the United States, when the highest court of the State decides against the validity of a statute or treaty of the United States, or when the claim is made that a State law or a provision of the State constitution, is not in harmony with the constitution, laws, or treaties of the United States.

**United States Marshals.**—Attached to every United States court is an officer known as a United States marshal. It is his duty to carry out the writs, judgments, and orders of his court, much as a New York sheriff carries out the orders of the State courts. A United States marshal, if resisted in the execution of the law, may like a constable or sheriff, call any citizen to his aid; and he may, if necessary, apply to the president for the aid of troops from the United States army.

**United States District Attorneys.**—Every judiciary district of the United States has a prosecuting officer known as a United States district attorney, whose duty it is to prosecute offenders against United States laws in his district, in much the same way as the district attorney of a New York county prosecutes offenders against the State law.

**The Jury in United States Courts.**—The constitution requires that the trial of all crimes against the United States, except in cases of impeachment, shall be by jury; and that the trial must be in the State where the alleged crime was

committed. If not committed in a State, the trial must be in a place designated by Congress.<sup>1</sup>

**The Court of Claims.**—As the United States may not be sued by one of its citizens, Congress has established a court of claims, which sits at Washington, to hear and investigate the claims of private parties against the national government. Appeals from its decisions are to the supreme court; but in some cases its “findings” are sent to Congress, which takes such action in the matter as seems just.

### SUMMARY.

United States government, like State and local governments, is carried on in three departments—legislative, executive and judicial. Congress is the chief branch of the legislative department. The president is at the head of the executive department. The judiciary department is composed of United States courts and judges.

Congress is composed of a senate of two members elected from each State by its legislature; and of a house of representatives, with members from each State in proportion to its population, elected by direct vote of the people.

The life of a particular Congress is two years; and each Congress has two regular sessions—a long and a short session. The long session begins in December of the year following the election of members of the house of representatives. The short session begins in the following December and ends at noon on the fourth day of the following March.

United States laws are passed by Congress in much the same way as laws are passed by the State legislature. The president has a veto over bills passed by Congress, quite

<sup>1</sup> United States Constitution, Article III., Section 2.

similar to the governor's veto over bills passed by the legislature.

The president, by and with the advice and consent of the senate, appoints ambassadors, ministers and consuls to represent the United States in foreign nations, negotiates treaties between the United States and such nations; and appoints the following heads of departments known as the "president's cabinet": secretary of state, secretary of war, secretary of the treasury, secretary of the navy, secretary of the interior, postmaster-general, attorney-general, secretary of agriculture. The president is commander in chief of the United States army and navy, and of the State militia when in the service of the United States.

The judiciary department is composed of the United States supreme court, the United States circuit and district courts, and the circuit court of appeals. These courts have jurisdiction generally of questions involving the constitution, laws, and treaties of the United States, and the conduct of United States citizens on the high seas.

### SUGGESTIVE QUESTIONS.

Describe the method of electing United States senators, and state the requirements for senators, as to age, residence, and citizenship. What constitutional provision keeps a large portion of the senate in comparatively close touch with the people?

How is the number of representatives to which a State is entitled in the house of representatives determined? Who may vote for representatives?

How is the speaker chosen? Describe generally, his power to influence legislation.



What legislative work is performed by committees of the senate and house of representatives?

Give in detail the steps necessary to pass a bill over the president's veto. What kind of bills must originate in the house of representatives? Why?

What provision of the constitution protects freedom of debate in Congress?

Name three powers of the president in connection with the work of the executive department.

What is the difference between an ambassador or minister, and a consul? What important difference between their legal rights while residing in a foreign country? How are treaties between the United States and foreign governments made?

May the president of the United States declare war against a foreign nation?

What constitutional prohibition controls the president's power to prosecute war?

What is a president's "message"? How is the president's power of appointment limited by the civil service laws?

Name the members of the cabinet, and describe the duties of each. What department controls United States pensions? Indian affairs? Which conducts explorations? Which grants patents and copyrights? Which has charge of matters relating to education? Describe the work of United States marshals; of United States district attorneys.

Name in their order the officers entitled to succeed the president on his death or inability to perform the duties of his office.

Describe in detail the manner of electing the president and vice president. Who and what are presidential electors?

Describe the proceedings in an attempt to impeach the president of the United States.

What good reason for the establishment of United States courts, independent of State judicial tribunals? Name the courts of the United States in their order, and describe generally the jurisdiction of each. How are the judges of these courts chosen? For what term of office? When may a case begun in a State court be removed to the United States supreme court? Describe the constitutional provision providing for jury trials in United States courts.

What work is done by the United States court of claims?

#### ADDITIONAL READING.

Bryce's *American Commonwealth*, Volume I., Part I., Chapter XII., "The Senate; Its Working and Influence"; Chapter XIII., "The House of Representatives"; Chapter XIV., "The House at Work"; Chapter XV., "The Committees of Congress"; Chapter XVIII., "Relations of the Two Houses"; Chapter VI., "Presidential Powers and Duties"; Chapter IX., "The Cabinet"; Chapter XX., "Relations of Congress to the President"; Chapter XXII., "The Federal Courts"; Chapter XXXIII., "Interpretation of the Constitution."

#### GENERAL BIBLIOGRAPHICAL NOTE.

For a manual of constitutional law, see Cooley's *General Principles of Constitutional Law in the United States of America*. For the sources and general principles underlying constitutional government in America, see Hannis Taylor's *The Origin and Growth of the English Constitution*, Part I., introductory chapter; Stubbs's *Constitutional History of England*; Freeman's *Growth of the English Constitution from the Earliest Times*; Fiske's *American Political Ideas Viewed from the Standpoint of Universal History*; Green's *Short History of the English People*; Howard's *Introduction to the Local Constitutional History of the United States* in the Johns Hopkins University Series of

Historical and Political Studies; Hildreth's *History of the United States*, Volumes I., II. and III; Bancroft's *Formation of the Constitution of the United States*; Schouler's *Constitutional Studies*. Douglas Campbell in *The Puritan in England, Holland and America* attempts to trace the origin of many of our political institutions to the Dutch. C. E. Stevens in *Sources of the Constitution of the United States* combats Campbell, taking the view that most American political institutions come from the English.

For the growth and development of constitutional government in New York, see Broadhead's *History of New York; Documents Relating to the Colonial History of the State of New York*, especially "Holland Documents," Volumes I. and II.; the Historical Note in Volume I. of the Colonial Laws of New York, compiled by the Statutory Revision Committee; Lamb's *History of the City of New York*; Hill's *Development of Constitutional Law in New York State*; Elting's *Dutch Village Communities on the Hudson*; Thwaites's *Colonies*, Chapters IX. and X.; Fiske's *Dutch and Quaker Colonies. The Rise of the Dutch Republic* by John Lothrop Motley, condensed and continued by William Eliot Griffis, contains many references to Dutch institutions and influences that have contributed to the formation of American political institutions.

## CHAPTER XXIV.

### The United States and Other Nations.

AN account of the governments affecting the people of New York does not end with a description of the government of the United States. As New York is a member of the United States, bound by all the common laws of the Union, so the United States is a member of the great family of civilized nations, bound by all the common customs and rules regulating the intercourse of such nations. The customs, rules and agreements, regulating the intercourse of civilized nations with one another are known as international law.

**International Law Differs From State and National Law.**—International law differs from the laws of the State and of the United States in this important particular, that while the latter are mainly positive written enactments, that may be enforced by State and national executive officers, international law, on the contrary, is made up chiefly of customs that have been gradually adopted, the enforcement of which depends largely upon the honor of the nations recognizing the obligation of such law.<sup>1</sup> There is no power outside of a nation to force it to observe the rules of interna-

<sup>1</sup> International law is a system of rules adopted by the free choice of certain nations, for the purpose of governing their intercourse with each other, and not inconsistent with the principles of natural justice. It has grown up by degrees, and has been submitted during its progress to sundry modifications. It is the most voluntary of all codes.—Woolsey, *Introduction to the Study of International Law*.

tional law, unless it be the power of some other nation or nations making war upon it.

**Official Intercourse between Nations Conducted by Ambassadors, Ministers and Consuls.**—Intercourse between the governments of civilized nations, as we have already seen, is officially carried on by officers known as ambassadors, ministers and consuls. The two former are known as diplomatic officers. They aid in the negotiations of treaties and represent generally their governments before the governments to which they are sent. A consul, on the other hand, is usually only a business agent who looks after the commercial interests of his government, and after the interests of any of its citizens, who may be in the country to which he is sent. All these officers when performing their official duties, usually reside in the territory of the nation to which they are accredited.

**Ambassadors and Ministers.**—Ambassadors and ministers represent different ranks of diplomatic officers, the former being the highest of such officials, and sent only to and from the great powers. Thus the United States sends to and receives from such nations as France, Germany and Great Britain, officials known as ambassadors extraordinary and plenipotentiary; while it sends to and receives from such powers as Belgium, Bolivia and Chili, officers known as ministers extraordinary and plenipotentiary. Ambassadors extraordinary and plenipotentiary of the United States have the full power of the highest diplomatic officers, and receive annual salaries of \$17,500 each. Ministers plenipotentiary have full powers of diplomatic officers, but receive salaries ranging from \$5,000 to \$12,000. A still lower grade of minister is the minister resident, sent to such powers as Corea and Liberia.

**Rights and Privileges of Ambassadors and Ministers.**—An ambassador or minister, though residing at the capital of the foreign nation to which he is sent, is subject in no way to the laws of the foreign government. His person, his official residence, and family, are considered as being within the territory and under the laws of the government that sends him. If a diplomatic official commit a crime against the laws of the country to which he is sent, he may be returned to his own country as a *persona non grata*—a person not satisfactory as a diplomatic representative.

**Consuls, Their Rights and Duties.**—A consul, unless there be special agreement to the contrary, has no such extraordinary rights and privileges as an ambassador or minister. Consuls are sent by the different civilized governments to the chief ports of all foreign nations, and while there are subject to the ordinary laws, civil and criminal, of the nation to which they are sent. A consul's duties are determined by the laws of the country sending him, and by treaty. Some of the duties of the United States consuls in foreign countries, are to look after the interests of American ships and seamen, and other citizens of the United States while abroad, to give certificates for various purposes, and to make reports to our government on conditions of industry and trade.

**Treaties.**—The details of the intercourse between different civilized nations, are now usually very largely regulated by formal agreements known as treaties. Any two nations may unite in making any treaty, that does not violate the accepted principles of international law. Each government enforces the provisions of its treaties upon its own citizens. Should a treaty be violated by one of the governments entering into it, the other may regard it as broken, and de-

mand redress; or, it may still require the observance of the treaty. But such a demand or requirement could be enforced only by act of war.

**Rights of Travelers in Foreign Countries.**—Travelers in foreign countries are subject to the laws, civil and criminal, of the countries through which they pass, and they may, as a rule, be tried and punished by the local authorities for violating such laws. The same is true of citizens of one country residing temporarily in another. But every government is bound to protect its own citizens in person and property, against arbitrary and unjust acts committed in another country.

**Foreign Governments May Return Escaped Criminals.**—By treaties made between two governments, a person who commits a crime in one country and escapes to another, may, on demand of the officers of the former country, be given up to them to be tried in the place where the crime was committed. This formal surrender of an escaped criminal is known as extradition, and treaties providing for such surrender of criminals are extradition treaties. Political offenders are not usually included among the persons to be returned under extradition treaties.

**Tariffs and Embargoes.**—The free commercial intercourse between nations is, as we have seen, frequently restricted by tariff laws, imposing taxes on imported goods. Such a law may be simply a means of raising revenue for the government making the law; or it may be enacted to protect domestic manufacturers against the free competition of foreign manufacturers; or it may be a retaliatory measure against a government that refuses to admit the products of another nation. On the other hand, as we have also seen, two governments may enter into a reciprocity treaty, whereby

each country agrees to admit freely the products of the other. By an act of embargo, all the vessels, domestic and foreign, in the ports of a country, may be prohibited from leaving these ports during a certain specified time. Tariffs and embargoes are enforced by the government enacting them.

**When Nations go to War.**—Nations at war with each other are known as belligerents, and all other nations as neutrals. Combatants are members of the military and naval forces, actually engaged in war. Noncombatants are citizens of the belligerent nations not directly engaged in prosecuting the war. Combatants may be legally killed or taken prisoners of war by the forces of the belligerent nations. Noncombatants may neither be killed nor captured. The citizen noncombatants of one nation may be allowed to remain within the territory of another nation at war with it, or they may be ordered to leave the territory with their goods and property. While they remain legally and peaceably within the territory of their enemy, noncombatants are entitled to the protection of his laws.

**The Declaration of War.**—War usually begins by a formal public declaration of war by the governments concerned, though actual fighting may precede such a declaration. The declaration of war is a notice to the citizens of belligerents and neutrals, that a state of war exists, and that they must regulate their actions accordingly. After a formal declaration of war, all intercourse and trade between the belligerent nations is supposed to cease, and contracts made between the subjects of one belligerent and those of another are void. War is ended by a formal treaty of peace between the belligerent governments. Property captured after the adoption of a treaty of peace, must be restored to the original owners.



**Property Rights During War.**—Only public property used for the purpose of prosecuting the war, may be destroyed or captured by a belligerent under the rules of international law. Thus forts, guns, ammunition, ships, military and naval stores of all kinds, railroads engaged in transporting troops and supplies, are subject to capture and confiscation by an enemy. Private property belonging to an enemy's subjects, and not used for prosecuting the war, may not be destroyed or captured. An exception to this rule is made in the case of the private property of an enemy's subjects when on ships at sea. All the merchant vessels of an enemy, with their crews and cargoes, are subject to capture. Such captures are called prizes of war, and belong to the government making the capture. Another exception is where an invading army finds it necessary to subsist wholly or partly upon the country invaded. In such cases the property of noncombatants may be taken for use of the invading army. The rule is to pay for such property, but it is not always observed.

**Rights and Duties of Neutrals.**—It is the duty of the governments of neutral nations to in no way aid either of the belligerents during the prosecution of a war; but neutral governments are not always responsible for the acts of their subjects. A neutral nation has the right to forbid the transportation of the troops or supplies of a belligerent across its territory; and no fighting may be done or captures made within the jurisdiction of a neutral, either on land or water. The subjects of a neutral nation may as a rule, freely continue their trade with the subjects of the belligerent nations; and a belligerent may not disturb goods belonging to the subject of a neutral nation, even though these goods be captured upon a merchant vessel belonging to the subjects

of a belligerent enemy. The war ships of belligerents may freely visit neutral ports, in the same manner as the merchant vessels of belligerent nations; but war vessels may not take on military stores at neutral ports, neither may privateers be fitted out in such ports.

**Contraband of War.**—An exception to the rule that the goods of neutral subjects may not be captured by belligerents, is in the case of property known as contraband of war. This is property, such as arms, ammunition, horses, military and naval stores, that may be used in directly prosecuting the war. Such contraband of war, the subjects of a neutral nation have no right to supply to either belligerent; and contraband of war destined for a belligerent, may be captured and confiscated by the other belligerent, even upon the vessels of neutrals. But no such captures may be made within the territory of a neutral nation. The belligerent governments have a so-called right of search, which they may exercise upon any neutral private merchant vessel when on the high seas, in order to ascertain if contraband of war be on board. Such a vessel refusing to be searched, may be captured by the belligerent as a prize of war.<sup>1</sup>

<sup>1</sup> Each belligerent government usually decides for itself what particular article will be considered and captured as contraband of war, when about to be supplied to the opposing belligerent. The government of the United States during our late war with Spain issued the following order to our navy relative to contraband of war:

“The term contraband of war comprehends only articles having a belligerent destination, as to an enemy’s port or fleet. With this explanation the following articles are, for the present to be treated as contraband: Absolute contraband—ordnance; machine guns and their appliances, and the parts thereof; armor plate, and whatever pertains to the offensive and defensive armament of naval vessels; arms and instruments of iron, steel, brass, or copper, or of any other material, such arms and instruments being specially adapted for use in war by land or sea; torpedoes and their appurtenances; cases for

**Blockades.**—During the progress of a war one belligerent often blockades the ports or coasts of the other belligerent. Under the rules of a blockade, no vessel may leave or enter a blockaded port, without permission of the party blockading it. The same is true as to communicating by land with a city that is blockaded on the land side. Neutral vessels attempting to enter or leave a blockaded port, may be captured and confiscated as prizes of war. But a blockade, to be effective under the rules of international law, must be actually maintained by the armed forces of the belligerent. Formal notice of the existence of a blockade must be given by the belligerent enforcing it, in order to make lawful the confiscating of property belonging to citizens of neutral nations attempting to pass the blockade.

**Privateers and Privateering.**—Private war vessels, as we have seen, may be fitted out to prey upon an enemy's commerce during the existence of war. Such vessels are called privateers, and they are given authority to make captures, by a belligerent government issuing to the owner of a privateer, so-called letters of marque and reprisal.<sup>1</sup> By a treaty concluded at Paris in 1856, the principal European powers agreed to license no privateers in future wars among themselves. The United States has refused to unite in such mines, of whatever material; engineering and transport materials, such as gun carriages, caissons, cartridge boxes, campaigning forges, canteens, pontoons; ordnance stores; portable range finders; signal flags destined for naval use; ammunition and explosives of all kinds; machinery for the manufacture of arms and munitions of war; saltpeter; military accoutrements and equipments of all sorts; horses. Conditionally contraband—coal, when destined for a naval station, a port of call or a ship or ships of the enemy; materials for the construction of railways or telegraphs, and money, when such materials or money are destined for the enemy's forces; provisions when destined for an enemy's ship or ships or for a place besieged."

<sup>1</sup> See "War Powers," Chapter XXII.

an agreement, but the president, during our late war with Spain, announced the determination of our government to adhere during the war to the anti-privateering clause of the Paris treaty.

**Arbitration.**—Arbitration, instead of war, is coming more and more to be a method of settling disputes between nations. It is the custom of each government in dispute, to choose some one or more impartial officials of a government not interested in the dispute, to be known as arbiters to whom the disputing governments agree to leave the question at issue. There is no actual force, however, to compel a nation to submit to the decision of such a court of arbitration, although it is morally bound to submit.

**The Hague Conference and Treaty.**—At the call of the Czar of Russia, accredited representatives of twenty-six of the leading powers of the world met in 1899, at The Hague, in what is known as The International Peace Conference,<sup>1</sup> and agreed upon a treaty, which has since been ratified by the governments represented. This treaty provides:

First, In case of serious disagreement between any two of the powers ratifying the treaty, before there is a resort to actual war, that one more of the other powers may offer their services as mediators between them; further, that each of the powers at variance “may choose respectively a power to whom they may intrust the mission of entering into direct communication with the power chosen on the

<sup>1</sup> Representatives of the following-named powers attended The Hague Conference, and agreed to the treaty for arbitration: Austria, Belgium, Bulgaria, China, Denmark, France, Germany, Great Britain and Ireland, Greece, Holland, Italy, Japan, Luxembourg, Mexico, Montenegro, Persia, Portugal, Roumania, Russia, Serbia, Siam, Spain, Sweden and Norway, Switzerland, Turkey, and the United States of America. The governments of all these powers have formally ratified the work of the conference.

other side," with the object of preventing, if possible, the war; and that for a period of thirty days the States in conflict shall cease from all direct communication on the subject in dispute, to allow, if possible, the arbiters so selected to settle it in a peaceable manner.

Second, That when differences of an international nature arise, "involving neither honor nor vital interests, but arising from a difference of opinion on points of fact," but upon which the parties are unable to agree, they shall as far as possible, leave the facts in dispute to an International Commission of Inquiry selected from a Permanent International Court of Arbitration.

Third, A Permanent International Court of Arbitration, composed of not more than four persons "of known competency on questions of international law, and of the highest moral reputation," appointed for a term of six years each, by each of the governments ratifying the treaty, is established with permanent headquarters at The Hague. Powers in dispute may choose arbiters from the members of this court. In the absence of an agreement, such tribunal of arbitration is to consist of five arbiters, of whom each of the disputing states shall name two. The four so named are to choose a fifth; but in case of a tie the fifth arbiter is to be chosen by a power agreed upon, or by two powers severally designated by the disputing states. This tribunal is to have its ordinary seat at The Hague, and its award or decision is to be morally binding upon the parties submitting to its arbitration. The Permanent International Court of Arbitration is also to be open to the settlement of disputes between nations not parties to The Hague conference, if these nations wish to accept its services.

**The Hague Conference and the Monroe Doctrine.**—A special proviso accompanying the signatures of the American delegates to the treaty adopted by The Hague conference reads: “Nothing contained in this convention shall be so construed as to require the United States of America to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or internal administration of any foreign state; nor shall anything contained in the said convention be so construed as to require the relinquishment by the United States of America of its traditional attitude towards purely American questions.”

**Recognition of Belligerency in Case of Rebellion.**—War sometimes arises between a government and some portion of its own subjects. This is known as rebellion or revolution. In such cases difficult questions often arise as to the rights and duties of neutrals towards the fighting parties; but it is a general rule of international law that every *de facto* government, that is every existing government, is sacred from arbitrary interference by outside powers.<sup>1</sup> Circumstances sometimes arise, however, owing to the weakness or inability of the *de facto* government to put down the rebellion, or owing to the establishment of an independent government by the rebellious subjects, when the so-called

<sup>1</sup> “While nations may take sides against a revolutionary movement in another state, if invited to do so by the government, they have a right to remain neutral, and in almost all modern movements of this kind nations have judged it wisest and best to take neutral attitude. Only when great cruelty, on the part of the established government, rouses the indignation of mankind, have they thought best to interfere.”—Woolsey’s *Introduction to the Study of International Law*. The United States took sides against Spain in the Cuban rebellion, both on the ground of humanity and of injury to the commercial interests of this country.

rebel government may be recognized as a belligerent by outside powers, and accorded all the rights of belligerency.

**Governments on an Equality Under International Law.**

—We have seen that every *de facto* government is accorded equal rights under the rules of international law. This is true, whatever the form or origin of the government. Thus a despotic government, like Russia or Turkey, stands upon an equality with liberal governments like the United States and France. So the fitful revolutionary governments of some of the Spanish American republics, must, while they exist, be treated on equal terms with the most stable government of the great powers; and this brings us to a brief consideration of existing forms of leading governments.

**The Monarchy.**—One of the oldest known existing forms of government is the monarchy. The word is derived from the Greek words—*monos*, meaning sole or only, and *archein*, meaning to rule. In a monarchy, a great part of the power of government is usually centered in a single person—the monarch—who is called variously—king, queen, sultan, czar, etc. The monarch usually inherits his office, although he is sometimes elected; and he holds the office for life, unless he voluntarily abdicate, or be deposed. Monarchies are absolute and limited. In an absolute monarchy, the monarch possesses supreme power and authority in the government. Such are Russia and Turkey to-day. An absolute monarchy is sometimes called a despotism, and its monarch a despot. In a limited monarchy the power of a monarch is limited by a legislature representing the people, and by a constitution, written or unwritten. Great Britain and Germany are conspicuous examples of limited monarchy. In the latter country the emperor must secure a majority of the legislators in the Reichstag, or national legislature, in order

to pass a law; while in Great Britain the monarch has become little more than a figurehead, the British parliament being the supreme law-making power, and its laws being carried out by an executive department, headed by a cabinet composed of members of parliament.

**The Aristocracy.**—In former times, there existed certain forms of government, in which the supreme power rested in the hands of a comparatively small body of citizens. These citizens held their positions because of noble birth or great wealth. Such a form of government is called an aristocracy, from the Greek words, *aristos*, meaning best, and *kratos*, meaning strength. The government of Great Britain at the beginning of the nineteenth century might be termed an aristocracy, for the entire administration rested in the House of Lords, and in the Crown. One branch of the legislative body in nearly all European monarchies, is composed principally of men inheriting their offices because of noble birth, thus bringing the aristocratic element prominently into these governments.

**The Democracy.**—Democracy, from the Greek word *demos*, meaning the people, and *kratos*, strength, is a form of government in which the great mass of the people have a voice. In ancient times, certain small states were almost pure democracies. Thus, in ancient Athens, every citizen had a right to appear and vote in the popular assembly that ruled the state. We have seen that the local government of a modern New York town meeting, in which every voter has a right to speak and vote, is an example of almost purely democratic government. In some cantons of Switzerland, local government at the present time is carried on in a popular democratic assembly, attended by all the voters of the canton.



**The Republic.**—A republic is a form of democracy, in which the mass of the people choose representatives to make and enforce the laws. Such is the form of government in the United States. What chiefly distinguishes the republic from the limited monarchy, with its elective monarch, is the fact that in the republic, the legislative and executive officers are chosen for short periods, and that as a rule all male citizens have a right to help elect them; while in the limited monarchy, the monarch is chosen for life, and though some of the legislators may be chosen by the people for short periods, many of them inherit their offices and hold them for life.

**Advantages of the Republican Form of Government.**—The form of government known as the democratic republic, with its written constitution, gives to the mass of the people living under it a greater degree of freedom, and at the same time, more stability of institutions, than either the monarchy or the pure democracy.<sup>1</sup> The monarchy, with vast powers centered in a single individual, is peculiarly strong as an executive government; and because of this, its powers are often used so as to result disastrously to the freedom of its subjects. A pure democracy, on the other hand, unrestrained by a stable constitution, is likely to suffer from ill-advised and easily effected changes.

**Origin of Governments.**—From our study of the local governments of town, city, county and State—and even of the government of the United States—we see that governmental institutions are a growth, with roots running hundreds of years back into the life history of the people. Governments may not be put on and off like a coat or cloak. They grow with the growth of the state. A wise

<sup>1</sup> See chapter III., page 29, "Importance of Local Government."

and just people will develop a just and rational form of government, just as an unwise, weak and immoral people is likely to suffer from an unjust and unwise form of government.

### SUMMARY.

The customs, rules and agreements, regulating the intercourse of civilized nations with one another, are known as international law.

The obligations of international law are voluntarily assumed, and cannot be enforced by one nation as against another, except by act of war, or by voluntary submission to the decision of a court of arbitration.

Official intercourse between nations is conducted by ambassadors, ministers, and consuls, and is usually regulated by agreements, called treaties.

Nations at war with each other are known as belligerents. Other nations are known as neutrals. Under the rules of international law, the government of a neutral nation has no right to aid or hinder a belligerent in the prosecution of any war.

Property belonging to the subjects of neutral nations, that is consigned to a belligerent for use in prosecuting the war, is known as contraband of war; and it may be seized and confiscated when in transportation on the high seas, by the opposing belligerent. Belligerents have a right to search neutral vessels for contraband of war; and a vessel refusing to allow such search, may be captured by the belligerent as a prize of war.

All actual governments, whatever their origin, form or strength, stand on an equality under the rules of interna-

tional law ; and no nation has a right, without just cause, to interfere in the affairs of another nation.

Most modern civilized governments may be classified as monarchies, absolute and limited, or as republics. Under an absolute monarchy the individual citizen has least power in the affairs of government ; under a republic, greatest power.

### SUGGESTIVE QUESTIONS.

Define international law. How does it differ from State and national law ? How is it enforced ?

Describe the difference between the powers and duties of ambassadors and ministers, and the powers and duties of consuls.

What is extradition ? What class of offenders is not usually subject to extradition ?

Define belligerent, neutral, combatant, noncombatant, declaration of war, prize of war.

What is the duty of a neutral government in time of war ?

What is contraband of war ?

Describe the right of search that may be exercised by a belligerent.

What is a blockade ? What facts are necessary to render a blockade lawful, as against the ships of neutral nations ? What is a privateer ? How are privateers commissioned ?

What general rule of international law applies equally to every *de facto* government ?

Define absolute monarchy, limited monarchy, aristocracy, democracy, democratic republic. What advantages has a constitutional republic over a monarchy ? Over a pure democracy ?

## ADDITIONAL READING.

On the general subject of international law, read Woolsey's *Introduction to the Study of International Law*, the introductory chapter ; also Part I., Chapter I., "The Rights of States as Independent Sovereignties." On the rights and duties of Belligerents and Neutrals, see the same work, Part II., Chapter II., "The Relations Between Belligerents and Neutrals."

## CHAPTER XXV.

### Personal and Property Relations.

IN our study of the State, we learned that the great body of laws regulating social and business relations, are State laws.<sup>1</sup> We saw that most ordinary crimes are defined and punished by the State; that the State guarantees to its citizens the enjoyment of the civil rights of personal security, personal liberty, and private property;<sup>2</sup> and that it defines the legal rights and duties of husband and wife, parent and child, employer and employee. In the same way the State defines the rights and obligations of persons who enter into ordinary business agreements, known as contracts; lays down the law regulating the purchase, sale, or rent of houses and lands; and the law governing the distribution of property left by persons deceased.

Let us examine in detail some of the laws regulating these personal and property relations in New York State.

**Sources of State Law.**—We have learned that the great body of State law consists of provisions laid down by the people in the constitution, and of statutes enacted by the legislature. But there is still another source of State law. In our study of personal rights, we remember a clause in the constitution of the State, which declared all parts of the common law of England, not repugnant to the constitution,

<sup>1</sup> Chapter VIII., "The State." See also "Powers of the Several States," Chapter XXII.

<sup>2</sup> Chapter XI., "Personal Rights."

and in force in the State at the time of the battle of Lexington, to be a part of our State law.<sup>1</sup> The common law of England consists of a great body of customs, rules and maxims, common to the people of England, that through long usage and the favorable decisions of the courts, have acquired the force of binding law. This English common law was brought to America by the early colonists, and except where changed by constitutions or statutes, it is still the basis of law throughout the Union.<sup>2</sup>

**Contracts.**—Most of our ordinary personal and property relations are regulated by contract. A contract is a voluntary agreement, in which two or more persons promise to do or not to do a specified thing. Any person, not debarred by law, may become a party to a contract. A person under twenty-one years of age, may not, as a rule, enter into any contract, except for the actual necessities of life, such as food, clothing and shelter, and then only when he has no parent or guardian to provide for him. Insane persons and imbeciles are incapable of making contracts.

**Express and Implied Contracts.**—Contracts are express and implied. An express contract is one in which the mutual promises of the contracting parties are expressed in words, oral or written. An implied contract is one in which, from the acts or circumstances of the parties, the law presumes that mutual promises have been made.

**When Contracts are not Binding.**—Contracts are not binding when one of the parties is by law incapable of making a contract; when the agreement of one or both is procured by force or fraud; when a thing is agreed to which in

<sup>1</sup> See page 121, Chapter XI., "Personal Rights."

<sup>2</sup> Except in Louisiana, where the Roman or civil law is the basis of State law.

its nature is impossible to perform; or when the thing agreed to be performed is prohibited by law. A person failing to fulfil a contract lawfully made by him may be sued in a court at law and a judgment obtained against him for money equal to the loss sustained by reason of his failure to perform the contract; or the court may compel him to keep his agreement. Under a State law known as the statute of limitations, certain contracts may not be legally enforced, unless an effort is made to enforce them within a time specified by the law.

**Contracts to Sell or Exchange.**—A contract to sell is one whereby the owner of some thing agrees to part with his ownership for a price or other valuable consideration, to be given by the person who agrees to buy. One article may also be exchanged for another by contract. Such an exchange is called barter. In order to complete or fulfil the contract, the thing sold must be delivered or given up to the person buying it, who must in turn pay the price agreed upon.

Unless there be an agreement to the contrary, the seller of goods has a legal right to retain possession of them until he receives the price. Such a right to hold the property sold is called a lien; but the seller usually loses his lien when he parts with the property sold.

**Contracts to Let or Lease.**—In a contract to let or lease, the owner of certain property agrees, for a valuable consideration, to part with the use of it, for a specified time, to the person leasing it. There is always an implied, if not an express contract, on the part of the person leasing property, that he will deliver it up to the owner at the time of the expiration of the lease, in as good a condition as he received it, reasonable wear and tear excepted.

**Contracts for Transportation.**—Railroad and steamship companies, and expressmen who make a business of transporting persons and goods from place to place for money, are known in law as common carriers. A common carrier is bound, under ordinary circumstances, to receive and carry all goods offered to him for transportation, as well as all persons, on payment of his regular charges for such work. The common carrier enters into an implied contract to carry the persons or goods safely to their destination; and he is responsible for any damage to goods intended for transportation, while in his possession, and also for injuries that occur to persons while in transportation, unless the injuries be caused by unavoidable accident, not due to lack of care or skill on the part of the carrier.

**Contracts for Insurance.**—Persons owning destructible property are accustomed to insure themselves against its possible loss by taking out a policy of insurance on the property. This is a contract between the person insuring against loss and the person who is insured. Under it the person insured pays to the person who insures a small percentage of the value of the property insured; and the insurer agrees in return to make good any damage to the property that may occur within a specified time. Insurance is of four kinds—fire, marine, life and accident. Under a contract of fire insurance, the insurer agrees to indemnify the owner of property from losses by fire; and under a contract of marine insurance, from losses arising while at sea; while under a contract of life insurance, the person who insures agrees to pay a certain sum on the death of the person insured. By some life insurance contracts, known as endowment policies, the insurer also agrees to pay a sum of money to the person insured, if the latter be living



at the expiration of a certain number of years. In a contract for accident insurance, the insurer agrees to pay for damages that may result from accident to the person insured. The contract of insurance is usually written, as before stated, in the form of a policy issued by the insurer; and the insured person usually makes a regular annual payment, called a premium, for his insurance.

**Principal and Agent.**—A person who buys or sells for another, or does business for him with third persons, is called an agent; and the person for whom the agent acts is known as the principal. In a contract of agency the principal appoints the agent and agrees to pay him in return for the services which the agent agrees to perform. It is a general rule of law that a principal is bound by the acts of his agent, if performed in the conduct of the business entrusted to him. An agent must follow the instructions of his principal. If he does not, he is generally responsible for any injuries to third persons that may arise from his acts while conducting the business of his principal.

**Employer and Employee.**—Contracts between employer and employee are generally quite similar to contracts between principal and agent. The employer has a legal right to the obedience of his employee in all matters within the scope of the employment. On the other hand, an employee is entitled to work for his employer, and to receive his wages during the time it was agreed he should work; and the employee may collect wages from an employer who discharges him without just cause before the expiration of the time for which he is hired.

**Partnership.**—A partnership is a contract by which two or more persons agree to unite their money and labor in business, and to share the profits and divide the losses.

Each partner on entering the partnership acquires an interest in all the partnership property; and the acts of one partner in connection with the partnership business bind all the partners. Each partner is also generally responsible for all the partnership debts and obligations. A limited partnership is one in which certain partners are responsible only for limited amounts of the partnership obligations.

**Joint Stock Companies and Mutual Aid Associations.**—Somewhat similar to the contract of partnership is the contract between the members of a joint stock company, or the members of a mutual aid association; and between such associations or companies and the public. Such companies and associations are corporations formed under the laws of the state, and have the right to do business as a single person under the company name. As a rule each member is responsible for the debts of his company or association to the amount of his individual share or interest.

**The Contract of Marriage.**—The law regards marriage as a civil contract, in which the husband agrees to love, protect, and support his wife, in return for services and affection rendered by her to him. The law of New York, inherited from the common law, requires no particular form of ceremony to make the marriage contract binding; and the contract can be dissolved only by death, or by one of the parties obtaining a divorce, according to the rules prescribed by law. The law of New York allows a married woman to own and dispose of her individual property. On the death of the husband, the wife has the use during her life of a one-third interest in his real estate. This is called the wife's dower interest. When a husband sells real estate, his wife must unite with him in signing the deed, otherwise she retains her right of dower in the property sold.

**Parents and Children.**—Parents must care for and support their children until the latter are twenty-one years old. If a parent neglects or refuses to supply his child with necessaries, a third person may supply him and charge the parent. Children owe their parents obedience and service. What a minor child earns belongs to the parent, unless the latter voluntarily relinquish the right to it. A parent is entitled to the custody of his minor children, and may enforce their obedience by any reasonable exercise of force.

**Guardian and Ward.**—When a minor child owns property, a guardian is appointed to care for the property. If the parents be living, one of them is usually made guardian. A child having a guardian is known as a ward. The guardian is entitled to the obedience of the ward, but not to his services, and the guardian must maintain and educate the ward out of the latter's property. It is the guardian's duty to manage the property of the ward with reasonable skill and diligence, and to turn it over to the ward when he becomes twenty-one years of age. Guardians are appointed in this State by the surrogate's court.

**Contracts Relating to Real Estate—Conveyance by Deed.**—Property is divided into real estate and personal property. The latter is movable property, while real estate consists of houses, lands, and their so-called appurtenances. Personal property may be sold without a written contract, but real estate may be sold and conveyed only by written contract called a deed. The person who sells and conveys real estate is called the grantor, and the person who buys it the grantee. The deed must be signed and sealed by the grantor, who must acknowledge his signature before a notary public, or other officer authorized to take such an acknowl-

edgment. The deed is then delivered by the grantor to the grantee, which act usually completes the transfer of the property. The laws of New York require a deed to be recorded, usually in the office of the county clerk. This is to protect innocent third persons, who might be induced to buy the property already conveyed by a dishonest grantor. It also protects the grantee from claims against the property by the creditors of the grantor. The recording of a deed is not necessary as between grantor and grantee. A warranty deed is one in which the grantor agrees to warrant and defend the title conveyed to the grantee against the claims of third parties.

**Conveyance of Property by Mortgage.**—Property is sometimes transferred or conveyed from one person to another as security for the payment of a debt. Such a transfer is made by written grant called a mortgage, which if conveying real estate, is signed, sealed, delivered and recorded, like a deed. The grant by mortgage is for a limited time, and the property thus granted is said to be mortgaged. It remains in the possession of the grantor, on the understanding that the legal title to it is to be transferred back to him on his paying his debt when due. The person conveying property by mortgage is called the mortgagor; the person to whom it is conveyed the mortgagee. If the mortgagor pays his debt at the time of the expiration of the grant by mortgage, the mortgagee gives him a written satisfaction of mortgage. This cancels the debt, and reconveys to the mortgagor the legal title to his property. Like the mortgage, the satisfaction should be recorded. Should the mortgagor, however, fail to pay his debt when due, the mortgagee may begin legal proceedings known as foreclosure of the mortgage. Under these proceedings, the

mortgagee having proven his claim against the mortgagor, the court orders the sheriff to sell the mortgaged property, and from the proceeds of the sale to pay the debt due to the mortgagee. Should any money remain after paying the debt and the costs of the foreclosure, it goes to the mortgagor. Both real and personal property may be conveyed by mortgage. A mortgage given on personal property is called a chattel mortgage. Such a mortgage is filed generally with the town clerk, and in this State it may not be given for a longer period than one year.

**Conveyance by Lease.**—When real estate is leased for a longer period than a year, the law requires it to be done by written contract, known as a lease. The lease is given by the owner of the property leased to the person who leases it, and like a deed or mortgage, the lease must be signed and delivered, but it need not be sealed. The owner of property leased is called the landlord or lessor; and the person to whom it is leased, the tenant or lessee. By the lease the landlord grants to the tenant the use of the leased property, in return for rent which the tenant agrees to pay. Should a tenant fail to pay his rent as agreed in the lease, or should he willfully injure the property leased, the landlord may obtain possession of it by legal proceedings known as eviction.

**Appurtenances.**—The ownership of real estate includes what is known as its appurtenances. These are minor rights, such, for example, as the right of a land owner to use a stream of water flowing across his land. Appurtenances may be acquired in two ways—by deed, or by long and uninterrupted use. Thus a right of way across land belonging to another may be granted by deed, or it may be legally acquired by twenty years of uninterrupted use. A transfer

of land by deed, or otherwise, includes a transfer of all its appurtenances without formal or specific enumeration.

**Conveyance by Will.**—As a general rule, any person owning property has a right to say how it shall be disposed of after his death. This is done by the property-owner making a written instrument, called a will. Real estate, as well as personal property, may thus be conveyed from one person to another by will. In order that a will may be valid, it must be made by a person of sound mind and understanding, who in the presence of two witnesses, must sign it, and declare it to be his last will and testament. The witnesses must then sign as witnesses. The person who makes the will is called the testator, and a gift made by will is called a bequest. A person dying without having made a will is said to be intestate. A will once made, may be revoked at any time before death, by the testator making another and later will, or it may be destroyed. An addition to a will may be made by the testator in the same manner and with the same formality as the original will. Such an addition is called a codicil. Wills that convey real estate are recorded like mortgages and deeds, and for similar reasons. As a husband cannot deed away his wife's dower interest, so he cannot convey it by will. The property of a person who dies without leaving a will is distributed to his lawful heirs by proceedings in the surrogate's court, according to the rules of the State law.

**Estates.**—Any interest which a person possesses in property is known as an estate. The law distinguishes between the property itself, and the interest which the owner has in it, which is the estate. An estate, to be complete, must consist of the right of property, the right of possession, and the actual possession. The largest possible interest or

estate which a person may have in real estate, is known as a fee simple. A person owning land in fee simple may hold it during his life and dispose of it after his death. An estate for life is an interest that ends with the death of the person possessing it. An estate for years is an interest for a certain definite time only. An estate by courtesy is the life interest which a husband and father possesses in his deceased wife's real estate. An estate in future is the right to the future possession of property.

**Promissory Notes.**—A debtor sometimes gives his creditor a written evidence of his debt in the form of a promissory note. This is a written promise to pay a definite sum of money at a future date. The person giving or making the note is called the maker; the person he promises to pay, the payee; the amount which is promised to pay, the face of the note. In a promissory note, the maker may agree to pay the face of the note at a certain definite date, or he may agree to pay whenever the note is presented to him by the lawful owner, and payment demanded. The latter form is called a note payable on demand. A note may be made with or without containing a promise to pay interest. When the note contains such a promise, interest is reckoned from the date of the note until the time of its payment. When a note does not contain this promise, it does not begin to draw interest until after the note is due. A promissory note is negotiable, that is, transferable from one owner to another, when it is drawn so that the maker promises to pay the face of the note to the "order" of the payee, or "to bearer." In such case, the payee may sell the note to a third person. When the payee sells a negotiable note, he writes his name across the back, as an indorser. By this act, he becomes responsible for its

payment to any other person, into whose hands the note may lawfully come. The payee may indorse the note to a particular person, who is then known as the indorsee; or he may indorse it in blank. The former is called a specific indorsement. In such case, only the indorsee may collect the note, unless he, by his own indorsement, still further transfers it. Each and every indorser of a note is responsible for its payment, but no indorser can, as a rule, be held responsible, unless the note has been presented, when due, to the maker, and payment refused by him; and in order to hold an indorser, he must be promptly notified in writing of the failure of the maker to pay the note. Making such notice is called "protesting the note." A promissory note is non-negotiable, that is, not transferable from one owner to another, when the promise is to pay the payee only, without the words "or order," "or bearer." No note is negotiable after it has become due.

### SUMMARY.

Nearly all ordinary personal and property relations are regulated by State laws, which have their sources in the constitution, adopted by the people; the statutes, enacted by the legislature; or in the common law of England, so far as it is applicable to existing modern conditions.

Ordinary personal and property relations are usually regulated by contracts, express or implied. Among these are contracts to buy, sell, and lease; contracts for transportation; contracts for insurance; contracts resulting from the relations between principal and agent, employer and employee; contracts arising from the relations between parties to promissory notes; contracts arising from partnership, marriage, and the relations of parent and child and guardian and ward.



Real estate is transferred from one person to another by contracts known as deed, mortgage, and lease. Real estate is also transferred by will.

### SUGGESTIVE QUESTIONS.

What is meant by the common law? How does it differ from statute law? Name the three sources of State law.

What is a contract? What persons may enter into contracts? State the difference between an express and an implied contract. Under what circumstances is a contract not binding?

Describe the contract known as a lease. What implied obligation does a lessee take upon himself with reference to the lessor's property?

State generally the obligations of a common carrier. What is the contract of insurance? Of principal and agent? Employer and employee?

What is partnership? What are the obligations of a partner in a limited partnership? In a joint stock company?

What is the right of dower? Define guardian, ward, real estate, grantor, grantee.

Name four legal requirements of a deed. How and why are deeds recorded? What is a mortgage? What is meant by foreclosure of a mortgage? Satisfaction of a mortgage? Chattel mortgage?

What are appurtenances? How is legal title to appurtenances acquired?

What is a will? Describe the formalities necessary to the making of a will. What is a codicil? How may a will

be revoked? What court has charge of distributing the property of persons leaving wills, and of intestates?

What is an estate? A fee simple? An estate for life? An estate for years?

Define promissory note, maker, payee, indorser, indorsement in blank. When is a note negotiable? What is meant by protesting a note?

## APPENDIX

### CONSTITUTION OF THE UNITED STATES OF AMERICA

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WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I. SECTION 1.—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.

SECTION 2.—1. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of 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 choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION 3.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

SECTION 4.—1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION 5.—1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each House may provide.

2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION 6.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

SECTION 7.—1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8.—The Congress shall have power—

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts and

provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;
3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;
4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;
6. To provide for the punishment of counterfeiting the securities and current coin of the United States;
7. To establish post-offices and post-roads;
8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
9. To constitute tribunals inferior to the Supreme Court;
10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;
13. To provide and maintain a navy;
14. To make rules for the government and regulation of the land and naval forces;
15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;
16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;
17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and,
18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

SECTION 9.—1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or

duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or *ex post facto* law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10.—1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II. SECTION 1.—1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

*Clause 3 has been superseded by the 12th Article of Amendments.*

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION 2.—1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Embassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the Courts of law, or in the heads of Departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION 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 necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such



time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4.—The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. SECTION 1.—The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION 2.—1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

2. 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.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3.—1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV. 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.

SECTION 2.—1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who

shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION 3.—1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

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 application of the legislature, or of the Executive (when the legislature can not be convened) against domestic violence.

ARTICLE V.—The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing Amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided, that no Amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.—1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.—The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

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### AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.—A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.—No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.—In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE VIII.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.—The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.—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 the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. 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. Neither Slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.—1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

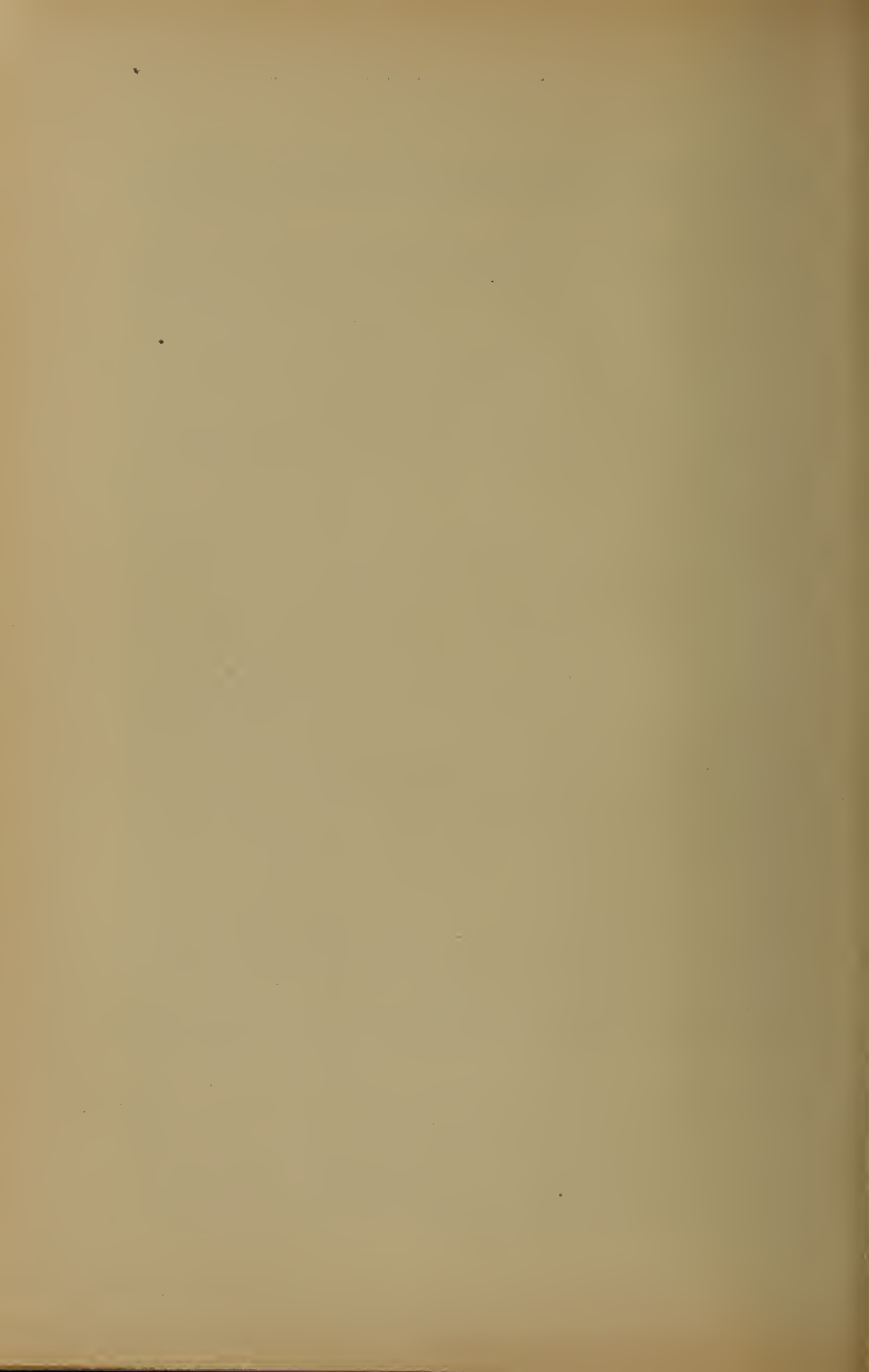
3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two thirds of each House, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.—1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.



# ABSTRACT OF THE STATE CONSTITUTION

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## ARTICLE I.—PERSONAL RIGHTS.

SECTION 1.—Persons not to be Disfranchised.—No member of the State may be disfranchised or be deprived of any right or privilege, except by law and after a legal trial.

SECTION 2.—Trial by Jury.—The right to trial by jury, in all cases where it has heretofore been used, shall remain inviolate.

SECTION 3.—Freedom of Worship.—Free exercise and enjoyment of religious profession and worship shall be allowed to all; and no person shall be rendered incompetent to be a witness on account of his opinions in matters of religion.

SECTION 4.—Habeas Corpus.—The privilege of the writ of habeas corpus may not be suspended, except in time of rebellion or invasion.

SECTION 5.—Excessive Bail and Fines.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted, nor shall witnesses be unreasonably detained.

SECTION 6.—Rights of Accused Persons.—No person may be held to answer for a capital or infamous crime (except in cases of impeachment, cases in the army and navy, and cases of petit larceny under regulations of the legislature) unless on presentment or indictment of a grand jury. Accused persons may appear in court and defend themselves in person and by counsel. No person may be twice put in jeopardy for the same offense; nor in a criminal case be compelled to be a witness against himself; nor be deprived of life, liberty or property without due process of law. Private property may not be taken for public use without just compensation.

SECTION 7.—Compensation on Taking Private Property. Private Roads. Drainage of Agricultural Lands.—When private property is taken for public use, compensation may be ascertained by commissioners appointed by a court of record. Private roads may be opened when necessary, the necessity and the amount of damage to be ascertained by a jury of freeholders. Owners

of agricultural lands may construct necessary drains across the property of another, under proper restrictions and with just compensation.

SECTION 8.—Freedom of Speech and the Press.—Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. In criminal prosecutions for libel the truth may be given in evidence, and if the matter charged as libelous is true, but was published with good motives and for justifiable ends, the party must be acquitted.

SECTION 9.—Right of Assembly and Petition. Divorces. Prohibition of Gambling.—The people may peaceably assemble and petition the government or any department thereof. Divorces may not be granted except by judicial proceedings. Lotteries, pool-selling, book-making and all gambling are unlawful.

SECTION 10.—Escheats.—All lands the titles to which fail from defect of heirs revert to the people of the State.

SECTION 11.—Feudal Tenures Abolished.—All feudal tenures with all their incidents are abolished, except rents and services certain which have been lawfully created.

SECTION 12.—Allodial Tenures.—All lands in the State are allodial and may be sold or disposed of by the owners.

SECTION 13.—Leases of Agricultural Land.—No lease of agricultural land may be made for a longer period than twelve years.

SECTION 15.—Purchase of Land from Indians.—No purchase of land from the Indians is valid unless made under the authority and with the consent of the legislature.

SECTION 16.—Common Law and the State Law.—Those parts of the Common Law of England not repugnant to the State constitution, which were in force in the State April 19, 1775, and have not since expired or been repealed, continue to be the law of the State, subject to alteration or repeal by the legislature.

SECTION 18.—Damages for Injuries Causing Death.—The right of action to recover damages for injuries resulting in death shall not be abrogated, and the amount recoverable shall not be subject to statutory limitation.

## ARTICLE II.—VOTING.

SECTION 1.—Qualifications of Voters.—Every male twenty-one years of age, who has been a citizen for ninety days, and an inhabitant of the State for one year, and a resident of the county for four months, and a resident of the election district for thirty days, has a right to vote. No elector in the military service of the State, or in the army or navy of the United States,



shall be deprived of the right to vote by reason of his absence from his election district.

SECTION 2.—Persons Excluded from the Suffrage.—No person who shall receive, accept or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding of a vote at an election; or who shall make or become directly or indirectly interested in any bet depending upon the result of any election, may vote at such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

SECTION 3.—Residence for Purposes of Voting.—No person gains or loses a residence for purposes of voting by reason of his presence or absence in the service of the United States, or in navigation, or at school, or while kept in any almshouse or asylum supported wholly or partly at public expense or by charity, or while confined in a public prison.

SECTION 4.—Registration.—Registration for purposes of voting must be completed at least ten days before the election. In cities and villages having 5,000 inhabitants and over, registration must be on personal application of the would-be voter. Persons not residents of such cities and villages need not personally apply for registration at the first meeting of the board of registry.

SECTION 5.—Manner of Voting.—All elections, except for such town officers as may by law be directed otherwise to be chosen, shall be by ballot, or by some other prescribed method of secret voting.

SECTION 6.—Election and Registration Boards to be Bipartisan.—All election and registration boards must be composed of an equal number of representatives from the two political parties that at the last preceding election cast the highest and the next highest number of votes. This does not apply to town meetings or to village elections.

### ARTICLE III.—THE LEGISLATURE.

SECTION 1.—Legislative Powers.—The legislative power of the State is vested in the senate and the assembly.

SECTION 2.—Number and Terms of Senators and Assemblymen.—The senate is composed of fifty members except as otherwise provided, and senators are elected for terms of two years each. The assembly is composed of 150 members, assemblymen being elected for terms of one year each.

SECTION 3.—Senate Districts.—The State is divided into fifty senate districts, each of which elects one senator. Senate districts are as follows:

1. Richmond and Suffolk counties.
2. Queens County.<sup>1</sup>
3. 1st, 2d, 3d, 4th, 5th and 6th wards of Brooklyn.
4. 7th, 13th, 19th and 21st wards of Brooklyn.
5. 8th, 10th, 12th, 30th and 31st wards of Brooklyn.
6. 9th, 11th, 20th and 22d wards of Brooklyn.
7. 14th, 15th, 16th and 17th wards of Brooklyn.
8. 23d, 24th, 25th, 29th and 32d wards of Brooklyn.
9. 18th, 26th, 27th and 28th wards of Brooklyn.
10. 1st, 2d and 4th assembly districts, Manhattan.
11. 6th, 8th and 10th assembly districts, Manhattan.
12. 12th, 14th and 16th assembly districts, Manhattan.
13. 3d, 5th and 7th assembly districts, Manhattan.
14. 18th, 20th and 22d assembly districts, Manhattan.
15. 25th, 27th and 29th assembly districts, Manhattan.
16. 9th, 11th and 13th assembly districts, Manhattan.
17. 15th, 17th and 19th assembly districts, Manhattan.
18. 24th, 26th and 28th assembly districts, Manhattan.
19. 21st, 23d and 31st assembly districts, Manhattan.
20. 30th, 32d and 33d assembly districts, Manhattan.
21. 34th and 35th assembly districts, Manhattan and The Bronx.
22. Westchester County and part of The Bronx (Annexed District).
23. Orange and Rockland counties.
24. Dutchess, Columbia and Putnam counties.
25. Ulster and Greene counties.
26. Delaware, Chenango and Sullivan counties.
27. Montgomery, Fulton, Hamilton and Schoharie counties.
28. Saratoga, Schenectady and Washington counties.
29. Albany County.
30. Rensselaer County. •
31. Clinton, Essex and Warren counties.
32. St. Lawrence and Franklin counties.
33. Otsego and Herkimer counties.
34. Oneida County.
35. Jefferson and Lewis counties.
36. Onondaga County.

<sup>1</sup> Including the new county of Nassau.

37. Oswego and Madison counties.
38. Broome, Cortland and Tioga counties.
39. Cayuga and Seneca counties.
40. Chemung, Tompkins and Schuyler counties.
41. Steuben and Yates counties.
42. Ontario and Wayne counties.
43. } Monroe County.
44. }
45. Niagara, Genesee and Orleans counties.
46. Allegany, Livingston and Wyoming counties.
47. } Erie County.
48. }
49. }
50. Chautauqua and Cattaraugus counties.

SECTION 4.—Enumeration and Reapportionment.—The inhabitants of the State are to be enumerated in 1905 and every tenth year thereafter. After each enumeration the legislature must alter the senate districts so that each shall contain as nearly as possible an equal number of inhabitants. Districts must be in compact form, and counties must not be divided except to form one or more senate districts wholly within a county. No town or city block may be divided in forming senate districts. No county may have four or more senators unless it has a full ratio for each senator. No one county may contain more than one third and no two adjoining counties more than one half of the total number of senators. The ratio for apportioning senators is obtained by dividing the total population, aliens excluded, by fifty, and the senate is to contain fifty members, except that if any county having three or more senators at the time of an apportionment is entitled to an additional senator or senators, such additional senator or senators shall be given to the county in addition to the fifty senators.

SECTION 5.—Apportionment of Assemblymen.—Assemblymen are to be apportioned among the counties in proportion to population, but no county heretofore established is to have less than one, except Hamilton which with the county of Fulton together elect one assemblyman. The ratio of apportionment for assemblymen is obtained by dividing the whole number of inhabitants, aliens excepted, by 150. One member of assembly is apportioned to every county containing less than the ratio and one-half over and two to every other county. The remaining members are apportioned to counties having more than two ratios in proportion to population, aliens excepted. Counties entitled to more than one assemblyman are divided into assembly

districts by the board of supervisors, or by the common council where a city embraces an entire county and the latter has no board of supervisors. Following is the present apportionment :

Counties entitled to one assemblyman : Allegany, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton (including Hamilton), Genesee, Herkimer, Greene, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Otsego, Putnam, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming, Yates.

Counties entitled to two assemblymen : Broome, Cattaraugus, Cayuga, Chautauqua, Dutchess, Jefferson, Niagara, Orange, Oswego, St. Lawrence, Steuben, Suffolk, Ulster.

Counties entitled to three assemblymen : Oneida, Queens,<sup>1</sup> Rensselaer, Westchester.

Counties entitled to four assemblymen : Albany, Monroe, Onondaga.

County entitled to eight assemblymen : Erie.

County entitled to twenty-one assemblymen : Kings.

County entitled to thirty-five assemblymen : New York.

SECTION 6.—Compensation of Legislators.—Each member of the legislature is to receive an annual salary of \$1,500, and in addition one dollar for every ten miles which he travels going to and returning from the meeting-place of the legislature once in each session, on the most usual route.

SECTION 7.—Civil Appointments of Legislators Void.—No member of the legislature may receive any civil appointment during the time for which he is elected, and any such appointment is void.

SECTION 8.—Persons Disqualified from Being Members of the Legislature.—No person is eligible to the legislature, who at the time of his election, or within one hundred days previous thereto, has been a member of Congress, or a civil or military officer under the United States, or an officer under any city government.

SECTION 9.—Time of Elections.—Members of the legislature are elected on the Tuesday following the first Monday in November, unless otherwise ordered by the legislature.

SECTION 10 —Powers of Each House.—A majority of the members of each house of the legislature constitutes a quorum. Each house makes its own rules of procedure, judges of the election and qualifications of its members, and chooses its own officers. The senate chooses a temporary president to act in the absence of the lieutenant governor.

<sup>1</sup> The third district of the former Queens County includes the new County of Nassau.

SECTION 11.—Journals and Proceedings.—Each house keeps a journal of its proceedings, which are open to the public except when public welfare requires secrecy. Neither house may adjourn for more than two days without the consent of the other.

SECTION 12.—Freedom of Debate.—No member may be legally questioned in any other place for any speech or debate in either house of the legislature.

SECTION 13.—Bills may Originate in Either House.—Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

SECTION 14.—Enacting Clause.—The enacting clause of all bills shall be, "The People of the State of New York represented in senate and assembly, do enact as follows":

SECTION 15.—Manner of Passing Bills.—No bill may be passed or become a law unless it is printed and lies in its final form for at least three calendar legislative days upon the desks of the members, unless the governor or acting governor certify to the need of its immediate passage. No bill may be passed except by the assent of the majority of the members elected to each branch of the legislature. No amendment is allowed on the last reading of a bill.

SECTION 16.—Private and Local Bills.—No private or local bill may embrace more than one subject, and that must be expressed in its title.

SECTION 18.—Certain Private and Local Bills Prohibited.—Private or local bills may not be passed in the following cases, but the legislature may enact general laws thereon affecting the whole State: Changing names of persons; laying out, opening, altering and discontinuing roads; locating or changing county seats; changing venue in civil or criminal suits; incorporating villages; selecting and summoning jurors; regulating the rate of interest; conducting elections; creating and changing fees of public officers; granting the right to lay railroad tracks; granting to any private corporation, association or individual any exclusive privilege, immunity or franchise; providing for bridges except over the Hudson below Waterford, on the East River, or over waters forming the boundaries of the State.

SECTION 19.—Private Claims not to be Audited by the Legislature.—The legislature may audit no private claim, but may appropriate money to pay claims lawfully audited.

SECTION 20.—Two-thirds Bills.—The assent of two thirds of the members of each legislative house is necessary to pass a bill appropriating public money for local or private purposes.

SECTION 21.—Appropriation Bills.—No money may be paid out of the treasury of the State except in pursuance of an appropriation by law.

SECTION 22.—Restricting Provisions in Appropriation Bills.—No provision may be embraced in an annual appropriation or supply bill unless it relates specifically to some particular appropriation in the bill.

SECTION 24.—Tax Bills.—Every law imposing a tax must state distinctly the tax and the object to which it is to be applied.

SECTION 25.—Quorum in case of Money Bills.—On the passage of an act imposing a tax, creating a debt, or making an appropriation of public money, or releasing any claim of the State, the vote of each member must be recorded, and three fifths of all the members elected to either house constitute a quorum.

SECTION 26.—Boards of Supervisors.—Every county, except in cities whose boundaries are the same as those of a county, must have a board of supervisors; but in such cities the duties of supervisors devolve upon the common council.

SECTION 27.—Local Legislative Powers.—The legislature may confer upon boards of supervisors further powers of local legislation.

SECTION 28.—Extra Compensation Prohibited.—Neither the legislature, a common council, nor a board of supervisors may grant any extra compensation to any public officer, servant, or contractor.

SECTION 29.—Prison Labor Contract System Abolished.—The labor of public prisoners may not be farmed out, contracted, given or sold to any person, firm, association or corporation; but the products of prison labor may be disposed of to the State or any of its political divisions or public institutions.

#### ARTICLE IV.—GOVERNOR AND LIEUTENANT GOVERNOR.

SECTION 1.—Executive Power.—The executive power of the State is vested in the governor. Governor and lieutenant governor are chosen at the same time and hold office for a term of two years each.

SECTION 2.—Qualifications.—To be eligible to the office of governor or lieutenant governor a person must be a citizen of the United States, at least thirty years of age, and five years a resident of the State.

SECTION 3.—Election.—Governor and lieutenant governor are to be elected at the times and places of choosing members of the assembly. On a tie vote the two houses of the legislature may choose a governor or lieutenant governor.

SECTION 4.—Governor's Powers and Duties.—The governor is commander in chief of the State's military and naval forces, has power to convene the legislature or senate in extra session, must send a message to the legislature

at each session, transacts all necessary business with the civil or military officers of the government, must faithfully execute all laws, and receives an annual salary of \$10,000.

SECTION 5.—Reprieves, Commutations and Pardons.—The governor has power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment.

SECTION 6.—When Lieutenant Governor Acts for Governor.—The lieutenant governor acts in place of the governor when the latter is impeached, removed from office, dies, resigns, or becomes unable to discharge the duties of his office.

SECTION 7.—Duties of Lieutenant Governor. Succession to Governorship.—The lieutenant governor is president of the senate and has a casting vote therein. When both governor and lieutenant governor become for any reason unable to perform the duties of the governor, the president of the senate is to act as governor, and in case of his disability, the speaker of the assembly.

SECTION 8.—Salary of Lieutenant Governor.—The lieutenant governor is to receive an annual salary of \$5,000 and no other compensation.

SECTION 9.—Legislative Powers of Governor.—Bills passed by the legislature must be presented to the governor before becoming laws. If he approves a bill he signs it. If the governor disapproves of a bill so passed he must return it to the house in which it originated with a statement of his objections. The legislature must then proceed to reconsider the bill, and if it is finally approved by two thirds of the members elected to both houses, it becomes a law in spite of the objections of the governor. A bill not returned by the governor within ten days (Sundays excepted) after it has been presented to him becomes a law the same as if he had signed it, unless the legislature by its adjournment prevents a return of the bill, in which case it does not become a law without the express approval of the governor. No bill becomes a law after the final adjournment of the legislature unless approved by the governor within thirty days after adjournment. The governor may veto separate items in an appropriation bill, while allowing other portions of the bill to pass.

#### ARTICLE V.—OTHER EXECUTIVE OFFICERS.

SECTION 1.—Officers, Terms and Compensation.—The secretary of state, comptroller, treasurer, attorney-general, and State engineer and surveyor are to be chosen at the same times and places as the governor and lieutenant governor and are to hold office for terms of two years each. The State engineer and surveyor must be a practical civil engineer.

SECTION 3.—Superintendent of Public Works.—A superintendent of public works is to be appointed by the governor, by and with the advice and consent of the senate, to hold office until the end of the governor's term, or until his successor is appointed. He is to execute all laws relating to the repair, navigation, construction and improvement of the canals, except such as are not confided to the State engineer and surveyor. He may be suspended or removed from office by the governor.

SECTION 4.—Superintendent of State Prisons.—A superintendent of State prisons is to be appointed by the governor, by and with the advice and consent of the senate, for a term of five years. He may be removed by the governor for cause.

SECTION 5.—Various Commissioners.—The lieutenant governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general, and State engineer and surveyor are the commissioners of the land office. The lieutenant governor, secretary of state, comptroller, treasurer and attorney-general are commissioners of the canal fund. The latter with the State engineer and surveyor, and the superintendent of public works, are the canal board.

SECTION 7.—State Treasurer may be Suspended.—The governor may suspend the State treasurer during a recess of the legislature, when it appears that the treasurer has violated his duty.

SECTION 9.—Civil Service Appointments and Promotions.—Appointments and promotions in the civil service of the State, and of all civil divisions thereof, including cities and villages, are to be made according to merit and fitness, to be ascertained, so far as practicable, by examinations, which so far as practicable, are to be competitive. Honorably discharged soldiers and sailors, who are veterans of the late civil war, and residents and citizens of the State, are entitled to preference in appointment and promotion without regard to their standing on the civil service lists.

#### ARTICLE VI.—COURTS.

SECTION 1.—Supreme Court.—The supreme court is continued with general jurisdiction in law and equity, subject to the appellate jurisdiction of the court of appeals. The legislature may alter the judicial districts once after every enumeration of the inhabitants of the State under the constitution, and may reapportion the justices.

SECTION 2.—Judicial Departments. Appellate Division Supreme Court.—The legislature must divide the State into four judicial departments, the first to consist of the County of New York, the others to be bounded by county



lines, to be compact and as nearly equal in population as possible. There is to be an appellate division of the supreme court, to consist of seven justices in the first department and of five in each of the others. Four constitute a quorum and the concurrence of three is necessary to a decision. The governor appoints from among all the justices of the supreme court, the judges of the several appellate divisions and the presiding justice in each division.

SECTION 3.—Justice not to Sit in Review.—No judge may sit in the appellate division or in the court of appeals in review of a decision previously made by him in another court.

SECTION 4.—Terms of Office.—The official terms of justices of the supreme court are fourteen years. The governor may fill vacancies by appointment.

SECTION 7.—Court of Appeals.—This court is to consist of seven justices—including a chief justice—elected for terms of fourteen years. Five are a quorum, and the agreement of four is necessary to a decision. The governor may appoint four supreme court judges to sit temporarily in this court.

SECTION 9.—Jurisdiction of Court of Appeals.—The jurisdiction of the court of appeals, except where the judgment is of death, is limited to a review of questions of law. No unanimous decision of the appellate division of the supreme court that there is evidence tending to sustain the finding of a fact or a verdict not directed by the court, may be reviewed by the court of appeals. The right to appeal to the latter court shall not depend upon the amount of money involved.

SECTION 10.—Judges not to Hold Other Office.—The judges of the court of appeals and of the supreme court may hold no other office or public trust.

SECTION 11.—Removal of Judges.—The judges of the court of appeals and of the supreme court may be removed for cause by concurrent resolution of both houses of the legislature, if two thirds of the members elected to each house concur. Other judicial officers, except justices of the peace and justices of inferior courts not of record, may be removed by two thirds of the senators, on the recommendation of the governor.

SECTION 12.—Age Restriction.—No person may hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age.

SECTION 13.—Trial of Impeachments.—The assembly, by a vote of a majority of the members elected, has the power of impeachment. The court for the trial of impeachments is composed of the president of the senate, a majority of the senators, and a majority of the judges of the court of appeals sitting together. Conviction is by concurrence of two thirds of the members. The judgment of the court does not extend beyond removal from office, or removal and disqualification to hold any office under the State.

SECTION 14.—County Courts.—There is to be a county court in each county, presided over by a county judge, elected for a term of six years by the voters of his county. Kings county has two county judges. County courts have original jurisdiction in civil suits where the amount involved does not exceed \$2,000.

SECTION 15.—Surrogate's Courts.—Surrogate's courts are to be held in each county, by a surrogate chosen for a term of six years (except in New York county, where the term is fourteen years) by the people of the county; except that in counties having less than 40,000 population the county judge is to act as surrogate.

SECTION 17.—Justices of the Peace and District Court Judges.—Justices of the peace are to be elected in each town at the annual town meeting for terms of four years each. Their number and classification may be regulated by law. Justices of the peace and justices of inferior local courts not of record may be removed for cause by such courts as may be prescribed by law. Justices of the peace and district court judges may be elected in the different cities with powers and terms prescribed by law.

SECTION 18.—Inferior Local Courts.—Inferior local courts may be established by the legislature, but not as courts of record. Such courts may exercise no equity jurisdiction nor any greater jurisdiction in other respects than is conferred upon county courts.

SECTION 20.—Judges not to Receive Fees.—No judicial officer, except justices of the peace, may receive any fees. No judge of the court of appeals, or justice of the supreme court, or any county judge or surrogate elected in a county having more than 120,000 population, may practice law in a court of record in this State, or act as referee. Only attorneys of this State are eligible for judicial positions.

SECTION 21.—Publication of Statutes.—The legislature must provide for the speedy publication of all statutes, but all laws and judicial decisions may be published freely by any person.

#### ARTICLE VII.—STATE PROPERTY AND DEBTS.

SECTION 1.—State Credit not to be Given.—The credit of the State may not be given or loaned in aid of any individual, association or corporation.

SECTION 2.—Power of the State to Contract Debts.—To meet casual deficits or failures in revenue, the State may contract debts not to exceed at any one time one million dollars. Moneys so raised must be applied only to the purposes for which they were raised.

SECTION 3.—State Debts to Repel Invasion.—The State may contract debts

to repel invasion, suppress insurrection, or defend the State in war; but moneys raised for such purposes may be applied only to the purposes for which they were raised.

SECTION 4.—Other State Debts.—No other State debt may be contracted except by law, and for some single work or object to be distinctly specified; and the law must provide for the collection of an annual tax sufficient to pay the debt within eighteen years; and before taking effect, such law must be submitted to the people at a general election and be approved by a majority of the votes cast for and against it.

SECTION 5.—Sinking Funds.—The sinking funds provided for the payment of State debts must be separately kept and invested, and used for no other purpose.

SECTION 6.—Limitation of Claims.—No person or official acting in behalf of the State may allow or pay any claim against the State, which, as between citizens of the State, would be barred by lapse of time.

SECTION 7.—Forest Preserve.—The State forest preserve must be forever kept as wild forest land, and may not be leased, sold, or exchanged, and the timber on the same may not be sold, removed or destroyed.

SECTION 8.—Canals.—The Erie Canal, the Oswego Canal, the Champlain Canal, the Cayuga and Seneca Canal, and the Black River Canal are to remain the property of the State and under its management.

SECTION 9.—No Tolls on Canals.—No tolls may be imposed upon persons or property transported on canals owned by the State.

SECTION 10.—Canal Improvement.—The canals may be improved as the legislature may direct, the cost to be defrayed by an appropriation of funds from the State treasury, or by annual tax.

#### ARTICLE VIII.—CORPORATIONS, PUBLIC FUNDS AND PRIVATE ENTERPRISES.

SECTION 1.—Corporations, as a rule, are to be formed under general laws. Municipal corporations may be created by special act.

SECTION 4.—Bank Charters. Restriction of Trustees.—No special charter for banking purposes may be granted by the legislature. No trustee of a savings bank may have any interest in the profits of such corporation.

SECTION 5.—Specie Payment.—The legislature has no power to pass any law sanctioning the suspension of specie payments by any bank.

SECTION 6.—Registry of Bills or Notes.—State bank bills must be registered by the State, and the legislature must require ample security for their redemption in specie.

SECTION 7.—Liability of Stockholders of Banks.—The stockholders of any bank are individually responsible to the amount of their respective shares, for all the bank's debts.

SECTION 9.—Credit of the State not to be Given.—Neither the credit nor money of the State may be given or loaned in aid of any private enterprise.

SECTION 10.—Cities and Towns not to Loan their Credit. Limitation of Indebtedness.—No county, city, town or village may give or loan its money or credit in aid of any private enterprise or incur any debt except for municipal purposes. No county or city may go into debt in excess of ten per cent. of the assessed valuation of its taxable real estate, except to provide a water supply. When the boundaries of a city and county are the same, or a city shall include within its boundaries more than one county, the power of such a county to go into debt ceases, but the existing county debt is not, for the purposes of this section, to be reckoned as a part of the city debt. No county containing a city of over 100,000 inhabitants, and no such city, may levy an annual tax of more than two per cent. of the assessed value of its taxable real and personal property, above what is necessary to provide for the principal and interest of its existing debt.

SECTIONS 11 and 12.—State Board of Charities. State Commission in Lunacy. State Commission of Prisons.—The legislature is to provide for a State board of charities to visit and inspect all charitable and reformatory institutions in the State; a State commission in lunacy to visit all insane asylums in the State; and a State commission of prisons to visit prisons. Members are to be appointed by the governor, by and with the advice and consent of the senate, and to be subject to removal by the governor.

#### ARTICLE IX.—EDUCATION.

SECTION 1.—The legislature must provide a system of free common schools wherein all the children of the State may be educated.

SECTION 2.—Regents of the University.—The regents of the University of New York are continued under the name of The University of the State of New York.

SECTION 3.—Common School, Literature, and United States Deposit Funds.—The capital of each of these funds must be preserved inviolate. The revenue of the common school fund is to be applied to the support of the common schools, the revenue of the literature fund to the support of the academies, and \$25,000 of the United States deposit fund is to be each year appropriated to and made a part of the capital of the common school fund.

SECTION 4.—Neither the State nor any municipality may aid in the maintenance of any school or institution of learning wholly or in part under the

control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

#### ARTICLE X.—PUBLIC OFFICERS.

SECTION 1.—Sheriffs, District Attorneys, County Clerks, and Registers.—These officers are to be chosen in their respective counties once in three years, except in New York and Kings counties, and in counties whose boundaries are the same as a city, when they are to be chosen once in two or four years, as the legislature may elect. Sheriffs are ineligible for the next succeeding term. The governor may remove any of these officers for cause.

SECTION 6.—The Political Year.—The political year and the legislative term begin on the first day of January. The legislature must assemble on the first Wednesday in January.

SECTION 9.—Compensation of Officers.—No officer whose salary is fixed by the constitution may receive additional compensation. Each of the other officers named in the constitution is to receive a salary fixed by law, which may not be increased or diminished during his term of office.

#### ARTICLE XI.—THE MILITIA.

SECTION 1.—The State Militia.—All able-bodied citizens, not exempt by law, who are between the ages of eighteen and forty-five, and residents of the State, constitute the militia.

SECTION 3.—Organization.—The legislature is to organize the militia and to divide it into land and naval forces; and there must be maintained at all times a force of not less than 10,000 men fully uniformed, armed, equipped, disciplined, and ready for active service.

SECTION 4.—Appointments by Governor.—The governor is to appoint the chiefs of all staff departments, his aids-de-camp, and military secretary, whose commissions expire with his term. He also appoints by and with the advice and consent of the senate, the major generals.

SECTION 6.—Removals from Office.—Commissioned officers may be removed for cause by the senate, on recommendation of the governor, or by sentence of a court-martial, or by the findings of an examining board.

#### ARTICLE XII.—CITIES.

SECTION 1.—Organization.—It is the duty of the legislature to provide for the organization of cities and villages, and to restrict their power of taxation and of contracting debt.

SECTION 2.—Classification of Cities. Special City Laws.—Cities of the first class have a population of 250,000 and over, of the second class a population between 50,000 and 250,000, cities of the third class include all others. When a proposed law applying to a particular city has passed both houses of the legislature it must be sent to the mayor of the city, who must return it within fifteen days to the legislature, if in session, or to the governor, if the legislature be not in session, stating whether or not the city accepts the proposed law. If accepted, the proposed law is subject to the action of the governor as in case of other bills. If rejected or not returned within fifteen days, and the legislature be still in session, the bill may be repassed by both branches of the legislature, when it is subject to the action of the governor, as in case of other bills.

SECTION 3.—Election of City Officers.—City officers in cities of the first and second classes including supervisors, and judicial officers of inferior local courts, and county officers elected in New York and Kings counties, and county officers in all counties whose boundaries are the same as those of a city, are to be elected on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer is to expire at the end of an odd-numbered year.

#### ARTICLE XIII.—OATH OF OFFICE. PROVISIONS AGAINST BRIBERY AND CORRUPTION.

SECTION 1.—Oath of Office.—Members of the legislature, and all officers executive and judicial, except such inferior officers as the law exempts, must, before they enter upon the duties of office take the following oath: “I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of . . . according to the best of my ability.” And all such officers chosen at any election must take the following in addition: “And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.”

SECTIONS 2 and 3.—Official Bribery and Corruption.—Any person holding office under the laws of the State, who accepts a bribe for performing or omitting to perform any official act, is guilty of a felony. The person who offers the bribe is also guilty of a felony.

SECTION 5.—Passes and Franking Privileges Prohibited.—No public officer may ask or receive for himself or for another any free pass, free transportation, franking privilege or discrimination in passenger, telegraph, or telephone rates. Violation of this section is a misdemeanor both for the party receiving and the party granting the pass, privilege, or discrimination.

SECTION 6.—Removal of District Attorney.—A district attorney failing to faithfully prosecute a person charged with violation in his county of any provision of this article may be removed from office by the governor.

#### ARTICLE XIV.—AMENDING THE CONSTITUTION.

SECTION 1.—Amendments, How Made.—An amendment to the constitution may be proposed in either house of the legislature, and must be passed by a majority of the members elected to each house, and then referred to the legislature chosen at the next general election of senators, in which legislature the proposed amendment must again pass both houses as before. The proposed amendment is to be then submitted to the voters of the State for adoption or rejection. If a majority of the voters voting on the proposed amendment approve it, it becomes a part of the constitution.

SECTION 2.—Revision of the Constitution by Convention.—In 1916 and every twentieth year thereafter, and also at such times as the legislature may provide, there is to be submitted to the voters the question: "Shall there be a convention to revise the constitution and amend the same?" If a majority voting decide in favor of the proposed convention, the voters of every senate district are to elect three delegates and the voters of the State fifteen delegates-at-large to such a convention. Any proposed constitution or constitutional amendment adopted by such convention must be submitted to the voters of the State and adopted or rejected by majority vote.





PUBLIC OFFICERS, MODE OF APPOINTMENT, TERM OF OFFICE AND SALARIES

*United States Officers.*

OFFICERS.	MODE OF APPOINTMENT.	TERM OF OFFICE.	SALARY.
President.	Elected by people.	4 years.	\$50,000.
Vice President.	Elected by people.	4 years.	8,000.
Sec'y of State.	App. by Pres. and Sen.	Will of Pres.	8,000.
Sec'y of the Treas.	App. by Pres. and Sen.	Will of Pres.	8,000.
Sec'y of War.	App. by Pres. and Sen.	Will of Pres.	8,000.
Attorney-General.	App. by Pres. and Sen.	Will of Pres.	8,000.
Postmaster-General.	App. by Pres. and Sen.	Will of Pres.	8,000.
Sec'y of the Navy.	App. by Pres. and Sen.	Will of Pres.	8,000.
Sec'y of the Inter'r.	App. by Pres. and Sen.	Will of Pres.	8,000.
Sec'y of Agricult'r.	App. by Pres. and Sen.	Will of Pres.	8,000.
Civil Service Com's.	App. by Pres. and Sen.	Will of Pres.	3,500.
Com. of Labor.	App. by Pres. and Sen.	Will of Pres.	5,000.
Interstate Com. Com's.	App. by Pres. and Sen.	Will of Pres.	7,500.
Librarian of Cong.	App. by Pres. and Sen.	Will of Pres.	5,000.
Supreme Court Judges.	App. by Pres. and Sen.	Dur. good behavior.	10,000.
Circuit Court Judges.	App. by Pres. and Sen.	Dur. good behavior.	6,000.
District Court Judges.	App. by Pres. and Sen.	Dur. good behavior.	4,000.
Judges Court of Claims.	App. by Pres. and Sen.	Dur. good behavior.	4,500.
Ambassadors.	App. by Pres. and Sen.	Will of Pres.	17,500.
Ministers.	App. by Pres. and Sen.	Will of Pres.	5,000 to 12,000.
Consuls.	App. by Pres. and Sen.	Will of Pres.	1,500 to 5,000. <sup>1</sup>
United States Senators.	Elected by State Leg.	6 years.	5,000.
Representatives in Cong.	Elected by people.	2 years.	5,000.

*New York State Officers.*

Governor.	Elected by people.	2 years.	\$10,000.
Lieutenant Governor.	Elected by people.	2 years.	5,000.
Secretary of State.	Elected by people.	2 years.	5,000.
Comptroller.	Elected by people.	2 years.	6,000.
Treasurer.	Elected by people.	2 years.	5,000.
Attorney-General.	Elected by people.	2 years.	5,000.
State Eng and Surv.	Elected by people.	2 years.	5,000.
Sup't. Public Works.	App. by Gov. and Sen.	Coin. with Gov.	6,000.
Sup't. of Banks.	App. by Gov. and Sen.	3 years.	5,000.
Sup't. of Insurance.	App. by Gov. and Sen.	3 years.	7,000.

<sup>1</sup> Sometimes paid in fees for services performed.

OFFICERS.	MODE OF APPOINTMENT.	TERM OF OFFICE.	SALARY.
Adjutant General.	App. by Governor.	Coin, with Gov.	\$4,000.
Sup't Public Build.	App. by Gov., Lieut. Gov. and Speaker.	} 2 years.	5,000.
State Tax Com's.	App. by Gov. and Sen.		
Commissioner of Excise.	App. by Gov. and Sen.	5 years.	5,000.
State Com. of Health.	App. by Gov. and Sen.	4 years.	3,500.
Insp. of Gas Meters.	App. by Gov. and Sen.	5 years.	5,000.
State Historian.	App. by Gov. and Sen.	Will of Gov.	5,000.
Railroad Com's.	App. by Gov. and Sen.	5 years.	8,000.
Judges Court of Claims.	App. by Gov. and Sen.	6 years.	5,000.
Civil Service Com's.	App. by Gov. and Sen.	Not defined.	3,000.
Commissioner of Labor.	App. by Gov. and Sen.	4 years.	3,500.
State Agr'l Com's.	App. by Gov. and Sen.	3 years.	4,000.
State Sup't Elections.	App. by Gov. and Sen.	4 years.	5,000.
Quarantine Com's.	App. by Gov. and Sen.	3 years.	2,500.
Port Wardens.	App. by Gov. and Sen.	3 years.	Fees.
Health Of'c'r P't N. Y.	App. by Gov. and Sen.	4 years.	12,500.
Regents of University.	By the Legislature.	For life.	None.
Sup't Public Instruct'n.	By the Legislature.	3 years.	5,000.
For. Fish and Game Com's.	App. by Gov. and Sen.	4 years.	5,000.
Sup't State Prisons.	App. by Gov. and Sen.	5 years.	6,000.
Com's of Charities.	App. by Gov. and Sen.	8 years.	
Com's in Lunacy.	App. by Gov. and Sen.	6 years.	3,500 to 7,500.
State Senators.	Elected by people.	2 years.	1,500. <sup>1</sup>
Assemblymen.	Elected by people.	1 year.	1,500. <sup>1</sup>
Judges Court of Appeals.	Elected by people.	14 years.	13,700. <sup>2</sup>
Supreme Court Judges.	Elected by people.	14 years.	7,200. <sup>3</sup>

*New York City Officers.*

Mayor.	Elected by people.	2 years.	\$15,000.
Comptroller.	Elected by people.	2 years.	15,000.
Chamberlain.	Appointed by Mayor.	Pleasure of Mayor.	12,000.
Corporation Counsel.	Appointed by Mayor.	Pleasure of Mayor.	15,000.
Police Commissioner.	Appointed by Mayor.	5 years.	7,500.
Borough Presidents.	El. by peo. of bor.		5,000 to 7,500.
Com. of Wat. Sup. Gas and Elect'y.	} Appointed by Mayor.	Pleasure of Mayor.	7,500.
Com. Street Cleaning.			
Com. of Bridges.	Appointed by Mayor.	Pleasure of Mayor.	7,500.
Com's of Parks.	Appointed by Mayor.	Pleasure of Mayor.	5,000.
Com'r of Pub. Charities.	Appointed by Mayor.	Pleasure of Mayor.	7,500.
Com. of Correction.	Appointed by Mayor.	Pleasure of Mayor.	7,500.
Fire Commissioner.	Appointed by Mayor.	Pleasure of Mayor.	7,500.
Com'r of Docks.	Appointed by Mayor.	Pleasure of Mayor.	6,000.

<sup>1</sup> And mileage.

<sup>2</sup> Chief Justice \$14,200.

<sup>3</sup> \$17,500 in New York County. \$13,200 in Kings.

OFFICERS.	MODE OF APPOINTMENT.	TERM OF OFFICE.	SALARY.
Pres. B'd Taxes and Ass.	Appointed by Mayor.	Pleasure of Mayor.	8,000.
Members B'd Education.	Appointed by Mayor.	5 years.	None.
Com'r of Health.	Appointed by Mayor.	Pleasure of Mayor.	7,500.
Tenement House Com'r.	Appointed by Mayor.		7,500.
City Judge.	Elected by people.	14 years.	12,000.
Recorder.	Elected by people.	14 years.	12,000.
Judges Court Gen. Ses.	Elected by people.	14 years.	12,000.
Judges City Court.	Elected by people.	10 years.	10,000.
Judges Municipal Court.	Elected by people.	10 years.	6,000. <sup>1</sup>
City Magistrates.	Appointed by Mayor. <sup>2</sup>	2 years.	7,000.
Aldermen.	Elected by people.	2 years.	1,000.
City Clerk.	{ Appointed by Board of Aldermen. }	{ 6 years. }	7,000.

*Local Officers (County).*

Sheriff.	Elected by people	3 years.	Fees. <sup>3</sup>
County Judge.	Elected by people.	6 years.	Fixed by Legislature.
Surrogate.	Elected by people.	6 years. <sup>4</sup>	Varies in different counties.
County Clerk.	Elected by people.	3 years.	Fees. <sup>5</sup>
Treasurer.	Elected by people.	3 years.	Fixed by board of supervisors.
District Attorney.	Elected by people.	3 years.	Fixed by board of supervisors.
Coroners	Elected by people.	3 years.	Fees.
Sup't of Poor.	Elected by people.	3 years.	By the day, or Salary.
School Commissioner.	Elected by people.	3 years.	1,000. <sup>6</sup>

*Local Officers (Town).*

Supervisor.	Elected by people.	2 years.	By the day.
Town Clerk.	Elected by people.	2 years.	Fees.
Justice of the Peace.	Elected by people.	4 years	Fees.
Assessor.	Elected by people.	2 years.	Percentage.
Highway Commissioner.	Elected by people.	2 years.	By the day.
Overseer of Poor.	Elected by people.	2 years.	By the day.
Collector.	Elected by people.	2 years.	Percentage.
Constables.	Elected by people.	2 years.	Fees.
Inspectors of Elect'n.	Elected by people.	2 years.	By the day.

<sup>1</sup> \$5,000 in Queens and Richmond.<sup>2</sup> Elected in Brooklyn, Queens and Richmond for term of six years each at salaries of \$6,000 in Brooklyn and \$5,000 in Queens and Richmond.<sup>3</sup> And percentage of money collected on executions.<sup>4</sup> Fourteen in New York county.<sup>5</sup> Salary in some counties fixed by legislature.<sup>6</sup> May be increased by supervisors; also \$200 for expenses.



## Topics in Civics Outlined in the Regents Syllabus

*(Figures in parentheses refer to pages in this book.)*

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### I. Local government. Its paramount importance (29, 30).

The town. Its antiquity (16-21); the clan (16), the tun (17, 18), the mark (16, 17); development in England (16-20); transference to America (20, 21); the town considered both as a unit and as a part of a greater political division (29, 30, 76, 77); vital importance of the principle of representation (135, 136).

The county. Its historical development on English soil (73-75); the tribe (73), the shire (73, 74); transition to America (75); form assumed in New York State (75-82).

The city. Origin of English boroughs and cities (42, 43); government of English cities (43); government of American cities (40, 41, 44-49).

### II. State and federal government.

The State. The written constitution (103-111); its birth on American soil (106, 107); germs of the idea (104-106); progress in other countries (106, 114); colonial governments (106, 107); transition to State governments (107, 108).

Relations of State to federal government (85, 86, 238-242, 252, 253, 256, 257), formation of new States (251), origin of the State government of New York (94-101); present constitution of New York (329-345), how established (103, 108, 109), its provisions (114-121); citizenship (125-127); suffrage (125-129); qualified voters (125, 126); classes excluded from voting (127); the division of the State into counties (70, 75), towns (8, 9), cities (40, 41, 44, 45), villages (33-39), and subordinate districts (140, 143, 182, 190, 192, 203, 217, 218).

The executive officers of the State (153-162), their qualifications (153-162), duties (153-162), tenure of office and mode of choice (153-162), viz, the governor (154, 155), lieutenant-governor (155, 156), and other State officers (156-163); the officers of a county (78-82); the officers of a town (23-28); the officers of a city (45-49), and of a village (35-37).

The State legislature (133-135), how constituted and elected (140-144); manner of enacting laws (144-147); the powers of the legislature (147, 148) and the limitations thereof (104, 147, 148, 179, 180, 209, 210, 240, 241, 256); the veto power of the governor (147).

Courts of the State of New York (179-186); judges and prosecuting officers (179-186, 79, 157); attorneys and counselors (173); the manner of proceeding in civil (178, 179) and criminal cases (166-176).

Taxes, their assessment and collection (201-207); expenditures for compensation of officers (201, 347-349); for education (193-195, 197, 199); for the support of institutions for the unfortunate and criminal classes (26, 38, 40, 62, 80, 201); for canals, railways and other internal improvements (7, 8, 10, 15, 25, 38, 46, 162, 211); for the maintenance of military and police organizations (159, 201).

The school system of New York State (189-197); the Regents of the University (198, 199); the Superintendent of public instruction (190); other school officers (191-195).

The nation. Origin of the union of States composing the United States (224-234); articles of confederation (229-232); the present constitution (233, 234, 240, 317-327), its original provisions (242-253) and its subsequent amendments (254-256); the nature of the union and the question of secession (238-242); citizenship and naturalization (125-127).

Executive branch of the government (269); qualifications, duties, mode of choice and tenure of office of the president and vice-president (269-275); the organization and administration of the several departments (272-275), viz, of state (272), of the treasury (273), of the interior (273, 274), of war (273), of the navy (273), of the post office (274), of justice (277-281), and of agriculture (274); officers of these departments, their qualifications, duties, tenure of office and mode of appointment (272-274); the organization and command of the army and of the navy (244, 245, 270, 271, 273).

Legislative branch of the government (261-268); the senate and the choice of senators (262, 263); the house of representatives and the election of members (263, 264); meetings and organization of congress (261, 264, 265); mode of enacting laws (265-268); limitations to the powers of congress (253-255, 269); power of congress to impose taxes (245), to regulate commerce (246), to govern the public territory (249-251), to declare war (244), and other powers (242-249).

Judicial branch of the government (277); the system of United States courts and their jurisdiction (277-280); the relation of State and national courts (280); judges and prosecuting officers, their qualifications, duties, tenure of office and mode of appointment (277-281).

III. International relations. Treaties (288); tariffs (245, 246, 289, 290); relations to travelers (298), diplomatic and consular officials (287, 288), fugitive criminals (289); relations of neutral governments in time of war (291-296).

IV. Principles and forms of government. The theories as to the origin of government (297-299); the rights of man under government (297-299); the different forms of government as illustrated in former and existing nations of earth (297-299); the relative advantage and defects of the several forms of government, and in particular that of the United States (297-299).

V. Laws relating to American citizens. Sources of the laws affecting the American citizen (113-115); his rights to liberty, protection and property (115-121).

Laws as to persons (307-309); distinction between a citizen and an alien (125-127); marriage and the rights and duties of the parties (308); parents and children (309); master and servant (307).

Laws as to property (303-314); title and transfer of real estate (309-313); appurtenances of real estate (311, 312); landlord and tenant (311); mortgages (310, 311), promissory notes, indorsements and interest (313, 314).

Wills and the distribution of property after death, gifts and bequests (312).

Contracts (304-314); general obligation of contracts (304); when not binding (304, 305); remedy for broken contracts (305); contract to sell or exchange (305); contract to let or lease (305).

Crimes and their punishment (166-176); criminal tribunals (168-174); rights of an accused man (167-169).





# Index

- ACCUSED persons, rights of, 118, 119, 167, 168, 172, 325, 329.
- Administrative departments of city of New York, 61.
- Aldorman, 74.
- Agent, 307.
- Agricultural land, leases of, 330.
- Agriculture, department of, 274, 275.
- Agriculture, State Commissioner of, 162.
- Aldermen, board of, 45, 58.
- Aliens, defined, 126.
- Ambassadors, 287, 288.
- Amending constitution, 257.
- Amendments, constitutional, 324, 345.
- Amendments to United States Constitution, 325.
- Annapolis convention, 233.
- Anti-trust law, 247.
- Appeals, 175, 181, 183, 184.
- Appeals, court of, 184, 339.
- Appellate division, supreme court, 183.
- Apportionment of representatives, 327.
- Appropriation bills, 335, 336.
- Appurtenances, 311, 312.
- Arbitrary power, provisions against, 115, 116.
- Arbitration, 294.
- Arbitration and mediation, State board of, 162.
- Arbitration, international court of, 295.
- Aristocracy, 298.
- Arms, right to bear, 255.
- Arraignment, 172.
- Arrest by "hue and cry," 166.
- Arrest, by warrant, 166.
- Articles of confederation, 227-233, 238, 239.
- Assembly districts, 140, 141, 143.
- Assembly, first provincial, 96, 97.
- Assemblymen, 331, 333, 334.
- Assemblymen, ratio for apportioning, 141, 145.
- Assembly of 1653, 96.
- Assembly, provincial, refuses to vote taxes, 99, 100.
- Assembly, right of, 325.
- Assembly, State, 134, 141, 143.
- Assessment roll, 204, 205.
- Assessors, city, 47, 204, 205.
- Assessors, State, see Tax Commissioners.
- Assessors, town, 27, 204, 205.
- Attainder, bill of, not to be passed, 253, 321.
- Attorney, city, 47.
- Attorney-general, State, 156, 157, 158.
- Attorney-general, United States, 274.
- Australian system of voting, 220.
- BAIL, excessive, prohibited, 325.
- Bail, provisions against excessive, 118.
- Bail, right of, 118, 119, 167, 168.

- Ballot, voting by, at town meeting, 15.  
 Ballot clerks, 218.  
 Ballots, counting of, 220, 221.  
 Ballots, marking of, 220.  
 Ballots, official, 218, 219.  
 Bank notes, 208, 209.  
 Bankruptcy, 247.  
 Banks, national, 209.  
 Banks, State, 208, 341, 342.  
 Banks, State superintendent of, 158, 161, 208.  
 Belligerency, recognition of, 296, 297.  
 Belligerents, 290.  
 Bet, effects of, on the right to vote, 128.  
 Bill, first reading of, 144.  
 Bill, second reading of, 145.  
 Bill, third reading of, 145.  
 "Bill of Rights," 109, 114.  
 Bill of Rights, the English, 114.  
 Bills, appropriating public money, 146.  
 Bills, governor's action on, 147.  
 Bills, how passed, 147, 267, 268, 319, 335.  
 Bills, private and local prohibited, 335.  
 Blockades, 293.  
 Board of aldermen, 45, 46.  
 Bonds, United States, 209, 245, 246.  
 Borough officers, city of New York, 63.  
 Boroughs, in city of New York, 55.  
 Boroughs, origin of English, 42.  
 Bribery, provisions against, 221, 222, 344, 345.  
 Bronx, borough of, 55.  
 Brooklyn, borough of, 55.  
 "Burghers," 43.  
 Burgomasters, 96, 97.  
 By-laws, town, 10.  
 By-laws, village, 34.  
 CABINET, president's, 272-275.  
 Canal board, 338.  
 Canal fund, commissioners of, 338.  
 Canals, 341.  
 Canals to be free, 211.  
 Canvassers, county board of, 220, 221.  
 Canvassers, State board of, 221.  
 Capital offense, 168.  
 Census, State, 140, 333.  
 Census, United States, 263, 274, 317.  
 Chamberlain, city of New York, 62.  
 Charge, judge's, 174.  
 Charities, State board of, 163, 342.  
 Charter, city, 41.  
 "Charter of Liberties and Privileges," 98.  
 Charter, village, 35.  
 Charters, ancient, 41.  
 Charters, colonial, 106, 107.  
 Chattel mortgage, 311.  
 Cities, classified, 44, 45, 344.  
 Cities of the second class, government in, 48, 49.  
 Cities, special laws effecting, 47, 48, 344.  
 Citizens, privileges and immunities of, 323, 327.  
 Citizens, State, 326.  
 Citizens, United States, 326.  
 Citizens, who are, 125, 127.  
 City attorney, 47.  
 City charter, 41.  
 City court in the city of New York, 67.  
 City courts, 47, 49.  
 City, defined, 41.  
 City government in Netherlands, 43.  
 City indebtedness, limitation of, 48.  
 City magistrates in city of New York, 68.  
 City marshals, 49.

- City officers, 47, 349.  
 City of New York, aldermen in, 58.  
 City of New York, assemblymen in, 55.  
 City of New York, board of education, 65.  
 City of New York, board of estimate and apportionment, 62.  
 City of New York, boards of local improvements, 63.  
 City of New York, borough officers, 63.  
 City of New York, boroughs of, 55.  
 City of New York, chamberlain of, 62.  
 City of New York, city court in, 67.  
 City of New York, comptroller, 61.  
 City of New York, corporation council of, 62.  
 City of New York, counties in, 54.  
 City of New York, county government in, 65.  
 City of New York, court of general sessions in, 66.  
 City of New York, court of special sessions in, 67.  
 City of New York, courts in, 66, 67, 68.  
 City of New York, department of finance, 61.  
 City of New York, districts of local improvement, 63.  
 City of New York, health department, 65.  
 City of New York, law department, 62.  
 City of New York, magistrates in, 67.  
 City of New York, mayor, 60, 61.  
 City of New York, municipal court of, 68.  
 City of New York, municipal departments, 58-66.  
 City of New York, police department, 63.  
 City of New York, recorder in, 67.  
 City of New York, representation in Assembly, 143.  
 City of New York, representation of, in State senate, 141.  
 City of New York, schools, 65.  
 City of New York, senators in, 55.  
 City of New York, superintendent of schools, 65.  
 City of New York, treasurer of, 62.  
 City treasurer, 47.  
 Civil and political rights, 121.  
 Civil service commissioners, city, 47, 160.  
 Civil service commissioners, State, 158, 160.  
 Civil service law, 46, 47, 160, 338.  
 Civil service, State, 159, 160.  
 Civil service, United States, 272.  
 Civil suits at law, 178.  
 Claims, court of, 187, 281.  
 Clan, 16.  
 Codicil, 312.  
 Collector, city, 47.  
 Collector, town, 27.  
 Colonial union, beginnings of, 225.  
 Combatants, 290.  
 Commerce, Congress may regulate, 320.  
 Commerce, interstate, 246, 247.  
 Commerce, power to regulate, 246.  
 Commissioner of jurors, 80.  
 Committees of Congress, 266, 267.  
 Committees of the legislature, 144, 145, 146.  
 Common carrier, 306.

- Common council, 45.  
 Common law, 121, 304, 330.  
 Common school fund, 194.  
 Commonwealth, the English, 89.  
 Compensation of officers, 343.  
 Complaint, 178.  
 Comptroller of the city of New York, 61.  
 Comptroller, State, 156, 157, 161.  
 Compulsory attendance law, 196, 197.  
 Concurrent powers, 242.  
 Confederate States of America, 239.  
 Confederation, 229, 230.  
 Congress, 261, 317.  
 Congress, Adjournment of, 319.  
 Congress, committees of, 266, 267,  
 318.  
 Congress, meetings of, 261, 264, 266,  
 318.  
 Congress, powers of, 242, 252, 268,  
 319, 320.  
 Congress, power under Articles of  
 Confederation, 238, 239.  
 Congress, quorum in, 318.  
 Congressional Districts, 264.  
 Congressmen, compensation of, 319.  
 Congressmen, election of, 318.  
 Congressmen, privileges of, 269, 319.  
 Congressmen, qualifications of, 318.  
 Congressmen, salaries of, 266.  
 Conscience, freedom of, 117.  
 Constable, town, 26, 181.  
 Constitution, English, 105.  
 Constitution, how amended, 324.  
 Constitution, officers must swear to  
 support, 324.  
 Constitution of the Dutch republic,  
 106.  
 Constitution of the United States, the  
 supreme law, 240.  
 Constitution, State, 100, 103, 104, 108,  
 109, 110.  
 Constitution, State, how amended, 108,  
 109, 110, 345.  
 Constitution, State, the Preamble,  
 115.  
 Constitution, the supreme law, 324.  
 Constitution, United States, 317.  
 Constitution, United States, how  
 amended, 257.  
 Constitution, written, beginnings of,  
 104, 105, 106.  
 Constitutional convention, 137.  
 Constitutional convention, United  
 States, 233, 234, 235.  
 Constitutionality of statutes, 179, 18c.  
 Consuls, 287, 288.  
 Continental Congress, first, 226.  
 Continental Congress, second, 227.  
 Continental Congress, the beginning  
 of national government, 227, 228.  
 Contraband of war, 292.  
 Contracts, 304, 305, 310.  
 Copyrights, 249.  
 Coroner, 81, 184, 185.  
 Coroner's inquests, 184.  
 Coroner's jury, 81, 184.  
 Corporation counsel, 47.  
 Corporation counsel, city of New York,  
 62.  
 Corporations, 208, 341.  
 Counterfeiting, Congress may provide  
 for punishment of, 320.  
 Counties, how divided into assembly  
 districts, 143.  
 Counties in New York, 70, 75.  
 County, 75, 77.  
 County board of supervisors, 76.  
 County canvassers, board of, 220,  
 221.

- County clerk, 78, 80.  
 County court, 80.  
 County courts, 340.  
 County courts in the city of New York, 66.  
 County executive officers, 78.  
 County government, why we have, 70.  
 County indebtedness, limitation of, 48.  
 County judge, 80, 81.  
 County officers, when chosen, 343.  
 County, relations to State, 76.  
 County superintendent of poor, 78, 80.  
 County treasurer, 78, 79, 80.  
 Court, coroner's, 184, 185.  
 Court, county, 80, 181.  
 Court for the trial of impeachment, 149, 185, 187.  
 Court of appeals, 184, 339.  
 Court of claims, 187, 281.  
 Court of general sessions in city of New York, 66.  
 Court of special sessions, 66, 67, 180.  
 Court, supreme, 182, 183, 184, 279, 280.  
 Court, surrogate's, 81, 184, 185.  
 Court, village police, 37, 38.  
 Courtesy, estate by, 313.  
 Courts, as interpreters of law, 179.  
 Courts, city, 47, 49.  
 Courts, district, United States, 278.  
 Courts, enumerated, 180.  
 Courts, inferior local, 340.  
 Courts in the city of New York, 66, 67, 68.  
 Courts, justice's, 180.  
 Courts of record and not of record, 185.  
 Courts, removal of cases from State to United States, 280.  
 Courts, State, 338, 340.  
 Courts, United States, 323.  
 Courts, United States circuit, 278, 279.  
 Courts, United States, enumerated, 277-281.  
 Courts, United States, jurisdiction of, 277.  
 Credit, public, not to be loaned, 342.  
 Credit, State, not to be given, 340, 342.  
 Crime, infamous, 168.  
 Criminals, rights of, 121, 122, 167, 168.  
 Cruel and unusual punishments, provisions against, 118.  
 Customs, taxes, 202.  
 DEBATE, freedom of, 335.  
 Debt, city, limitation of, 48.  
 Debt, county, limitation of, 48.  
 Debts of cities and counties, 342.  
 Debts, State, 340, 341.  
 Declaration of independence, 228.  
 Declaration of Rights, the, 114.  
 Deed, 309, 310.  
 Defendant, 178.  
 Democracy, 298.  
 Democratic government, direct and representative, 11.  
 Departments of government, 28, 131, 132, 261.  
 Departments of government, United States, 261.  
 Despotism, 297.  
 Diplomatic officers, 287.  
 Direct democratic government, 10.  
 District of Columbia, 249.  
 District attorney, 78, 79.  
 District attorneys, United States, 274, 280.  
 Divorces, 330.

- Dower, 308.  
 "Due process of law," 119, 175.  
 Duke of York, 99.  
 "Duke's Laws," the, 98.  
 Dutch, the, 87, 88, 89.
- EDUCATION, board of, city of New York, 65.  
 Education, public, 342.  
 Education, United States bureau of, 274.  
 Election boards to be bi-partisan, 331.  
 Election districts, 218.  
 Election, general State, 218.  
 Election, inspectors of, 27.  
 Election officers, 218.  
 Elections, conduct of, 214.  
 Elections, village special, 38.  
 Electors, presidential, 321, 326.  
 Embargoes, 289, 290.  
 Eminent domain, right of, 119.  
 Employer and employee, 307.  
 Enabling act, 251.  
 Engineer and surveyor, State, 156, 158.  
 Enrollment, party, 215, 216.  
 Equalization, county board of, 205.  
 Equalization, State board of, 161, 206, 207.  
 Erie county, representation in State senate, 141.  
 Escheats, 330.  
 Estates, 312, 313.  
 Estimate and apportionment, board of, city of New York, 62.  
 Excise taxes, 245.  
 Excessive bail and fines, prohibited, 255, 256.  
 Executive department, 29, 131, 132, 153, 269.
- Executive officers, State, 337.  
 Exports not to be taxed, 321.  
 Ex post facto law, not to be passed, 253, 321.  
 Extradition, 257, 289, 323, 324.
- FARMERS' Institutes, 162.  
 Federal government, definition of, 230.  
 Federal places, United States control of, 249.  
 Fee simple, 313.  
 Fees, judges not to take, 187.  
 Felony, 172.  
 Finance department, city of New York, 61.  
 Fines, provisions against excessive, 118.  
 Fisheries, game and forest commissioners, 162.  
 Forbidden powers, 253, 254, 255, 256.  
 Foreign relations, 243, 271.  
 Forest preserve, 210, 341.  
 Forests, protection of, 162, 210.  
 Freedom of conscience, guaranteed, 117.  
 Freedom of speech, 120, 148, 149, 325, 330.  
 Free speech, 254.  
 French, the, 90.  
 Fulton and Hamilton counties to have one assemblyman, 141.
- GA, German, 73, 74.  
 Gambling prohibited, 330.  
 Game, protection of, 162.  
 Gau, German, 73, 74.  
 Gold certificates, 248.  
 Government, division of its powers, 241.  
 Governments, equality of, 297.

- Governments, origin of, 299, 300.  
 Governor, 336, 337.  
 Governor, powers of, 153, 154, 155, 158, 159.  
 Governor, qualifications of, 156.  
 Governor, salary of, 154.  
 Governor, when president of senate, may act as, 156.  
 Governor, when speaker, may act as, 156.  
 Governors, New York's early, 154.  
 Governor's veto, 147, 154.  
 Governor, legislative powers of, 147.  
 Grand jury, 169, 170, 255.  
 Greenbacks, 248, 249.  
 Guardian, 309.  
 Guilds, 43.
- HABEAS CORPUS**, 329.  
 Habeas Corpus, not to be suspended, 253, 321.  
 Habeas Corpus, writ of, 118.  
 Hague conference and treaty, 294, 296.  
 Health department, city of New York, 65.  
 Health, State board of, 163.  
 Health, village board of, 37.  
 "Het Groote Priviligie," 106.  
 High seas, control over, 243.  
 Highway commissioners, 25.  
 "Hue and cry," arrest by, 166.  
 Huguenots, the, 90.  
 Hundred, the, 26, 73, 74.  
 Husband and wife, 308.
- IMPEACHMENT**, court for the trial of, 149, 185, 186, 276, 318, 323, 339.  
 Impost duties, State, 247.  
 Independence, declaration of, 228.  
 Indians, 274.
- Indictment, bill of, 169.  
 Indorser, 313, 314.  
 Initiative and referendum, 136.  
 Inspectors of election, 27.  
 Insurance, contract for, 306, 307.  
 Insurance, State superintendent of, 158, 161.  
 Interior, department of, 273, 274.  
 Interior, secretary of the, 272, 273.  
 Internal revenue, 202, 245.  
 International law, 286, 287.  
 Interstate Commerce Commission, 247.  
 Impeachment, court of, United States, 276.  
 Impeachment of State officers, 149, 339.  
 Impeachment of United States officers, 276, 318, 323.
- JAMES II.**, 99.  
 Joint stock companies, 308.  
 Judges, age of, 187.  
 Judges, appointment and term of office of, 339.  
 Judges, not to receive fees, 340.  
 Judges of the supreme court, 182, 183.  
 Judges, removal of, 339.  
 Judges, United States, 323.  
 Judicial departments, State, 182, 338, 339.  
 Judicial districts, State, 182.  
 Judiciary department, 29, 166, 178.  
 Judiciary department, United States, 277.  
 Jurors, commissioner of, 80.  
 Jury, coroner's, 81, 184, 185.  
 Jury, grand, 169, 170.  
 Jury, in United States courts, 280, 281.  
 Jury, justice's, 181.  
 Jury, petit, 172, 173.

- Jury, trial, 172, 173.  
 Jury, trial by, 172, 173.  
 Jury trial guaranteed, 116.  
 Jury trial in United States courts, 323.  
 Jury trial, right to, 255, 325, 329.  
 Justice of the peace, 27, 180.  
 Justice of the peace, origin of, 28.  
 Justices of the peace, 340.  
 Justice, United States department of, 274.
- LABOR, State commissioner of, 162.  
 Labor, United States department of, 274.  
 Land office, commissioners of, 338.  
 Land, rights in, 120.  
 "Law of the land, the," 116, 119.  
 Law, sources of State, 303, 304.  
 Laws of United States, how made, 266.  
 Laws, State, how made, 144, 145, 146, 147.  
 Lease, 311.  
 Lease, contract of, 305.  
 Legislative department, 29, 131, 132, 133.  
 Legislators, compensation of, 134.  
 Legislators, qualifications of, 143, 334.  
 Legislature, 331.  
 Legislature, committees of, 144, 145, 146.  
 Legislature, meeting of, 343.  
 Legislature, State, authority of, 133, 135.  
 Legislature, State, development of, 133.  
 Legislature, State, freedom of speech in, 148, 149.  
 Legislature, State, "houses," 133, 136.  
 Legislature, State, may not enact private or local laws, 148.
- Legislature, State, meets, 133.  
 Legislature, State, members, 133.  
 Legislature, State, powers of, 147, 148, 149, 150.  
 Legislature, why two "houses," 135, 136.  
 Legislatures, misrepresentation of, 136.  
 Lieutenant governor, 155, 156, 336.  
 Limitation of claims, 341.  
 Limitations, statute of, 305.  
 Literature fund, 195.  
 Local government, importance of, 29.  
 Local laws, enactment forbidden, 148.
- MAGNA CHARTA, 104, 105, 115, 116, 118, 119, 175.  
 Majority, 221.  
 Manhattan, borough of, 55.  
 Manor, 19.  
 Manor, courts of, 20.  
 Marque and reprisal, 244, 293.  
 Mark, 16.  
 Marriage, contract of, 308.  
 Marshals, city, 49.  
 Marshals, United States, 280.  
 Mayor, 46.  
 Mayor of city of New York, 60, 61.  
 Mayor, powers of, 46, 47.  
 Mayor's veto, 46.  
 Militia, State, 159, 343.  
 Militia, United States, 244, 245, 320.  
 Ministers, 287, 288.  
 Minister resident, 287.  
 Mints, United States, 248.  
 Misdemeanor, 172.  
 Monarchy, 297, 298.  
 "Money" bills, 146.



- Money, Congress may regulate value of, 320.  
 Money, power to coin, 248.  
 Money, United States, 248.  
 Monroe Doctrine and Hague Conference, 296.  
 Mortgage, 310, 311.  
 Municipal corporation, defined, 9.  
 Municipal court of the city of New York, 68.  
 Mutual Aid Associations, 308.
- NANTES, Edict of, 91.  
 National guard, the, 159.  
 National State, the, 240.  
 Naturalization, 125, 126, 320.  
 Naturalization, requirements for, 126, 127.  
 Navigation laws, 246.  
 Navy, department of, 273.  
 Navy, secretary of, 272, 273.  
 Neutrals, rights and duties of, 291-293.  
 New Netherland, 94.  
 New York, becomes a State, 100.  
 New York, under Dutch, 94, 95, 96, 97.  
 New York, under English, 97.  
 Nicolls, Col. Richard, 97.  
 Nobility, title of, not to be granted, 321.  
 Nominating conventions, 216.  
 Nominating "by petition," 217.  
 Nominations, how filed, 217.  
 Noncombatants, 290.  
 Normal schools, State, 195.  
 Notes, promissory, 313, 314.
- OATH of office, 221, 324, 344.
- Officers, public, mode of appointment, terms, salaries, 347-349.  
 Officers, State, appointed, 158.  
 Officers, State, elected by legislature, 158, 159.  
 Officers, State, elected by people, 156.  
 Orange, Prince of, 99.  
 Overseers of the poor, 26.
- PARDON, governor's power to, 155.  
 Parents and children, 309.  
 Parish, 18.  
 Park commissioners, city, 47.  
 Partnership, 307, 308.  
 Passes prohibited, 345.  
 Patients, 249.  
 "Patroons," 95.  
 Peace, conservator of, 28.  
 Peace, justice of the, 27.  
 Pensions, United States, 274.  
 People, power of, in the national government, 240.  
 Personal property, 309.  
 Personal rights, 113, 114.  
 Persona non grata, 288.  
 Petition, right of, 120, 254, 325, 330.  
 Pilgrims, the, 89.  
 Piracies, Congress may punish, 320.  
 Pirate, 244.  
 Plaintiff, 178.  
 Plea, 172.  
 Plurality, 221.  
 Police, chief of, city of New York, 63.  
 Police court, village, 37, 38.  
 Police department, city of New York, 63.  
 Political parties, government by, 214, 215, 216.

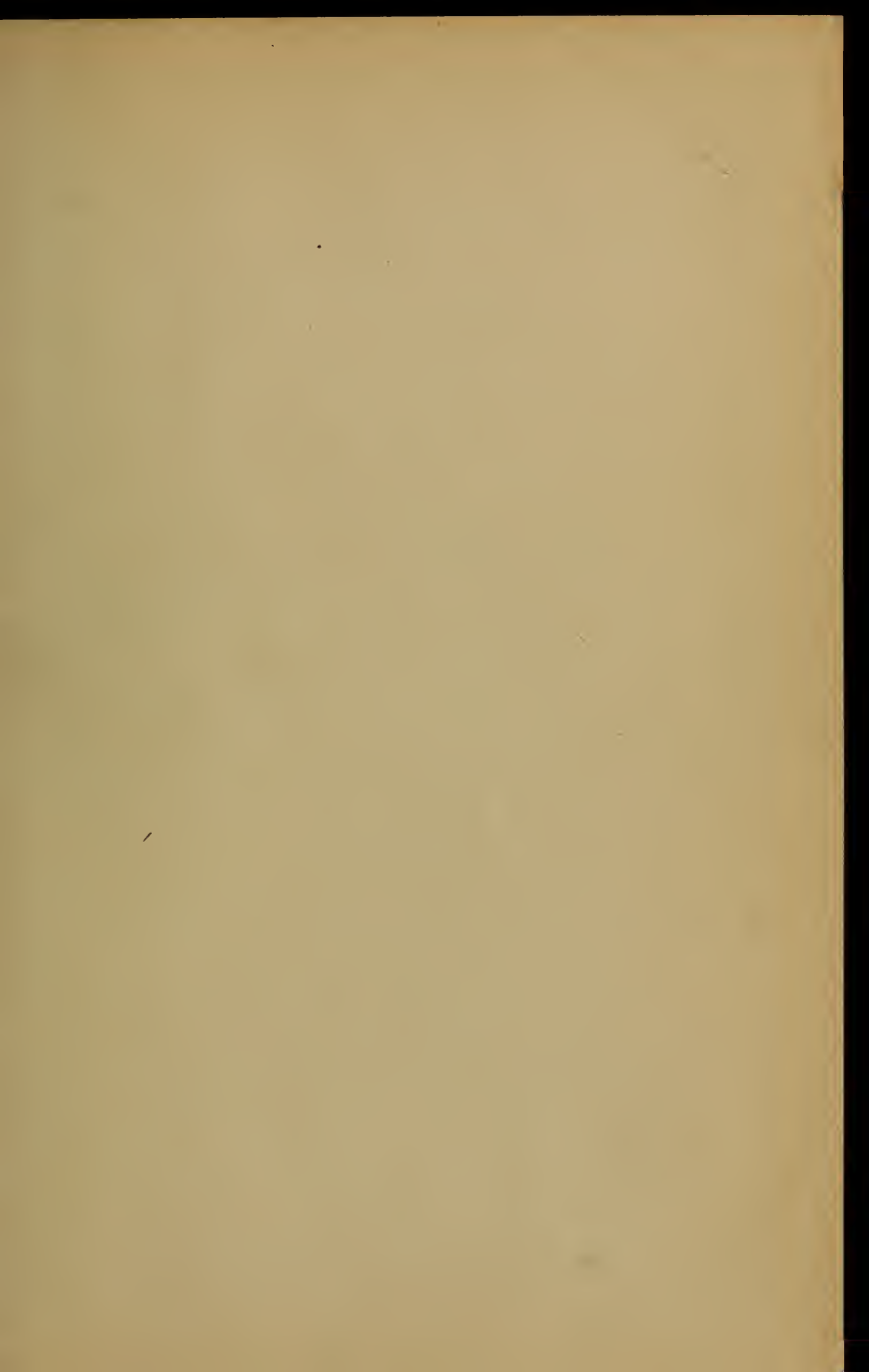
- Political parties, how organized, 215.  
 Political parties, State regulation of, 216.  
 Political year, 343.  
 Poll clerks, 218.  
 Poll tax, 25.  
 Poor, overseers of, 26.  
 Postal system, United States, 248.  
 Postmaster general, 274.  
 Post office department, 274.  
 Post offices and post roads, 248.  
 Powers forbidden the United States, 253, 254, 255.  
 Powers of government, division of, 241.  
 Powers of the States, 252, 253.  
 Powers, reserved to States, 326.  
 Preamble in the State constitution, 115.  
 Presentment by grand jury, 170, 171.  
 President, how elected, 326.  
 President, legislative powers of, 319.  
 President, how elected, 275, 276.  
 President, messages of, 271.  
 President of the United States, powers and duties, 270, 272.  
 President, powers and duties of, 322, 323.  
 President, qualifications of, 322.  
 President, village, 36, 37.  
 Presidential electors, 275.  
 Presidential succession, 276, 322.  
 President's oath of office, 322.  
 President's veto, 268.  
 Privileges and immunities of citizens, 257.  
 Primary assembly, original, 133.  
 Primary election law, 216.  
 Primary meeting, 215, 216.  
 Principal and agent, 307.  
 Prison labor, 336.  
 Prisons, State, superintendent of, 158, 161.  
 Prisons, superintendent of, 338.  
 Private enterprises, State and local governments not to aid, 209, 210.  
 Private laws, enactment forbidden, 148.  
 Privateers and privateering, 249, 293, 294.  
 Prizes of war, 291, 293.  
 Prohibited powers, 242, 253, 254, 255, 256.  
 Prohibition against States, 256, 321.  
 Promissory notes, 313, 314.  
 Property, not to be taken without compensation, 325.  
 Public works, superintendent of, 338.  
 Punishments, cruel, prohibited, 256, 325.  
 Punishments, reasonable, guaranteed, 118.  
 Puritans, the, 89.  
 QUARANTINE commissioners, 163.  
 Queens, borough of, 55.  
 Quorum, in Congress, 318, 334.  
 RAILROAD commissioners, State, 162.  
 Real estate, 309.  
 Rebellion, debt for suppression of, 327.  
 Reciprocity Treaty, 243.  
 Record, courts of, 185.  
 Recorder of the city of New York, 66.  
 "Reeve," 18.  
 "Reeve and four discreet men," 133.  
 Regents' examinations, 199.  
 Regents of the State university, 159, 198, 199, 342.  
 Registration, 331.  
 Registration, necessary for voting, 128, 217, 218.

- Registry, board of, 217, 218.  
 Religion, no law establishing, 255.  
 Religion, not to be established, 325.  
 Religious test, not required, 324.  
 Representation, ratio of, 263.  
 Representative democratic government, 11.  
 Representative, United States, 317.  
 Representatives, House of, 317.  
 Representatives, how apportioned, 327.  
 Representatives, United States, election of, 264.  
 Reprieve, governor's power to, 155.  
 Republic, 299.  
 Republican government, 257, 299, 324.  
 Revenue bills, 266, 319.  
 Richmond, borough of, 58.  
 Right of Assembly, 330.  
 Right of petition, 120.  
 Right to vote, 124, 128.  
 Rights, civil and political, 121.  
 Rights, criminals may lose, 121, 122.  
 Rights of accused persons, 118, 119, 167, 168, 172.  
 Rights, personal, 113, 325, 329, 330.  
 Rights retained by the people, 257, 325.  
 SALE, contract of, 305.  
 "Schepens," 96, 97.  
 School commissioner, 190, 191.  
 School district, 191.  
 School district meeting, 192, 193.  
 School district meeting, voters at, 192.  
 School district officers, 192, 193.  
 School funds, 342.  
 School moneys, 194, 195.  
 School tax, 193, 194.  
 School teachers, 196.  
 School trustee, 193, 194.  
 Schools, city superintendent of, 47.  
 Schools, free, 196, 197, 342.  
 Schools, normal, 195.  
 Schools, public, 189, 190.  
 Schools, State superintendent of, 159, 190, 198.  
 Schools, superintendent of, city of New York, 65.  
 "Schout," 96, 97.  
 Searches and seizures, 255, 325.  
 Searches and seizures, unreasonable, 325.  
 Secretary of state, 156, 157.  
 Sectarian schools, State not to aid, 342, 343.  
 Senate districts, 140, 332, 333.  
 Senate, president of, may act as governor, 156.  
 Senate, State, 133, 134, 141.  
 Senate, State, presiding officer of, 144, 156.  
 Senate, State, power to reject governor's nominations, 149, 150.  
 Senate, State, representation of the city of New York in, 141.  
 Senate, United States, 262, 318.  
 Senators, State, 331, 332.  
 Senators, State, may be more than fifty, 141.  
 Senators, State, ratio for apportionment of, 140.  
 Senators, United States, 149, 262, 263, 318.  
 Senators, United States, election of, 149, 262.  
 Senate, United States, vacancy, how filled, 262.  
 Sentence, 174, 175.  
 Sheriff, 78, 79.  
 Shire, English, 73, 74, 153.

- "Shire mote," the, 74.  
 Slavery prohibited, 256, 326.  
 Silver certificates, 248.  
 Sinking funds, State, 341.  
 Soldiers, not to be quartered, 255, 325.  
 "Sovereign" States, 85, 86.  
 Sovereignty, defined, 85, 86.  
 Speaker, 134, 144, 156, 263, 264, 318.  
 Speaker, may act as governor, 156.  
 Speaker, power of, 267.  
 Specie payment, may not be suspended, 341.  
 Speech, freedom of, guaranteed, 120.  
 Stamp Act Congress, 225.  
 State, a municipal corporation, 84.  
 State as a political unit, 225.  
 State, a "sovereign," 85.  
 State constitution, 100, 103, 104, 108, 109, 110, 329-345.  
 State, defined, 84, 85.  
 State, department of, 272, 273.  
 State, duties of, 87.  
 State governments independent of national government, 241.  
 State powers, 252, 253.  
 State, powers of, 87, 303.  
 State, relations of, to lesser governments, 85.  
 State, secretary of, 156, 157, 272.  
 States, how admitted, 324.  
 States, prohibited from certain acts, 321.  
 States to be protected, 257.  
 States to be protected from invasion, 324.  
 State treasurer, governor's power to suspend, 155.  
 Statute, 179.  
 Statutes, publication of, 340.  
 Street commissioners, city, 47.  
 Stuyvesant, Peter, 95, 96.  
 Suffrage, persons excluded from, 331.  
 Summons, 178.  
 Superintendent of banks, State, 158, 161.  
 Superintendent of insurance, State, 161.  
 Superintendent of public instruction, State, 159, 190, 198.  
 Superintendent of public works, State, 158, 161.  
 Superintendent of State prisons, 158, 161.  
 Supervisor, 24, 25, 7.  
 Supervisors, county board of, 76.  
 Supervisors, how elected, 76.  
 Supervisors, powers of, 336.  
 Supervisors, powers of county board of, 76, 77.  
 Supreme court, appellate division, 339.  
 Supreme court, State, 338.  
 Surrogate, 81, 184, 185.  
 Surrogate courts, 340.  
 TARIFFS, 289, 290.  
 Taxation and representation, 225, 226.  
 Taxation without consent, 225, 226.  
 Tax, capitation or direct, 253.  
 Tax, Commissioners, State, 158, 161, 207.  
 Tax districts, 203.  
 "Tax dodging," 207.  
 Tax, no export, to be laid, 254.  
 Tax, power of Congress to, 245.  
 Tax sales, 206.  
 Taxes, assessment and collection of, 201, 202, 203, 206.  
 Taxes, direct, 317, 321.  
 Taxes, direct and indirect, 202, 203, 245.  
 Taxes must be uniform, 245.

- Taxes, special, 207, 208.  
 Taxes, State and local, 202, 203, 204, 206, 207.  
 Taxes, United States, 202.  
 Taxes, village, 204.  
 Teachers, 196.  
 Teachers' licenses, 196.  
 Territorial government, 250, 251.  
 Territories become States, how, 251.  
 Territories, organized and unorganized, 250, 251.  
 Territory of the United States, 249-251.  
 Territory, United States, government of, 324.  
 Testator, 312.  
 "Tithingman," 26.  
 Title of nobility not to be granted, 254.  
 Town, a municipal corporation, 9.  
 Town board, 28.  
 Town clerk, 25.  
 Town, defined, 9.  
 Town, governed through town meeting, 9.  
 Town meeting, example of direct democratic government, 10.  
 Town meeting, in America, 21.  
 Town meeting in England, 18.  
 Town meeting, old form of government, 16.  
 Town meeting, powers of, 14.  
 Town meetings, first in New York, 21.  
 Town meetings, when held, 13.  
 Town officers, 23.  
 Town officers, pay of, 28, 349.  
 Town, relations of, to county, 77.  
 Town, relations of, to State, 28.  
 Travelers, rights of, 289.  
 Transportation, contracts for, 306.  
 Treason, 323.  
 Treason, defined, 155.  
 Treason, power of legislature to pardon, 155.  
 Treaties, 288, 289.  
 Treasurer, city, 47.  
 Treasurer of the city of New York, 62.  
 Treasurer, State, 155, 156, 157.  
 Treasurer, State, may be suspended, 338.  
 Treasury, department of, 273.  
 Treasury notes, 248, 249.  
 Treasury, secretary of the, 272, 273.  
 Trial by jury, 116, 117, 172, 173.  
 Tribe, ancient German, 73, 133, 153.  
 Trust companies, 161.  
 Trustees, village, 35.  
 "Twelve Select Men," 95.  
 UNION free schools, 194.  
 United States a nation, 225.  
 United States a permanent union, 239.  
 United States, a sovereign power, 86.  
 United States bonds, 209.  
 United States Deposit Fund, 194.  
 United States government begins in Continental Congress, 227, 228.  
 United States government, one of specific powers, 241.  
 United States government, powers of, 242.  
 United States not a league of States, 238.  
 United States, not to be sued, 326.  
 United States territory, 249, 250, 251.  
 University of the State of New York, 198.  
 VERDICT of the jury, 174.  
 Vestry meeting, 18.  
 Veto, defined, 46.

- Veto, governor's, 147, 337.  
 Veto, mayor's, 46.  
 Veto power, president's, 268.  
 Veto, president's, 319.  
 Vice president, 318.  
 Vice president of the United States, 275.  
 Village charter, 35.  
 Village elections, special, 38.  
 Village election, annual, 36.  
 Village government, why a separate, 33.  
 Village government, plan of, 34.  
 Village lawmakers, 38.  
 Village officers, 37.  
 Village, part of town, 34.  
 Village police court, 37, 38.  
 Village, population necessary for, 33.  
 Village president, 36, 37.  
 Villages, classes of, 35.  
 Village trustees, 35, 36.  
 Village trustees, powers of, 36.  
 Vote, the right to, 124, 327.  
 Vote, right to, a political right, 128, 129.  
 Vote, right to, how lost, 128.  
 Vote, who may, 125, 126.  
 Voters at school district meetings, 128, 129.  
 Voters, qualifications of, 125, 126, 330, 331.  
 Voting, 220.  
 Voting, duty of, 129.  
 WALLOONS, 90, 91.  
 War, Congress may declare, 320.  
 War, declaration of, 290.  
 War, department of, 273.  
 War powers, 244, 270, 271.  
 War, property rights during, 291.  
 War, rights and duties of nations during, 290, 293.  
 War, secretary of, 272, 273.  
 Ward, 309.  
 Wards, 45.  
 Warrant, arrest by, 167.  
 Warrants, 325.  
 Washington, made president, 234.  
 Weather bureau, State, 162.  
 West India Company, 94, 95, 96.  
 Wills, 185, 312.  
 Witness against self, 255.  
 Witnesses, must attend and testify, 255.  
 Women may vote, when, 125, 128.  
 Worship, freedom of, 117, 329.  
 Writ of habeas corpus, 118.



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